4. TRADE AND SUSTAINABLE DEVELOPMENT

One of the highlights of this agreement is the inclusion of a chapter on Trade and Sustainable Development. The agreement includes 15 pages on this subject, establishing principles and actions on decent work, and environmental aspects of sustainable development in the context of trade and investment (Article 1.1).

The chapter includes the following subtitles, which correspond to different topics. Here we highlight the most relevant:

Article 4: Multilateral Agreements of Labour Standards

Article 5: Multilateral Environmental Agreements

Article 6: Trade and Climate Change

Article 7: Trade and Biodiversity

Article 8: Trade and Sustainable Forest Management

Article 9: Trade and Sustainable Management of Fisheries and Aquaculture

Article 10: Technical and Scientific Information

Article 11: Trade and Responsible Management of Supply Chains

We will review several of these issues here, although some of them, such as fishing, have already been covered in greater detail in other chapters on the previous pages.

4.1 Trade, Climate Change, Biodiversity, and Forests

European officials presented the inclusion of the Paris Agreement commitments on climate change in the agreement as a victory, having made adherence to the Paris climate obligations a condition of the trade deal. They argued that this clause would "bind" Brazil to its international climate commitments [1]. Under the Paris Agreement, Brazil is committed to acting against illegal deforestation and delivering 12 million hectares of reforestation in the Amazonian forest, which plays a crucial role in regulating the earth's climate.

Article 6 of the chapter refers to the link between trade and climate change. It states that each party will effectively implement the Paris Agreement signed in 2015 (Article 6.2 (a)), which makes it binding to commercial matters. Article 6 on Trade and Climate Change states that:

"Each Party shall:

1. effectively implement the United Nations Framework Convention on Climate Change (UNFCCC), and the Paris Agreement established there;
2. in accordance with Article 2 of the Paris Agreement, promoting the positive contribution of trade to a path towards low greenhouse gas emissions and climate-

resilient development, as well as increasing the ability to adapt to the adverse impacts of climate change in a way that does not threaten food production."

However, the inclusion of these clauses does not mean that Brazil is bound to commitments on climate change mitigation. On the contrary, this agreement includes no enforceable mechanisms in this regard. The chapter establishes no penalties for cases in which the Paris obligations are not respected. Moreover, the language used in these articles weakens the relevance of climate in the agreement, and grants ample room for manoeuvre to the states to avoid fulfilling concrete commitments (Abdenur, 2019). Here the wording of the clauses becomes central. For example, Article 6 on Trade and Climate Change continues: "The Parties shall cooperate, as appropriate, on issues of climate change linked to trade bilaterally, regionally and in international fora such as the UNFCCC." The phrase "as appropriate" removes the obligation for states to cooperate on climate change issues.

The Paris Agreement sets targets for reducing CO2 emissions in order to limit the increase in global average temperature. Article 2 of the Paris Agreement establishes that its objective is "to maintain the global average temperature increase well below 2°C with respect to pre-industrial levels, and to continue efforts to limit that temperature increase to 1.5°C with respect to pre-industrial levels, recognising that this would significantly reduce the risks and effects of climate change". In this regard, beyond the incorporation of the reference to the Paris Agreement in this text, the impact of trade liberalisation on the climate involves multiple negative effects, including deforestation, emissions from methane gas, the increase in pollution from maritime transport, and an increase in the use of pesticides.

The environmental impacts of trade liberalisation have become more relevant given the increase in the traffic of goods and its harmful effects on the ecosystem. Nevertheless, the issue of climate change and the EU-Mercosur deal only became a subject of public debate in the wake of the hundreds of fires propagated in the Amazon rainforest in August 2019. This situation generated a political tension between France and Brazil, with numerous declarations being exchanged between the French President, Emmanuel Macron, and his Brazilian counterpart, Jair Bolsonaro.

Bolsonaro was elected president of Brazil with an electoral campaign which focused on "the three Bs" [2]: bullet, bible, and bovine meat. This refers to the hardening of repressive politics, his attachment to religious conservatism (especially evangelical), and his support for the beef sector, which implies the expansion of the agricultural frontier for fodder and livestock grazing.

Bolsonaro has acted to undermine the climate and biodiversity, by putting the agency responsible for protecting indigenous territories (FUNAI) under the authority of the Ministry of Agriculture, which represents the interests of large landowners [3]. His government progressed the reforming of the Forest Code, which makes illegal appropriation of land easier. It has also disarmed the Environmental Protection Agency (IBAMA) and the National Space Research Institute (INPE) that work to control deforestation. The government fired the head of INPE after the Institute revealed that deforestation had increased according to satellite reports (there was reportedly an observable 88% increase in deforestation in June 2019, compared to June of the previous year). Bolsonaro then announced his plan to redirect

foreign aid which was aimed to help combat deforestation. This policy led Germany and Norway to freeze committed donations to that fund [4]. Finally, the issue of Brazilian deforestation gained even more international visibility due to the dramatic fires that were covered by the global media. In particular, Emmanuel Macron requested that the issue be urgently discussed at the G7 Summit in Biarritz in August 2019.

The lack of an apparent reaction from President Bolsonaro to the fires in the Amazon led President Macron to announce that he would oppose the EU-Mercosur agreement. He publicly added that Bolsonaro had lied at the G20 meeting in Japan earlier in the year, where EU leaders agreed to finalise the negotiations. Other countries have also expressed their doubts about an agreement with Mercosur: the Irish Prime Minister also threatened to vote against the agreement, just as the Prime Minister of Luxembourg asked to suspend the ratification process. The Slovakian Minister of Agriculture stated that imports of agricultural products and food that are not produced according to European environmental and animal care standards should be stopped. In Germany, the press asked for sanctions against Brazil, and the Minister of Agriculture threatened the country over the lack of concern shown about the fires in the Amazon [5], with support from the UK government. The EU committee of the Austrian Parliament also surprisingly decided to oblige their government to veto the agreement at the Council of the EU [6].

Macron's position against the agreement with Mercosur has been interpreted as a masterful political move within the framework of a precarious balancing act for France, taking into account the tensions created between CETA and the agreement with Mercosur in France. Thus, Macron can present the "good CETA" against the "bad Mercosur agreement," sacrificing the latter but saving the agreement with Canada, and thereby giving in to the persistent criticisms by the French agricultural sector of the agreement with the South American bloc. In short, Macron intends to argue that the ecological transition is compatible with free trade, thus saving the very principles of market liberalisation.

4.1.1 Impacts of trade on deforestation and climate change

The agreement will generate an increase in the emission of greenhouse gases. The existing trade relationship already produces a high amount of gases: trade from Mercosur to EU produces more than 25,000 tonnes of CO2 per year (Grain, 2019). The proliferation of exports and imports promoted by this agreement will thus inevitably generate an increase in emissions. For example, a higher trade in poultry is likely to produce an increase of 6% in emissions, while the increase in trade of ethanol might generate an extra 4% of CO2 emissions. Two-thirds of the new emissions will be produced on farms, via the use of increased fertilisers and manure, while about 30% will come from changes in land use, including deforestation (Grain, 2019).

The increase in export quotas and the reduction of tariffs will lead to an increase in production and export of many products. In Mercosur countries this will most likely lead to further deforestation [7], as there is a deeply interconnected relationship between the agricultural biotechnological model (Poth, 2019), deforestation, and climate change. Forests trap and store large amounts of carbon dioxide and contribute significantly to mitigating global warming. When forests are destroyed, the carbon they absorb returns to the

atmosphere, causing a double negative impact. As previously mentioned, it is estimated that between 25 to 30% of the greenhouse gases released into the atmosphere every year are due to deforestation.

Deforestation around the world is directly connected to the EU's trade policy since the region is the largest importer of products from illegally deforested areas [8]. In 2012, the EU imported amounts equivalent to around 6 billion euros of soy, meat, leather, and palm oil originating from land cleared illegally in tropical forests around the world. This sum represents about a quarter of the total world trade of these products. The EU and European consumers are the leading importers per capita of goods that promote deforestation [see 8].

European countries import meat, ethanol from sugar cane as well as soybeans and soybean meal, all of which contribute to deforestation. In the EU there is little land to grow soybeans, and the use of glyphosate is more restricted than in Mercosur countries, which makes soybean plantations uncompetitive. Thus, soy is imported from all four Mercosur countries. More than 90% of the planted soybeans are genetically modified, which gives producers an extraordinary advantage [9]. Soybean imports from Mercosur countries are essential to support the agri-food model in Europe, demonstrating the clear inconsistency in the EU´s discourse on deforestation. Due to the abolition of export duties, the cost to export soy beans and soy meal will most likely reduce, and therefore become more competitive, leading to a probable increase in production.

In 2019, Brazil was the main supplier of soybeans to the European market, with 45% of market share. Brazil (46%), Argentina (43%) and Paraguay (4%) together account for 93% of all EU soya meal imports in 2019 [10]. Therefore, although European leaders like Emmanuel Macron may claim that they are against the agreement, in fact there is a strong dependency on soy imports from the Southern bloc and the agreement will even encourage soy production. The Netherlands, Spain, Germany and Italy are the primary purchasers of soybeans in the EU: they import more than 80% of the soybeans that enter the bloc. For soya meal, it is mainly Spain, the Netherlands, France and Poland, accounting for 55% of total imports to the EU [see 10]. Soybeans and soya meal are primarily used for animal feed, but also for the production of biodiesel. It should be noted that in Mercosur countries there is no clear and credible traceability process for soy production which could guarantee that exported soya does not come from deforestation – where it exists, the process depends on the private sector.

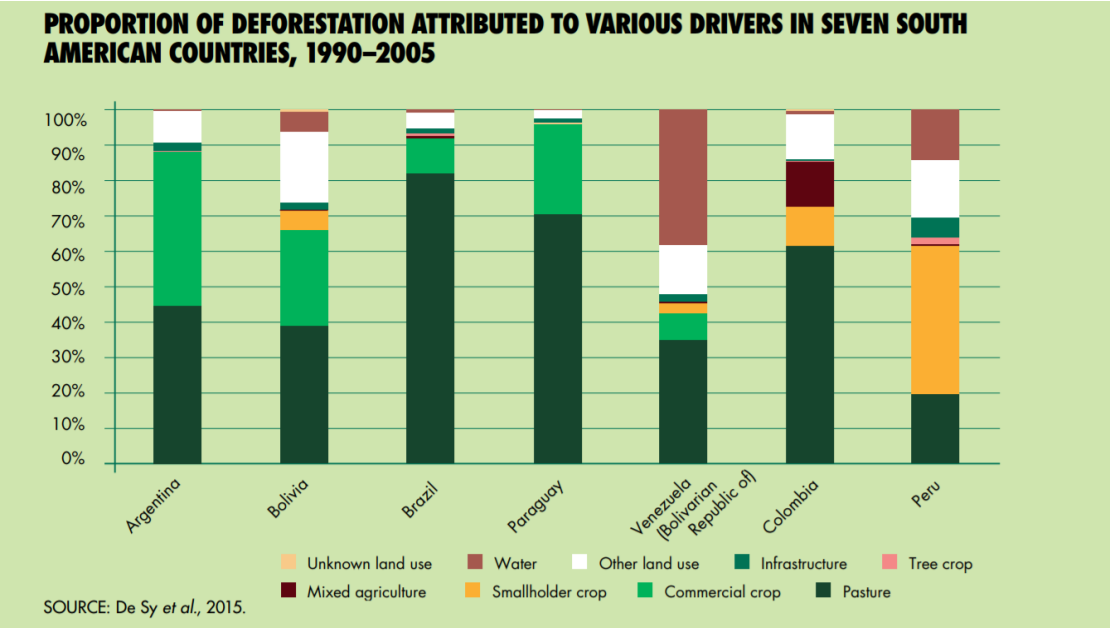
In the case of Argentina, there is no traceability system for exported soybean at all. Recently, a report by The Guardian showed that large British supermarkets were selling chicken and meat that had been fed soybeans from deforestation in Argentina [11]. Approximately 55% of the soybean meal in the UK comes from Argentina. Some Argentinean officials have confirmed that there is no traceability system for soybeans in deforested areas. Soy is mixed before being exported to different markets, which include the UK. The National Service for Agrifood Health and Quality (SENASA) in Argentina explained that there is no demand for traceability by soy buyers. They pointed out that: “If large grain merchants demanded it, in the same way that citrus buyers do, Argentina would have no other option. However, it is the buyer who always imposes traceability". UK retailers agree that there is a problem with the traceability of soy. The Tesco supermarket chain has a detailed plan which aims to eliminate soy from deforested regions from its supply chain by 2025. Marks & Spencer has also

acknowledged that Argentinean soy is in the company's supply chain and is working towards the goal of zero deforestation by 2020. Meanwhile, nothing guarantees that the soy that the EU imports from Argentina do not come from deforested areas.

But it is not only soy which is causing massive deforestation. In the Brazilian Amazon, 63% of deforested land is occupied by cattle grazing (Abdenur, 2019). Illegal logging has advanced to worrying levels: in the Brazilian Amazon, the equivalent of one and a half football stadiums are destroyed every minute [12]. Since the 1980s, and even more so today, the expansion of the soybean frontier and the land used for cattle grazing from South to Central Brazil has continued to shift pastures north into the Amazon. Pastures there have increased by 500% between 1985 and 2017, from 7.2 to 36.4 million hectares, causing the deforestation of 28.5 million hectares [13].

Today, forests cover about 58% of the territory of Brazil, 38% of Paraguay, and 10% of Argentina. According to the LSE SIA (2019), Brazil, Paraguay, and Argentina are among the ten countries with the highest deforestation rates in recent years. According to estimates, the Province of Córdoba in Argentina, the heart of the soybean model, lost 95% of its native forest in the last 20 years, mostly due to the advance of the agricultural frontier [14]. About 14% of soybeans planted in Argentina are also located in the north of the country, where deforestation has swept areas of the Gran Chaco, a large biome that crosses the border to Paraguay.

Graphic 1 - Proportion of deforestation attributed to various drivers in seven South American countries, 1990-2005.



Source: State of the World's Forests (FAO, 2016)

The replacement of forests by livestock has a direct impact on the emission of gases into the atmosphere. The raising of cows and grasslands has tended to replace the jungle lands in

Brazil or the forests in Argentina and Paraguay. Another area of criticism is the issue of the emission of methane from the livestock sector in these countries. Greenhouse gas emissions in the EU (80% being CO2) correspond mainly to fuel burning and industrial activity [15]. On the other hand, in Mercosur, large amounts of methane emissions are associated with agricultural activities, waste management, and energy use, particularly in Uruguay (sixth in the ranking of methane emitting countries) and Paraguay (LSE, 2019).

In Paraguay and Brazil, the change in land use, from forests to land for sowing and grazing, is one of the most significant contributors to CO2 emissions. According to the SIA undertaken by LSE (2019), about 55% of Brazil's CO2 emissions are due to change in land use, with the figure reaching 70% in Paraguay. Brazilian emissions decreased between 2005 and 2012 (the year of the lowest level of deforestation) as a result of the change in the use of land (mainly due to a reduction in deforestation rate). However, it increased in the manufacturing and construction sectors. Moreover, even though deforestation in Brazil went from 19,000 square kilometres in 2005 to 4,571 in 2012, the pace alarmingly grew again in recent years, registering an average of 7,500 square kilometres of deforestation per year between 2016 and 2018 [16]. The fires caused an increase of 15% in deforestation between August 2018 and July 2019, according to the Deforestation Alert System, based on images captured by satellites, which recorded 5,042 square kilometres of deforestation in this period [17].

The transformation of wooded land into land for livestock or agriculture also has social impacts. The work of Hinojosa (2007), which presents an overall positive perspective on the agreement, argues that the impacts on the rural sector are mixed, due to the diversification that characterises the livelihood strategies of rural populations in Mercosur countries and how institutions condition the access to assets. This report says that the incentives towards land concentration generated by the agreement "could affect the most vulnerable groups if no palliative measures are taken to avoid dispossession of assets and unfair labour market practices" (Hinojosa, 2007: 4). However, no measures have been taken by Mercosur countries to mitigate the possible effects on vulnerable groups or the environment.

Thus, the Amazon fires cannot be seen separately from trade issues: indiscriminate logging and fires are the first steps in extending agricultural borders and thereby increasing the area dedicated to the export of commodities to, for example, EU countries. The EU-Mercosur trade agreement will deepen these devastating effects on the environment and nature.

4.1.2 The general effects of the agreement on the environment

The agreement between the two blocs will have profound environmental impacts. However, according to the University of Manchester's impact study (2007), these could be both positive and negative, including (a) a potential for improvement of environmental services; (b) a risk of increased water pollution, requiring stricter regulations; (c) a potential adverse effect on biodiversity, aggravated by the increased demand for biofuels in Europe, in particular from Brazil. Other "less significant" impacts are identified, in particular: potential deterioration of water resources and soil reserves, air pollution, the spread of plant diseases, and risks to animal welfare. It is clear that the environmental impacts are many, and yet what is not guaranteed are policies that can effectively mitigate these impacts.

Beyond the fires in the Amazon and the conversion of forested lands for grazing and agriculture, the effects of this trade agreement on the environment can be counted in several areas. Here we highlight two particularly important aspects: a) the increase in CO2 emissions due to the increased maritime transport; b) the use of pesticides in Mercosur countries.

Increase in CO2 emissions as a result of trade

The agreement will reduce tariffs to zero for a large number of products. The EU will export, without barriers, sophisticated agri-food products, such as wines (which are currently subject to a 27% tariff), chocolates (20%), whiskeys and other distillates (20 to 35%), cheeses (28%), biscuits (16 to 18%) and even soda (20 to 35%). To this is added olive oil, fresh fruit, peaches, and canned tomatoes and frozen potatoes, all indicated in the text as crucial products for European export.

Some of these products exemplify the irrationality of international trade. Certain food products that are traded internationally are also produced a few kilometres away from consumers in the Mercosur or EU countries, such as tomatoes, potatoes and fresh fruits, but will now travel 10,000 kilometres in vessels from, for example, Rome to Montevideo.

The consequences of this trade can be observed in other agreements signed by the EU with Latin American countries. For example, Peru imports products such as frozen potatoes at zero tariffs from the EU. But the potato is not just any product: it is an ancient product in Peru, where it was first cultivated 8,000 years ago. Peru produces more than 4 million tonnes of potatoes itself a year, being the primary producer in Latin America. However, the Netherlands is now the primary source of frozen potatoes for Peru (Ghiotto, 2019).

This contradictory logic has been pointed out by environmental movements, which denounce the ecological footprint of products being internationally traded when they could simply be purchased at reasonable prices within walking distance of the consumer's home. For example, in 2007, Britain imported 15,000 tonnes of chocolate-dipped waffles, while it exported 14,000 tonnes of the same product [18], and in 2016 it imported 213,000 tonnes of milk, while that same year it exported another 545,000 tonnes of the product. FTAs protect and encourage this type of trade, where companies exploit regulatory and trade facilities, low taxes, cost of production, and environmental standards in other countries, with the sole objective of increasing profits.

Moreover, direct and indirect subsidies which support the extraction and use of fossil energy, of USD 5 trillion per year globally, allow the cost of marine transportation of goods to be sustained by taxpayers´ money [19]. The International Monetary Fund estimated in 2015 that eliminating fossil fuel subsidies and then imposing taxes on their consumption could lead to a decrease in fossil fuel related carbon emissions of more than 20% worldwide [20]. The elimination of subsidies would also increase government revenues by USD 2.9 billion (3.6% of global gross domestic product).

These combined subsidies lead to an irrational level of international transportation. By 2050, carbon dioxide emissions from global maritime transport could represent 17% of total carbon dioxide emissions [21]. The EU has recently taken measures to reduce the impact of emissions on the maritime transport sector. It established sulfur oxide emission limits in EU

waters. To meet the limits, operators can, for example, use low sulfur fuel, install onboard filters or adopt alternative fuel technologies.

For its part, Mercosur is very late in measuring the impact of its economic activity on climate. In 2018, the Mercosur Ministers of Health supported a motion to advance in the measurement of carbon footprint and strategies to reduce it [22]. On October 1 2019, the First Meeting of Political and Social Dialogue on Climate Change of Mercosur took place, where parliamentarians and civil society met to build networks which would discuss the challenge of climate change [23].

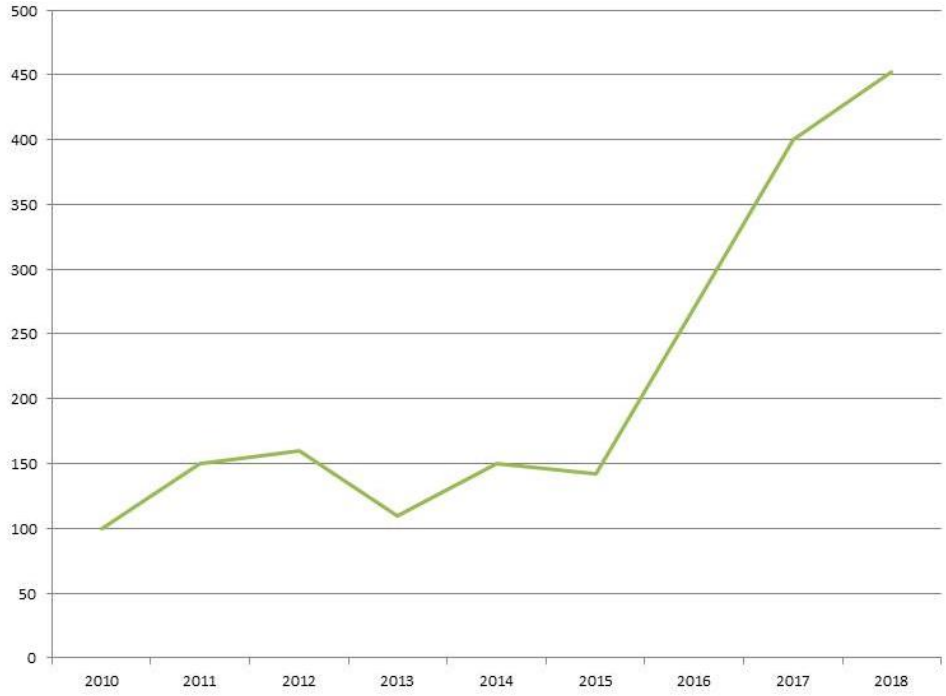
According to the LSE-authored SIA (2019), Mercosur countries have a lower performance within the Environmental Performance Index (EPI). The EPI measures six aspects: water resources, fisheries, biodiversity, forests, climate, and energy. In 2016 Argentina was ranked 43rd, closely followed by Brazil at 46th, while Uruguay and Paraguay were at rank 65 and 82 respectively.

Pesticides and pollution

The current situation concerning pesticides can best be described as circular. European corporations export large quantities of pesticides to Mercosur countries. These pesticides return in the form of food exported from Mercosur to the EU. This vicious circle will be deepened by the agreement.

According to a study by Brazilian researcher Larissa Mies Bombardi, Brazil and the USA are the countries that use the largest amounts of pesticides in the world. Brazil consumes about one million tonnes a year, and has become, according to the New York Times, a "paradise for pesticides" [24]. The country allows the use of 500 pesticides, 150 of which are prohibited in the EU. As seen in Graphic 3, the situation has worsened since Jair Bolsonaro took office in Brazil. Between January and July 2019 290 new agrochemicals were approved (tripling the number of pesticides approved in the same period the previous years). Another 530 pesticides are pending permission. Brazil is thus an oasis for the agrochemical industry, as the EU and even the USA have banned many of the chemicals due to their toxicity levels and detrimental impacts on the environment.

Graphic 2 - Evolution of the approval of pesticides in Brazil, 2010-2018



Source: Luciana Ghiotto, Javier Echaide, 2019 (based on information provided by the Ministry of Agriculture, Brazil)

Glyphosate is the best-selling pesticide, but its dangers are not discussed in Brazil. A study by the National Cancer Research Institute (INCA) estimates that each Brazilian ingests on average 5 litres of pesticides annually due to residues in food products [25]. In southern Brazil, the location of large agricultural areas, between 12 and 16 kg of pesticides are sprayed per hectare and year, while in Europe the equivalent figure is only 1 kg. Almost 70% of pesticides are used on genetically modified soy, corn, and sugar.

Many of these pesticides are extremely toxic. Sulfoxaflor and fipronil are used for several crops in Brazil, despite the fact that other countries have banned them because of their effect on the reproductive process of bees. Many neonicotinoids have been proven to kill bee populations. In fact, the EU Commission decided to ban the use of neonicotinoids in April 2018, after an increase in the mortality of beehives. Sulfoxaflor is one of the pesticides that caused bee colonies to collapse in Brazil. According to a study carried out by the Agência Pública and Repórter Brasil, five hundred million dead bees were found in four Brazilian states in the first quarter of 2019, an incredible number that puts the pollination of fruits and vegetables and native vegetation at risk [26].

The circle closes when we look at the companies that earn the most from the approval of pesticides. The German companies BASF and Bayer, the US-American company Dow-DuPont and Syngenta (of Swiss origin, but acquired by Chinese capital), are the main suppliers of pesticides in Brazil. As mentioned in the section on Rules of Origin, the agreement will make

it even easier and cheaper for European companies to produce and export pesticides and agro-chemicals to Mercosur countries. Also, after the union between Bayer and Monsanto, more than 50% of the genetically modified seeds sold in Brazil are from this company. It should be noted that on the Brazilian market it is not expensive to obtain permits to sell pesticides. In 2015 the cost of registration was about USD 1,000 per product, while in the USA, the same company would have to disburse about USD 630,000 to place its pesticide in stores [27]. Finally, it is important to note that five of the most-used pesticides in the region are considered carcinogenic by the World Health Organisation (WHO) [28].

To sum up, it has become clear that the agreement will not only contribute to higher greenhouse gas emissions through deforestation. The increased trade flows between the two blocs, due to the reduction of tariffs to zero for a large number of products, will also affect the climate. Instead of fostering more sustainable local and regional supply chains, this agreement deepens a bizarre trade system whereby food products which are already produced locally or in the region, are exported to other continents. These emissions are not accounted for in the EU emission reduction targets. International and EU efforts to reduce shipping emissions are currently grossly inadequate to reach global climate targets.

4.2 Labour Standards

The chapter on Trade and Sustainable Development does not only mention climate change and deforestation - it also includes a number of articles where the issue of Labour Standards is adressed. Article 4 on Multilateral Labour Agreements and Standards implies a mutual commitment to the labour rights conventions of the International Labour Organisation (ILO), as well as the agreement to not lower labour standards to attract foreign investment or promote trade. The EU argues that it is one of the most advanced agreements in this area (Sanahuja, 2019). Phil Hogan, then EU Commissioner of Agriculture, said in July 2019 that "trade should not happen at the expense of environmental or labour conditions: on the contrary, it should promote sustainable development" [29].

Paragraph 3 of the same Article states that the parties: “must respect, promote and effectively implement the main labour standards recognised in the Fundamental Conventions of the ILO,” referring here to the Declaration on Fundamental Principles and Rights at Work of 1998. This Declaration incorporates the four fundamental rights, addressed in eight basic conventions: a) freedom of association; b) elimination of all forms of forced labour; c) elimination of child labour; 4) elimination of discrimination in employment.

It is interesting to note that the Article on Multilateral Labour Agreements and Standards incorporates the following: “Each Party will make continuous and sustained efforts to ratify the fundamental ILO Conventions of which it is not a party” (paragraph 4). The “importance of ratifying and implementing the 2014 Protocol to the Convention on Forced Labour” is also added (paragraph 5). The parties undertake to exchange information on their respective progress in the ratification of the fundamental conventions or protocols (paragraph 6) and to exchange information and cooperate on labour issues related to trade within the

framework of the ILO (paragraph 8). The article states that the parties will promote decent work conditions (paragraph 10).

The trade union confederations of both blocs, the Southern Cone Confederation of Trade Unions (CCSCS) and the European Trade Union Confederation (ETUC), in June 2019 stated their concern that in the Mercosur countries several ILO conventions have not been ratified [30]. In fact, according to the ILO, Brazil is among the countries that violate international labour standards, undermine collective bargaining and hinder the work of labour unions. The International Trade Unions Confederation (ITUC) has listed Brazil as one of the 10 worst countries for employees, due to violent repression against strikes and threats received by members of trade unions [31]. Brazil has not ratified Convention 87 on Freedom of Association and protection of the Right to Organise, and the ILO has observed the absence of compliance with Convention 98 on the Right to Collective Bargaining. For their part, the EU member states have ratified all the ILO core conventions since 2007.

The agreement could have a positive effect, given the commitment to advance in the ratification of the conventions. But the incorporation of the articles on Labour Standards is of little use: they cannot be executed, as will be explained in section 4.5 of this chapter. The LSE impact study (2019) recognises that there is limited evidence to show the effectiveness of labour provisions in trade agreements.

The European Commission's proposal for the TSD chapter remains favourable towards the consultation and cooperation mechanisms for dispute resolution. The EU relies on consultation and persuasion mechanisms for the enforceability of this part of its trade agreements, with the sole exception of the agreement with the Caribbean countries, where (at least in the clauses) economic sanctions are allowed (LSE, 2019). An analysis of the experience of the EU-Peru trade agreement can demonstrate the functioning of this non-enforceable mechanism in the Trade and Sustainable Development chapter. Just like in the EU-Mercosur agreement, the TSD chapter in the agreement with Peru constitutes a frame of reference for compliance with labour, social and environmental standards, and establishes obligations regarding labour and environmental rights. It also includes a mechanism for dialogue with civil society, although this is not binding. In 2017, at the annual meeting of the Sub Committee on Trade and Sustainable Development, Peruvian civil society (together with European organisations) raised a complaint based on the breach of labour and environmental standards by the Peruvian government (REDGE, 2017). Commissioner Cecilia Malmström's response at that time was blunt: Peru was urged to make sufficient progress on these matters, otherwise, she would consider the possibility of using "the mechanisms existing under the agreement, including the commercial execution procedure to address the identified problems" (Malmström in Fernández-Maldonado, 2018: 63). However, subsequent responses to the ongoing complaint reduced the seriousness of the EU's language, finally ending with an official EU response in April 2019 that avoids taking concrete steps in response to requests from Peruvian civil society (Ghiotto, 2019).

In the EU-Mercosur agreement, there is no certainty regarding how the dialogue with civil society will work, because the specific pillar on Political Dialogue has not been released publicly yet. However, as we will see in the following sections, if we judge based on the TSD chapter, civil society will most likely have few possibilities to take part in the decision-making process. As a matter of fact, some of the articles still contain sentences between

brackets, meaning that negotiations on these topics are not yet concluded. This is the case for the dispute settlement mechanism established in the TSD chapter and the role of civil society organisations in it.

In conclusion, the integration of articles on labour and environmental standards in EU agreements has proven to be ultimately unsuccessful. The clauses in the TSD chapter become irrelevant when compared to the other chapters in the trade agreement. Although the EU defends its agreements, arguing that they are progressive and protect human and environmental rights, in cases where attempts have been made to activate these clauses, the Commission's response has been very weak.

4.3 Technical and Scientific Information

The chapter on Trade and Sustainable Development also contains an article on Technical and Scientific Information (Article 10). This article includes a specific mention of the use of the "precautionary principle". In the EU, the precautionary principle, as established in the Lisbon Treaty, allows the EU to take regulatory measures against a risk, even if it is a risk for which there is no scientific certainty (Fritz, 2018).

The "Agreement in Principle" published on July 1, 2019 claims that the agreement does not prevent the EU from retaining its environmental standards or using the precautionary principle (European Commission, 2019a). However, the text of the agreement does not contain such an explicit assertion, but instead refers to national levels of environmental protection, opening up many questions.

Throughout the negotiations, Mercosur countries opposed the incorporation of the precautionary principle, given that their agro-export model is based on massive amounts of GMOs and pesticide use. The four Mercosur countries were part of the dispute against the EU in the WTO on its moratorium on Genetically Modified Organisms, which the EU defended by appealing to the precautionary principle (which has been explained previously in the section on Dialogues (3.3). The EU lost this case (Hartmann and Fritz, 2018).

For his part, former Argentine Foreign Minister Jorge Faurie said that "environmental regulations would not be an obstacle for Argentine agriculture", and the precautionary principle "can only be used on a scientific basis" and, therefore, cannot be used as a trade barrier [32]. This interpretation is not entirely wrong. This is due to the tension that exists in the definition of "scientific basis." The Article on Technical and Scientific Information states in its first paragraph:

"1. When establishing or implementing measures aimed at protecting the environment or labour conditions that may affect trade or investment, each Party shall ensure that the scientific or technical evidence on which they are based is from recognised technical and scientific bodies and that the measures are based on relevant international standards, guides or recommendations, where they exist." However, in the second and third paragraph, it reads as follows:

> 2. In cases when scientific evidence or information is insufficient or inconclusive, and there is a risk of serious environmental degradation or occupational health and safety

in its territory, a Party may adopt measures based on the precautionary principle. Such measures must be based on available pertinent information and must be subject to periodic review. (…)

3. When a measure adopted in accordance with the above paragraph has an impact on trade or investment, a Party may request to the Party adopting the measure to provide information indicating that scientific knowledge is insufficient or inconclusive in relation to the subject matter at stake and that the measure adopted is consistent with its own level of protection, and may require discussion of the matter in the TSD Sub-Committee.

Some elements of analysis that derive from these paragraphs include the following:

a) The terminology used in this article is very lax. The final disposition of these clauses show the flexibility and vagueness of the precautionary principle. Moreover, it was only included in the chapter on Trade and Sustainable Development, that cannot be invoked for the Dispute Settlement chapter of the Agreement (on this, see section 4.5).

b) When compared with the drafts of 2017, the EU´s position to include "occupational health and safety" prevailed in the final version. However, the wording is limited in comparison to the EU's broader concept of the precautionary principle, which has been applied in more areas, such as health and consumer protection (Fritz, 2018).

c) The concept of "serious environmental degradation" is not specified, and thus open to free interpretation. It is unclear what constitutes, or what does not, a "serious" risk of environmental degradation, which may open up to questions about the use of the precautionary principle.

d) If the precautionary principle is applied, the measure will be discussed by the Sub-Committee on Trade and Sustainable Development, which will thus have extraordinary capabilities. The use of the precautionary principle will be defined on a case-by-case basis. However, the Sub-Committee lacks democratic transparency, and there is no guarantee that corporate capture of the officials will not occur.

4.4 Responsible management of supply chains

Corporate responsibility in global value chains is treated in Article 11 of the chapter on Trade and Sustainable Development. It is called "responsible management of supply chains."

The agreement focuses on responsible business conduct, and corporate social responsibility (CSR) practices based on internationally recognised guides. In pursuit of such objectives, the Article remarks that each bloc must support the dissemination and use of internationally signed instruments, mentioning in this regard:

- the ILO Tripartite Declaration of Principles on Multinational Enterprises and Public Policies,
- the UN Global Compact,

- the United Nations Guiding Principles on Business and Human Rights,
- the OECD Guide for Multinational Companies.

Each of the international instruments listed above represent soft law – they are not binding on states, but rather voluntary mechanisms. They can serve as sources of future norms on the matter, however they do not in themselves constitute instruments that could be used to oblige corporations to abide by the standards these instruments set.

The agreement clarifies that the parties will promote the voluntary adoption of CSR or other forms of responsible business practices based on the principles and guidelines mentioned above. Yet, neither this article on "responsible management of supply chains" nor any other chapter in the EU-Mercosur agreement establishes binding rules or standards for corporations within their supply chains.

4.5 Dispute settlement in the context of Trade and Sustainable Development

The TSD chapter incorporates a particular dispute resolution mechanism for the issues it covers. The general dispute resolution mechanism provided for in the overall agreement, especially applicable to trade issues, does not apply. Thus, the agreement reserves enforceable mechanisms (hard law) for trade issues, while environmental issues are relegated to a non-enforceable dispute resolution mechanism (soft law).

The chapter establishes a Sub-Committee on Trade and Sustainable Development, composed of delegates from each party. In turn, each party will designate a contact point from its administration to facilitate communication and coordination between the parties (Article 14). This Sub-committee is part of the institutional or bureaucratic body that the agreement will create.

Any dispute arising on issues related to sustainable development must first be resolved in a friendly manner by the parties to the dispute, through consultations which aim to reach a mutually satisfactory solution. If this negotiation mechanism is not successful, the parties will form a panel of three experts that will issue a report with non-binding recommendations to resolve the issue.

Each party will propose 15 individuals to make up an overall list of experts that will examine controversies that may arise. Another 15 are selected by mutual agreement, and cannot be nationals of either of the two blocs. Each party will then select a sub-list of five individuals under the same criteria. Of those 15 experts, three will be chosen (one by Mercosur, one by the EU, and another non-national from any bloc chosen by agreement) to form the Panel for each dispute (Article 17). The Panel will prepare a Preliminary Report within 90 days, and a Final Report 60 days later. The parties may submit written comments within 45 days of accessing the Preliminary Report, and the Panel may take these comments into account to modify its report for the final version. The Final Report must be published 15 days after it was signed by the experts.

The explanatory documents (the "Agreement in Principle") of both the EU and Mercosur highlight the existence of civil society participation mechanisms in this dispute resolution process. On this issue, Commissioner Phil Hogan said on August 2, 2019 that: "the dispute resolution mechanism of the Trade and Sustainable Development chapter will be enforceable and will include a role for civil society, including representatives of employers and trade unions, at all stages using the experience of international organisations such as the International Labour Organisation"[33]. However, when reviewing the text, in particular Article 17 of the TSD chapter, it becomes obvious that the "participation" is merely symbolic, since it is only the final report which will be shared with civil society, presumably with a "civil society domestic advisory group." Yet this provision has not been confirmed by negotiators, since the reference remains in square brackets. Supposedly the "civil society domestic advisory group" could submit observations. However, no deadlines are stipulated for this, and there is no clarity as to how those observations would be considered on a report that has already been issued and published.

It is clear that, in light of this agreement, the participation of civil society is a mere formality. There is no guarantee that civil society organisations will have transparent access to information or that they will be able to participate in the processes as for example "amicus curiae" (or "friends of the court").

4.6 Notes

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