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The TSD Chapter of the EU-Mercosur Intermediary Agreement:

the challenge of pursuing sustainable development in a trade treaty

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ABSTRACT

Negotiations between the EU and Mercosur led to an 'agreement in principle' in 2019 after twenty years of heated negotiations. Following sharp criticism by the European Parliament, specific arrangements regarding agriculture as well as sustainability were inserted in the two agreements signed in January 2026. This article reveals two key lessons that could be useful for ongoing free trade agreement (FTA) negotiations with third countries with respect to agricultural and environmental matters. First, trade and these non-commercial issues are so closely intertwined that the objective of sustainability must permeate the entire FTA. Secondly, negotiations with Mercosur have resulted in a marked imbalance between the absence of mirror clauses – designed to safeguard the sustainability of European agriculture – and the albeit modest advances made in the areas of trade and sustainable development. [1]

[1] The author is indebted to Thomas Roberts, Gauthier Michiels, Elsa Kantz, and Paula Galbiatti Silveira. All errors remain his own.

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1. INTRODUCTION

Recent geopolitical tensions have led the European Commission to accelerate trade negotiations with a number of third countries, such as Mercosur, Mexico, India, Indonesia, Thailand, Malaysia and the Philippines. The resulting free trade agreements (FTAs) will complement those already concluded with several trade partners. These agreements aim not only to lower customs duties, simplify procedures for checking imported goods, facilitate access to public procurement markets and guarantee the protection of geographical indications such as Champagne and Camembert, but also to promote sustainable development. Given that a FTA has an impact on an array of issues, ranging from climate change to labour protection, sustainability is constantly interacting with trade and investment. With the involvement of NGOs and civil society, EU trade policy has experienced increasing politization and has sparked heated debates in national parliaments.

Since President Donald Trump's return to the White House and the escalation of tariffs, the EU has stepped up its country-specific trade approach in a more tailored and targeted manner. Negotiations to conclude FTAs are taking place at a gathering pace.[2] Hence, the proliferation of bilateral FTAs increasingly appears to be a response to the US rejection of multilateralism and the decline of the World Trade Organisation.

After 25 years of negotiations, 65 rounds of talks, numerous diplomatic snags and considerable disagreement over the way forward, both within Mercosur (Argentina, Brazil, Paraguay and Uruguay) and also among the EU institutions and the Member States, the EU-Mercosur trade agreement is becoming a reality. Although the conclusion of a framework partnership agreement between the EU and Mercosur (EMPA) has been postponed until a later date, the provisional entry into force from 1st of May 2026 of the Interim Trade Agreement (ITA) between the EU and Mercosur leads to the creation of a market of more than 700 million consumers. Furthermore, this trade agreement would complete the Union's network of 42 preferential FTAs with 74 partners, representing 44% of the EU's foreign trade.

The ITA, which is in provisionally in force since the 1st of May 2026, is a unique agreement given Mercosur's export strength in agriculture, a sector that is highly sensitive in Europe on a social, economic and political level. In effect, regulatory differences in the areas of agriculture, plant health, the environment and occupational safety standards were at the heart of lengthy and difficult negotiations between the two trade partners. Specific arrangements have been put in place to meet the expectations of both trading blocs. As a result, the ITA, has been hailed by the European Commission as a ground-breaking trade agreement regarding sustainability which is one of the landmark objectives pursued by the EU.[3] However, many concerns have been raised in Europe about the lack of competitiveness of agricultural production, given that it is subject to greater regulatory constraints than in the four South American countries. In addition, sustainability commitments took centre stage in the negotiations with a chapter fully dedicated to these issues (TSD).

Will the ITA and the forthcoming EMPA benefit the EU's economy and geopolitical power, given that it creates a market of 780 million people? Experts agree that, given the many concessions that were made on both sides, there will be both winners and losers. The jury is still out. To be fully in force, the ITA still needs to be concluded by the Council of the Union with the approval of the European Parliament. This process is likely to be slowed by the request for an opinion submitted formally by the Parliament on 25 March 2026. To make matters more complicated, in April 2026, Poland lodged an annulment action before the CJEU against the Council's decision regarding the signature of the EMPA and the ITA.

The purpose of this article is to assess from a legal perspective whether the legal arrangements related to agriculture and sustainability of the two agreements comply with the EU obligations regarding sustainability and a high level of protection of health, the environment, and the consumers. In any case, the aim is not to

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[2] It should be noted that there is no strict definition of an FTA. The term is used tautologically: a free trade agreement is whatever the EU institutions designate as such.

[3] Article 3(3)-(5) and Article 21(2)(d) TEU.

anticipate how the Court of justice of the EU (CJEU) will respond to the questions raised by the European Parliament and the ways in which it will rule on the action for annulment brought by Poland. This piece is based on my experience as an expert who has appeared before the French and the Belgian foreign affairs parliamentary committees as well as before the European Parliament.

The discussion within this article will be structured in the following manner. Section 2 will highlight the key stages of the 25-year negotiation process that led to the signing of the two EU-Mercosur agreements in January 2026. Section 3 will provide an in-depth analysis of the institutional issues arising from the splitting approach between a genuine trade treaty (ITA) and a broader agreement (EMPA). We will highlight how the splitting approach has been placing several Member States eager to foster sustainable agriculture before a *fait accompli*. Given that the European agricultural sector has been at the heart of heated negotiations, Section 4 will examine various treaty and secondary law mechanisms designed to mitigate the impact of market liberalisation on this sector. In response to protests from several national parliaments, the European Parliament and civil society, the sustainability provisions of the ITA have been gradually strengthened. In a fifth section, we will examine the extent to which these new commitments are likely to ensure compliance with the primary law obligations to achieve a high level of environment, workers and consumers protection.

2. HISTORICAL BACKGROUND: SUSTAINABLE AGRICULTURE, THE ENVIRONMENT AND CLIMATE CHANGE ARE AT THE HEART OF ALL OF THE VARIOUS TENSIONS

2.1. The initial intention to set up an EU-Mercosur association

It is not easy to trace back the somewhat circuitous path taken by EU and Mercosur negotiators since 1999. Indeed, the trajectory has been anything but linear. [4]

At the outset, the institutional asymmetry between the two trading blocs did not make the negotiations any easier. Representing only four Latin American countries (Argentina, Brazil, Paraguay and Uruguay), Mercosur lacks the institutional capacities that give a single voice to the EU. This minimal level of institutionalisation means that the Mercosur decisions are purely intergovernmental and its governance is interpresidential.[5]

In December 1995, the Interregional Framework Cooperation Agreement (IFCA) between the European Community and its Member States, of the one part, and the Southern Common Market and its Party States, of the other part was signed in Madrid.[6] The 1995 IFCA was presented, in its preamble, as a ‘prelude to the negotiation of an Interregional Association Agreement” falling under shared and national competences. Against this background, negotiating directives for the conclusion of an Interregional Association Agreement between the EU and Mercosur were adopted by the Council on 13 September 1999. On 22 May 2018, the scope of this mandate was confirmed by the Council.

The envisioned association agreement involving ‘reciprocal rights and obligations, common action and special procedure’ had to be signed and concluded in accordance with former Article 310 of the EC Treaty, which has been replaced by Article 217 Treaty on the Functioning of the European Union (TFEU).

[4] Nicolas de Sadeleer, ‘The Draft EU-MERCOSUR Agreement Drawing the Dividing Line Between Policy Cooperation and Trade’ (2025) 16 EJRR 1156-1167.

[5] Andrés Malamud and Luis Schenoni, *Geopolitical aspects of the EU-Mercosur agreement* (EP AFET Committee 2025) 2, 10.

[6] Council Decision (EC) 1999/279 [2012] OJ L 112/65.

Based on a triptych (political dialogue, cooperation and trade), association agreements aim to establish close and lasting links between the EU and a third country. Although the founding treaties never specified with precision their material scope, areas frequently covered by such agreements include the development of political, trade, social, cultural and security cooperation. Accordingly, they are global in nature.[7] Furthermore, these agreements incorporate a substantial institutional framework that contributes to political dialogue at several levels.[8] In terms of voting procedures, the Council must decide unanimously in accordance with Article 218(8), second indent TFEU. What is more, in order to overcome the limits inherent within the principle of conferral of powers, association agreements are deemed to be mixed.[9]

Negotiations were suspended in 2004 due to fundamental disagreements. Following the objections of several national and regional parliaments, negotiations were relaunched at the EU-Latin America summit held in Madrid in 2010. Finally, internal political changes (appointment of a pro-liberal government in Argentina in 2015) and the geopolitical weakening of the EU convinced the parties to work on a draft EU-Mercosur Trade Agreement (EUMETA).[10] On 29 June 2019, the Parties concluded negotiations for trade components of the EUMETA, that were complemented in July 2020 by the conclusion of negotiations of the political and cooperation components of the deal.

Following the conclusion of EUMETA 2019, sustainability concerns caused tensions between the EU and Mercosur, obliging the Parties to negotiate amendments to the agreement between March 2023 and December 2024.

The Parties negotiated first a joint interpretative instrument, that was replaced by an annex in order to improve the TSD chapter of the EUMETA, in particular with respect to controversial issues such as climate change and deforestation.[11]

2.2 Deeply divided Member States over the procedure to be followed

During the negotiations, the EU institutions and Member States were deeply divided over the approach to be taken regarding the signature and the conclusion of the FTA with Mercosur. They had to decide between two alternatives that have far-reaching consequences.

On the one hand, the European Commission, supported by several Member States, notably Germany and Spain, regarded the EUMETA 'in principle' as a 'stand-alone' agreement that was falling under the exclusive competence of the EU as it relates to the Common Commercial Policy (CCP), that requires a qualified majority. Accordingly, the Council's decisions concerning the signature and subsequently the conclusion of the trade agreement would have to be adopted by a qualified majority of Member States.

On the other side of the fence, several Member States, notably France and Poland, were fiercely opposed to the adoption of the EUMETA as a stand-alone EU agreement. They were of the view that it should be ratified as part of a broader association agreement by the national (and even regional as far as Belgium is concerned)

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[7] In its judgment in *United Kingdom v Council*, the CJEU held that Article 217 TEU confers on the Union a general power 'to guarantee commitments towards third countries in all the fields covered by the TFEU'. See Case C-81/13 *United Kingdom/Council* [2014] EU:C:2014:2449, para 61.
[8] Niki Aloupi et al, *Les accords internationaux de l'Union européenne* (IEE 2019) 236–242.
[9] Merijn Chamon, 'Mixity in the EU's post-Lisbon free trade agreements' in Isabelle Bosse-Platière et al (eds), *The Conclusion and Implementation of EU Free Trade Agreements* (Elgar 2019) 39-56.

[10] James Harrison and Sophia Paulini, 'Reinventing trade, environment and development interlinkages: lessons from the EU–Mercosur Association Agreement' (2024) JIEL 4.
[11] See below section 5.1.

parliaments of the 27 Member States.[12] In other words, given that the Council has mandated the Commission to negotiate an agreement akin to pre-existing association agreements, the signature and the conclusion of such an agreement required unanimity.[13]

2.3 The abandonment of a single agreement in favour of a two-step approach

In order to prevent Member States opposed to the 2024 'agreement in principle' from blocking it by exercising their veto right in accordance with Article 217 TFEU, the European Commission announced in December 2024 its intention to proceed in two stages through two separate treaties. This approach was implemented for the EU's agreements with Chile.[14]

Firstly, it envisioned the conclusion of a 'stand-alone' agreement on trade, namely the 'ITA', covering only trade matters falling within the scope of the CCP (goods and services, customs duties, public procurement, competition law, IPRs) and the transport policy.[15] These legal bases require a qualified majority.[16] In this way, given that this is a purely trade matter, a single Member State cannot, on its own, form a blocking minority. The fact that the ITA covers sustainability issues does not preclude the recourse to Article 207 CJEU, given that the objective of sustainable development 'forms an integral part' of the Common Commercial Policy.[17]

Secondly, the EU-Mercosur Partnership Agreement (the 'EMPA') had to be signed and concluded between the EU and its 27 Member States (in contrast they have been excluded from the ITA), of the one part, and the Mercosur and the four South American countries, of the other part. The scope of the forthcoming EMPA is much broader than the ITA as it includes a political and cooperation pillar as well as a trade and investment pillar.[18]

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[12] However, Article 218 TFEU does not provide for Member States to intervene at any time in the procedure for the EU's negotiation or conclusion of international agreements. See Opinion of AG Sharpston in Case C-114/1, *Commission* v *Council* [2014] EU:C:2014:224, para 174; Opinion of AG Mengozzi in in Case C-28/12, *Commission* v *Council* [2015] EU:C:2015:43, para 48.

[13] Article 218(8), second indent TFEU.

[14] The EU-Chile Association Agreement (in force since 2003) has been modernised through two parallel legal instruments: the Advanced Framework Agreement (AFA), and an Interim Trade Agreement (ITA) covering trade and investment liberalisation. Both agreements were signed on 13 December 2023. The European Parliament gave its consent to them on 29 February 2024.

[15] Accordingly, the Council decision to sign it has been founded on Article 207 TFEU (CCP) as well as Articles 91(1) and 100(2) TFEU (transport policy), which have enabled the Council to sign it by a qualified majority.

[16] Article 218(8) TFEU lays down voting procedures in the Council with regard to the signature and the conclusion of the EMPA ('throughout the procedure') similar to those applicable to the adoption of corresponding internal rules. Since the internal rules governing most of the chapters of the ITA and the EMPA require an ordinary legislative procedure, 'the Council shall act by a qualified majority throughout the procedure'.

[17] Opinion 2/15 [2017] EU:C:2017:376, para 147.

[18] Various legal bases include transport policy (Articles 91 and 100(2) TFEU), the CCP (Article 207 TFEU), development cooperation policy (Article 209(2) TFEU) as well as economic and technical cooperation (Article 212 TFEU). These legal bases imply also that the Council decides by a qualified majority, precluding therefore the risk of a blocking minority in the Council.

In other words, the ITA is a 'stand-alone' version of the 'trade part' of the EMPA.[19] This second agreement will replace the current IFCA, signed in Madrid on 15 December 1995.[20] The EMPA should be concluded by the Council according to a qualified majority and, due to its mixed nature, is subject to a requirement of approval by national parliaments. The ITA will cease to have effect and will be replaced by the EMPA upon the entry into force of the latter.

After 65 rounds of negotiations, a wisp of white smoke climbed the sky over Montevideo on 6 December 2024. Participating in the 65th Mercosur Summit Meeting, the President of the European Commission announced the finalization of negotiations for a groundbreaking EMPA.

On 9 January 2026, in accordance with Article 218(5) TFEU, the Council authorised the signing of both agreements, as well as the provisional application of the ITA. The ITA was approved by qualified majority[21] despite opposition from five EU Member States (i.e., France, Poland, Ireland, Austria, and Hungary) and an abstention by Belgium. On Saturday 17 January, President Ursula von der Leyen signed both agreements with great fanfare in Asunción, Paraguay. Pursuant to the Council decision, the ITA has been applied on a provisional basis, since 1st May 2026.[22]

On 26 February 2026, on the Mercosur side, Argentina and Uruguay completed their domestic ratification procedures for the ITA. Brazil and Paraguay are also moving forward with their internal ratification procedures.

In contrast to the ITA, the EMPA is deemed to be a mixed agreement on the grounds that it straddles EU competences as well as Member States competences. As a result, the EMPA would have to be concluded by the Council and be ratified by the national and several regional parliaments. As it is unlikely that the EMPA will be ratified soon by all Member States, the ITA might become permanent in practice.

3. INSTITUTIONAL DIMENSION: SIDELINING THE MEMBER STATES

3.1. European Parliament rebellion: request for an opinion

With a request for an opinion by the European Parliament in accordance with Article 218(11) TFEU, the ITA treaty finds itself again at the centre of the storm. The procedure provided for in this provision requires a few words of explanation. An international agreement concluded by the Union must comply with the fundamental Treaties provisions, of which the CJEU is the ultimate interpreter. Article 218(11) procedure aims at forestalling complications which would result from legal disputes concerning the compatibility of international agreements binding upon the EU with the founding EU Treaties.[23] Pursuant to that provision, the EU institutions as well as the Member States are empowered to request the CJEU to issue an opinion on the matter, prior to its signature or the conclusion of an international treaty. The Court has described the procedure as 'a special procedure of collaboration between the Court on the one hand and the other Community institutions and the Member States on the other whereby, at a stage prior to conclusion of an agreement which is capable

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[19] Part III, Chapters 9 and seq.

[20] See above subsection 2.1.

[21] Article 207(2) TFEU.

[22] See Article 23.3. Council Decision (EU) 2026/183 of 9 January 2026 on the signing and provisional application of the Interim Agreement on Trade between the EU, of the one part, and the Common Market of the South, Argentina, Brazil, Paraguay and Uruguay, of the other part, *OJ L, 2026/183. Regarding the provisional application of international agreements, see* Andrei Suse and Jan Wouters, 'The provisional application of the EU's mixed trade and investment agreements' in Isabelle Bosse-Platière et al (eds), *The Conclusion and Implementation of EU Free Trade Agreements* (Elgar 2019) 176-202.

[23] See Opinions 2/94 [1996] EU:C:1996:140, para. 3; 1/08, EU:C:2009:739, para. 107; and 1/09, EU:C:2011:123, para. 47. The Court may rule at any time on the compatibility of the proposed agreement before the EU institutions are definitively bound by it.

of giving rise to a dispute concerning the legality of a Comminy act…the Court is called upon to ensure, …, that in the interpretation and application of the treaty the law is observed'.[24] This *ex-ante* review of decisions concerning signature and conclusion is deemed to remove the risk of an *ex-post* review of these acts. That said, this judicial procedure does not preclude the Court to conduct judicial review *ex post* of the Council decision authorizing the signature of the ITA and the EMPA. This is, in fact, the case, insofar as Poland lodged an action for annulment before the CJEU in May 2026 challenging the decision to sign the two agreements.

In several Member States, the initiation of such a procedure was debated, but to no avail. By contrast, several European Parliament's political groups had voiced their opposition to the splitting approach and militated in favour of such a request. On 21 January 2026, a majority of MEPs (334 in favour, 324 against, 11 abstentions) voted in favour of the draft resolution seeking the opinion of the CJEU. Whereas the European Parliament's request to the CJEU does not prevent provisional application of the ITA, it has the effect of suspending the examination of the ITA and the broader EMPA by the Parliament[25] until the CJEU issues its opinion.

This is not merely an advisory opinion. In case the opinion of the Court is adverse, the agreement may not enter into force unless it is amended in accordance with the applicable procedure. In contrast, a favourable opinion will leave the way for the EU to enter into the agreement. We shall contextualise below some of the questions put to the Court by the request of the European Parliament.

3.2 Division of competences between the EU and the Member States

As it was not envisioned before December 2025, the splitting the EU-Mercosur agreement into two separate legal texts, namely the EMPA and the ITA, raises an acute problem as regards the division of competences between the EU and the Member States. In particular, it circumvents national parliaments' right to ratify the ITA,[26] on the ground that it falls within the CCP's exclusive competence (whereas an association agreement is deemed to be mixed).

One might ask whether it was possible for the Commission to propose a plurality of legal bases to the Council for the signature and the conclusion of the two agreements, instead of one single basis such as Article 217 TFEU. The crux of the problem lies specifically in the mandate conferred by the Council on the Commission in 1999 and confirmed in 2018 to negotiate an association agreement. In defining the essential parameters for negotiations, this mandate explicitly determined negotiators' room for manoeuvre. The option of splitting the association agreement to fast-track the signature and conclusion of the ITA and EMPA has clearly never been envisaged at that time by the Council.

Given that the Commission's mandate is governed by Article 218 TFEU, the European Parliament is seeking the opinion of the CJEU as to whether the splitting of the envisaged EU Mercosur agreement into the EMPA and the ITA may be incompatible with Article 218(2) and (4) TFEU, as well as with the principle of conferral, the institutional balance principle and the sincere cooperation principle enshrined in Article 4(3) and Article 13(2) TEU. We will now briefly outline the scope of these principles.

Article 13(2) TEU provides that each institution shall act within the limits of the powers conferred on it in the Treaties, and in conformity with the procedures, conditions and objectives set out in them. That provision reflects the principle of institutional balance, a keystone of the institutional structure of the Union. Accordingly, each institution exercises its powers having due regard for the powers of the other institutions.[27] The EU

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[24] Opinion 2/94, above (n 23), para. 6.

[25] Article 218(6) (a) TFEU.

[26] Carlo Tovo, 'The role of national parliaments in the negotiation and conclusion of EU free trade agreements' in Isabelle Bosse-Platière et al (eds), *The Conclusion and Implementation of EU Free Trade Agreements* (Elgar 2019) 125-142.

[27] Case C-409/13 *Council* v *Commission* [2015] EU:C:2015:217, para 64, and Case C-73/14 *Council* v *Commission* [2015] EU:C:2015:663, para 61

institutions are not at liberty to cherry-pick certain aspects of the procedures laid down in the Treaties, while disregarding others.

It follows from the context of Article 218 TFEU, as well as from the wording and broad logic of that provision – and, in particular, from its objective of establishing a general system and procedural rules for the negotiation and conclusion of international agreements by the EU[28] – that the European Commission cannot depart from the procedures laid down in that provision.

Furthermore, Article 4(3) TEU enshrines the principle of cooperation between Member States and the EU institutions. In accordance with this principle, the institutions must ensure that the Union functions properly.

In presenting the Council and the European Parliament with a *fait accompli* by negotiating a different type of agreement, subject moreover to different voting arrangements, compared to the association agreement initially envisaged, it may be asked whether the Commission has acted in excess of its 1999 mandate and breached the principles of institutional balance and sincere cooperation. In addition, the Parliament must be immediately and fully informed at all stages of the procedure,[29] and any circumvention of this obligation undermines the Parliament's right of consent.[30]

4. AGRICULTURE: LOTS OF ANTICIPATION, PLENTY OF HOPE, BUT DISAPPOINTING RESULTS

4.1. Introductory remarks: the extent of the respective concessions

Although the ITA is expected to achieve moderate economic gains for both parties,[31] it could have a significant impact on certain types of farming activities in the EU. In short, there is a structural imbalance in the types of goods exchanged between the two trading blocs. Mercosur is, on the one hand, primarily an exporter of goods closely related to its natural resources, including agricultural and food products (vegetables, fruits and nuts), as well as minerals and fuels. The value of Mercosur's agricultural and agri-food exports to the EU amounted to €22.7 billion in 2023. On the other hand, the EU primarily focuses on exporting industrial products such as chemicals, machinery, and transport equipment.

The ITA's pursuit of deeper economic integration hinges upon negotiated tariff reductions. From May 1st, 2026, Mercosur's tariffs on European industrial products will be gradually reduced. As a result, European companies should gain easier access to the markets of the four South American countries, which have hitherto been shielded from foreign competition by high customs duties (35% for cars, 14–20% for machine tools and 14% for pharmaceutical products). Although EU exports to Mercosur have grown little during the last ten years, industry is likely to be the main beneficiary of the agreement, given that Mercosur is one of the most protected markets in the world. According to President von der Leyen, 'the agreement will enable European businesses to save €4 billion in export duties each year whilst expanding our markets'.[32]For instance, the reduction of import tariffs on electric vehicles and hybrids opens opportunities for European manufacturers.[33]

The opportunity for European companies to gain access to new South American markets comes with certain concessions, namely the granting of import quotas for South American agricultural products (meat, soya, sugarcane, rice, etc.). By way of illustration, the agreement provides for a quota of 99,000 tonnes of beef –

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[28] Opinion AG Mengozzi, in Case C-28/12, *Commission* v *Council* [2015] EU:C:2015:43, para 47.
[29] Article 218(10) TFEU.
[30] Article 218(6) TFEU.
[31] Bettina Rudloff, Peter-Tobias Stoll, Kristina Mensah, Zahar Ahmad and Samina Sultan, *A comprehensive analysis of the updated trade part of the EU-Mercosur Partnership Agreement* (EP, 2025).
[32] Statement/24/6261, 6th December 2024.
[33] Malamud and Schenoni, *Geopolitical aspects of the EU-Mercosur agreement* (n 5) 9.

split between fresh and frozen - at a reduced rate of 7.5%, compared with an average rate of 40%. The Commission claims that this quota represents around 1.5% of EU beef production.[34] As regards poultry, imports of chicken from Mercosur are also causing concern. Following a five-year transitional period, these imports into the EU will be duty-free up to 180,000 tonnes, ensuring theoretically that market disruption remains minimal. They will be added to the 300,000 tonnes already imported from Brazil. According to the Commission, this second quota represents around 1.3% of EU chicken consumption.

Although the ITA contains numerous safeguards and positive measures for European farmers (350 protected geographical indications, the phasing out of 93% of customs duties on wine and spirits, etc.), several European sectors could be vulnerable to market distortions (beef, pork, poultry, sugar and rice).[35] According to critics of the ITA, agriculture was used as a bargaining chip to secure its conclusion. [36] Indeed, farmers' anger has been fuelled by the feeling that the EU is increasingly favouring market liberalisation; this benefits industry at the expense of agriculture, which is forced to compete with third country producers that are subject to less stringent environmental and labour standards.

As a matter of course, the situation varies considerably depending on the product and the Member State. Although criticised by French, Italian and Polish farmers, the ITA should nevertheless help to boost the share of certain European agri-food exports to Mercosur. By way of illustration, olive oil tariffs will fall to 0/15 years, with no volume limits. By the same token, tariffs for higher-end sparkling wines will be scrapped immediately.

The farmers' complaints did not fall on deaf ears. ITA maintains protective mechanisms for sensitive products, such as beef, pork, and soy, with tariff rate quotas (TRQs) that limit imports at reduced tariffs to safeguard EU farmers. In addition, to secure the support of agricultural Member States such as France and Poland, the European Commission and the European Investment Bank have released €3 billion in loans for agriculture and the bioeconomy. Furthermore, the Commission has relaxed the State aid rules in the agricultural sector and proposed measures to strengthen farmers' position in the food supply chain.[37]

4.2. 'Mirror clauses': a dashed hope?

Given that the EU is a crucial destination for Mercosur's food products,[38] farmers' unions fear that lowering customs duties would make South American agricultural products even more competitive, as their producers are not subject to the same production agricultural standards, whether in terms of plant protection products, animal welfare or sustainable practices.[39] Furthermore, Mercosur agriculture includes a relatively large share of very large farms, which are precisely the producers that are best positioned to expand exports to the EU under the agreement.[40] The surge in Mercosur exports is likely to exacerbate the pressure that intensive

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[34] Sector-specific simulations suggest that the EU–Mercosur agreement could reduce EU beef producer prices by approximately 2%. See Alan Matthews, 'Limited impact of Mercosur Partnership Agreement on the EU beef market', (2025) CAP Reform.

[35] Yves Petit, 'L'accord UE-Mercosur : un accord de libre-échange (très) contesté !' (2025) 1 *Revue de droit rural* 10.

[36] Nicolas-Jean Brehon, 'L'agriculture, variable d'ajustement des accords commerciaux ?' (2024)740 *Schuman Paper*, 8 p. This may seem surprising at first glance, as agriculture falls under the shared competence of the EU and the Member States (Article 4(2) d) TFUE), whereas the CCP is one of the EU's exclusive competences (Article 3(1) e) TFUE).

[37] The Middle East crisis Temporary State aid Framework (METSAF), adopted by the European Commission on 29 April 2026 is a targeted and temporary framework to address the effects of the Middle East crisis. See Communication from the Commission, Middle East Crisis Temporary State Aid Framework, C(2026) 2947 final

[38] In 2023, the EU accounted for 14.5 % of Mercosur's total exports.

[39] Copa-Cogeca *European farmers and livestock Producers raise concerns on production standards and demand reassessment of EU-Mercosur trade deal* (Brussels, 2024).

[40] Orsola Costantini and Alex Izurieta, *New Economic Study on the EU-Mercosur Trade Agreement: Growth Narrative Debunked, Inequalities Uncovered* (CAN Europe, 2026)

agriculture is placing on ecosystems in Europe and undermine the objectives pursued by the EU under the farm to fork strategy.

However, the insertion of unilateral 'mirror clauses' into FTAs and EU secondary law could address both sustainability and competitiveness concerns. The debate on the salience of these clauses harks back to the concerns that were raised in the context of 'Comprehensive Economic and Trade Agreement' (CETA) negotiations. In 2019, the European Parliament's Committee on Agriculture and Rural Development (AGRI) proposed inserting a new Article 188a into Regulation (EU) No 1308/2013, which establishes a common organisation of the markets in agricultural products prohibiting the import of agri-food products from third countries if they are not complying with 'production standards and obligations consistent with those adopted, in particular in the field of environmental and health protection, for the same products harvested in the Union …'.[41] Although this amendment failed to pass, it marked the start of the debate on the need to provide 'reciprocal treatment' with respect to imported agricultural products from third countries.

This debate has gained considerable traction during the negotiations of the EU-Mercosur treaties when several Member States (France, Austria, Belgium, Ireland) raised their concerns that their farmers were likely to face stricter requirements for health and environmental protection stemming from the Green Deal and its agricultural targets[42] than their four South American counterparts. These fears were confirmed by a 2022 European Commission report stressing that the EU enforces strict sanitary, phytosanitary, antimicrobial resistance and end-product standards on imported agri-food products.[43] The 2023-2024 farmer protests intensified public debate around the competitiveness challenges due to imports from countries with potentially lower standards.[44]

France has been the leading proponent of the insertion of mirror clauses into FTAs, arguing that 'mirror clauses' are essential for maintaining fair competition. Its food law enshrines such a clause.[45] Although they are loosely defined and highly politicised, mirror measures basically require imported goods to have been produced under the same standards as those applied to EU products.[46] In short, they aim at furthering two different objectives: sustainability[47] and competitiveness. Indeed, a common playing field will ensure that European farmers are not penalised for complying with more stringent environmental and social standards than those applicable in the trading partner's countries.

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[41] EP, Committee on Agriculture and Rural Development, Report on the proposal for a regulation of the European Parliament and of the Council amending Regulations (EU) No 1308/2013 establishing a common organisation of the markets in agricultural products, A8-0198/2019, 7.5.2019, p. 141.

[42] In its 2020 Farm-to-Fork and Biodiversity Strategy, the Commission proposed to increase organically farmed land to 25 % of the EU's agricultural area by 2030, to reduce nutrient losses by at least 50 %, to cut fertiliser use by 20 %, to halve the overall use and risk of chemical pesticides, to designate 10 % of agricultural land as landscape features with high biological diversity, and to reduce antimicrobial sales for farmed animals by 50 % by 2030.

[43] 2022 European Commission report on the 'Application of EU health and environmental standards to imported agricultural and agri-food products'.

[44] Alan Matthews, 'Farmer Protests and Income Developments in the EU' (2024) 95(2) The Political Quarterly 344–349.

[45] Article L. 236-1.-A. of the EGALIM Law n° 2018-938 of 30 October 2018 prohibits the marketing, 'for human or animal consumption, of foodstuffs or agricultural products on which plant protection products, veterinary medicinal products or animal feed not authorised under European regulations have been used'.

[46] Peter-Tobias Stoll, Bettina Rudloff, Kristina Mensah and Zahar Ahmad, *'Mirroring': The scope and limitations of EU trade agreements and autonomous actions* (EP INTA 2025) 9.

[47] For a critique of the CAP animal welfare regulations, see Nicolas de Sadeleer and Alice Di Concetto, 'The Common Agricultural Policy and Animals: Friends or Foes?', in Aude-Solveig Epstein et al (eds.), *Animals in EU Economic Law. A New Approach to Protecting Sentient Beings* (Palgrave Macmilan 2026).

With very few exceptions, products from third countries do not have to comply with production standards, or even animal health standards, in order to enter the internal market. For instance, the EU bans the import of poultry meat contaminated with salmonella, but it does not concern itself with the stocking density of poultry on industrial farms in the country of origin. Similarly, EU law bans several hormones in beef but pays little attention to rearing conditions in third countries. That said, some production standards focus more on animal welfare than on human health. These include the ban on 'cannibalism'—that is, feeding poultry with processed poultry protein or pigs with pig protein—which is motivated by ethical considerations. However, these standards do not apply to products imported from third states. There are, of course, a few exceptions. The Council Regulation on the protection of animals at the time of killing [48] requires that third countries must guarantee in the export health certificate that animal welfare standards at least equivalent to those of the EU were applied at the time of slaughter. This requirement is verified by the Commission during the meat hygiene audits it carries out regularly in third countries.

Mirror clauses have not been inserted into FTAs, perhaps on the grounds that they are likely to breach the principle of non-discrimination under WTO law, and a Dispute Settlement Body's case law that is hardly favourable to Processes and Production Methods (PPMs).

However, the conclusion of a FTA could more easily enshrine mirror clauses and consequently bypass the hurdles imposed by WTO law. For example, the FTA concluded with New Zealand on 30 June 2022 excludes meat from animals that are finished in feedlots from tariff reductions on imports into the EU. Although the insertion of mirror clauses in the EMPA gave rise to a heated debate both at national level and in the European Parliament, the ITA does enshrine very few such legal arrangements. A few special tariff preferences accorded to Mercosur products are conditional on such products complying with EU standards. By way of illustration, the tariff quota for shell eggs subordinates this preference to compliance with EU animal welfare standards. Accordingly, the "4-EG" imports shall be accompanied by a certificate of compliance with Council Directive 1999/74/EC[49] or any equivalent animal welfare official standards. The equivalence to these conditions shall be verified either by official certification or by third party certification.[50]

4.3.CAP safeguard clauses in the ITA: a mirage?

In addition to France's reservations and Poland's hostility, there is now a backlash from several agricultural sectors fearing a flood of cheaper South American agricultural products. In a way, the export and investment opportunities that will open up for the industrial and pharmaceutical sectors will be offset by an increase in food exports from Mercosur. Consequently, this treaty could become a 'touchstone' of the European agricultural crisis.

Article 9.3(1) of the ITA sets out the conditions under which bilateral safeguard measures may be imposed. It reads as follows: 'in exceptional circumstances, for goods other than vehicles …., apply bilateral safeguard measures … if imports from the other Party of a product under preferential terms have increased in such quantities, absolute or relative to domestic production or consumption and under such conditions as to cause or threaten to cause serious injury to its domestic industry of the like or directly competitive products.'

[48] Council Regulation (EC) No 1099/2009 of 24 September 2009 on the protection of animals at the time of killing, *OJ L* 303, 18.11.2009, p. 1.

[49] Council Directive 1999/74/EC of 19 July 1999 laying down minimum standards for the protection of laying hens, *OJ L 203,* 3.8.1999, pp. 53–57.

[50] Tariff elimination schedule, Annex 2.A.6, o).

safeguard measures may not be applied for a period longer than 2 years, with a possible extension of 2 years provided certain conditions are met.[51]

With a view to operationalising Article 9.3(1), the European Parliament and Council of the Union adopted in March 2026 a regulation tailored to the specific issues raised by the Mercosur agricultural products imports.[52] In brief, the regulation aims to strengthen protections for EU farmers by allowing safeguard measures to be swiftly applied in cases where imports from Mercosur partners threaten to cause serious injury to EU producers.

Firstly, a safeguard clause covering sensitive agricultural products (beef, mutton, pork, cheese, etc.) should empower the European Commission to reduce the quotas for Mercosur countries in the event of a significant increase in imports (10% compared with the previous year) or a fall in prices (10% compared with the previous year). The Member State concerned, or even the affected agricultural sector, will be able to trigger the procedure in requesting the Commission to launch an investigation. The Commission could then impose provisional, or even definitive, measures on products from Mercosur for a maximum of four years. However, these measures may only be adopted in 'exceptional circumstances' and only if it is proven that the imports are causing 'serious injury to the Union industry'. In principle, the effects of a significant increase in imports of Argentine beef on French beef production alone would not be sufficient to trigger the procedure. Furthermore, the Commission could face practical difficulties in verifying whether the 10% thresholds have been exceeded, particularly regarding the identification, scope and duration of the markets affected by imported agricultural products. Finally, it will be the sole body to decide whether to apply safeguard measures, as the affected Member States and sectors concerned can only request its intervention.[53]

5. TRADE-RELATED SUSTAINABILITY ISSUES: PROGRESS HAS BEEN MADE, ALBEIT LIMITED

5.1 Introductory remarks

Sustainability is one of the main priorities for the EU, as underlined in the European Green Deal and Decent Work Worldwide initiatives.[54] Since 2021, the EU has been strongly committed to ensuring that its FTAs foster sustainability, so that economic growth goes together with the protection of human rights, decent work, the climate and the environment. As a result, all modern EU trade agreements include a Trade and Sustainable Development (TSD) chapter. Although the structure of these chapters is broadly similar, the bindingness, enforceability and transparency of their provisions vary significantly.[55]

Due to divergences between public policies in the four South American countries and the often more progressive policies of the EU, the negotiation of sustainability clauses has been strewn with pitfalls. Despite certain innovative aspects of the TSD chapter, in its resolution of 16 February 2023, the European Parliament reiterated that the envisioned bilateral agreement with Mercosur should be concluded 'provided that pre-

[51] Articles 9.8 and 9.9.
[52] Regulation of the European Parliament and of the Council implementing the bilateral safeguard clauses of the EU-Mercosur Partnership Agreement and the EU-Mercosur Interim Trade Agreement for agricultural products (PE-CONS 56/25). Regulation (EU) 2019/287 already transposes bilateral safeguard clauses from several FTAs into EU law.
[53] Clémentine Bladon, *Analysis of the bilateral safeguard mechanism in the EU-Mercosur Partnership Agreement* (22 October 2025).

[54] Council conclusions on the Trade and Sustainability Review, 17 October 2022, para 4.
[55] Saide Esra Akdogan, *Decrypting Sustainability in EU Free Trade Agreements* (Groeningen 2024); Hannes Lenk, 'Sustainable development in EU trade and investment agreements' in Xavier Groussot et al (eds.), *The EU Law of Investment. Past, Present, and Future* (Hart 2025) 212-13.

ratification commitments on climate change, deforestation and other concerns are satisfactory'.[56] In addition, several national parliaments, as well as civil society organisations, considered that the TSD provisions were toothless. To heighten tensions between negotiators, EU secondary environmental law underwent in 2023 and 2024 significant changes, particularly with the adoption of Carbon Border Adjustment Mechanism (CBAM),[57] the Deforestation Regulation (EUDR)[58] and the CS3D, legislation promoting sustainability in international trade. In the course of 2024, the EU negotiators persuaded their Mercosur counterparts to strengthen the treaty' sustainability commitments.

5.2. Is the ITA a groundbreaking FTA when it comes to achieving high and effective levels of protection?

Fully aware of the differences in their levels of development and that there is not a one-size-fits-all development model,[59] the Parties proclaim their willingness to 'enhance the integration of sustainable development in the Parties' trade and investment relationship'.[60]

The new annex 18 to the TSD chapter, which now doubles the original chapter's length, introduces several substantive commitments regarding climate change,[61] forests,[62] indigenous people,[63] fisheries, [64] and renewable energy.[65] Other commitments reiterate the commitments set out in the TSD chapter, without however providing any further clarification.[66] Furthermore, the Paris Agreement becomes a key element of the TSD. Mercosur appears to have had its way on certain points: different approaches to achieve sustainable development[67] that should benefit all parties, particularly producers.[68] The Annex highlights that inequalities between and within countries should be reduced[69] and proclaims the principle of common but differentiated responsibilities.[70] On the other hand, several new obligations are actually likely to favour a greater level of environmental protection favoured by the EU institutions. As it is impossible to cover every aspect of sustainable development exhaustively, this section focuses on the most controversial issues.

5.2.1. Right to regulate

[56] European Parliament resolution of 16 February 2023 on an EU strategy to boost industrial competitiveness, trade and quality jobs (2023/2513(RSP)), point N.
[57] Regulation (EU) 2023/956 of the European Parliament and of the Council of 10 May 2023 establishing a carbon border adjustment mechanism [2023] *OJ* L 130/52.
[58] Regulation (EU) 2023/1115 of the European Parliament and of the Council of 31 May 2023 on the making available on the Union market and the export from the Union of certain commodities and products associated with deforestation and forest degradation, *OJ* L 150*, p 206.*
[59] Annex 18, Preamble (c).
[60] Art. 18.1(1) ITA.
[61] Art. 18.5(3) and Annex 18, A.2(13) ITA.
[62] Annex 18, A.1(2) ITA.
[63] Article 18.8(2)(b), Annex 18, A.2(21), A.2(47)(b), A.4(36).
[64] Article 18.8 and Annex 18, A.1(2) ITA.
[65] Annex 18, A.1(2) ITA.
[66] Rudloff et al, *A comprehensive analysis* (n 39) 13-17.
[67] Annex 18, preamble (c)(i), A.1(3), A.2(32), A.4(41).
[68] Annex 18, A.3 (27) and (28).
[69] Annex 18, B.1(46).
[70] Annex 18, preamble (g)(i), A.2(13)(a).

The primary law obligation to attain a 'high level of protection', be it for workers, patients, consumers or the environment, [71] gives rise to specific positive obligations for the EU institutions. In line with previous FTAs, the 2026 ITA TSD chapter endorses a three-pronged approach.

The initial focus has been placed on compliance with international labour and environmental law, and effective enforcement thereof. The Parties commit to effectively implement the International Labour Organisation (ILO) treaties and the Multilateral Environmental Agreements (MEAs) they have concluded.[72] They commit also to step up cooperation with a view to strengthening implementation of international obligations in these two fields.[73] These provisions are in line with Opinion 2/15 of the Court of Justice, according to which the TSD chapter does not seek to harmonise social and environmental standards, but to ensure that trade liberalization would not affect existing regulatory standards or commitments under MEAs and ILO Conventions.[74] However, the emphasis is placed on the minimum denominator, such as the effective implementation of ILO 'fundamental Conventions'[75] and key MEAs,[76] which are in many aspects outdated and inept to deal with contemporary challenges. Emphasis is also placed on cooperation between the two trading partners within international organisations.[77] Of course, the success of this cooperation will depend on their willingness to cooperate.

In accordance with the overall objective of the TSD chapter,[78] Article 18.2(1) recognises that each Party establishes 'the levels of domestic environmental and labour protection it deems appropriate'.[79] Given that the right to regulate must be viewed from a dynamic perspective, the Parties are called on to improve their laws and policies as to ensure a 'high and effective levels of environmental and labour protection'.[80] That being said, nothing obliges the Parties to the ITA to achieve the highest, or even a high level of protection. One could even wonder whether the level of protection pursued must be absolute, calculated at the highest conceivable level, or intermediate.

To avoid a race to the bottom with respect to environmental and labour protection, the Parties commit themselves not to lower their environmental or labour standards 'with the intention of encouraging foreign trade of investment'.[81] However, the scope of this stand-still obligation is rather narrow as it applies in as much as the regression is affecting trade or investment between the Parties.[82] Consequently, each Party is allowed to curtail different procedural rights (e.g. transparency, access to justice, etc.) whenever this regression is not likely to affect trade or investment.[83]

[71] Article 3(3) of the Treaty on the EU (TEU); Articles 114(3), 168(1), 169(1), 191(2), TFEU; Articles 35, 37 and 38 of the Charter of Fundamental Rights (CFREU).

[72] Articles 18.2(4) and 18.2(5); Annex 18, A.1(2) and A.2(11).
[73] Article 18.4(3), 18.4(7) and 18.5(3).
[74] Opinion 2/15 (n 18) paras 163-166.
[75] Article 18.4(3), and Annex 18, A.2(11).
[76] Article 18.5(4) ITA.

[77] Article 18.4(8) and 18.5(3); Annex 18, A.2(11).
[78] Article 1.
[79] See, for example, Articles 23(2) and 24(3) CETA; Joint Interpretative Instrument to CETA, points 2 and 9.b.
[80] Article 18.2(2). This provision is line with Articles 151(1) and 191(1) TFEU.
[81] Article 18.2(3)-(4), Annex 18, A.1(2).
[82] Article 18.2(3) and Annex A.1(2) ITA.
[83] In sharp contrast, advocate general Sharpston stressed that a similar clause in the EU-Singapore FTA aimed 'to achieve in the EU and Singapore minimum standards of …labour protection and environmental protection, in isolation from their possible effects on trade': see Opinion 2/15 (n 18), para. 491.

5.2.2. Climate change

As trade in goods resulting from the ITA trade liberalisation process is likely to contribute to an increase in GHG emissions,[84] the TSD Chapter and its Annex attach greater importance to climate issues than previous FTAs. Recognising 'the urgent threat of climate change and the role of trade to this end',[85] the Parties commit themselves to implement effectively the Paris Agreement,[86] and collaborate on trade-related climate aspects.[87] Notably, the Paris Agreement is designated as an 'essential element'.[88]

Unlike other FTAs, Annex 18 breaks new ground in relation to nationally determined contributions ("NDCs"), that must 'represent a progression over time and reflect the highest possible ambition'. [89] However, each party remains free to determine its own pathway for achieving climate neutrality. Although the energy shift should at the hearth of the NDCs, Annex 18 merely states that the Parties will 'step up efforts to increase substantially the share of renewable energy in the global energy mix'.[90] In addition, the Parties will collaborate in designing interregional partnerships in energy transition projects,[91] and the joint development of sustainable interregional markets and value chains in strategic sectors such as liquified natural gas and renewable energy.[92] These commitments fall far short of the level of ambition pursued under the RED III Directive.[93]

Despite all these declarations of good intentions, one might wonder whether the provisions on climate change will withstand the challenges faced by both South America and Europe. For instance, Eckes and Krajewski stress that the provisions on climate change of the EU-New Zealand Agreement and the EU-UK Trade and Cooperation Agreement are more detailed and require closer cooperation under the international climate governance regime.[94] Furthermore, additional steps could have been taken to consolidate multilateral coordination in this aspect.[95] The EU's stance as the foremost promotor of low-carbon industrial processes could produce mutual benefits. By sharing these technologies with Mercosur countries, particularly in energy-intensive sectors such as steel, cement and chemicals, the EU can promote investments in sustainable technologies, improve energy efficiency and reduce industrial emissions, and coordinate carbon markets. However, cooperation must be commensurate with the challenges involved.

5.2.3. Biodiversity and forests

At first glance, the TSD chapter appears to have significant shortcomings when it comes to biodiversity conservation. It merely refers to the Convention on Biological Diversity (CBD) and CITES. For this reason, Annex 18 places greater emphasis on biodiversity conservation and the implementation of other nature conservation MEAs.[96] Although the Annex recognises the importance of implementing the three objectives

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[84] Roda Verheyen and Gerd Winter, 'The Compatibility of the Draft EU-Mercosur FTA with EU and International Climate Protection Law' (2024) 58:6 JWT 963-988.
[85] Article 18.6(1).
[86] Article 18.6(1)(a).
[87] Article 18.6(2) (a); Annex 18, Preamble (g) (i).
[88] Article XX.3 EMPA.
[89] Annex 18, A.2(13) (a).
[90] Annex 18, A.2(18).
[91] Annex 18, A.2(29).
[92] Annex 18, A.2(31) (b).
[93] Directive (EU) 2023/2413 of the European Parliament and of the Council of 18 October 2023 as regards the promotion of energy from renewable sources [2023] Official Journal L 243/1-77.
[94] Eckes and - Krajewski (n 107). For instance, in the EU-New Zealand FTA, parties can be subject to sanctions in case of 'actions or omissions which materially defeat the object and purpose of the Paris Agreement'.

[95] Malamud and Schenoni (n 5) 22.
[96] Annex 18, A.2(11) (g)-(i).

of the the CBD[97] 'in a balanced manner',[98] there is no mention of the effective implementation and monitoring of the Kumming-Montreal global biodiversity framework.

The conservation of forest ecosystems was undoubtedly one of the most thorny issues in the negotiations. Large-scale slash-and-burn agriculture has been encouraged by former President Bolsonaro.[99] Despite improvements, particularly in Brazil following the election of President Da Silva in 2020, the rate of deforestation remains a cause for concern. In addition, a shift in pressures is occurring : whilst deforestation in the Amazon region has experienced a decline, the Cerrado biome recorded its highest level of deforestation in 2023 since 2015.[100] To make matters worse, the Amazon Soy Moratorium (ASM) – an agreement among Brazilian traders and producers - that prohibits the purchase of soy grown on land cleared after 2008 is unravelling. The situation is not necessarily any better in Argentina and Uruguay, where intensive farming is putting pressure on the Choco forest.

The EMPA's impact assessment suggested that the agreement would have a near-zero effect on deforestation. In particular, the EU assessment assumes that improved access to EU chemical inputs, technologies, and capital goods will raise land productivity in Mercosur countries, allowing agricultural expansion without further deforestation. This approach disregarded the risk of continued agricultural encroachment of the Cerrado, which is leading Brazilian ranchers to clear forest further north.

Against this background, the TSD Chapter and its Annex 18 recognize that forests have a key role to play in climate change mitigation and adaptation, as well as in the conservation in sustainable use of biological diversity. As the Paris Agreement 'enhances sinks and reservoirs' of GHG, including forests,[101] this Agreement is deemed to be an 'essential element' of the implementation of the ITA.

While the TSD chapter makes no mention of ending deforestation—a sensitive issue for Europeans—Annex 18 requires the end of deforestation, with a specific deadline, 2030.[102] No other FTA concluded by the EU has so far included such an ambitious commitment. However, it leaves something to be desired. There is no monitoring of the proper implementation of this objective. The concept of deforestation is not defined, whereas it has been defined in the defined in the flagship EUDR regulation.[103] Furthermore, there is no mention of forest degradation which is another pilar of the EUDR.[104] Whilst the proposed Joint Instrument was setting out more specific targets for forest restoration, the Annex merely entices the Parties to 'enhance efforts to stabilize or increase forest cover from 2030'.[105] No quantitative targets have been set. That said, other commitments set forth in Annex 18 could help ensure that Mercosur countries to put an end to deforestation by 2030. For instance, the Parties have committed to encourage trade in 'natural resource-based products obtained through a sustainable use of biological resources',[106] and 'combat illegal logging and related trade'.[107]

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[97] Annex 18, A.4(38).
[98] Annex 18, A.2(12) (a).
[99] Markus Kröger, 'Field research notes on Amazon deforestation during the Bolsonaro era' (2020) 17(6) *Globalisations* 1080–1083.
[100] Rhamon Talles, Daniel Da Mata and Joao Paulo Pessoa, 'The end of soy moratorium will accelerate deforestation' (2025) LSE Business Review.
[101] Article 5.
[102] Annex 18, A.2(15).
[103] Article 2(3).
[104] Article 1(1)(a).
[105] Annex 18, A.2(15).
[106] Article 18.7.2, c). See also Annex 18, A.2(27).
[107] Article 18.8(2) (c).

The question arises as to whether these new commitments could assist Mercosur countries to comply with the EUDR that covers seven products and their derivatives identified as most relevant to deforestation (soybean, rubber, wood, coffee, etc.).[108] Needless to say, the implementation of this regulation has drawn the ire of several Mercosur countries are that export to the EU most of these commodities and products. Nevertheless, the impact of the EUDR can vary significantly across different value chains. For example, the EU's global import share of soy is relatively modest[109] compared to its share of coffee and cocoa, which means that the EU has less leverage over soy-producing countries through import-linked measures. Without refereeing to the EUDR, Annex 18 states that actions taken by the Parties 'shall be favourably considered, among other criteria, in the risk classification of the countries'.[110] That said, the scope of the EUDR is limited to forests and does not include biomes of great ecological importance, such as the Cerrado, the Pantanal and the Pampas in the far south of Latin America.

Last, there is also the issue of respecting the rights of indigenous populations, who generally inhabit the most ecologically significant areas.[111] Although they are coming under increased pressure from agribusiness, mining and illegal logging activities, these communities were not consulted by the four Mercosur states during the negotiations.

5.2.4. Critical Minerals

Mercosur countries, particularly Argentina and Brazil, are rich in critical materials vital for renewable energy technologies, such as lithium and copper. Mineral exports to the EU are expected to rise, due to increased demand linked to the digital and energy transitions. China's expanding influence also presents significant challenges for the EU undertakings. Does the ITA secure access to essential raw materials for energy transition? In short, it precludes the possibility of increased export duties of critical materials.[112] Is the environmental impact of extracting these minerals being adequately considered in the agreement? Annex 18 merely promotes 'responsible mining and transformation of metals and minerals which are critical for the energy'.[113]

5.2.5. Trading in sustainable goods and services

A list of sustainable products, to be mutually agreed upon, which will be subject to 'preferential market access', shall be established one year after the entry into force of ITA and will be regularly reviewed every three years.[114] This list is expected to support exports from indigenous communities, small farmers, and businesses linked to the bioeconomy.[115] However, trade in products from sustainably managed forests is merely encouraged.[116] Besides, the Parties are intent upon promoting 'goods and services contributing to a resource-efficient, low-carbon economy, or goods that are the subject of sustainability assurance schemes'.[117] In this

[108] European undertakings importing these commodities must fulfil specific due diligence requirements throughout their value chains down to the first suppliers.
[109] In 2025, China bought roughly 80 per cent of Brazil's soy exports. See Talles *et al,* 'The end of soy moratorium' (n 101).
[110] The EUDR classifies countries according to the level of risk of producing commodities that are not deforestation-free. This classification has been adopted through an implementing act.
[111] See Annex 18, A.4(36) and (38).
[112] Rudloff et al, *A comprehensive analysis* (n 32) 29-32.
[113] Annex 18, A.2(31)(a).
[114] Annex 18, B.4(39).
[115] Annex 18, B.2(47)(d).
[116] Annex 18, B.4(35).
[117] Annex18, A.4(39).

connection, the EU could offer preferential and additional market access or other incentives to promote trade (e. g. technical assistance, capacity building).

These provisions seem disappointing when compared with the Agreement on Climate Change, Trade and Sustainability (ACCTS) that has been signed by Rica, Iceland, Switzerland, New Zealand on November 15, 2024. Aiming at improving the contribution of international trade 'in addressing climate change and other serious environmental challenges' including loss of biological diversity and pollution',[118] the ACCTS goes further than other FTAs in eliminating import and export duties on 300 'environmental goods'[119] and in liberalising trade in environmental and environmentally related services.[120] In particular, it aims at eliminating fossil fuel subsidies[121] and at promoting 'high-integrity voluntary ecolabelling programmes in order to promote more transparent and sustainable trade'.[122]

Last, Annex 18 emphasises that the systems officially recognised and registered by the Mercosur countries should be 'used as a source' by the competent authorities in the EU when verifying imports' compliance with EU market requirements.[123] This consideration of existing quality systems on the Mercosur side does not amount to an automatic mutual recognition procedure as regards the quality of the control systems in place in Mercosur countries.[124]

5.3. Labour rights

Given that the social pillar is a component of sustainable development,[125] the TSD chapter also attaches some importance to this issue. Against this background, the TSD chapter aims to prevent a race to the bottom that would lead to a significant degradation of domestic labour standards.[126] In addition to ratifying and enforcing the 'fundamental' ILO conventions,[127] the annex focuses on the fight against child labour,[128] poverty[129], hunger as well as women's empowerment.[130] However, the rather soft and imprecise language of these commitments raises a question about their legal effectiveness. In addition, given their different capacities, the four Mercosur countries are likely to implement labour rights commitments differently. For instance, Argentina and Uruguay rank high in the United Nations Human Development Index, whereas and Brazil and Paraguay lag behind.

Besides, judicial protection is a key component of labour law. Labour rights are effective only if they are justiciable. The rule of law implies that both employers and employees should be able to bring their disputes before independent and impartial courts. In particular, Article 18.4 does not enshrine a right to effective judicial protection which is recognised by the CJEU.[131]

5.4. Weaknesses of the TSD Chapter and its Annex 18

As regards the various sustainability provisions (principle of non-regression, high level of protection, etc.), there is still much to be done. Apart from the banning deforestation by 2030, these clauses are more aspirational

[118] Article 1.1.
[119] Articles 2.1 to 2.11 and Annex II.
[120] Articles 3.1 to 3.16 and Annex III.
[121] Article 4.1. In contrast, Annex 18 places emphasis on 'cleaner fossil-fuel technology. See Annex 18, A.2 (18).
[122] Article 5.1 to 5.7.
[123] Annex 18, A.55 (b) and (c).
[124] Rudloff et al, A comprehensive analysis, above (n 31) 15.
[125] Article 3(3) TEU.
[126] Article 18.2(3).
[127] Article 18.4(4); Annex 18, A.2(24).
[128] Article 18.4(3)(c), Annex 18, A.2(25).
[129] Annex 18, preamble (d) and (g).
[130] Annex 18, A.1(6) (d); A.5(43)-(46).
[131] Case 222/86 *Georges Heylens* [1987] ECR 4097, paras 14–15.

than legally binding. They encourage rather than require specific actions.[132] In addition, these provisions do not call into question the aspiration to economic growth. For instance, the Parties are neither obliged nor encouraged to adopt measures that restrict trade for achieving a higher level of protection.[133] That said, the fact that the TSD chapter refers to several MEAs requires the Parties to interpret the ITA's provisions in accordance with the obligations set forth in these MEAs.[134]

What is more, the rather modest cooperation arrangements on sustainability fail to incorporate sustainable agriculture, industrial and technological cooperation, and carbon credit systems.[135]

Last but not least, the crux of the matter is how disputes will be settled in the event of a breach of a treaty obligation. The progress made in the EU–New Zealand and EU–Chile FTAs is not reflected in the ITA. The interim agreement excludes provisions on sustainable development from the bilateral trade dispute settlement system. It follows that breaches of these obligations do not result in the adoption of a decision that is binding on the Parties, nor do they authorise the suspension of trade concessions. This effectively leaves the resolution of any disagreements regarding their proper implementation to panels of experts, which will issue mere recommendations.[136] Furthermore, the implementation of the provisions relating to sustainable development must be carried out in accordance with WTO rules, and in particular with the TBT and SPS agreements[137]

5.5. Potential breach of the precautionary principle as defined by the CJEU

Under EU law, the precautionary principle is deemed to be one of the foundations of the high level of environmental and health protection in the EU.[138] However, the insertion of this principle has been subject of many tensions between the Parties, that explains its restrictive wording of the principle in the agreement.

In accordance with Article 6.12(2), sanitary and phytosanitary measures are only acceptable if they are provisional and reviewed 'in a reasonable period of time'. In addition, the TSD Chapter restricts the application of the precautionary principle, notably to situations involving a 'risk of serious environmental degradation or to occupational health and safety'.[139] However, under EU law, the application of the principle is not made conditional on such conditions. The question also arises as to whether several ITA provisions are compatible with the much more general jurisprudential definition of the principle according to which: 'where there is uncertainty as to the existence or extent of risks to human health, protective measures may be taken without having to wait until the reality and seriousness of those risks become fully apparent'.[140]

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[132] Fransesca Martines and Samantha Velluti, 'Sustainable Development in Free Trade Agreements of the European Union' in Leonardo Pasquali (ed) *EU Values and International Law* (Springer 2026) 160.

[133] See Lenk, 'Sustainable development' (n 55) 215-216.
[134] Martines and Velluti (n 132) 163.
[135] *Ibid* 26 to 29.
[136] Sholars have been criticising this soft approach as the core weakness of EU TSD chapters. See Mario Bronckers and Giovanni Gruni, 'Taking the enforcement of labour standards in the EU Free Trade Agreements seriously' (2019) 66(6) *CMLRev* 1610.
[137] Article 18.1.4 and Annex 18 A.2.6.
[138] Case C-127/02 *Waddenzee* [2004] ECR I-7405, para 44 ; Case T-125/17, *BASF Grenzach GmbH* [2019] T:2019:638, para 272.
[139] Article 18.10(2).
[140] See Case C-157/96 *NFU* [1998] ECR I-2211, para 63; Case C-180/96 *UK v Commission* [1998] ECR I-2265, para 99. This interpretation of the principle has become settled case law: Case C-236/01 *Monsanto Agricoltura Italia* [2003] ECR I-8105, para 111; Case C-77/09 *Gowan* [2010] C:2010:803, para 73; Case C-333/08 *Commission v France* [2010] ECR I-757, para 91; Case C-343/09 *Afton* [2010] C:2010:419, para 62.

The European Parliament is seeking the opinion of the CJEU as to whether the EMPA and the ITA may compromise the application of the precautionary principle, which could result in incompatibility with, at least, Articles 168, 169 and 191 TFEU. The Parliament is also concerned that the principle might be adversely affected by the authority granted to an arbitration panel to assess the EU's application of the principle.

5.6. Compliance with maximum limits for pesticide residues in food products imported into the EU

The ITA is expected to boost exports of crops and agricultural products from the Mercosur, including soybeans, sugarcane and the ethanol derived from it, which are heavily reliant on pesticides. As discussed above, there are significant regulatory differences between the EU and the Mercosur countries in relation to food production and sanitary and veterinary standards.[141] As of January 2026, several pesticides banned in the EU (atrazine, chlorothalonil, chlorpyrifos and paraquat) are authorised and widely used in Brazil.

To allay consumer concerns, the European Commission has repeatedly emphasised that no product may enter the EU unless it complies with sanitary and phytosanitary standards (SPS), as well as the ban on the use of hormones and antibiotics for fattening. Two categories of controls are in place to ensure compliance with these standards: checks on local production installations are carried out by the European Commission whereas controls on products are carried out by customs authorities upon their arrival in the Member States. By way of illustration, the European Commission highlighted the lack of traceability systems for Brazilian beef exported to the EU and subsequently detected the presence of 17-β-oestradiol residues.[142] Therefore, failure to comply with EU SPS standards should preclude the import of agro-products from the Mercosur. However, two clarifications are necessary.

Firstly, as shown in a previous section, the ITA does not contain mirror clauses requiring countries to apply within their own border the same the same levels of health, social or environmental protection as those in force in the EU. On this point, the TSD chapter merely emphasises the regulatory autonomy of each Party in pursuing its respective policy. This shortcoming is of particular concern to European farmers, who fear they will be at a significant disadvantage compared to their South American competitors, who can use cheaper pesticides.

Secondly, food products may still be imported into the EU even if they exceed the established maximum residue limits (MRLs) for pesticides. In fact, Regulation (EC) No 396/2005[143] allows for the setting and maintenance of import tolerance thresholds, and for alignment with Codex standards[144] for pesticide residues not approved in the EU, provided they do not pose a risk to 'vulnerable consumers'.[145] MRLs are established solely on health grounds with a view to protecting consumers and not the global environment. Currently, this regulatory approach may allow the presence in imported food products of hazardous substances that are not approved in the EU under the Pesticides Regulation (EC) No 1107/2009. This tolerance not only poses a danger to the health of consumers, who are exposed to chemicals not authorised in the EU, but is also contrary to the economic interests of European farmers.

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[141] Section 4.2.

[142] European Parliament, Parliamentary question - P-002460/2024, Traceability and control in connection with Brazilian beef.

[143] Regulation (EC) No 396/2005 of the European Parliament and of the Council of 23 February 2005 on maximum residue levels of pesticides in or on food and feed of plant and animal origin and amending Council Directive 91/414/EEC, OJ L 70, 16.3.2005, pp. 1–16.

[144] In accordance with the SPS Agreement, MRLs for imports have been set either on the basis of Codex Alimentarius standards or on the basis of import tolerances.

[145] Article 3, d) of Regulation (EC) No 396/2005. MRLs apply to 315 fresh products and to the same products after processing. A general default MRL of 0.01 mg/kg applies.

However, on the account that Codex Alimentarius standards do not achieve the appropriate level of protection, the Commission has been proposing to set the MRLs for two neonicotinoid insecticides (clothianidin and thiamethoxam)[146] on the basis on their global environmental impact rather than on the basis of good agricultural practice. Following on from this, the Commission announced in December 2025 its intention to pursue greater alignment of the production standards applied to imported products, particularly with regard to pesticides.[147] In this regard, it will propose the EU lawmaker to amend the Regulation on MRLs with a view to enshrining the principle that the most dangerous pesticides banned in the EU for health and environmental protection reasons cannot be reintroduced into its territory via imported products.

6. THE 'REBALANCING' MECHANISM

Although it was not included in the 2019 version of the EMPA, the Mercosur countries asked for the inclusion of a rebalancing clause in the EUMPA similar to the one enshrined in Article XXIII:1(b) GATT and Article 26 Dispute Settlement Understanding (DSU).[148] Pursuant to these provisions, through a non-violation complaint, a WTO Member can request compensation for the nullification or impairment of any benefit under the agreements due to an unforeseeable measure by another Member, even if the measure at hand does not breach WTO rules. The mere failure to meet its legitimate expectations will suffice. This specific procedure has rarely been used and has a very low success rate given that the rules agreed by WTO Members may 'only exceptionally' 'be challenged for actions not in contravention of those rules'.[149]

It must be noted that Brazil already enacted unilaterally such reciprocity measures. Originally initiated in response to the EU's due diligence rules under the EUDR and CBAM, the Brazilian Economic Reciprocity Law targets unilateral environmental measures imposed by trade partners that negatively impact Brazil's international competitiveness. In accordance with this legislation, Brazilian authorities may implement countermeasures when trade partners' policies undermine negotiated benefits under existing trade agreements. [150]

The Mercosur demand was met by the inclusion of a non-violation complaints in Chapter 21 Article 21.4(b) and Chapter 1 Article 1.3(k) of the ITA. This newly designed rebalancing mechanism[151] is more wide-reaching than existing ones in previous FTAs concluded by the EU and differs in scope and content to the clause set forth in the GATT and in the DSU. [152] The mechanism is covering all measures (legislative acts, administrative practice, etc.)[153] adopted after the conclusion or that have not yet been 'fully implemented at the conclusion of the negotiations' (i.e. on 6 December 2024). This definition extends the scope of the mechanism beyond what

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[146] In the light of the Implementing Regulations restricting the active substance clothianidin and thiamethoxam, the applicants withdrew their applications. Consequently, the approval of these substances expired 30 April 2019 and 1 December 2020.

[147] Proposal for a regulation of the European Parliament and of the Council as regards the simplification and strengthening of food and feed safety requirements, COM(2025) 1030 final.

[148]See also GATS, Article XXIII.

[149] AB Report, DS 44, *Japan-Measures Affecting Consumer Photographic Film and Paper,* para. 10.36.

[150] Law 15.122 of 11 April 2025 and Decree 12.551 of 14 July 2025.

[151] Chapter 21, Article 21.4(b)

[152] Christina Eckes and Piotr Krajewski, 'How Sustainable is the EU-Mercosur Agreement?' (Amsterdam 2025). See also European Parliament, *Motion for a resolution seeking an opinion from the Court of Justice on the compatibility with the Treaties of the proposed EMPA, and the proposed ITA*, B10-0060/2026, G.

[153] Article X.3.

is usually provided for. As a result, the EUDR and the CBAM that are still subject to implementing measures are falling within the scope of the rebalancing mechanism. [154]

In addition, the ITA provisions are framed less precisely than Article XXIII of the 1947 GATT and subsequent agreements, which refer to elements of GATT/WTO case law concerning the interpretation of the requirements of 'legitimate expectations' and the proof of 'serious distortion'. Whether the EU-Mercosur panels would take into consideration the GATT/WTO panels interpretation of Article XXIII remains to be seen.

In addition, assessing whether the challenged measure was 'unforeseeable' in cases where there is no breach of the ITA's obligations will be far from straightforward, given that, as we have seen, the TSD Chapter enshrines the right of parties to regulate and determine their own level of protection and encourages them to raise their national sustainability standards.[155] In view of these provisions, the Parties cannot expect their respective regulatory framework to remain unchanged.

Although the EU will not have to amend or to withdraw its measure in the event that the non-violation complaint is upheld,[156] the risk of compensation via additional concessions could entail a chilling effect.[157]

The European Parliament has been expressing the view that the "rebalancing" mechanism could be used by Mercosur countries to pressure the EU to refrain from enacting or enforcing legislation and other measures related to climate and environmental protection, food safety or bans on certain pesticides.[158] This chilling effect would call into question the principle of a high level of protection enshrined in treaty law[159] and the obligations stemming from the Paris Agreement. The CJEU must now render an opinion whether the rebalancing mechanism may be incompatible with Articles 11, 168, 169 and 191 TFEU and Articles 35, 37 and 38 of the

CONCLUSION

The emergence of new trading powers such as China, the protectionist ambitions of the United States, and the dependence of a decarbonised, circular and digital economy on raw materials extracted outside Europe are all eroding the commercial supremacy of the EU.[160] As was seen during the Covid-19 pandemic, complex value chains have heightened the EU's economic model vulnerability.[161] As its share of world trade is falling, the EU's negotiating power is on a declining trend.

To avoid a sharp political and economic decline, the EU must continue to open up to the world, whether through its fledgling diplomacy or by concluding FTAs. Instead of using economic coercion, the EU prefers to use the attractiveness of its single market to secure bilateral deals on market access. Against this backdrop, the conclusion of an ambitious intermediary trade agreement with Mercosur appears to offer a lifeline. Indeed, this agreement creates the largest interregional trade area in history, valued at EUR 110 billion in trade and covering over 780 million people living in 31 countries. It has thus been hailed as a strategic breakthrough that would

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[154] Florian Couveinhes Matsumoto and Sabrina Robert, *Analyse du Mécanisme de rééquilibrage de l'Accord de libre-échange UE-Mercosur* (Veblen Institute, 2024) 8 ; Eckes and Krajewski (n 152) 16.

[155] Section 5.

[156] Article 21.14(10) (c) ITA.

[157] Eckes and Krajewski (n 152) 15.

[158] European Parliament, *Motion for a resolution* (n 153) E and H.

[159] In its opinion 1/17 on the compatibility of CETA investment chapter with EU law, the CJEU held that the 'CETA tribunal has no jurisdiction to declare incompatible with the CETA the level of protection of a public interest established by EU measures… and, on that basis, to order the Union to pay damages' (para 153). Whether the CJEU will follow the same reasoning remains to be seen. The ITA rebalancing mechanism differs from the CETA chapter on investment in that the arbitral tribunal may award compensation to the requesting State.

[160] Mario Draghi, *The Future of European Competitiveness* (Commission 2024) at p 36 and 51.

[161] Enrico Letta, *Much more than a market. Speed, Security, Solidarity* (2024) at p 61, 133-136.

enhance cooperation between the EU and the Mercosur and allow them to better withstand mounting pressures from the United States and China.

Our analysis unfolds around three perspectives. Firstly, from an institutional perspective, the division of competences between the EU and the Member States in this area tends to involve not so much a separation but rather an intermingling of powers, in particular where the political cooperation envisioned with third States is intertwined with trade considerations (ITA). For the sake of expediency, the Commission decided in 2025 to separate the political aspects of the 'agreement in principle' from its trade dimension. However, this approach raises several constitutional questions, that the CJEU will have to address.

From a second perspective, we have sought to assess from a legal standpoint whether the amendments made to the 'agreement in principle' in 2024 ensure sustainable agriculture. Unsurprisingly, agriculture was the most difficult part of the agreement to negotiate, with the Commission under pressure from different parliamentary assemblies taking a firm stance. Very low tariff quotas have been set for sensitive products and rebalancing arrangements have been introduced. Both the EU institutions and the Member States have reassured the public in emphasising that the ITA does not call into question EU health and environmental standards. However, on closer consideration, import controls focus on whether foreign agricultural products comply with EU health standards aiming at protecting human health, and not on production methods. This is a far cry from the mirror clauses that are intended to scrutinise production methods in third States.

Finally, from a third perspective, we have assessed the extent to which the 2025 modifications would make it possible to reconcile trade and sustainability. The interplay between agriculture, climate and the environment has been at the heart of negotiations, which were at times very tense. For instance, trade and climate change are entangled. Given that transporting goods across the oceans is a major source of GHG emissions and that customs duty rebates allow for the sale of a greater amount of cheaper goods,[162] the implementation of the ITA is likely to have an impact on the climate. As a result, sustainability provisions have been strengthened, notably through the adoption of Annex 18 which has been hailed by the European Commission as a major step forward.

This leads us to make five observations regarding the TSD chapter. First, with but a few exceptions, the TSD provisions may be viewed as aspirational standards, intended to encourage the Parties to attain a certain threshold of protection. Against this background, sustainability commitments are rather rhetoric; everyone pays homage to sustainability but nobody succeeds to flesh it out in binding legal arrangements.[163] Second, the core objective of the ITA and EMPA, as of other EU FTAs, is to facilitate trade and not to enhance environmental protection or climate mitigation. It remains to be seen whether the TSD commitments designed to encourage trade in sustainable goods will be enough to reverse that trend. Third, although Annex 18 is paving new ways in providing for preferential access to the EU internal market thanks to customs duty rebates, whether this preferential access will significantly increase the four South American trade partners' willingness to make headway in sustainability remains to be seen. Fourth, it is unclear whether the numerous sustainability commitments are likely to erase the chilling effect stemming from the ITA 'rebalancing mechanism'. This mechanism might not only call into question several climate and environmental regulations, adopted in 2024, which have not yet entered into force in their entirety, but also lead, in the future, to a risk of regulatory inhibition. Fifth, the enforcement mechanisms are asymmetrical. Whilst national or EU measures can be challenged according to the main dispute settlement mechanism (Title VIII), whether on the grounds of non-compliance with the Agreement or a substantial impairment of concessions, any failure to implement the obligations set out in the TSD chapter can be subject to consultations.

Two key lessons can be drawn from our analysis.

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[162] Eckes and Krajewski (n 153) 5, 9.

[163] Justice Mensah, 'Sustainable development: meaning, history, principles, pillars, and implications for human actions' (2019) 5:1 Cogent Social Science, 1, 8; Lenk, 'Sustainable development' (n 56) 225.

Whilst only ten years ago FTAs have been the playing field of trade departments and a few academics, these agreements are now sparking a wide-ranging public debate as European civil society advocates for fairer and more equitable trade. Having succeeded in securing the inclusion in the negotiated agreements of a series of sustainability clauses ranging from an end to deforestation in South America to the protection of vulnerable people and the eradication of child labour, the EU attempts to shape the fabrics of global governance. But is that enough? It is clear from the request for an opinion submitted by the European Parliament to the CJEU that the social acceptability of FTAs will be illusory so long as they do not set out binding sustainability obligations. The key point is that it takes two to tango. It is not always easy for the EU institutions to make the case for getting certain trading partners to recognise non-commercial values.

A second lesson can be drawn from our analysis. Negotiations with Mercosur have resulted in a marked imbalance between the absence of mirror clauses – designed to safeguard the sustainability of European agriculture – and the albeit modest advances made in the areas of trade and sustainable development. Moreover, EU FTAs are not standalone tools. They do not call in question the autonomous EU approach in the field of environmental, economic and social sustainability.[164] For instance, due diligence obligations have been laid down by the EUDR with regard to imports of products and commodities (cocoa, coffee, timber, soybean, etc.) that are associated with deforestation and forest degradation. Many experts in international trade law have argued that FTA provisions incorporating sustainable development are preferable to these unilateral measures.[165] In any case, our analysis highlights that the various obligations under the TSD chapter and its Annex 18 do not provide the same level of environmental protection as unilateral EU measures would.

[164] Council conclusions on the Trade and Sustainability Review, 17 October 2022, para 6.
[165] Stoll et al, 'Mirroring' (n 47) 39-43.