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Trade Agreements: An Untapped Leverage Point for Sustainability

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40

41 **Summary:** International trade agreements could serve as a crucial leverage point in reaching
42 global sustainability goals. Yet, no international standards currently exist to ensure trade deals
43 meet sustainability criteria. For example, the new trade deal between the European Union and the
44 Mercosur bloc (Brazil, Argentina, Uruguay and Paraguay) is likely to increase environmental
45 degradation and greenhouse gas emissions as a result of increased trade quotas and insufficient
46 sustainability criteria. Here we introduce the three tenets of sustainable trade agreements to
47 address their socio-ecological risks: 1) *inclusion* of civil society and local communities, 2)
48 *transparency* mechanisms to trace the origin of high-risk commodities and provide open-access
49 information on negotiations, and, 3) *enforcement* of legally binding instruments to uphold
50 sustainability commitments. We apply these tenets to the provisional EU-Mercosur trade
51 agreement and find that this agreement does not meet any of our tenets of sustainability. Trade
52 agreements could help to protect human rights, critical ecosystems, and the climate – but only if
53 specific mechanisms are made a central component of international trade agreements. Such
54 mechanisms include binding legislation to enforce international sustainability commitments, due
55 diligence, the genuine inclusion of local communities, and collective redress. Ultimately,
56 achieving sustainable trade will depend on a transformation of the objectives of trade
57 agreements, where global actors recognize that working together to protect human rights and the
58 living world is fundamental to long-term prosperity.

59

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

62

63 **Main Text:** In the last 50 years, the real monetary value of international trade has grown more
64 than ten-fold.¹ While trade can improve efficiency and reduce costs, it can also have negative
65 impacts on environmental and social outcomes. Natural habitat conversion, biodiversity loss,
66 conflicts over land, displacement, and human rights abuses can all be fuelled by trade deals that
67 overlook vulnerable local communities and the environment.^{2,3} Between one quarter and two
68 thirds of all anthropogenic material, energy, and land use, as well as deforestation and
69 greenhouse gas emissions are embodied in global trade flows.^{3,4} However, despite the obvious
70 relevance of international trade for sustainability outcomes, there is no broadly applicable
71 international standard for ensuring that trade meets sustainability criteria.

72

73 Multiple levers influence the sustainability of international trade, including protectionist
74 domestic policies and subsidies, power asymmetries, market distortions, and the dynamics of
75 global markets. Today, trade is increasingly regulated through international trade agreements,
76 making these agreements a critical means to leverage action towards sustainability.

77 Comprehensive trade reform in line with the principles of triangular cooperation (international
78 collaboration to facilitate South-South initiatives through the provision of funding, training,
79 management and technological systems as well as other forms of support) could allow for the
80 collective development of mechanisms needed to protect planetary health, such as local
81 engagement, stricter international standards, and robust enforcement mechanisms. High-income
82 regions with a high carbon emissions debt, such as the European Union, have a clear
83 responsibility to negotiate trade agreements that serve as sustainability beacons for further
84 international collaboration.

85

86 After two decades of negotiations, in 2019 a historic trade agreement was provisionally reached
87 between the EU and the four founding members of the Mercosur bloc.⁵ These countries - Brazil,
88 Argentina, Paraguay, and Uruguay - which together represent over 40% of Latin America's
89 formal economy in 2019⁶ - are home to several global biodiversity hotspots and are decisive for
90 global climate stability. While the EU-Mercosur agreement offers substantial reductions in tariffs
91 and opens new markets, it also has the potential to cause negative environmental and social
92 impacts.

93
94 The Mercosur bloc and neighbouring countries are undergoing rapid conversion of forests,
95 savannas, and wetlands to meet rising domestic and global demand for meat and livestock feed.⁴
96 Current trends, exacerbated by reduced policing of illegal activities during the COVID-19
97 pandemic, suggest further agricultural expansion in these countries is inevitable. While clearing
98 forests for commodity production can bolster economic growth in the short term, the ongoing
99 destruction of natural habitat makes future pandemics more likely along with jeopardizing global
100 climate stability, biodiversity conservation, and the livelihoods of those who depend directly on
101 native flora and fauna. It's not just the livelihoods of local communities that are at risk, violent
102 conflicts over land and the murder of environmental defenders are both increasing.⁷ The recent
103 spike in deforestation in the Amazon is bringing this ecosystem closer to the brink of collapse,
104 whereby our planet's largest rainforest could shift towards a novel ecosystem, supporting lower
105 amounts of carbon stocks and biodiversity. This would cause major impacts to the global climate
106 regulation system, irreversible damage to Indigenous and local communities' ways of life, and
107 reductions in the rainfall on which the region's agriculture depends.⁸ While efforts to address the
108 underlying drivers of deforestation, for example the overconsumption of resource-inefficient

109 foods such as meat and dairy, are critical, especially when consumption rates in the EU and
110 Mercosur bloc far exceed sustainable levels⁹, we argue that such efforts must be complemented
111 by stricter trade policies.

112
113 The EU is a major importer of goods and services associated with natural habitat conversion,
114 importing over one third of all internationally traded commodities linked to deforestation.¹⁰ From
115 Mercosur countries, the EU annually imports a quantity of commodities corresponding to
116 120,000 hectares of embodied deforestation (Figure 1) –equivalent to one football pitch of
117 deforestation every three minutes⁴ – predominantly for rearing beef and producing soy beans
118 (which are used in Europe for livestock feed). The EU has a clear responsibility for this
119 deforestation and to the same degree, an major opportunity to strengthen efforts in sustainable
120 trade.¹¹ While the EU-Mercosur agreement adopts the precautionary principle and states
121 “*increased trade should not come at the expense of the environment or labour conditions*”⁵,
122 critical information is lacking on how environmental and social sustainability standards will be
123 set and enforced.

124
125 Here we introduce three core sustainability tenets for trade agreements: 1) *inclusion*: consultation
126 with and involvement of civil society and local communities, 2) *transparency*: mechanisms to
127 trace the origin of high-risk commodities and ensure open-access information on negotiations
128 and regulations, and, 3) *enforcement*: legally binding instruments that uphold and enforce
129 sustainability commitments (Figure 2). We use the EU-Mercosur agreement to demonstrate how
130 the application of these three tenets could reduce risks to local communities and the
131 environment.

132 **The Three Tenets**

133

134 **1. Inclusion**

135 Trade in natural resources can impinge on the livelihoods, labour conditions, and land tenure
136 rights of local communities^{2,3}. Yet because the voices of these communities are not adequately
137 incorporated in the negotiation of trade agreements, these impacts remain invisible. For trade to
138 be sustainable, these communities should be part of discussions - from the trade agreement
139 negotiations through to implementation stages. To achieve this goal, cooperation between
140 national policy makers, trade unions, NGOs, and local communities is crucial.

141

142 Local communities are affected in multiple ways by the production of commodities for export.
143 For example, agribusiness is the sector with the most assaults on land and environmental
144 defenders¹². Those employed by this industry are also at risk: the agriculture and fishing sector
145 has the fourth highest proportion of victims of forced labour in the world.¹³ By setting minimum
146 quotas for traded goods and therefore guaranteeing long-term export partners, international trade
147 deals financially support the highly problematic practices embedded in large-scale agribusiness.
148 Achieving socially just and sustainable trade agreements requires that local stakeholders play a
149 central role in trade agreement negotiations. Despite international legal instruments mandating
150 the participation of local actors, their voices remain peripheral due to a range of factors
151 including: the absence of land ownership rights; power imbalances; weak enforcement of
152 participation clauses; and the prioritization of industrialized resource extraction over community
153 management of resources.

154

155 Several frameworks exist to support inclusiveness, such as the United Nations Declaration on the
156 Rights of Indigenous Peoples (UNDRIP), which requires nations to consult with Indigenous
157 Peoples via their own institutions in order to obtain their free, prior and informed consent for
158 development strategies that will affect them or their territories (Art. 15). Nevertheless, there is
159 growing evidence that these principles are not adhered to within trade agreements.^{2,3} Examples
160 of trade agreements negatively impacting native communities include: the Peru-US Trade
161 Preference Agreement, which catalysed state attempts to re-zone Indigenous forests for
162 agriculture, leading to violent clashes that left 33 dead and over 170 injured;¹⁴ and the expansion
163 of coal mining in Colombia's La Guajira province on foot of agreements with the US, Canada
164 and the EU, that has resulted in Indigenous Wayúu people suffering displacement, water
165 shortages and high child mortality.¹⁵ A more thorough consultation with and ongoing
166 involvement of local communities, adhering to the principles of free, prior and informed consent,
167 is crucial to ensure that trade deals include the expertise, values, and interests of those most
168 likely to be negatively affected by trade policy.

169
170 In the EU-Mercosur agreement, local communities were not systematically consulted during the
171 negotiation phase of the deal and are only briefly referenced in the *Trade and Sustainable*
172 *Development Chapter*, which proposes “*the inclusion of forest-based local communities and*
173 *indigenous peoples in sustainable supply chains of timber and non-timber forest products*”.⁵
174 Cattle and soy production are not ‘forest products,’ but do pose an ongoing threat to both the
175 forest and Indigenous and local communities’ land rights and lives. International demand for soy,
176 beef, and ethanol from Latin America provides economic incentives to drive agricultural
177 expansion which can result in ecological destruction, the perpetuation of forced labour on

178 farms^{13,16,17}, and violent incursions on Indigenous lands⁷. In 2017, Brazil hit a global record by
179 reaching the highest number of murdered environmental defenders ever registered in one year
180 (57 people).¹² In 2019, murders of Indigenous leaders in the Brazilian Amazon hit the highest
181 level in two decades.¹⁸

182
183 Limiting forest-dependent local communities' inclusion only to matters related to the
184 commercialization of forest products ignores this reality. Even when local communities are
185 included in commodities grown on converted land, care must be taken to ensure a fair and
186 inclusive process. A clear illustration of how the interests of local communities can be side-lined
187 is the deliberations of the Cerrado Working Group in Brazil, which resulted in the reinforcement
188 of existing power structures and undermined the long-term goals of local communities, risking
189 both conservation and sustainability success.¹⁹ Despite this, there are examples of how
190 Indigenous rights and values can be incorporated into decision making, such as moving from
191 reactive to proactive development planning to conserve Indigenous community and biodiversity
192 values.²⁰ Trade agreements provide an opportunity to make these practices more common place.

193
194 An effective participatory process should consider the complexity of local needs and rights. This
195 could be achieved by reforming existing multi-stakeholder governance forums to include local
196 communities via their representative bodies. In Argentina, for example, consultations could be
197 linked to the activities of the Consultative and Participative Council of Indigenous Peoples of the
198 Argentine Republic. Triangular cooperation initiatives involving EU members and countries in
199 the Mercosur bloc could aid in developing adequate consultation processes and multi-stakeholder
200 forums. However, to ensure the effectiveness and human rights ethics of these standards,

201 decisions regarding their configuration must rest with the respective national authorities.
202 Ultimately, to genuinely respect the rights of self-determination, Indigenous Peoples and local
203 communities must themselves be centrally involved and supported to design this process, in
204 order to develop culturally appropriate ways in which to ensure the full and legitimate inclusion
205 of local voices. The responsibility in producing sustainable outcomes is therefore shared across
206 importing and exporting countries, spanning from local to international scale.

207

208 **2. Transparency**

209 As policies frequently underestimate environmental and social costs arising in the country where
210 extraction or production occurs, publicly available information on product supply chains is
211 crucial. Such information on environmental and social impacts provides a key entry point for
212 third parties to participate in improving the sustainability of global trade.²¹ Protocols, procedures,
213 and monitoring tools are required to identify commodities that have a high risk of negative
214 environmental or social impacts across their supply chain.⁴ Combining satellite-based
215 monitoring, land registries, customs taxes, and other public databases can demonstrate, with an
216 increasing level of reliability, the specific origins of commodities that are related to natural
217 vegetation conversion (e.g., Trase.Earth and GlobalForestWatch.org) or potential social conflicts
218 (e.g., LandMatrix.org and ejatlas.org). Trade agreements should include mechanisms whereby all
219 parties commit to make publicly available sectoral data on extraction, production, and supply
220 routes of high-risk goods, and to implement internal traceability systems that would allow
221 scientists, Indigenous Peoples, civil society, and public actors to monitor flows and develop
222 sustainability-oriented certification and conservation schemes. In addition, transparency in trade
223 negotiations is also crucial, as deals and assessments supporting vested interests over public and

224 environmental interests are likely to be less efficient and more destructive.¹ Regular publicly
225 accessible updates on draft texts, with adequate provisions for public feedback and stakeholder
226 input, can help mitigate this risk.

227
228 In the case of the EU-Mercosur agreement, the EU's own sustainability impact assessment
229 identified increased risks associated with deforestation.²² Approximately 20% of all soy and
230 17% of beef exported to the EU from the Cerrado and Amazon regions of Brazil are linked
231 to deforestation.²³ The cattle sector is the leading driver of deforestation in the region,^{4,9} with
232 the EU importing over 200,000 ton/year and set to commit to a new quota of 99,000 tons of
233 reduced-tariff beef under the new agreement (Figure 1).⁵ Despite this, the EU-Mercosur
234 agreement does not include mechanisms to trace the origin of high-risk commodities such as
235 beef, soy, and sugarcane for ethanol production. Existing traceability systems, such as SISBOV
236 in Brazil and DICOSE in Uruguay, should be strengthened and expanded via south-south
237 cooperation, and their data made public and linked to information on environmental and social
238 performance, so that producers, consumers, third party agencies and NGOS, Indigenous Peoples,
239 and regulators are able to ensure that imports are not driving natural habitat loss or social
240 conflicts. Crop traceability systems and certification schemes are also urgently needed. EU
241 traceability systems must also be improved. For example, the system for illegal, unreported, and
242 unregulated fishing could be strengthened and expanded with mandatory disclosure of vessel
243 registries and fishing authorizations. In line with the principles of triangular cooperation, the EU
244 should take responsibility for sharing knowledge and codeveloping technological systems
245 regarding tracing and monitoring production and supply chains. The risk of leakage effects could
246 potentially be mitigated via south-south cooperation between the Mercosur bloc and

247 neighbouring countries. Long-term land-use change monitoring is needed to assess both direct
248 and indirect environmental and social impacts of traded goods. This is particularly important, as
249 public attention and enforcement tend to focus on more charismatic biomes (e.g. the Amazon),
250 while neighbouring regions are often neglected (e.g., the Pantanal, Gran Chaco, Cerrado, and
251 Bolivian Chiquitanía) despite their outstanding conservation value and capacity to store carbon.

252

253 **3. Enforcement**

254 In order to be effective, sustainability commitments in international trade agreements need to be
255 legally binding and enforceable. Requirements for *ex post* sustainability impact assessments and
256 active monitoring by independent third parties could identify non-compliance and in serious
257 cases could allow for a suspension of the trade agreement, for example, if a breach of the Paris
258 Agreement, UNDRIP, or the international standards of the International Labour Organization
259 (ILO) is found. Other non-compliance issues could trigger a renegotiation of the terms of the
260 agreement² or increased tariffs or border taxes until compliance is reached.

261

262 Additional approaches to reduce negative environmental and social impacts of trade agreements
263 include: new laws requiring companies to follow environmental and human rights due diligence
264 in their supply-chains; setting up legal processes to empower vulnerable groups who may be
265 adversely affected by the expansion of commodity production for export; and severely restricting
266 mechanisms such as the ISDS (investor-state dispute settlement), to ensure that investors' rights
267 do not undermine a nation's capacity to reach sustainability goals. Introducing due diligence as a
268 legal requirement would make the purchase of products linked to environmental and social harm
269 a criminal offence, enforced through substantial fines and sanctions for companies sourcing non-

270 compliant products or committing human rights abuses. Importantly, bans on trade in specific
271 goods and services should be introduced until commodities comply with basic legal and
272 sustainability criteria. This is a particularly powerful policy option given the lack of legal
273 mechanisms to enforce international agreements such as the Paris Agreement.

274

275 Alarming, there are no legally binding enforcement measures specified to support the
276 sustainability goals of the EU-Mercosur agreement. Introducing binding legal procedures on an
277 international level is likely one of the most effective options to ensure that EU commitments on
278 human rights and the environment are upheld when importing commodities.^{24,25} It is encouraging
279 to note that a new legislative proposal will be introduced by the European Commission in 2021,
280 proposing mandatory human rights and environmental due diligence for EU companies' global
281 supply chains. However, given the early stage of this proposal, questions remain related to the
282 scope and stringency of this initiative, including enforcement mechanisms, access to remedy and
283 liability regimes.²⁵

284

285 Importantly, enforcement does not imply that the EU, or any trading partner, directly intervenes
286 in the management of an export country's resources. However, countries can act to avoid the
287 import of non-compliant commodities. The EU could support the legal capacity building in and
288 across the Mercosur countries via triangular cooperation. This could enable the creation of
289 enforcement mechanisms that ensures that vulnerable communities who may be negatively
290 affected by the non-compliant production of commodities included in the trade agreement can be
291 safeguarded.

292

293 Similarly, trade deals should include procedures for collective redress. An opt-out class
294 arbitration procedure²⁶ is considered the most effective form of collective redress, whereby
295 communities have an impartial international legal forum to gain access to justice under equal
296 legal arms with investors. Such legal protection is important, for example, if Indigenous and
297 other local communities are negatively affected by the production of commodities linked to a
298 specific export market. Furthermore, MEPs already support making a “*collective redress*
299 *mechanism available to all victims of corporate harm*”.²⁷

300

301 **Matching Ambition with Action**

302 As global trade continues to present a major threat to the conservation of the worlds remaining
303 forests, savannas and wetlands, connecting the demand for sustainable trade with realities on the
304 ground requires a transformation in how international trade agreements are negotiated and
305 implemented. The current EU-Mercosur agreement includes ambitious goals and principles, but
306 the deforestation is in the detail. Clear mechanisms to include and protect local communities, to
307 trace the origin of commodities, and to enforce sustainability standards are sorely lacking (for a
308 summarized EU-Mercosur policy brief, see supplementary information). Therefore, the proposed
309 EU-Mercosur agreement puts the EU’s own social and environmental sustainability goals at risk.
310 For example, the proposed EU-Mercosur agreement as it currently stands is in direct
311 contradiction with the recently announced European Green Deal goals²⁸ of:

312

- 313 1. “No net emissions of greenhouse gases by 2050”. Beef and soy livestock feed from
314 the Mercosur bloc have some of the highest emissions of any agricultural commodity
315 in the world today.⁴

- 316 2. “Economic growth is decoupled from resource use”. This goal has not been achieved
317 in any system to date.^{29,30} There is a substantial risk that much of the economic
318 growth in the Mercosur bloc as a result of this agreement will come at the expense of
319 natural habitat and climate stability (Figure 1).
- 320 3. “No person and no place is left behind”. This goal is in direct contradiction with how
321 local communities have been inadequately involved in the negotiation of the EU-
322 Mercosur agreement.

323

324 International trade agreements could provide a key opportunity to create robust mechanisms
325 towards sustainable resource use. Considering the billions of dollars that bilateral trade deals
326 save in tariffs and the access to new markets they provide, ample funding could be made
327 available to protect the rights of Indigenous Peoples, local communities, and the environment.
328 Our three tenets of sustainable trade – inclusion, transparency and enforcement - are widely
329 applicable and provide policymakers, producers, consumers, and the wider international
330 community with a clear and practical pathway towards supporting human rights, a habitable
331 climate, and a healthy environment.

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413

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THE EU-MERCOSUR TRADE AGREEMENT



427

428 **Figure 1.** The EU-Mercosur Trade Agreement.

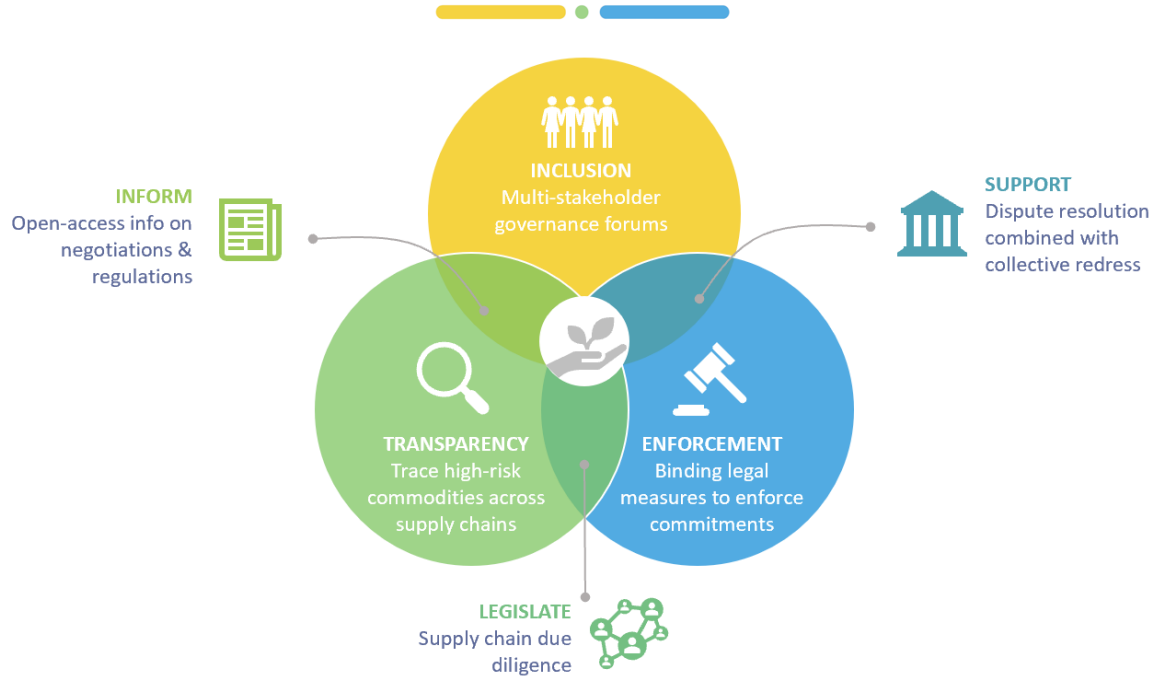
429 There are multiple risks embedded in both ongoing trade between the EU and the Mercosur bloc,
 430 and the ratification of the provisional trade agreement. Here we outline some of these risks in
 431 terms of the annual imports from the Mercosur bloc to the EU^{31,32}, the new quotas under the
 432 provisional agreement,⁵ the ongoing deforestation footprint,⁴ and associated risk to Indigenous
 433 peoples and local communities,^{7,12,14,15,18} wildlife, & global climate.⁸

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THREE SUSTAINABILITY TENETS FOR TRADE AGREEMENTS



438

439 **Figure 2.** Overview of the Three Sustainability Tenets for Trade Agreements: Inclusion,
 440 Transparency, and Enforcement.

441 Areas of overlap reflect the explicit duties of the parties to the agreement: *inform* through open
 442 access publication of information concerning negotiations and regulations included in the
 443 agreement; *legislate* at the national level, to ensure that supply chain tracking and due diligence
 444 are expressly included as legal duties for those engaged in economic activities carried out under
 445 the terms of the trade agreement; and *support* actors in both importing and exporting countries in
 446 processes of redress, in the event that the sustainability terms of the agreement have been
 447 violated. Binding legal measures to enforce international commitments should include the eight
 448 fundamental ILO conventions, the “Decent Work Agenda”, the United Nations Declaration on
 449 the Rights of Indigenous Peoples (UNDRIP), the Paris Agreement, the Vienna Convention for

450 the Protection of the Ozone Layer, the Montreal Protocol, the Convention on Biological
451 Diversity, the Cartagena Protocol on Biosafety, the CITES (Convention on International Trade in
452 Endangered Species of Wild Fauna and Flora), the Convention on the Conservation of Migratory
453 Species of Wild Animals, the International Plant Protection Convention (IPPC), and the
454 International Covenant on Economic, Social and Cultural Rights³³. For an EU-Mercosur specific
455 policy brief, see supplemental information Figure S1.

456