

EU-Mercosur Agreement

Risks to Climate Protection and Human Rights

by Thomas Fritz

STUDY



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Imprint

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Edition:

First web edition

Published in June 2020

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Photo credits:

See photographers' credits next to the photos
Cover: Florian Kopp / MISEREOR

Graphic design:

VISUELL Büro für visuelle Kommunikation, Aachen



Foto: Florian Kopp / MISEREOR



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Preface

When it was announced on 28 June 2019 that political talks had been completed on a trade agreement between the EU and the four Mercosur member states Argentina, Brazil, Paraguay and Uruguay, Jean-Claude Juncker, then President of the European Commission, tweeted: “A historical moment. In the midst of international trade tensions, we are sending a strong signal that we stand for rules-based trade. Largest trade agreement the European Union has ever concluded. Positive outcome for environment and consumers.” The assessment by Olivier de Schutter, a UN human rights expert and international professor of law, was very different: “The EU-Mercosur deal is about cars traded for beef. It is an insult to all the youth who have been marching for the climate and to the [human] rights and environment defenders in Brazil. The European Parliament must veto. What we need is coherence between trade and the values the EU professes to defend.” He described it as an agreement that went against climate protection, the environment and human rights, and on top of this one that was concluded on the very same Friday that hundreds of thousands of young people were taking to the streets worldwide in support of climate protection.

One year later, Germany is about to assume the Presidency of the Council of the European Union. It appears that the German government wants to tackle the next hurdle – voting on the agreement in the Council – in the second half of this year. After all, Germany’s automotive, mechanical engineering and chemical industry stand to benefit substantially from the tariff cuts. In return, the Mercosur countries would be able to export more agricultural products, such as beef and poultry, sugar and bioethanol made from it, to the EU. As it happens, these are also the main drivers of Amazon rainforest deforestation, greenhouse gas emissions, land displacement and human rights violations. Binding human rights and environmental standards are nowhere to be found in the agreement, any more than effective enforcement mechanisms. In addition, the post-colonial division of roles between Latin American exporters of raw materials and European manufacturers of industrial goods would be further cemented by it.

Solidarity in times of coronavirus

What distinguishes June 2019 from June 2020 is a global pandemic of unprecedented proportions. This pandemic is more than a public health crisis. It is a

systemic crisis. Like the climate crisis and the many other crises we face, it affects everyone but some are hit harder by it than others. The world that has been struck by the pandemic is one in which hunger is still rampant. Equality, job security and fair pay remain beyond the reach of most of its inhabitants, and the next debt crisis is already looming. The pandemic is a stark reminder that human suffering is even greater in unequal societies, fragile economies and precarious democracies.

For this reason, the one sentiment that we cannot generate too much of over the coming months is – solidarity. This word implies a great deal of responsibility. We will only overcome the present crisis if we show solidarity with our fellow human beings. Solidarity must be the foundation of Europe’s response to this crisis: Fighting the pandemic and protecting all human beings, tackling the social and economic consequences and defending democracy. Solidarity also means that we need to safeguard the environment and the basis for the life of future generations. All this requires a fundamental change of policy in many areas, including trade policy.

The German government ought to advocate such a fundamental change of policy during its Presidency of the Council of the European Union, rather than perpetuating structures that destroy and exploit the environment through trade agreements. Germany must follow the examples of the governments and parliaments of Belgium, France, Ireland, the Netherlands and Austria and withhold its approval for the agreement with Mercosur. Together, they should in addition initiate a process leading to a reorientation of EU trade policy that is guided by social justice, ecological needs and human rights and that does justice to the challenges of our time.

Brussels, Aachen, Hamburg in June 2020

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Summary

At the end of June 2019, the European Commission announced that it had reached an agreement in principle on a trade agreement with Mercosur. This South American trade bloc includes Argentina, Brazil, Paraguay and Uruguay. The planned agreement – part of a broader Association Agreement – is highly controversial both within civil society and among governments.

The publication in hand by MISEREOR, Greenpeace and CIDSE describes central human rights and ecological risks posed by the EU-Mercosur Agreement based on the texts of the treaty as published to date. It also analyses the extent to which the intended agreement could obstruct the necessary control of harmful movements of goods.

Extensive access to natural resources

An examination of EU-Mercosur trade relations reveals that two thirds of EU imports consist of agricultural and mineral resources. In view of this disproportionate access to Mercosur's natural resources, the EU bears a large share of the responsibility for environmental degradation and human rights violations in the South American region. The tariff cuts envisaged by the trade agreement would further increase the volumes of the raw materials traded.

EU soya imports: A social-ecological burden

EU soya imports constitute the greatest burden in the agricultural trade sector. The area set aside in Mercosur countries for cultivating soya destined to be exported to the EU amounts to approximately 13 million hectares – one third the size of Germany. However, since only 13 percent of EU soya imports are considered deforestation-free, European demand is an important driver of deforestation, greenhouse gas emissions but also land and human rights conflicts in South America.

Nevertheless, the trade agreement does not contain any arrangements for making soya cultivation more environmentally sustainable or for reducing the trade in soya. Instead, it includes clauses that would make animal feed even cheaper in the EU, for example by reducing Argentina's export duties on soya. By committing to such a reduction, Argentina

is also risking a serious decrease in its fiscal revenues, which would not be available in order to fund urgently needed welfare programmes.

Drivers of agricultural expansion: Quotas for beef and bioethanol

The additional preferential tariff-rate quotas offered to Mercosur for meat and bioethanol exports also threaten to exacerbate existing social-ecological



Deforestation in the Chaco region of Argentina: "This is how climate change begins".

conflicts. For example, the total bioethanol quota of 650,000 tonnes represents a six-fold increase over previous import volumes from Mercosur. This favours a further expansion of the cultivation of sugar cane, the main raw material for South American bioethanol production.

The quotas offered for beef and chicken, in turn, represent an increase in previous import volumes by one half. The beef quota of over 99,000 tonnes is particularly troublesome in this connection, since the development of grazing land is a major driver

of deforestation in Brazil's Amazon forests and in the dry forests of the Gran Chaco in Argentina and Paraguay.

Shrinking indigenous habitats

Indigenous groups, such as the Ayoreo in Paraguay or the Guarani-Kaiowá in Brazil, are among those particularly affected by the expansion of cattle herds or sugar cane fields. The fact that the demarcation of indigenous territories is often inadequate and strongly contested makes things even more difficult for them.

The situation is particularly worrying in Brazil, where demarcation has not only come to a complete standstill under President Jair Bolsonaro, but ex-

ary principle to prevent critical products from being imported. This could be the case for agricultural goods suspected of containing residues of prohibited pesticides, for example, or of exceeding pesticide residue limits.

High number of pesticide poisonings

This omission is all the more troublesome because Mercosur countries use numerous highly toxic pesticides in their agricultural operations, some of which are banned or not approved in the EU. These pesticides are particularly hazardous to those people who deploy them in the fields or who live on the edges of the plantations.

In Brazil alone, according to an analysis of its government statistics, more than 7,200 people died from pesticide poisoning between 2008 and 2017. The number of deaths could actually be much higher, however, since inadequate registration procedures mean that a large number of cases go unreported.

Even UN institutions are now expressing concerns about the use of pesticides. Among other things, they warn that in Brazil pesticides are sometimes deliberately sprayed in order to drive away indigenous people. In 2019, the United Nations Human Rights Committee adopted a resolution which found Paraguay to be responsible for serious poisoning using banned pesticides, because the authorities there had not taken any action against the illegal spraying of soya fields.

Removal of pesticide tariffs and barriers to regulation

German companies are also taking advantage of the regulatory discrepancies between EU and Mercosur countries. According to a recent study, BASF and Bayer each sell at least twelve pesticide ingredients in Brazil that are not approved for use in the EU.

Meanwhile, the EU-Mercosur Agreement could further boost pesticide consumption in Mercosur by reducing or eliminating tariffs on pesticides and other chemicals. Until now, Mercosur has charged duties of up to 18 percent on chemicals.

Meanwhile, the agreement also creates additional obstacles to stricter pesticide regulations, mainly because the precautionary principle is not adequately incorporated in it. Mercosur countries could, for example, trigger the treaty's dispute settlement mechanism if the EU were to lower permissible pesticide levels or consider ending the licensing of highly toxic products, such as glyphosate, a pesticide widely used in Mercosur.



The habitats of indigenous people are increasingly being encroached upon.

isting demarcations are in fact being revised. This legal uncertainty in turn encourages mining, livestock and timber companies to invade indigenous territories, often resorting to force.

Risks to food safety

The agreement also poses specific risks to food safety, because the EU's precautionary principle is not incorporated in the chapter on Sanitary and Phytosanitary Measures (SPS). Due to this omission, the EU and Mercosur cannot rely on the precaution-

Securing cheap raw materials: general ban on export duties

The Mercosur countries are also important suppliers of mineral and energy resources. Some of these, such as iron ore and kaolin from Brazil or silver and copper from Argentina, are indispensable for EU industry.

To ensure that the EU's supply of such raw materials remains cheap, the agreement includes a general ban on taxes and duties being levied on exports. Three years after coming into force, none of the contracting parties will be allowed to introduce or maintain export duties, unless they have reserved the right to make exceptions.

Until now, however, only Argentina and Uruguay have made use of this possibility for a limited number of products. In this respect, reintroducing export duties on mining products, such as iron ore, as is currently being discussed in Brazil, would constitute a breach of the EU-Mercosur Agreement.

Iron ore disaster: Breach of due diligence obligations

At the same time, European iron ore imports are associated with some of the most serious human rights abuses for which EU companies are partly responsible along their supply chains, e.g. the Brumadinho dam disaster in the state of Minas Gerais, where the Brazilian mining group Vale operates an iron ore mine. In January 2019, a tailings dam collapsed and a huge wave of mining waste destroyed a village, killing 272 people. However, the German technical inspection company TÜV SÜD had shortly before certified the structural stability of the dam, despite considerable shortcomings.

Although corporations neglected their due diligence obligations in the Brumadinho disaster and in other cases, the EU-Mercosur Agreement does not contain any binding rules on corporate responsibility. It is true that the chapter of the treaty on sustainability contains an article dealing with the "responsible management of supply chains". However, this chapter is not enforceable since it has been excluded from the intergovernmental dispute settlement mechanism for the agreement.

Inadequate: Instruments to prevent conflicts over land

The instruments provided for in the treaty to protect human beings and nature are fundamentally

extremely deficient. So far, there are no effective measures in place to punish human rights violations in conflicts over land. In this connection, an article of the chapter on sustainability merely cites an obligation for the parties to the agreement to encourage the inclusion of indigenous peoples in the supply chains of forest products, for which they should give their "prior informed consent".

However, this is only a very mutilated version of the more demanding UN concept of free, prior and informed consent. The latter requires that indigenous people should give their consent to any use of their territories, and not simply be allowed to participate in the exploitation of the resources.

Absence of a human rights clause

Furthermore, the human rights clause that is usually found in similar EU agreements has not yet been included in those parts of the agreement published to date. It is therefore not possible to ascertain to what extent such a clause would overcome the known weaknesses of this instrument.

While this clause allows trade preferences to be suspended in principle in the event of any human rights violation, the barriers to its being triggered are so high that it has rarely been used, in most cases in



Foto: Florian Kopp / MISEREOR

The human rights situation in the Mercosur countries is often precarious.

response to serious violations such as coups d'état. It also lacks bodies for monitoring the agreement and handling complaints. Nor does the clause permit protective measures to be taken if they contravene the provisions of the trade agreements. If, for example, the agricultural quotas agreed in the EU-Mercosur Agreement were to aggravate the conflicts over land, it would nevertheless be impossible to suspend these preferences.

Ratification uncertain: Reservations expressed by several governments

Ever since the agreement in principle between the EU and Mercosur was announced, criticism of the planned agreement has persisted. It is therefore unclear whether it will actually enter into force. The results of the negotiations are currently undergoing a legal review and will then have to be translated into all EU languages. Only then can the agreement be signed and the ratification procedure begin.

If it remains true that the trade agreement is to be part of a more comprehensive Association Agreement, the Council of the European Union, the European Parliament and the 27 EU member states will have to give their approval. However, several countries have already expressed reservations.

After last year's fires in the Amazon and the highly problematic role of the Brazilian government, the French government announced that it could not sign the agreement under these circumstances. The Irish parliament called on the government to vote against the agreement. The Austrian government also rejects the agreement in its present form. Similarly, the parliament of Wallonia has voted against it, thereby preventing approval by the Belgian central government. At the beginning of June 2020, the second chamber of the Dutch parliament also voted against the EU-Mercosur Agreement – among other things because it contains no enforceable rules for the protection of the Amazon or for preventing illegal deforestation. Although this decision is not binding on it, the Dutch government cannot ignore it without risking a vote of no confidence. The decision was also supported by MPs from the governing parties. The German Federal Government, for its part, stands by its approval.

Elements of trade policy reform

An analysis of the treaty texts that are available to date shows that the EU-Mercosur Agreement fails to meet the requirements of a modern trade agreement.

It neither helps to make production and trade more environmentally friendly, nor to avoid human rights violations along the value chains.

In this respect, the draft treaty once again underscores the great urgency of a fundamental reform in EU trade policy. Such a reform could encompass the following elements:

- EU trade relations must be subjected to careful scrutiny. In which countries do they endanger people and nature, as well as a social-ecological transformation? Such an analysis would have to be carried out in a participatory process involving civil society and parliaments in the EU and in the partner countries concerned.
- Afterwards, an equally inclusive discussion would have to take place concerning the most appropriate instruments for such a transformation of the trade relations. These would also have to include legal requirements, such as sustainability criteria for goods that have a negative impact on forest conservation (so-called FERC or "forest and ecosystem risk commodities" such as soya, beef and iron ore).
- Decisions to open trade negotiations should only be taken following a participatory impact assessment of their social, environmental and human rights risks.
- A prerequisite for opening trade negotiations would have to be the ratification and verifiable implementation of multilateral environmental agreements and international human rights treaties.
- Trade agreements would have to include effective human rights clauses, incorporate monitoring and complaints bodies, allow preferences to be suspended in the event of violations and allow agreements to be revised even after entering into force.
- Chapters on sustainability would have to be on an equal footing with the other parts of the trade agreements, and provide the option of imposing sanctions. They should also be supplemented by binding rules on corporate responsibility and more effective monitoring and complaint mechanisms within civil society.
- On top of this, Austria, Germany, and the other EU member states should adopt supply chain legislation. The EU should also enact a regulation imposing human rights and environmental due diligence obligations on companies.
- A responsible trade policy must aim to ensure that pesticides that are not approved in the EU for environmental or health reasons are not, as a matter of principle, exported to third countries. ◀

1 Introduction

Many parts of the world are facing increasingly severe social and ecological crises. A “business as usual” approach, continuing to apply the existing liberalisation policies of the European Union (EU), is therefore no longer sustainable. This is illustrated by the high proportion of greenhouse gases embedded in world trade: Over the past 15 years, for example, the carbon emissions embedded in world trade have risen from a quarter to a third of total global emissions.¹

Against this background, it was all the more troubling when the European Commission announced, at the end of June 2019, that it had reached an agreement in principle on a trade agreement with Mercosur², a South American trade bloc that includes Argentina, Brazil, Paraguay and Uruguay. It would be the EU’s largest trade agreement in terms of population numbers, affecting some 710 million people.

Shortly after this announcement, Brazil made the headlines around the world on account of a significant increase in Amazon fires and violent land conflicts, which were actually fuelled by the current government. In view of the Brazilian government openly disregarding the environmental and human rights objectives of the EU, EU trade policy has been coming under increasing pressure to justify itself.

The trade talks have taken more than 20 years and were conducted in 38 rounds of negotiations, sometimes interrupted by breaks lasting several years. However, the trade agreement – which is to become part of a more comprehensive Association Agreement – is still far from complete. Because it has neither been signed nor ratified so far. This also means that it could still fail. This possibility is currently on the table, because the governments and parliaments of several EU member states, e.g. France, Austria, Ireland, Belgium and the Netherlands, have expressed substantial reservations about the treaty.

What does civil society in the EU and Mercosur criticise about the treaty? What risks does it pose to human rights and the environment? The publication in hand provides answers to these questions. On the one hand, the report focuses on the most important products that the EU imports from Mercosur countries: agricultural goods and raw materials. On the other hand, it analyses the instruments with which

the agreement is meant to mitigate the risks to human beings and nature. The offensive interests of European and German companies whose exports to Mercosur could increase as a result of the agreement, be they cars and car parts, machinery, medicines or chemicals (such as pesticides), will not be dealt with in detail here.³

This report does however differ in one respect from the usual impact assessments of trade agreements. These usually focus on whether and to what extent an agreement changes the status quo of existing trade and what implications this might have. Such an analysis is inadequate, however. The increasingly urgent question today is whether such a treaty permits a departure from the trade relations that have evolved historically and that are exacerbating the social-ecological crisis. Because this crisis has in the meantime taken on existential dimensions for humankind.

In applying broader assessment standards, this study does not therefore limit itself to estimating changing trade patterns and their impact on the environment and human rights. It also analyses to what extent the intended treaty would limit or expand the scope available to the contracting nations for taking action to reduce and control harmful movements of goods.

The key question is: **Does the trade agreement make enough of a contribution to the necessary social-ecological transformation and the decarbonisation of the economy?**

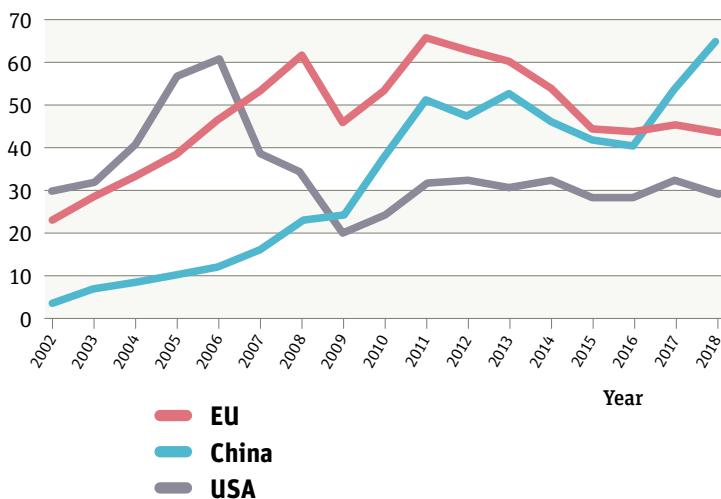
This assessment is based on those texts of the trade section of the EU-Mercosur Agreement that the European Commission published on its website in July 2019.⁴ The intended overarching Association Agreement is to be based on three pillars: trade, political dialogue and cooperation. So far, however, the European Commission has only published parts of the trade policy pillar of the Association Agreement; it is still keeping the full text of the Association Agreement under wraps. As a result, at the time of publication of this text, some parts of the agreement that are relevant for the overall assessment of the agreement are missing, including the human rights clause that would usually be included or the concrete lists of commitments for the chapters on trade in goods, investment and public procurement. ◀

➤ 2 EU-Mercosur relations: Reinforced extractivism

The EU's trade relations with Mercosur are characterised by a high level of access to the natural resources of the four South American countries. For decades, the EU has been importing large quantities of agricultural products and raw materials from Mercosur countries, which are responsible for numerous land conflicts and a significant increase in greenhouse gas emissions and biodiversity loss.

Nor can the EU hide behind the increased demand from Asia. Despite the growing significance of China, which a few years ago became the largest consumer of Mercosur goods, the EU remains the second most important market for goods exported from the South American bloc (*see Diagram 1*).

DIAGRAM 1
Mercosur exports: Most important customers
(in bn US dollars)



Since 2012, the EU has continuously achieved a trade surplus in its bilateral trade with Mercosur, reaching around two and a half billion euros in 2018 (*see Diagram 2*).

The extractivist nature of the EU's relationship with Mercosur, i.e. its strong focus on extracting natural resources, is reflected by the extremely dissimilar ranges of goods exported by the two regions.

Around 84 percent of EU exports to Mercosur are processed goods (*see Diagram 3*).

Mercosur exports to the EU are very different: about three-quarters of them are agricultural and mineral resources, with agricultural products making up the lion's share (*see Diagram 4*). In view of this disproportionate access to Mercosur's natural resources, the EU bears a large share of the responsibility for environmental degradation and human rights violations in the South American region. The tariff cuts envisaged by the trade agreement would further increase the volumes of the raw materials traded.



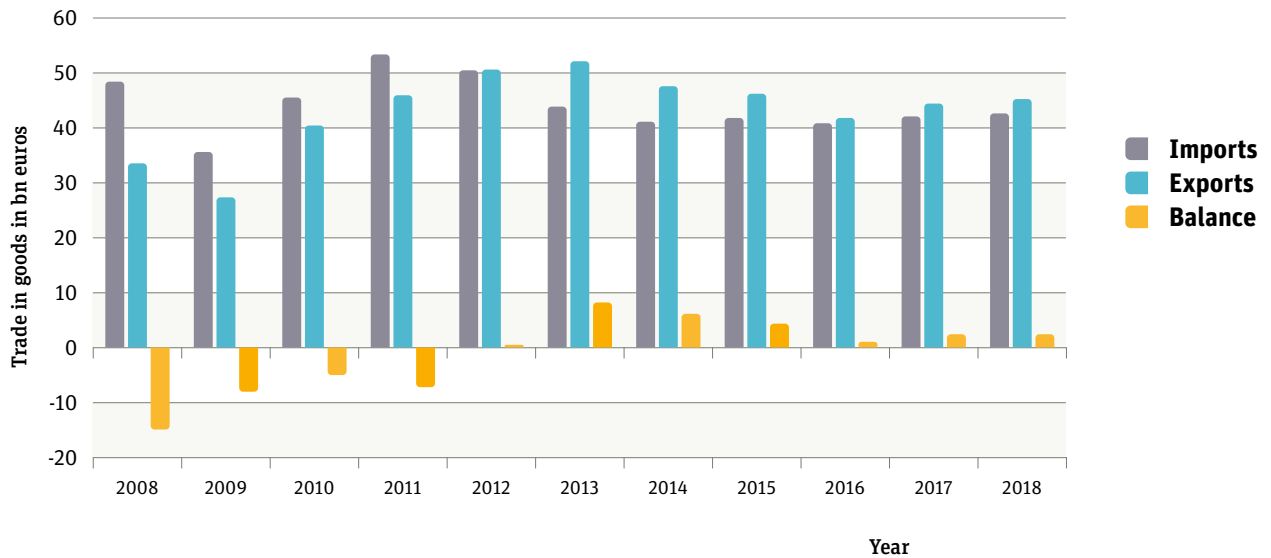
Soya, as far as the eye can see. The original vegetation of the Argentinian Chaco is being pushed back.

Foto: Florian Kopp/MISEREOR

DIAGRAM 2

EU: Balance of trade with Mercosur (trade in goods in bn euros)

Source: European Commission 2019



While Brazil is the trade policy heavyweight within Mercosur, this role is assumed by Germany in the EU. At the same time, the Federal Republic of Germany is also the main reason for Mercosur's trade deficit with the EU. At 15.4 billion euros, Germany accounted for around one third of EU exports in 2018. During the same period, the Federal Republic of Germany only imported goods to the value of 6.3 billion euros, leading to a large surplus of 9.1 billion euros in its trade with Mercosur.⁵

Since the intended trade agreement will mean Mercosur gradually eliminating import duties on 91 percent of EU goods, the European Commission is promising German exporters large additional profits in Mercosur. The most important products sold by Germany are machines, cars and chemicals. The tariff cuts would be particularly pronounced for the car industry. Customs duties on cars (currently 35 percent) and on car parts (14 to 18 percent) are to be largely eliminated.⁶ ◀

DIAGRAM 3

EU-28: Exports to Mercosur in 2018

Source: European Commission 2019

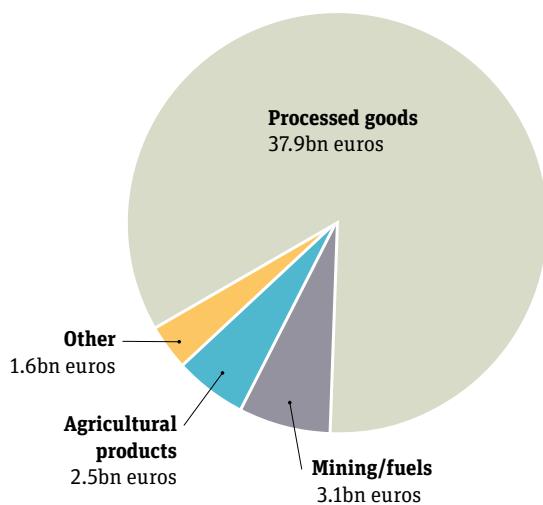
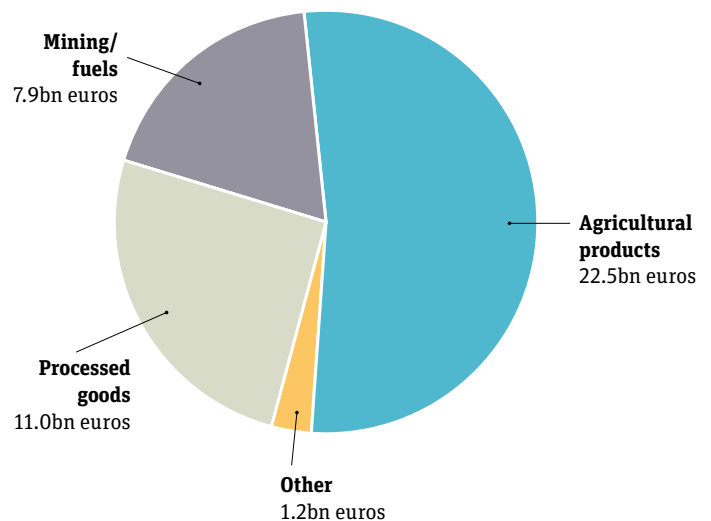


DIAGRAM 4

EU-28: Imports from Mercosur in 2018

Source: European Commission 2019



3 Agricultural trade: Access to land and forests

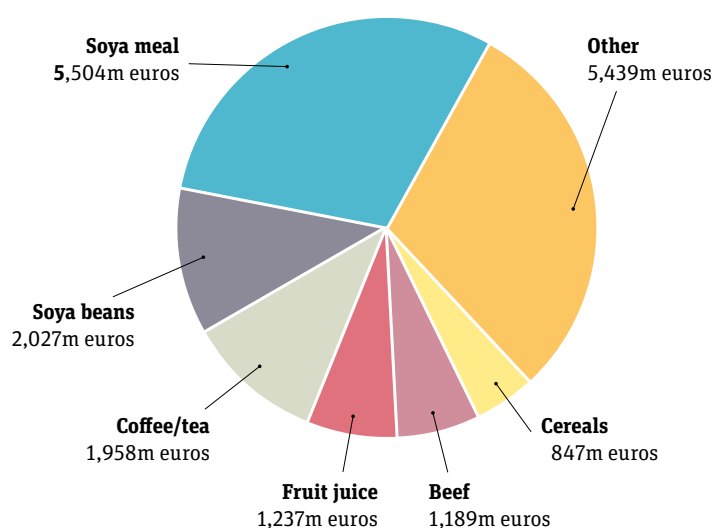
In estimating the extent to which the EU-Mercosur Agreement will contribute to the necessary social and environmental transformation, both existing trade flows and any potential additional volumes must be taken into account. In the following, both these facets will be examined in the context of agricultural trade.

3.1 A heavy burden: The great importance of animal feed

Agricultural imports account for over half of the European Union's imports from Mercosur. The figures released by the European Commission show which are the most important goods (see Diagram 5).

DIAGRAM 5
Agricultural imports to EU from Mercosur in 2018

Source: European Commission 2019



Clearly, soya beans and soya meal are the most important agricultural products imported by the EU from Mercosur in terms of import value. Soya serves as a high-protein component of the concentrated feed used in industrial livestock farming, mainly being added to poultry and pig feed and to a lesser

extent to cattle feed. Since the EU depends on this protein-rich feed, soya has enjoyed duty-free access to the market for decades.

The area set aside in Mercosur countries for cultivating soya destined to be exported to the EU is huge. Agricultural scientists estimate that it amounts to about 13 million hectares.⁷ This corresponds to more than a third of Germany's total area of 35.7 million hectares. Since only 13 percent of EU soya imports are considered deforestation-free, European demand bears a great responsibility for deforestation and greenhouse gas emissions in South America.⁸

The total area set aside for cultivating soya in the Mercosur countries currently totals around 58 million hectares, of which Brazil accounts for 35.8 million, Argentina for 17.5 million, Paraguay for 3.5 million and Uruguay for 1.1 million hectares. That is to say, Brazil's soya fields alone are the size of Germany. The Brazilian Ministry of Agriculture estimates that this area will increase by almost 10 million to 45.3 million hectares by the 2028/29 harvest. That estimate does not even take into account the possible boost in demand stimulated by the EU-Mercosur Agreement.⁹

The projected expansion of the Brazilian soya fields alerted the European Commission's Joint Research Centre, which recently presented an impact assessment of European demand on the environment in Brazil.¹⁰ According to this study, Brazilian soya cultivation not only leads directly to the deforestation of the dry savannah of the Cerrado and the Amazon rainforests, but also to indirect changes in land use. With grazing land in southern and central Brazil being converted into soya fields, livestock farming is being displaced to the northern states, in particular Amazonia.

According to the research centre, if the increased deforestation rates seen in recent years continue, Brazil will fall far short of the greenhouse gas reduction target it has committed to under the Paris Agreement. Should deforestation continue in order to create new soya fields, carbon emissions will not be reduced by 22 million tonnes by 2030, as stated in Brazil's nationally determined contribution, but will instead increase to cumulative emissions of

900 million tonnes of CO₂. To prevent further deforestation, the Joint Research Centre (JRC) therefore recommends that the planned trade agreement should be made conditional upon compliance with “strict environmental requirements for agricultural goods”.¹¹ However, this is not the case.

The sustainability chapter of the EU-Mercosur Agreement, the chapter on trade and sustainable development, does include commitments to the “effective implementation”¹² of multilateral environmental agreements, including the Convention on Biological Diversity and the Paris Agreement on Climate Change. However, these provisions cannot be effectively enforced because the entire chapter on sustainability is excluded from the dispute settlement mechanism of the trade agreement.

This weakness has practical consequences. Although it is scientifically irrefutable that cultivating soya in Mercosur and importing it to the EU endangers biodiversity and the climate, the trade agreement does not allow trade restrictions to be imposed either on the EU or on Mercosur. In its current form, the agreement does not even contain an exit path from existing environmentally damaging trade relations.

By contrast, a modern trade agreement ought to make a clearly defined contribution to the necessary decarbonisation of the economy. To this end, it could, for example, contain binding timetables for progressively making the cultivation of soya and

Argentina: Export duties on soya

Export duties on soya and other products are indispensable for Argentina, especially in the current situation of a tightening of the national budget due to a substantial withdrawal of capital and conflictual negotiations over the restructuring of Argentina’s foreign debt.¹³ Currently, soya export duties are at 33 percent.¹⁴

In 2019, export duties on soya – which were 26 percent at the time – generated revenues of around 4.7 billion US dollars for the Argentinian state.¹⁵ Up until 2018, a portion of these revenues from the export duties was used directly to fund the social infrastructure, including hospitals, schools and housing. In 2009, the then government set up a solidarity fund for the Argentinian provinces and municipalities (Fondo Federal Solidario) for this purpose, into which 30 percent of export tax revenues were channelled. However, the government of Mauricio Macri dissolved this fund in 2018 as part of its austerity measures.¹⁶ ◀

other crops more environmentally sustainable or for reducing the trade in these goods. However, the existing treaty texts mention nothing of the kind.



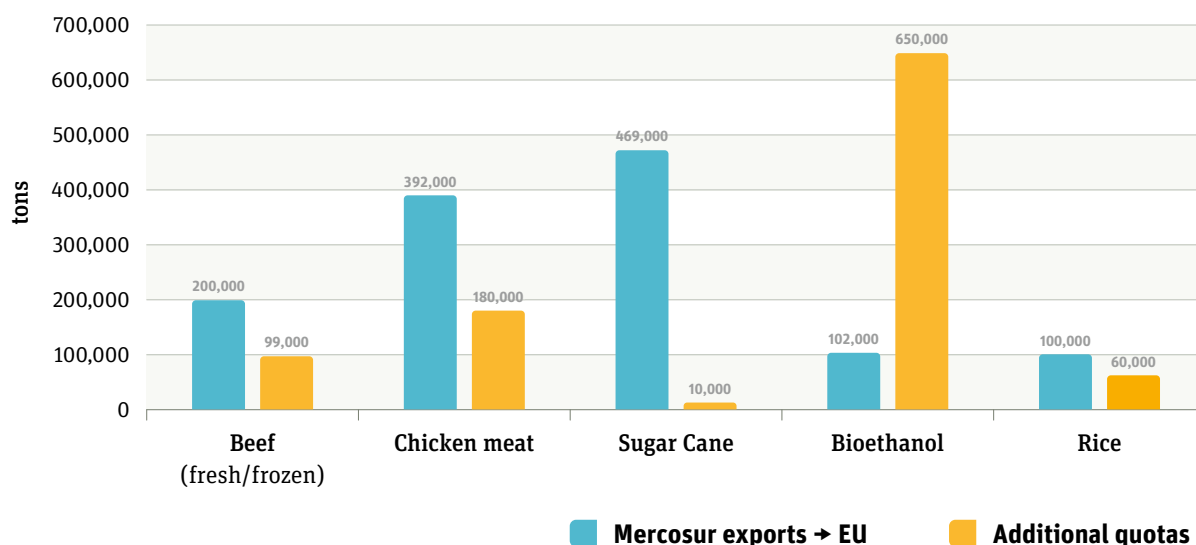
Foto: Bruno Kelly / Greenpeace

The expansion of soya fields in Brazil is destroying large areas of the Amazon.

DIAGRAM 6

Mercosur exports to the EU (2018) and additional quotas

Source: European Commission 2019 / GRAIN 2019



On the contrary, they contain clauses that further stimulate soya sales in the EU.

For example, an annex on export duties contains a long list of products for which Argentina undertakes to reduce its export duties. Five years after the agreement comes into force, export duties on soya are to be reduced from their current level of 33 percent to 18 percent of the value of the goods, and to 14 percent after ten years.¹⁷ This will make it cheaper to import soya into the EU, so that European factory farms will be able to buy protein-rich feed at a lower price. This in turn would support Europe's overproduction of meat and milk.¹⁸ It would also represent a considerable drain on the Argentine national budget (*see box on page 13*).

The EU-Mercosur Agreement could also further boost soya consumption indirectly. If Mercosur meat producers take advantage of the expanded EU import quotas for beef and chicken (*see below*), Mercosur's own feed requirements will increase, which in turn will stimulate soya production.

3.2 Agricultural quotas: Increasing the pressure on humans and nature

The proposed agreement will increase the transatlantic flow of goods by reducing tariffs and expanding duty-privileged import quotas. The agricultural quotas agreed between the EU and Mercosur in summer 2019 are at the centre of the public debate.¹⁹

According to this agreement, the EU will grant Mercosur additional preferential tariff quotas for meat, sugar, rice and bioethanol. An overview shows that the beef²⁰ and chicken quotas could increase by a half compared with the existing Mercosur exports, while bioethanol quotas could increase by a factor of more than six (*see Diagram 6*).

Conversely, EU exporters can also benefit from duty-free quotas for cheese, milk powder and baby food under the agreement. These actually



Foto: Marizilda Cruppe EVE / Greenpeace

Cattle farms are driving deforestation.

How do the quotas affect Mercosur exports?

Gauging the impact of the new import quotas on the production of the preferential agricultural goods and their transatlantic trade is subject to a number of uncertainties. Some of Mercosur's exports are already subject to tariff-rate quotas that have not always been fully utilised in the past, e.g. the quota for high-quality beef (the so-called Hilton quota).²¹ Even after the introduction of the newly offered quotas, it cannot be ruled out that such under-utilisation will occur from time to time in certain years. Exporters might also increasingly switch to the new quotas, meaning that the ones that are already in place will remain underutilised more often.

However, it is also possible that an expansion could take place, in which not only the quotas are exhausted, but an increasing number of exports also take place at higher tariff rates beyond those quotas. Today, for example, the Mercosur countries already import almost half their beef at the higher tariff rates beyond the existing quotas.²² In other words, beef from Mercosur is so competitive that it can also be sold in the EU at higher tariff rates.

A scenario of this kind – in which the “in-quota” volumes are used up and “out-of-quota” volumes increase – is favoured by the high tariff savings offered by the agreement. The Brussels think tank Bruegel estimates that the new beef quotas alone will save exporters around 430 million euros in customs payments. Taking all the new quotas together, the savings could amount to almost 920 million euros.²³ These additional profits will increase the profit margins for cattle farming, promoting its expansion in the Mercosur countries. The additional profits could also make exports to the EU more profitable beyond the quotas. ◀

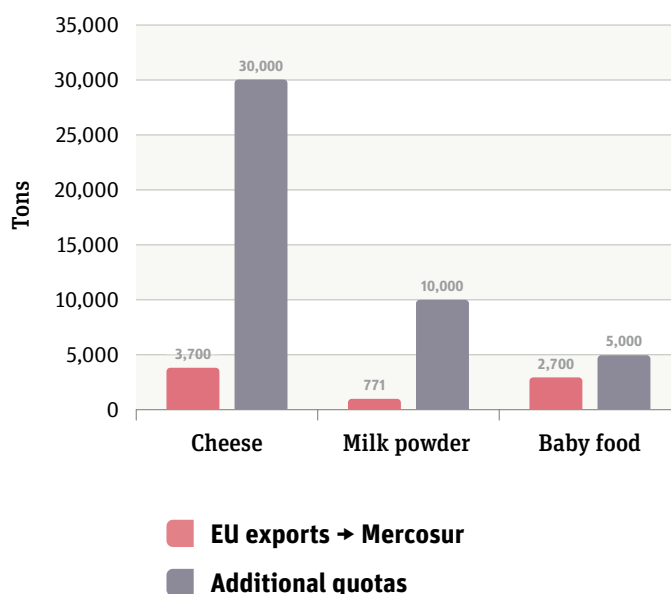
represent a considerable increase compared with current EU exports: by a factor of eight for cheese and by a factor of thirteen for milk powder (see Diagram 7).

In this respect, export-oriented milk producers within the EU would benefit particularly, since they would be able to sell a larger share of their surpluses

DIAGRAM 7

EU exports to Mercosur (2018) and additional quotas

Source: European Commission 2019 / GRAIN 2019



in Mercosur. This prospect has already led to protests by South American dairy farmers, who fear for their sales markets in the region. Argentinian milk producers, for example, have demanded that their industry be excluded from the planned agreement.²⁴

The agricultural quotas for bioethanol and beef can also be expected to have substantial effects. The concessions for bioethanol, which in South America is mainly produced from sugar cane, consist of a duty-free quota of 450,000 tonnes for use in the chemical industry and a preferential tariff quota of 200,000 tonnes for use as a biofuel.

These quotas are likely to stimulate a further expansion in the cultivation of sugar cane in Mercosur, especially in Brazil, the world's second largest producer and exporter of bioethanol after the US. The Brazilian Ministry of Agriculture estimates that the land area on which sugar cane is cultivated could increase from 9 to 10 million hectares over the next ten years.²⁵ This estimate does not even take into account the additional demand resulting from the EU-Mercosur Agreement. In terms of land use, sugar cane is the most important arable crop in Brazil, alongside soya and maize.²⁶

Although sugar cane cultivation is concentrated in the south of the country, the fastest expansion is occurring in the central west and north-east of the country, especially in the species-rich Cerrado. President Jair Bolsonaro further paved the way for this expansion when, in November 2019, he revoked a decree restricting sugar cane cultivation in Amazonia, the Cerrado, the Pantanal wetlands and in

Guarani-Kaiowá: Growing pressure on indigenous territories

The indigenous peoples of Brazil, in particular, are victims of the expansion in sugar cane cultivation. Among them are the Guarani-Kaiowá, in the state of Mato Grosso do Sul, whose traditional territories are increasingly falling victim to sugar cane cultivation and other plantations. The bioethanol producer Raízen, for example, – a joint venture between Shell and Cosan – has purchased sugar cane that was illegally grown on indigenous territories. In addition, the Guarani-Kaiowá suffer numerous violent attacks by security forces and plantation operators, as well as being poisoned by the pesticides used on the encroaching fields.²⁷

The lack of demarcation of indigenous areas increases the legal uncertainty for their inhabitants. Having already fallen sharply in recent years, demarcation has come to a complete standstill under President Bolsonaro.²⁸ Bolsonaro has repeatedly affirmed that in future he will not authorise a single demarcation in favour of indigenous peoples. Instead, he plans to reverse the process by revising demarcations that have already been made. In order to implement his policy, he has appointed a former commissioner of the federal police and follower of the agricultural lobby to lead the government body in charge of indigenous affairs, FUNAI (Fundação Nacional do Índio).²⁹ ◀



Indigenous children from the Guarani-Kaiowá people in the state of Mato Grosso do Sul holding up a banner: “We will fight to the death for our rights. Territory of justice and freedom.”

indigenous territories. The decree on Sugar Cane Agro-Ecological Zoning had been issued in 2009 by then President Lula da Silva.³⁰ Particularly the indigenous people of Brazil are victims of Bolsonaro’s revocation of this decree (*see box on this page*).

3.3 Beef: Driving forest loss and climate change

The preferential tariff quotas of a total of 99,000 tonnes of beef (55,000 tonnes fresh, 44,000 tonnes frozen) which the EU is granting to Mercosur are no less problematic. While the greater price competition is particularly threatening those cattle farms in the EU that practise animal-friendly grazing, in Mercosur the cattle herds are a dangerous driving force behind deforestation.

JBS, Marfrig and Minerva, the largest beef producers in Brazil, who also supply meat to the EU market, have no system for monitoring their supply chains so as to guarantee the deforestation-free origin of their livestock. Many of their suppliers purchase cattle that are fattened on cleared Amazon areas.³¹ Satellite images show that 70 percent of Amazon fires, which have recently seen a sharp increase, occurred in those regions where the livestock slaughtered by these three companies are believed to have originated.³² For this reason, non-governmental organisations, including Greenpeace Brazil, published an open letter in December 2019 warning investors against buying shares in JBS and Marfrig.³³ However, slash-and-burn clearing to develop grazing land has increased not only in Amazonia but also in the dry forests of the Gran Chaco region, which extends across Brazil, Bolivia, Argentina and Paraguay (*see box on page 17*).

The non-governmental organisation GRAIN has estimated the impact of the agricultural quotas agreed between the EU and Mercosur in summer 2019 on the climate. It finds that the production and trade of the eight agricultural products for which import quotas have been agreed even now generate emissions of 25.5 million tonnes of CO₂ equivalents per year.³⁴

Should the current export volumes remain unchanged and the new agricultural quotas be exhausted as well, a further 8.7 million tonnes of CO₂ equivalents would be added every year. According to GRAIN, the lion’s share of the additional emissions caused by the EU-Mercosur Agreement is attributable to increased beef imports, amounting to 7.1 million tonnes of CO₂ equivalents per year (*see Diagram 8*).

Paraguay: Cattle herds destroy habitats of indigenous people in the Gran Chaco

In the Gran Chaco region, numerous cattle farms are expanding into former dry forest areas. Here, too, forest fires have increased significantly over the past year, with many fires being set to reclaim land for the agricultural industry. In the north-east of Paraguay alone, more than 300,000 hectares of Chaco forests have fallen victim to the flames.³⁵

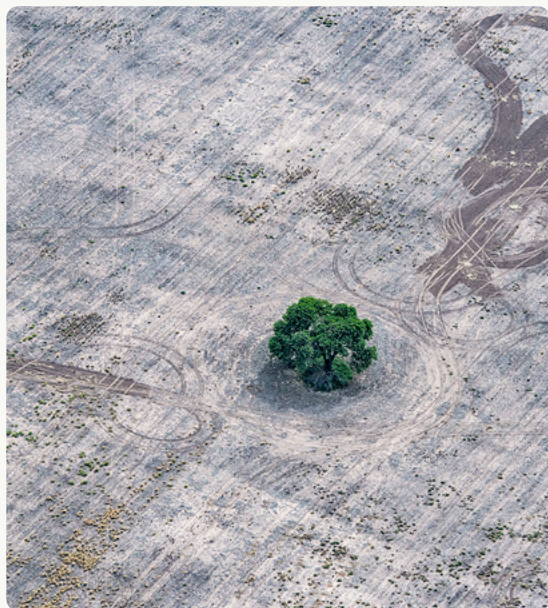


Foto: Martin Katz / Greenpeace

This region is also the prime area for cattle farming. The lion's share of Paraguayan beef production is destined for export, which is controlled and carried out almost entirely by transnational corporations.³⁶ Meat processors based in Paraguay are hoping to supply a quarter of the new quota of 99,000 tonnes of beef that the EU has granted to Mercosur.³⁷

The indigenous people of the Chaco region are particularly impacted by slash-and-burn clearing. In the north-east of Paraguay, many of the fires are set in the territory of the Ayoreo, many of whom live in a subsistence economy. In its latest report, the Human Rights Coordinating Committee of Paraguay warns that the decimation of the forests poses an immediate threat to the livelihood of the Ayoreo people.³⁸ ◀

Large parts of the Chaco forests are being destroyed by slash-and-burn.

However, since the GRAIN investigation is confined to those goods covered by the quota agreements, significant agricultural products are not included in its calculation of the impact on climate. For example, the two new beef quotas, which cover fresh and frozen meat, do not take processed products such as canned meat into account.³⁹ The huge soya imports from Mercosur are also ignored by the GRAIN calculations. This omission needs to be taken into account, because the EU-Mercosur Agreement can also boost soya consumption further – either through a reduction in price following a cut in Argentinian export duties or through an increase in demand for animal feed in Mercosur should meat producers there fully exploit the new quotas in the EU.

3.4 Food safety: Inadequate incorporation of the precautionary principle

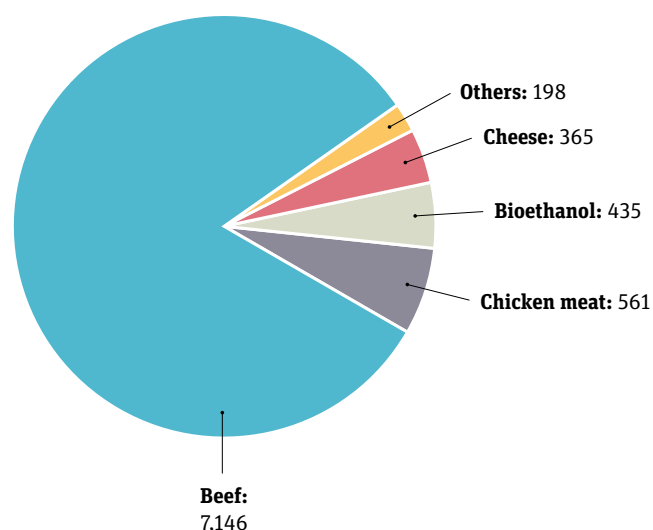
The EU-Mercosur Agreement also entails considerable risks for food safety. The chapter on Sanitary and Phytosanitary Measures (SPS), for example, makes

DIAGRAM 8

EU-Mercosur: Additional emissions through agricultural quotas

(in thousand tonnes of CO₂-equivalents per year)

Source: GRAIN 2019



no reference to the precautionary principle enshrined in EU legislation, on which trade-restrictive measures could be based in the event of any risk.⁴⁰

At the moment, the only explicit reference to the precautionary principle is in the chapter on trade and sustainable development, which is however largely ineffective because it is excluded from the dispute settlement mechanism of the agreement.⁴¹ In addition, the chapter on sustainability restricts the application of the precautionary principle to environmental risks and occupational health and safety risks. The typical risks to human, animal and plant health addressed by the SPS chapter do not, by contrast, lie within the scope of the chapter on sustainability.

The consequence of this is that the EU and Mercosur cannot rely on the precautionary principle to preventively block imports of critical products. These might for example be agricultural goods suspected of being contaminated with pathogens, containing residues of prohibited pesticides or exceeding the limits for pesticide residues.

3.5 Pesticides and genetically modified agricultural products: Free trade for high-risk goods

All these risks are very real. Numerous highly toxic pesticides are used in agriculture in the Mercosur

countries, for example, some of which are banned or not approved in the EU (*see box on page XX*). Such pesticides pose a significant health risk, particularly for the people who apply them and who work in the fields, as well as for rural communities. Villages and settlements on the edges of plantations and fields often suffer from the drift of pesticides that are sprayed over the fields by aircraft. In Brazil alone, one of the world's largest markets for agricultural chemicals, thousands of rural inhabitants are poisoned every year through direct contact with pesticides.

Between 2005 and 2015, for example, the Brazilian Ministry of Health registered a total of 84,206 pesticide poisonings.⁴² But a large number of poisonings go unreported. It has been estimated that for every registered case of poisoning, 50 more are not reported.⁴³ Accordingly, the corresponding figures for the numbers of deaths linked to pesticide use are uncertain. The journalist Juca Guimarães has analysed the statistics from the Brazilian Ministry of Health. He found that more than 7,200 people died from pesticide poisoning between 2008 and 2017.⁴⁴

In his latest report on Brazil, Baskut Tuncak, the UN Special Rapporteur on toxics, criticises the practice among large landowners of carrying out aerial spraying unannounced, thereby preventing residents from seeking shelter in time. Schools, community centres and residential buildings have also repeatedly been victims of spraying. Tuncak also emphasises that some plantations systemati-

UN Human Rights Committee:

Paraguay responsible for poisoning by banned pesticides

Soya beans and the soya meal obtained from them account for well over half of Paraguay's exports to the EU.⁴⁵ However, most of the varieties grown in Paraguay are genetically modified and are sprayed with large amounts of pesticides that penetrate into the groundwater and poison the residents living near the soya plantations.

In August 2019, the UN Human Rights Council passed a resolution making Paraguay responsible for the severe poisoning of peasant families in Canindeyú Department after banned pesticides were sprayed on a soya field. One of those affected, Rubén Portillo, had died in 2011 from poisoning. Since the government authorities did not take action against the illegal spraying, the relatives of the deceased, who were also affected themselves, first filed a complaint with the constitutional court

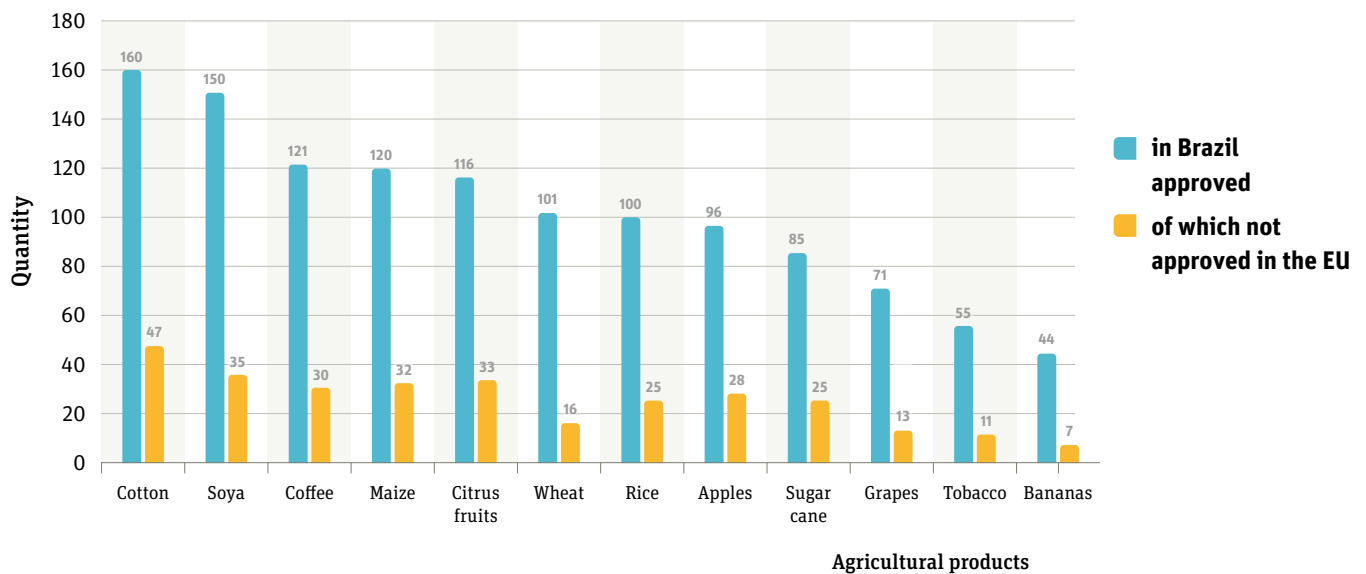
of Paraguay. The court ruled that the government had not fulfilled its obligation to protect health, physical integrity and the environment.⁴⁶

When the state authorities still failed to act, Portillo's family filed a complaint with the UN Human Rights Committee in 2013. They were represented by the human rights coordinator CODEHUPY and the non-governmental organisation BASE IS. In its ruling of August 2019, the Human Rights Committee found that by failing to take action against the illegal spraying operations, Paraguay had breached the right to life of those affected. The government, it said, has an obligation to compensate the victims, to hold the guilty parties legally accountable and to take pre-emptive measures to prevent similar violations.⁴⁷ ◀

DIAGRAM 9

Brazil: Number of pesticides (active ingredients) approved for use on selected agricultural products

Source: Larissa Bombardi 2019



cally use spraying to drive indigenous people like the Kaiowá off their land.⁴⁸ Dangerous spraying is also widespread in Brazil's neighbouring countries, recently leading to Paraguay being rebuked by the UN Human Rights Committee (*see box on page 18*).

In addition, pesticide residues are also found in agricultural products consumed in Mercosur or exported to the EU, be it cereals, beverages, fruit,

cotton or tobacco. A study by the agricultural geographer Larissa Bombardi from the University of São Paulo found that of the 500 or so pesticides that were approved for use in Brazil up until 2017, 30 percent were banned or not approved in the EU.⁴⁹

For example, of the 160 active substances approved in Brazil for cotton farming, 47 were banned in the EU. When it comes to soya beans, Brazilian



Foto: Daniel Beltrá / Greenpeace

South American countries like Brazil are using hazardous pesticides on a large scale.

plantations are allowed to use 150 pesticides, 35 of which have no approval in the EU (*see Diagram 9*).

One of the inconsistencies in EU pesticide policy that raises questions from a human rights perspective is that there is no EU-wide ban on manufacturing and exporting pesticides that are not approved in the EU. This means that companies such as Bayer or BASF can continue to manufacture pesticides for export in Germany that are banned or not approved in the EU or in Germany.⁵⁰ This situation is further aggravated by the fact that chemical companies often manufacture pesticides that are banned in the EU in countries with laxer licensing laws than the EU and Germany.

Toxic trade: EU and Germany allow unapproved pesticides to be exported

The legal situation in the EU with regard to the trade in pesticides is alarming. Regulation (EC) 1107/2009 only allows a pesticide product to be placed on the EU market if it has been approved in the EU member state in question. This rule does not apply, however, if the pesticide is intended for export to a country outside the EU.⁵¹ EU law thereby systematically subordinates the need to protect human beings and nature in third countries to the interests of European pesticide exporters.

Nevertheless, EU member states could prevent the export of such highly toxic pesticides which are produced in their countries but are not approved in the EU. France has recently started availing itself of this right. A new law comes into force there from January 2022, prohibiting the export of pesticides to third countries if these products have been denied EU approval in order to protect human and animal health or the environment.⁵²

In principle, Germany too could impose a similar export ban. Germany's Plant Protection Act allows a statutory order to be issued banning certain pesticides from being exported to countries outside the EU. Until now, however, the German government has not made use of this possibility.⁵³

A responsible trade policy must aim to ensure that pesticides that are not approved in the EU are not, as a matter of principle, exported to third countries. Such an export ban would have to apply equally to all EU member states. ◀

A recent study by MISEREOR, Inkota, the Rosa Luxemburg Foundation and other organisations has revealed that BASF and Bayer each sell at least 12 active substances in Brazil that are not approved in the EU. In each case, six of these active substances are classified by the Pesticide Action Network PAN as being highly toxic (Highly Hazardous Pesticides - HHP). They may be carcinogenic, mutagenic or reprotoxic, or else they harm the environment (*see Diagram 10*). Carbendazim, for example, which is found in the Bayer product Derosal Plus and has been detected in the groundwater in southern Brazil, can damage chromosomes, impair fertility and harm unborn children.⁵⁴

Analyses carried out in February 2020 by Public Eye and Unearthed (Greenpeace UK) and in May 2020 by Greenpeace Germany show that Bayer and



Foto: Mitja Kobal / Greenpeace

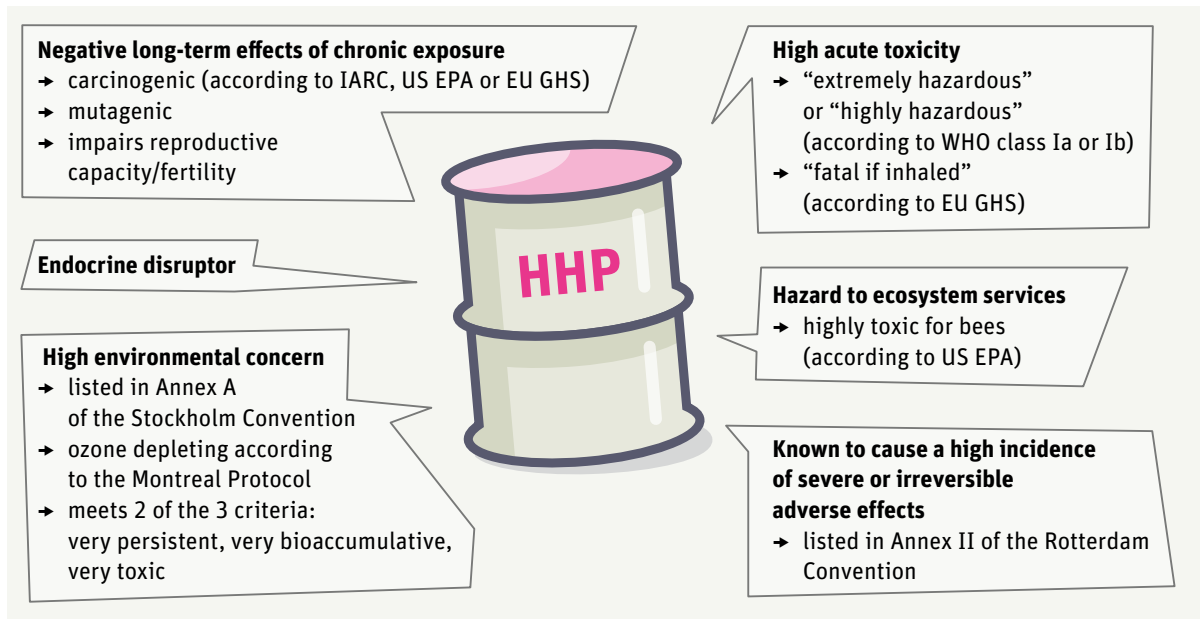
Many pesticides that are toxic to bees are not approved in the EU, but are exported to South America.

BASF are also marketing so-called neonicotinoids, highly toxic chemicals that are particularly harmful to bees and other insects. Brazil is the main market for Bayer's imidacloprid – a bee killer whose use outdoors was banned by the EU in 2018. BASF, in turn, sells two active substances used in pesticides which are suspected of killing bees on a large scale

DIAGRAM 10

PAN criteria for identifying highly hazardous pesticides (HHPs)

Source: PAN (2019), see endnote 50



in Brazil: chlorfenapyr and fipronil. This practice gives all the more cause for concern in that Brazil already suffered a massive increase in bee mortality last year. More than 500 million bees died in a space of just three months.⁵⁵

The hazardous pesticidal active substances may be contained in various products marketed by the chemical companies in Mercosur. According to a recent analysis, 71 of the 113 BASF products approved in Brazil are highly toxic pesticides and 57 are not approved in the EU. Of the 123 Bayer products approved in Brazil, 78 are highly toxic pesticides and 36 are not approved in the EU (*see Appendix*).⁵⁶

More than half the pesticides sold in Brazil are sprayed on soya fields, over 90 percent of which have been planted with genetically modified varieties. By far the most commonly used active substance in Brazilian agriculture is the controversial herbicide glyphosate, to which the genetically modified soya varieties are resistant.

The bulk of the herbicide-resistant soya varieties used in Brazil (Roundup Ready and Intacta) are now sold by Bayer, following its acquisition of the US company Monsanto. Meanwhile in 2015, the World Health Organization’s Agency for Research on Cancer classified glyphosate as “probably carcinogenic to humans”.⁵⁷ Nevertheless, it is still approved both in the EU and in the Mercosur countries.

The risks posed by food contaminated with pesticides could increase for both Brazilian and European consumers. This is suggested not only by an increase

in the use of agricultural toxins, but also by the massive increase in pesticide approvals in Brazil. Over the past three years, the number of pesticide products approved in Brazil has more than tripled compared with 2015 (*see Diagram 11*).

In addition, the EU-Mercosur Agreement provides for the reduction or elimination of tariffs on chemicals, including pesticides. The European Chemical Industry Council (CEFIC) emphasises that the

DIAGRAM 11

Brazil: Approval of pesticides (number per year)

Source: Ministério da Agricultura, Pecuária e Abastecimento (MAPA), 2020

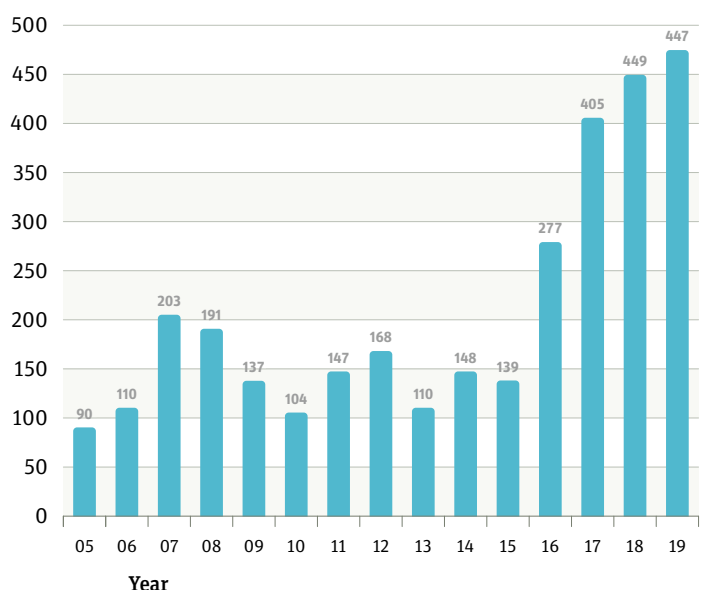
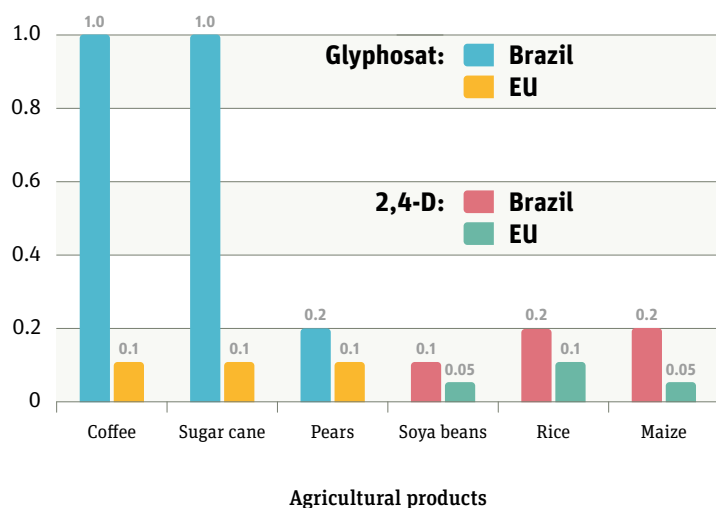


DIAGRAM 12

**Glyphosate and 2,4-D:
Limits for pesticide residues 2017**
(unit: mg/kg)

Source: European Commission / ANVISA, as cited by Larissa Bombardi 2019



agreement will eliminate tariffs for more than 90 percent of EU chemical exports, which have so far amounted to up to 18 percent.⁵⁸ There is a danger, therefore, that reducing the cost of pesticide imports into Mercosur will further increase the consumption of agricultural toxins, at the expense of human beings and nature.

3.6 Pesticide residue levels: At the mercy of trade interests

Significant discrepancies also exist between the EU and Mercosur in terms of the maximum permitted levels for pesticide residues, as the pesticide databases of the EU and the Brazilian Health Regulatory Agency (ANVISA) reveal. For example, lower limits apply in the EU than in Brazil for the permissible residues of the herbicides glyphosate and 2,4-D in a number of products, including coffee, sugar cane and pears (glyphosate) as well as soya beans, rice and maize (2,4-D). The limits for glyphosate in coffee and sugar cane are no less than ten times higher in Brazil than in the EU (see Diagram 12).

However, a comparison of other agricultural products shows that the EU does not in fact apply stricter pesticide residue limits than Brazil throughout. The Brazilian limits for glyphosate residues in soya beans, wheat and peas, for example, are much lower than in the EU, where they are extremely high. In the case of wheat, the discrepancy is 200-fold, for peas it is 1000times higher (see Diagram 13).

Brazilian consumers could therefore face particular health risks when wheat or peas are imported from the EU. However, the limits for glyphosate residues in soya beans are extremely high on both sides (Brazil 10 mg/kg, EU 20 mg/kg).

It should be noted that it was only in 1999 that the EU, coming under pressure from the agricultural lobby, drastically increased the residue limit for glyphosate in soya beans from 0.1 mg/kg to 20 mg/kg – a 200-fold increase. In doing so, it was aligning itself with the international Codex Alimentarius Commission, which had already raised its limit to 20 mg/kg two years earlier. The Codex Alimentarius Commission defines food standards, but its decisions are controversial because they often reflect the influence of the food industry. Brazil followed the trend in 2004 and raised its glyphosate limit for soya beans from 0.2 mg/kg to 10 mg/kg – a 50-fold increase.⁵⁹

Bayer, BASF and other pesticide producers are exerting enormous pressure on the European Commission to prevent it from tightening the residue limits for imported agricultural products. Recent research by the non-governmental organisation “Corporate Europe Observatory” shows that the companies have often been successful in this respect.⁶⁰

3.7 Obstacles to environmental and consumer protection

The EU-Mercosur Agreement also presents additional obstacles to potentially ending the approval of glyphosate. Glyphosate is approved in the EU until 15 December 2022. However, Mercosur countries could use the trade agreement to fight the possible expiry of this approval. Even before the last decision on glyphosate in 2017, Argentinian and Brazilian trade diplomats expressed fears that the EU might also lower the high residue levels once the approval expires, thereby posing a threat to soya bean exports to the EU.⁶¹

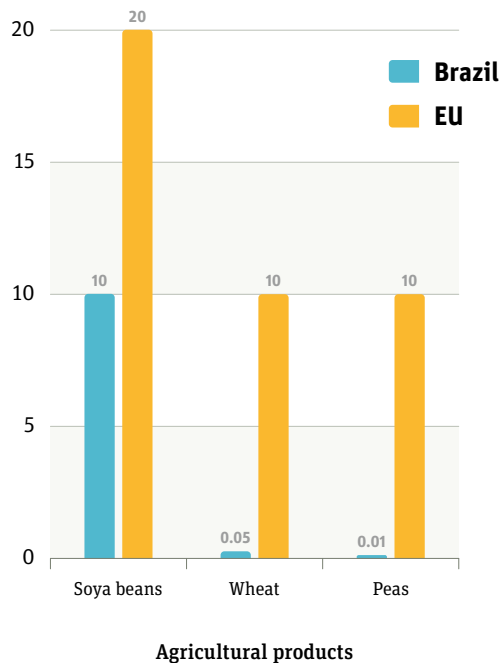
In fact, the SPS chapter of the agreement does not provide sufficient protection to avoid trade disputes in the event of an end to glyphosate approval or a reduction in residue levels. Article 11 of the SPS chapter states that either international standards or scientific evidence should be provided to justify such measures. In the absence of both, trade restrictions may only be imposed for a transitional period.⁶²

However, the key weakness is that this chapter lacks the precautionary principle as a justification for ending glyphosate approval, for tightening pesticide limits or for similar measures. Because of this omission, the Mercosur countries could react

DIAGRAM 13

Glyphosate: Limits for pesticide residues 2017
(unit: mg/kg)

Source: European Commission/ ANVISA, as cited by Larissa Bombardi 2019



by imposing trade sanctions should the EU decide to lower the limits.

In view of the dangers posed to human beings and nature by the increasing use of pesticides, a modern trade agreement would have to contain very different regulations for this problem too. For example, a time frame could conceivably be established during which the use of highly toxic pesticides is to be phased out, accompanied by a lowering of the limits for pesticide residues in domestic and export markets. The economically stronger trading partner – in this case the EU – would have to offer financial assistance for the necessary adjustments to production. Last but not least, for the sake of coherence of the EU's development policies, a ban would be necessary on the production and export of pesticides that are not approved in the EU for environmental or health reasons. As a matter of principle, EU trade policy should be aimed at the goal of pesticide-free agriculture.

Finally, the EU-Mercosur Agreement also weakens food checks and the ability to identify and withdraw contaminated animal foodstuffs from the market when they arrive. This is because Article 7 of the SPS chapter provides for export authorisations for animal products to be speeded up. To this end, the importing country is to refrain from carrying out import checks if the exporting country provides "sufficient guarantees"⁶³ via its exporting parties. In

addition, the trading partners are expected to agree to reduce the frequency of import checks.

This, however, works in favour of Brazilian meat companies such as JBS and BRF, which have repeatedly been involved in food scandals. In 2017, the Brazilian police discovered that both companies had mixed rotten meat into their export products and bribed health inspectors in order to obtain hygiene certificates. In 2019, a team of journalists found out that 20 percent of EU chicken meat imported from Brazil was infected with salmonella and only a fraction of the shipments were being microbiologically tested.⁶⁴ A considerable proportion of the contaminated chicken meat crossed the border undetected. If the checks are further reduced under the EU-Mercosur Agreement, the risk to consumers will therefore increase once again. ◀



In 2017, a consumer protection scandal over the bribery of slaughterhouse inspectors and politicians – including the head of government – not only shook Brazil but also led to a collapse in beef exports to Europe and the US.

► 4 Trade in raw materials: Access to mining and energy

The negotiated texts available to date also involve considerable ecological and human rights risks in terms of the trade in raw materials. In this sector, too, the planned regulations will not only safeguard problematical trade relations, but will aggravate them further by expanding the flow of goods. The negotiated texts seen to date reflect the interests of European companies particularly clearly. These consist, on the one hand, in securing the EU's supply and, on the other, in expanded investment opportunities for European companies in the Mercosur raw materials sector.

4.1 Mercosur: Supplier of important minerals

The Mercosur states, in particular Brazil and Argentina, are already important suppliers of mineral and energy resources to the EU. Overall, mining products and fossil fuels account for around 20 percent of EU imports from the region. Some of these products are essential for EU industry.

DIAGRAM 14
EU imports of raw materials from Brazil 2010-2014
(percentage of total imports)

Source: European Commission 2017

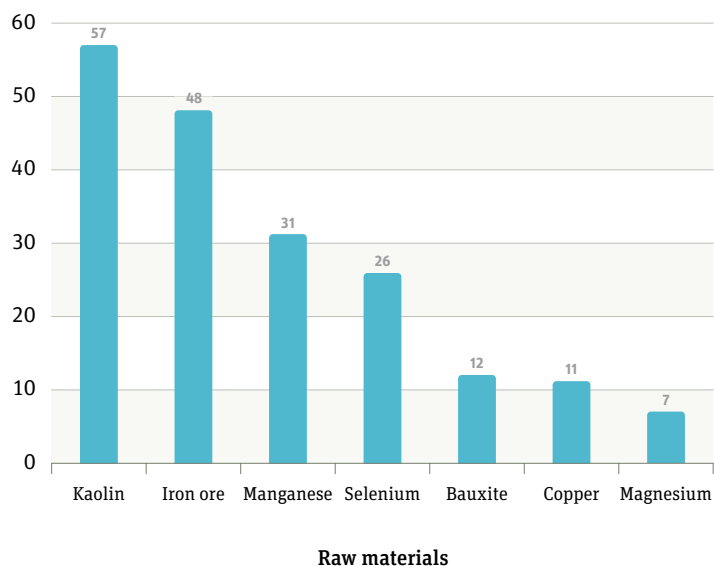
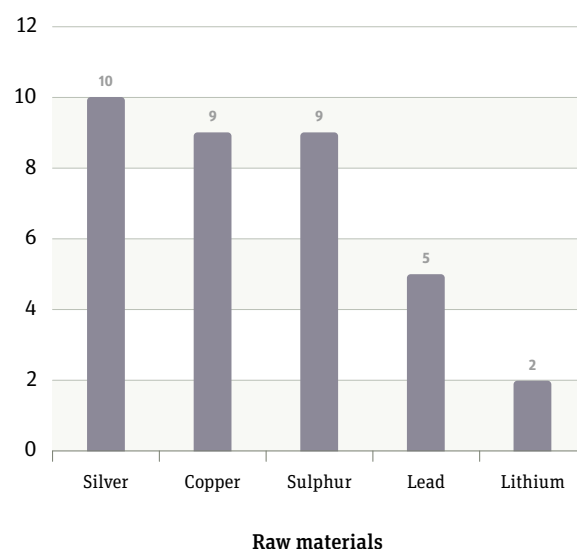


DIAGRAM 15
EU imports of raw material from Argentina 2010-2014
(percentage of total imports)

Source: European Commission 2017



The European Commission has for some time been investigating the EU's supply of raw materials from third countries. Its latest report on this matter reveals that goods imported from Brazil, in particular, represent a significant share of total EU imports of the mineral resources in question.⁶⁵ For example, 57 percent of kaolin imports and 48 percent of iron ore imports alone come from Brazil (see Diagram 14). Imports of manganese, selenium, bauxite and copper from this South American country are also very important for the EU.

Argentina also supplies significant quantities of mineral resources, including silver, copper and sulphur (see Diagram 15).

However, Brazilian exports of raw materials to the EU are the most important in terms of volume and economic significance. An overview of the ten leading Brazilian exports to the EU by value illustrates the great importance of mineral and energy resources compared with agricultural imports (see Diagram 16).

With a value of over three billion euros, iron ore is the most important raw material to be exported to the EU by Brazil. Other important commodities

include oil, copper, pig iron and gold. Iron ore and crude oil are already subject to zero tariffs in the EU, as are unrefined copper and iron. For other raw materials, such as the aluminium ore bauxite, and for processed goods, on the other hand, existing import duties might be removed by the trade agreement.⁶⁶

However, a particularly important objective of the European Union is to prevent possible export restrictions by the Mercosur countries on those raw materials needed by EU industry, especially on essential products such as iron ore.

4.2

Iron ore disasters: Due diligence obligations remain toothless

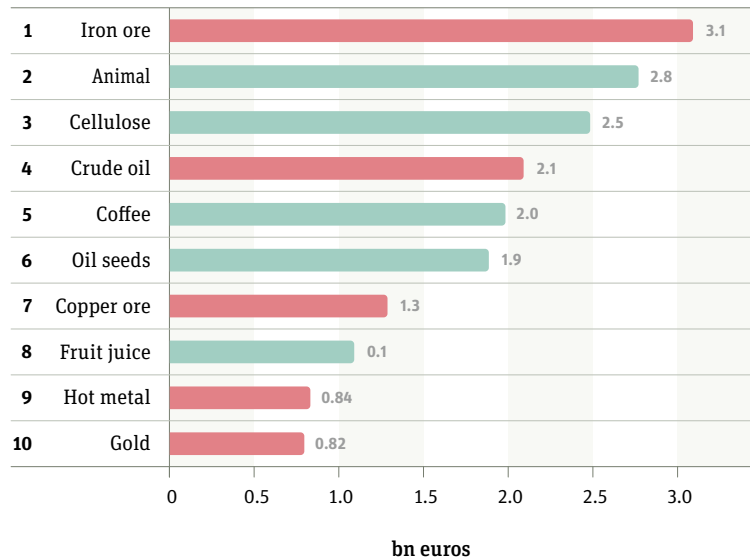
At the same time, iron ore is responsible for some of the most serious examples of environmental destruction and human rights violations in Brazil. Environmental scientists reckon that about ten percent of the deforestation in Amazonia is due to mining, especially at the Carajás Mine in the state of Pará – the largest iron ore mine in the world.⁶⁷

Germany bears a large share of the responsibility for this destruction. This is because Germany imports all the iron ore required for its pig iron and steel production and more than half of it comes from Brazil.⁶⁸ At the beginning of the 1980s, Ger-

DIAGRAM 16

Top 10: EU imports from Brazil 2018 (in bn euros)

Source: Eurostat, November 2019



many and the European Community granted loans worth several hundred million euros to develop the Carajás Mine, thereby securing cheaper access to Brazilian iron ore for German industry. The main buyers of the steel produced using Amazonian iron ore are the automotive, mechanical engineering and construction industries.⁶⁹



Foto: Daniel Beltra / Greenpeace

Iron ore mines in Brazil stand for environmental destruction and inhumane working conditions.

However, it is not just iron ore mining that is destroying tropical forests, but also smelting it to produce pig iron. This is because Brazilian iron and steel works use large quantities of charcoal to smelt the iron ore. This in turn comes from primary forests or timber plantations established on cleared land, such as the eucalyptus plantations that are rapidly expanding in Brazil and other Mercosur states.⁷⁰

Germany and the EU not only import iron ore, but also pig iron produced using charcoal. Thirty percent of German pig iron imports come from Brazil alone.⁷¹ Germany's steel, automotive and mechanical engineering industries are therefore implicated in the destruction of Brazil's primary forests on several levels. However, European iron ore imports are also associated with some of the most serious human rights abuses for which EU companies are to blame

along their supply chains. A particularly devastating example of this is the Brumadinho disaster in the state of Minas Gerais (*see box below*).

Although corporations neglected their due diligence obligations in the Brumadinho disaster and in other cases, the EU-Mercosur Agreement does not contain any binding rules on corporate responsibility. While the chapter on sustainability does include Article 11 on the "responsible management of supply chains", the entire chapter is not enforceable since it provides no access to dispute settlement procedures. Furthermore, the article only requires trading partners to endorse the dissemination and use of international guidelines on corporate responsibility published by the United Nations (UN), the Organisation for Economic Cooperation and Development (OECD) and the International Labour Organisation

A disaster announced: The bursting of the dam at Brumadinho

The Brazilian mining company Vale operates an iron ore mine in Brumadinho which became the site of one of the country's biggest disasters. On 25 January 2019, a tailings dam collapsed and a huge wave of mining waste spilled across the land. The toxic flood killed 272 people, destroyed a village and contaminated the river Paraopeba. This drama is connected with Germany in several ways. The dam was built in 1976 by a Brazilian subsidiary of the Thyssen group. Decades later, in September 2018, the German technical inspection company TÜV Süd certified the soundness of the dam despite considerable defects. Deutsche Bank in turn holds shares in Vale and has granted loans to the company.⁷²

Last but not least, Vale supplies its iron ore to the EU, among other regions of the world. Its customers include various German steelworks, including those of ThyssenKrupp. To make matters worse, Brumadinho is not an isolated case. A similar disaster had already occurred in 2015 in Minas Gerais, at the Samarco iron ore mine, owned by Vale and BHP Billiton. On that occasion, 19 people died and thousands of fishermen lost their livelihoods due to the poisoning of the Rio Doce. Samarco iron ore was also supplied to the EU and Germany.⁷³

The legal implications of the Brumadinho catastrophe are being investigated not only in Brazil, but now also in Germany. In October 2019, MISEREOR and the human rights organization European Center for Constitutional and Human Rights (ECCHR), together with five relatives of victims, filed a complaint against TÜV Süd and one of its employees with the Munich public prosecutor's office.⁷⁴ The latter has in the meantime launched a preliminary investigation into TÜV Süd.⁷⁵ ◀



Foto: Vinícius Mendonça Ibarra / Wikimedia

A vigil for the victims of the Brumadinho disaster, in which 272 people lost their lives.

(ILO), insofar as they have signed up to them.⁷⁶ These instruments are not however binding.

Furthermore, Article 11 requires the trading partners to encourage companies to voluntarily adopt corporate social responsibility or responsible business practices – which is again a very weak clause given the failure of voluntary approaches to corporate governance.

4.3 Restrictions on export duties: Raw materials are to remain cheap

Whereas the EU-Mercosur Agreement only contains non-binding clauses on corporate responsibility, at the same time it contains binding rules that secure and cheapen the supply of raw materials to transnational corporations. This is the effect, for example, of the intended strict limitations on export restrictions.

The Mercosur countries have repeatedly had to resort to such measures in the past, whether in the form of temporary export licences, export duties, export quotas or minimum export prices. Argentina, for example, restricted exports of cobalt, lithium, copper and iron ore, and Brazil restricted exports of magnesium, among other minerals.⁷⁷ Such measures are, however, also indispensable in the current policy, especially as a means of generating government revenue in the event of budgetary bottlenecks.

For example, in the wake of the economic crisis, the former Argentinian President Mauricio Macri decided in September 2018 to introduce a flat-rate emergency export duty of 12 percent, with additional surcharges for unprocessed raw materials. The mining companies operating in the country immediately protested and warned that they stood to lose one billion US dollars annually.⁷⁸ The current taxes on soya exports (*see above*), are even more significant for Argentina's state revenues.

In Brazil, members of congress are currently discussing reintroducing export duties on mineral and agricultural resources, which were abolished in 1996. A draft law presented in October 2017 proposed an export tax of 30 percent on raw materials produced by mining.⁷⁹ A current proposal involves a 13 percent export tax on mineral and agricultural resources and semi-finished goods, and immediately led to industrial warnings.⁸⁰

Measures like this for restricting exports would however be jeopardised if the EU-Mercosur Agreement were to come into force. To maintain a cheap supply of these raw materials to EU industry, the EU-Mercosur Agreement stipulates a general ban on all taxes and duties on exports. Article 8 of the



Timber in the Brazilian region of Pará. Europe's hunger for natural resources is enormous.

Foto: Marizilda Cruppe / Greenpeace

chapter on trade in goods states that three years after the agreement enters into force, neither party shall introduce or maintain such export duties or charges, other than in accordance with a specific schedule of commitments.⁸¹

However, until now only Argentina has reserved the right to levy export duties on a long list of products in Mercosur's published list of commitments. It must, however, pledge to freeze or reduce these (to 14 percent of the value of goods for some products, and 5 percent for others). Uruguay has so far only put one product group on this list, while Brazil and Paraguay are not listed at all.⁸² As things currently stand, the reintroduction of export duties that is currently being discussed in Brazil would therefore be in breach of the EU-Mercosur Agreement.

Further social and environmental risks may also be posed by the intended regulations concerning investments and tendering. However, no qualified assessment is possible at this stage due to the lack of transparency in the negotiation process. This is because the key annexes containing the sectoral commitment lists are missing from the two chapters of the contract on investment and tendering.⁸³ They alone would indicate the extent to which investments in mining and the tendering of mining rights are to be liberalised. ◀

5 Inadequate: Instruments for protecting human beings and nature

The export-oriented production of agricultural and mineral resources in the Mercosur countries is often accompanied by extremely violent conflicts. The conflicts over land that peasants and indigenous people have to endure continue to take a heavy toll.

5.1 No instruments for protecting land rights

In Brazil, for example, the Pastoral Land Commission CPT (Comissão Pastoral da Terra) has registered a marked increase in conflicts over water and land (see Diagram 17). The number of land conflicts has almost doubled over the past ten years, and the number of water conflicts has more than quadrupled. The increase in the number of conflicts was particularly sharp in 2019, after the inauguration of President Jair Bolsonaro.⁸⁴

At the same time, the number of land occupations by social movements decreased markedly. The CPT attributes this, among other things, to a growing fear of repressive measures on the part of the landless

movement and to the widespread impression that the current government will not meet the demands for agricultural reform anyway.⁸⁵ The CPT also documents the impunity that is still rampant. Between 1985 and 2019, a total of 1,973 people were killed in rural conflicts. Yet in 1,376 of these cases, the perpetrators had still not been brought to justice.⁸⁶

The situation is particularly dramatic for the indigenous population. The Indigenous Missionary Council, CIMI (Conselho Indigenista Missionário), has registered a considerable increase in illegal intrusions into indigenous territories in Brazil, whether to seize land or to extract raw materials. Loggers, gold diggers and plantation operators are advancing into indigenous territories with less and less restraint, resulting in numerous violent clashes.

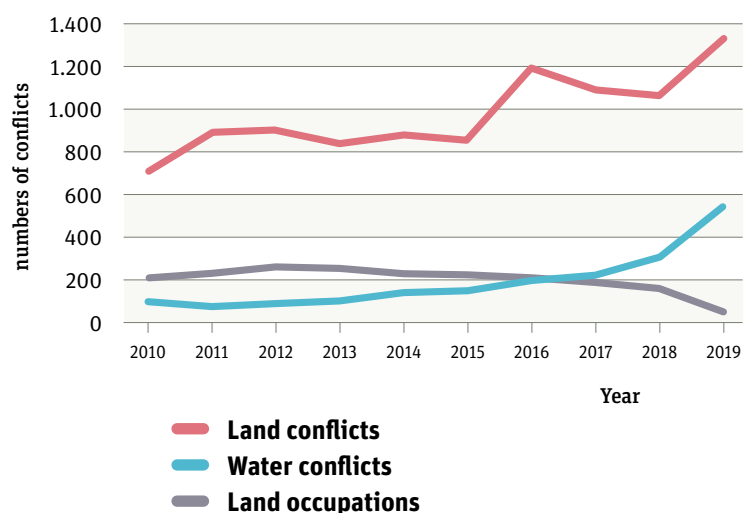
The substantial increase in the number of such invasions under the Bolsonaro administration since the beginning of 2019 is particularly alarming. In the first months of that year alone, CIMI registered 160 invasions – far more than in previous years and triple the number in 2015 (see Diagram 18).

In addition, Bolsonaro has not only brought the demarcation of indigenous areas to a complete halt, but now wants to create the legal framework for these areas to be developed by the mining and agricultural industries. At the beginning of February 2020, he introduced into Congress the proposed law PL 191/2020 which sets out, among other things, to legalise the exploration and extraction of minerals, oil and gas and the construction of hydroelectric power plants in indigenous territories. This draft law has already led to protests by the people affected, who have joined together to form the network of indigenous organisations APIB (Articulação dos Povos Indígenas do Brasil).⁸⁷

Analyses of the law PL 191/2020 show that it would undermine not only the guaranteed rights of indigenous communities, but also environmental protection. Among other things, it seeks to permit genetically modified plants to be cultivated in nature reserves. The violations of ILO Convention 169 on the rights of indigenous and tribal peoples, which has been ratified by Brazil, are particularly blatant, however. These and other UN instruments stipulate

DIAGRAM 17
Brazil:
Increasing conflicts over land and water

Source: Aladi 2020



that any use of indigenous territories requires the prior free and informed consent of the peoples concerned – even when giving consideration to new legislative or administrative measures that will permit such use. For this reason, the law PL 191/2020 should itself have been subject to consultation by indigenous representatives; however, this did not happen.⁸⁸

The EU-Mercosur Agreement does not currently provide effective measures to punish the countless human rights violations perpetrated over land conflicts. For example, Article 8 of the chapter on sustainability only includes a commitment by the parties to the agreement to promote the inclusion of local communities and indigenous peoples in the supply chains of forest products. The persons concerned are to give their “prior informed consent”⁸⁹ to such an inclusion.

However, this is only a very mutilated version of the more demanding UN concept of free, prior and informed consent. The latter requires that indigenous communities should give their consent to any use of their territories, and not simply be allowed to participate in the exploitation of their own resources.

5.2 Due diligence obligations in the supply chain: Drawing a blank

This weakness comes on top of the shortcomings of the sustainability chapter that have already been mentioned: the exclusion from the dispute settlement mechanism, the limitation of the precautionary principle to environmental risks and occupational safety hazards, and the lack of binding rules on corporate responsibility along the supply chains.

The EU-Mercosur Agreement thus also highlights the blatant omissions in the regulation of companies operating on a transnational level. Europe too, for example, lacks laws making it obligatory for companies to observe due diligence concerning environmental and human rights along their supply chains. In the EU, only France currently has a comprehensive supply chain law (*Loi de Vigilance*), while the German government is putting off such legislation and waiting to see the results of ongoing company surveys.⁹⁰

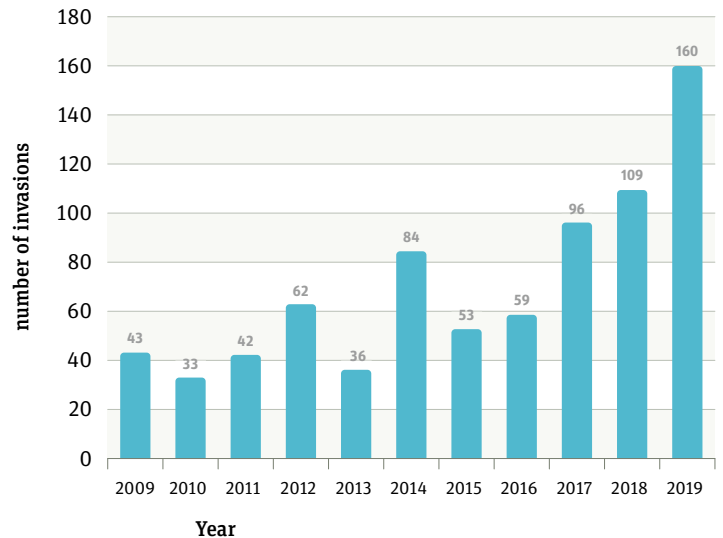
At a European level, too, there is still no legal framework for member states to enforce corporate responsibility, aside from regulations for very narrow sectors, such as the timber trade and conflict minerals. Such EU legislation would have to

DIAGRAM 18

Brazil:

Illegal invasions of indigenous territories

Source: CIMI, Relatório Violência contra os Povos Indígenas no Brasil, 2019: first 9 months



require companies to draw up publicly verifiable due diligence plans. It would have to provide for sanctions and the civil liability of companies guilty of infringements contributing towards foreseeable and avoidable damage. In addition, barriers would have to be removed, facilitating access to the courts in EU member states by aggrieved parties outside Europe.⁹¹ Germany’s parliament (Bundestag) has also spoken in favour of such EU legislation. On 14 November 2019, the Bundestag called for the German government to “advocate a uniform, cross-sectoral and binding regulation defining corporate due diligence obligations on a European level during Germany’s 2020 Presidency of the Council of the European Union”.⁹²

In its coalition agreement, the German government had already announced such an initiative on a national and European level if German companies failed to implement their due diligence obligations voluntarily by 2020. However, these plans are currently being blocked by the Federal Ministry of Economics and the Federal Chancellery, despite the fact that only 18 percent of German companies with more than 500 employees are fulfilling their due diligence obligations, according to a study commissioned by the Federal Government.⁹³ As long as the EU and its member states do not oblige their companies to human rights and ecological diligence, however, the unilateral privileging of corporate interests, also by the EU-Mercosur Agreement, would systematically lead to a weakening of human rights and environmental protection.



Looking towards an uncertain future: Members of the indigenous community of Campito in Caaguazu, Paraguay.

Another problem is that the EU still rejects a binding international agreement on business and human rights at the level of the United Nations, as is currently being negotiated by a working group within the UN Human Rights Council. Such an agreement would also oblige Mercosur countries to protect human rights better against violations by individual companies. It could also establish a primacy of human rights over trade and investment law under international law.⁹⁴ So far the European Commission has not even brought itself to ask the member states for a negotiating mandate. The member states in turn are hiding behind the EU and not participating in the negotiations of the UN Human Rights Council working group even though, being sovereign states, they do not need the permission of the EU to do so.

An announcement by the European Commissioner for Justice Didier Reynders on 29 April 2020 raised hopes that something could be done on a European level after all. While presenting a new study by the European Commission, which underlines the need for binding rules for companies, he announced that a draft European supply chain law would be presented in 2021⁹⁵. This would oblige companies to respect human rights and environmental standards in their value chains and provide for sanctions under public law as well as the possibility for aggrieved

parties to take legal action. The German Initiative Lieferkettengesetz (Supply Chain Law Initiative), which advocates the demand for binding regulations along supply chains in Germany, quoted Reynders, as saying, "A regulation without sanctions is not a regulation".⁹⁶ It remains to be seen whether he will receive the necessary support from the German government, the other member states and the European Parliament.

5.3 Human rights clause: Will it remain weak?

This shortcoming is underscored by the fact that those parts of the treaty so far published do not even contain the otherwise customary human rights clause. The EU incorporates such clauses either in its trade agreements or in the framework treaties to which the agreements refer, in order to demonstrate its international responsibility.

At present, EU-Mercosur relations are governed by an interregional framework agreement, which entered into force in 1999 and contains such a human rights clause. Article 1 of that agreement states that "respect for democratic principles and human rights" constitutes an "essential element of this agreement".⁹⁷ According to the 1999 negotiating

mandate, such a clause would also have to be included in the EU-Mercosur Association Agreement.⁹⁸

However, as the EU has not yet published large parts of the Association Agreement, it is not possible to analyse whether the envisaged human rights clause would eliminate the already known weaknesses of this instrument. In principle, this clause allows trade preferences to be suspended in the event of human rights violations. However, the barriers to its being triggered are so high that it has until now only been used in 24 cases, mostly in response to serious violations of democratic principles, such as coups d'état. Many other human rights violations have remained beyond its reach. Moreover, the measures taken have mostly been limited to consultations.⁹⁹

In addition, the human rights clause does not allow measures to be taken to protect human rights if those measures violate the provisions of the trade agreements. If, for example, the agricultural quotas agreed in the EU-Mercosur Agreement were to aggravate the conflicts over land, it would nevertheless be impossible to suspend these preferences. Another shortcoming is that the clauses do not include bodies for monitoring the agreement and handling complaints.¹⁰⁰

5.4

Official impact assessment: Too late, too deficient

Finally, the official Sustainability Impact Assessment (SIA) also proves to be an inadequate tool for assessing and containing the risks of the agreement.

The European Commission conducts SIAs as a mandatory requirement alongside its trade negotiations. The idea behind the SIAs is to inform the negotiators about possible risks and to make corresponding recommendations. However, when the European Commission announced its political agreement in principle on the EU-Mercosur Agreement at the end of June 2019, not even the interim report of its impact assessment was available. In fact, the interim report was not published as a draft until October 2019, and the final version was only released in February 2020 – much too late to have any influence on the negotiations.

To make matters worse, the interim report published in February 2020 still contains no recommendations, let alone a summary of its main findings. Policy recommendations and possible remedial actions will in fact not follow until a final report, the publication date of which is still unknown.¹⁰¹

Meanwhile, the existing findings of the interim report can hardly be used since they lack an adequate

empirical basis. The short section on indigenous rights, for example, is limited to speculations about possible negative consequences of developing new farmland, which could allegedly be avoided if production methods were intensified.¹⁰² In addition, the report claims that only 40 percent of Mercosur's land is used for agriculture, so that there is "large room for expansion of the agricultural frontier".¹⁰³ The reality, though, is that deforestation, displacements and agricultural intensification are all taking place at the same time, while the remaining untouched areas play a key role in preserving biodiversity and protecting the climate. It is negligent to present them as freely available reserves for valorisation.

The statement in the interim report that the agreement will only have a "negligible" ¹⁰⁴ impact on carbon dioxide emissions is also questionable. In fact, an examination of the climate effects in the SIA offers no reason to give the all-clear. Both scenarios examined in the SIA (a conservative and an ambitious one) predict that emissions in the EU, Brazil and Argentina will increase by 2032 with respect to a baseline scenario. Emission might decrease slightly only in Uruguay and Paraguay; however this would not make up for the increase in the other countries in view of the lower weight of these countries. The bottom line is that even based on the SIA, the agreement will contribute to an increase in CO₂ emissions rather than the necessary reduction.

In addition, a more detailed estimate would probably result in an even larger rise in emissions, because despite mentioning all the different greenhouse gases, the SIA only actually goes on to calculate carbon dioxide emissions. However, carbon dioxide plays a less important role in the greenhouse gas mix of the Mercosur countries than in the EU, where it accounts for around 80 percent. In the Mercosur countries, by contrast, methane and nitrous oxide, which are mainly produced by agricultural operations, account for a much larger share.¹⁰⁵ Nor does the SIA examine the equally significant emissions from changes in land use and deforestation, which are also likely to have increased due to increased deforestation in Amazonia. These methodological flaws have already been criticised by NGOs.¹⁰⁶

The key shortcoming of the impact assessment cannot be overcome in the context of the existing methodology, because it is essentially based on an assessment of potential changes in trade flows that could be induced by the agreement. However, overcoming the precarious status quo of trade relations, as manifested in numerous ecological and human rights crises, is beyond the scope of official impact assessment. ◀

6 The EU-Mercosur Agreement under discussion

Ever since the agreement in principle between the EU and Mercosur was announced in June 2019, criticism of the planned trade agreement has persisted. Similarly, the number of critical analyses of the agreement is increasing.¹⁰⁷ It is therefore unclear whether it will actually enter into force. The results of the negotiations are currently undergoing a legal review and will then have to be translated into all EU languages. Only then will the agreement be signed and the ratification procedure begin.

The negotiation process has been characterised by a considerable lack of transparency. This is because the European Commission has until now only published parts of the trade agreement. Until now, it has kept the full text of the Association Agreement under wraps. As a result, key parts of the agreement are missing which are relevant for the assessment of the agreement, including the human rights clause or the concrete lists of commitments for the chapters on trade in goods, investment and public procurement. Nor has the negotiating mandate given to the European Commission by the Council in 1999 been officially published to date. It was not until last year that a French version of the mandate was leaked.¹⁰⁸

This information is also necessary for future proceedings, because if the trade agreement should be part of a more comprehensive Association Agreement, the Council of the European Union, the European Parliament (EP) and the 27 EU member states will all have to give their approval. However, the trade agreement – which is particularly controversial – could already come into force provisionally after being ratified by the Council and the EP.

Meanwhile, the Council already presents the first obstacle. Article 218(8) of the Treaty on the European Union stipulates that the Council shall act unanimously when adopting an Association Agreement.¹⁰⁹ The veto of one member state is therefore sufficient to prevent ratification (an abstention, on the other hand, would not be sufficient to prevent ratification).¹¹⁰ Following the Brazilian government's inadequate response to the Amazon fires, the French government has for example repeatedly announced that it cannot sign the agreement under these circumstances.¹¹¹

Approval by other countries in the Council of the European Union is also uncertain. In a non-binding vote in July 2019, Ireland's parliament called on the government to vote against the agreement.¹¹² In September 2019, Austria's National Council also adopted a motion obliging the then government to veto the EU-Mercosur Agreement.¹¹³ Austria's current governing coalition, between the Austrian People's Party (Österreichische Volkspartei or ÖVP) and the Greens, also rejects the agreement in its present form.¹¹⁴ The parliament of Wallonia, one of the three regional parliaments of Belgium, voted unanimously against adopting the agreement in February 2020.¹¹⁵ As a result of the Walloon rejection, the Belgian central government can also no longer approve the treaty in the Council of the European Union. At the beginning of June 2020, the second chamber of the Dutch parliament also voted against the EU-Mercosur Agreement – among other things because it contains no enforceable rules for the protection of the Amazon or for preventing illegal deforestation. Although this decision is not binding on it, the Dutch government cannot ignore it without risking a vote of no confidence. The decision was also supported by MPs from the governing parties.¹¹⁶

The German government, for its part, is standing firmly by its approval, even though it has been forced to admit that the chapter on sustainability does not allow any sanctions to be imposed in the event of any violation.¹¹⁷

For the forces within civil society, in turn, this means that the objections by EU governments are improving the chances of stopping the agreement. On top of this, the public is becoming significantly more sensitive to the heightening of the climate crisis. As a result, it is becoming more and more difficult to communicate politically the desire to push through a trade agreement that provides no efficient measures for reducing greenhouse gas emissions but would – on the contrary – actually increase these. The deterioration of the human rights situation in Brazil under the Bolsonaro administration puts further pressure on the EU to justify the agreement. ◀

7 Conclusions and recommendations

The analysis of EU-Mercosur trade relations shows that a key issue in any assessment of trade relations must be their unacceptability in ecological and human rights terms. Conventional approaches are no longer appropriate when evaluating new trade agreements: It is not enough to simply assess the implications of the additional flow of goods that could arise from the EU-Mercosur Agreement.

A modern trade agreement must make a verifiable contribution to overcoming trade relations that endanger human beings and nature. In concrete terms, it should help to make production and trade more ecological and to identify and prevent human rights violations along the value chains.

Based on this assessment criterion, there is currently no justification for concluding and ratifying the EU-Mercosur Agreement. The planned sustainability instruments, in so far as they have been published to date, are far too weak to trigger the necessary reforms, be it the chapter on sustainability, the planned human rights clause or the official impact assessment.

Nor are the legal prerequisites in place for credibly enforcing environmental and human rights due diligence obligations in international value chains. Until the EU adopts legislation on human rights and environmental diligence, a key basis for regulating its foreign trade will be missing. This is because the companies that carry out the trade can exploit this regulatory loophole to avoid meeting minimum social-ecological standards.

In this respect, the planned EU-Mercosur Agreement once again underscores the great urgency of a fundamental reform of EU trade policy and other areas. For this reason, some elements of such a reform will be discussed in the following.

- ▶ There must be a fundamental consensus that the existing trade relations which the EU maintains with many countries around the world are no longer sustainable. This is because the continuation comes with the risk of perilous changes to the earth's climate and a continued disregard for fundamental human rights.
- ▶ In recognising the lack of sustainability of EU trade relations, the privileged instrument of EU trade policy loses its legitimacy: negotiating com-

prehensive free trade agreements that perpetuate and exacerbate the status quo instead of transforming it in a sustainable direction.

- ▶ The first step of a necessary reform would be to review existing trade relations. In which countries does a growing exchange of goods, investments and services increase the risks for human beings and nature? Which trade rules pose a threat to the necessary social-ecological transformation in the EU and its partners? And what alternative trading rules are needed in order to drive such a transformation?
- ▶ Even the analysis of existing trade relations must be a participatory process, involving civil society and the parliaments of the EU and the respective partner countries.
- ▶ Afterwards, an equally inclusive discussion is needed to determine the most appropriate instruments for transforming those trade relations identified as being particularly precarious. One such instrument is to create the legal conditions for enforcing socially and ecologically responsible trade relations, including supply chain legislation. In selecting the appropriate instruments, sectoral agreements with verifiable sustainability objectives must take precedence over comprehensive trade agreements.
- ▶ Another instrument is to adopt sustainability criteria for goods that have a particularly high impact on forest conservation (so-called FERC or “forest and ecosystem risk commodities”, such as soya, beef and iron ore). In October 2019, nine NGOs called on the EU to adopt a regulation requiring companies to comply with their obligation to conduct due diligence for forest protection throughout the entire supply chain of such high-risk goods.¹¹⁸
- ▶ Whether or not the parties should start negotiating more comprehensive trade agreements can only be decided once participatory social, environmental and human rights impact assessments have been carried out. The negotiating mandates must reflect the results of these impact assessments. They ought to define the priorities laid down with regard to human rights and environmental protection in the agreements to be negotiated.

- ▶ Entering into trade negotiations must be conditional upon the ratification and verifiable implementation of multilateral environmental agreements (including the Paris Agreement on Climate Change), international human rights agreements and the conventions on the core labour standards set by the ILO and on indigenous rights.
- ▶ The trade agreements must include more effective human rights clauses, supplemented by effective monitoring and complaints bodies. Furthermore, it should be possible to suspend preferences in the event of an infringement, and a review clause should allow agreements to be amended after they have entered into force. The model clause developed by Lorand Bartels for embedding the protection of human rights protection in EU trade agreements can provide helpful guidance.¹¹⁹
- ▶ The chapters on sustainability must be put on an equal footing with the other parts of the trade agreements and provided with options for imposing sanctions. They should also be supplemented by binding rules on corporate responsibility along the supply chain. These chapters also need monitoring and complaints mechanisms within civil society, which must be able to draw on sufficient financial resources. In addition, rules for sustainability must be bindingly incorporated in all other chapters of the trade agreements.
- ▶ On top of this, Austria, Germany and the other EU member states should adopt supply chain legislation for which the “Initiative Lieferkettengesetz” (Supply Chain Law Initiative), that is supported by 99 organisations within civil society in Germany, has published legal requirements.¹²⁰ The EU should also enact a regulation imposing human rights and environmental due diligence obligations on companies.
- ▶ A responsible trade policy must aim to ensure that pesticides that are not approved in the EU for environmental or health reasons are not, as a matter of principle, exported to third countries.¹²¹ ◀



Appendix

TABLE 1

Pesticides (commercial products) by Bayer and BASF approved in Brazil (2020)

Source: Ulrike Bickel: Pesticide approvals in Brazil (& Argentina), February 2020 (research for Greenpeace)

Company	Number of commercial products	Highly hazardous pesticides according to PAN List of HHPs (3/2019)	Banned / not approved in the EU	On the Greenpeace Pesticide Blacklist (2016)
BASF	113	71	57	17
Bayer ^A	124	78	37	80

Sources

Column 2: <https://www.agrolink.com.br/agrolinkfito/produto/lista/> (1919 commercial products in total)

Column 3: http://pan-international.org/wp-content/uploads/PAN_HHP_List.pdf

Column 4: <https://ec.europa.eu/food/plant/pesticides/eu-pesticides-database/public/?event=activesubstance.selectionlanguage=EN>

Column 5: https://www.greenpeace.de/sites/www.greenpeace.de/files/publications/20160727_schwarze_liste_pestizide_greenpeace_final.pdf

A Bayer data also includes Monsanto-Brazil. 24 of the 124 Bayer pesticides come from Monsanto-Brazil and all 24 belong to the group of highly hazardous pesticides.



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This publication was produced with the financial support of the European Union. Its contents are the sole responsibility of the author and the contracting organisations and do not necessarily reflect the views of the European Union.



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