

# HAPING GLOBAL TRADE NORMS: THE EU-MERCOSUR AGREEMENT AND THE EU'S ROLE IN THE INTERNATIONAL ORDER

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## **ABSTRACT**

*This paper examines the EU-Mercosur Association Agreement as a critical test of the Union's capacity to project normative influence through trade while preserving strategic interests. It reconstructs two decades of negotiations, compares the final text with CETA (EU-Canada) and the EPA (EU-Japan), and assesses whether the 2024 revisions convert aspirational clauses on sustainability, labour rights and climate action into justiciable obligations. A qualitative analysis of topic exposes an asymmetry: extensive tariff liberalisation and regulatory gains coexist with fragile enforcement mechanisms and the complex ratification requirements of a mixed agreement. The revised annex designates the Paris Agreement and anti-deforestation commitments as "essential elements", yet their effectiveness depends on administrative capacity, participatory monitoring and an untested rebalancing procedure. The paper concludes that the Agreement's implementation will reveal whether the EU can reconcile market power with normative credibility amid intensifying geo-economic competition in Latin America and beyond today.*

**Keywords:** EU-Mercosur, mixed agreement, trade, sustainability, strategic autonomy

## **1. INTRODUCTION**

Trade agreements have moved well beyond mere tariff reductions or market access. They now function as strategic frameworks through which States and regional blocs project not only their economic clout but also their values.<sup>1</sup> The European Union (EU), arguably more than any other global actor, has sought to combine these roles. By embedding environmental, labour, and human rights standards

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<sup>1</sup> Vid., Blanc Altemir, A. (ed.), *Trade relations of the European Union after the pandemic and the Russian invasion of Ukraine*, Aranzadi, Navarra, 2023.

into its trade agreements, the EU aspires to be a “normative power,”<sup>2</sup> though it simultaneously depends on trade to support growth, employment, and strategic autonomy. In particular, the Commission has identified trade as a fundamental driver of competitiveness and job creation, insisting on the need for diversified, rules-based partnerships in an increasingly volatile global order.<sup>3</sup>

Yet, as Siles-Brügge contends, the EU’s trade agenda is neither neutral nor monolithic; it is shaped by tensions between economic liberalism and regulatory ambition.<sup>4</sup> Similarly, Bailey highlights the “quiet influence” of diffuse interests -such as environmental NGOs and consumer associations- that challenge purely top-down, business-driven approaches to trade policy and amplify sustainability concerns.<sup>5</sup> This duality is visible in the EU-Mercosur Association Agreement (hereinafter, EU-Mercosur Agreement), which was negotiated over two decades and reached political conclusion in December 2024.<sup>6</sup> It promises significant economic opportunities, including the potential liberalisation of up to 90% of trade flows between both regions, but also raises questions about the enforceability of its sustainability provisions, particularly its commitments on deforestation and climate action. While the updated 2024 text incorporates the Paris Agreement as an “essential element”, thereby allowing for suspensions if a party reneges on climate obligations, critics and civil society organisations remain concerned about whether the agreement’s laudable goals will translate into robust implementation.

Against this backdrop, this paper examines the EU-Mercosur Agreement<sup>7</sup> as a crucial test of the Union’s self-proclaimed capacity to shape global trade rules while defending its regulatory and strategic interests.<sup>8</sup> It explores whether the Agreement’s legal structure reflects genuine normative commitments, assesses the sufficiency of its enforcement provisions, and considers how it might affect the EU’s

<sup>2</sup> Manners, I., *Normative Power Europe: A Contradiction in Terms?*, Journal of Common Market Studies, Vol. 40, No. 2, 2002, p. 252.

<sup>3</sup> European Commission, Trade, Growth and Jobs: Commission Contribution to the European Council (COM(2013) 22 final, [2013], p. 3-6.

<sup>4</sup> *Vid.*, Siles-Brügge, G., *Constructing European Union Trade Policy: A Global Idea*, Palgrave Macmillan, 2014.

<sup>5</sup> *Vid.*, Bailey, M., *Quiet Influence: The Representation of Diffuse Interests on Trade Policy, 1983–94*, Legislative Studies Quarterly, Vol. 26, No. 1, 2001, pp. 45-80.

<sup>6</sup> European Commission, *EU and Mercosur reach political agreement on groundbreaking partnership*, 2024, [[https://ec.europa.eu/commission/presscorner/detail/en/ip\\_24\\_6244](https://ec.europa.eu/commission/presscorner/detail/en/ip_24_6244)], Accessed 1 April 2025.

<sup>7</sup> European Commission, EU-Mercosur: text of agreement, 2024, [[https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/mercosur/eu-mercosur-agreement/text-agreement\\_en](https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/mercosur/eu-mercosur-agreement/text-agreement_en)], Accessed 1 April 2025.

<sup>8</sup> *Vid.*, Poletti, A.; Sicurelli, D., *The Political Economy of Normative Trade Power Europe*, Palgrave Macmillan, 2018.

credibility as a values-driven actor. Methodologically, the analysis is grounded in qualitative legal research, focusing on the main treaty texts, institutional documents, and secondary literature in EU external relations law. To gauge whether the EU-Mercosur deal aligns with or diverges from previous practice, the paper also draws on comparative insights from the Comprehensive Economic and Trade Agreement (CETA) with Canada and the Economic Partnership Agreement (EPA) with Japan, both of which contain trade and sustainable development (TSD) chapters with varying degrees of enforceability.

Ultimately, the study addresses the tensions between rhetoric and *realpolitik* in the EU's external trade policy: Can the Union simultaneously uphold high sustainability standards and secure a competitive foothold in Latin America, especially in light of growing Chinese and American influence? In order to answer it, the paper is structured as follows: Section 2 outlines the legal and political evolution of the EU-Mercosur negotiations; Section 3 discusses the core trade commitments; Section 4 analyses the sustainability chapter and its normative ambitions; Section 5 examines the challenges of ratification and the broader geopolitical context; and Section 6 offers concluding reflections on the EU's capacity to reconcile economic interests with principled governance in shaping the future of global trade.

## 2. LEGAL AND POLITICAL EVOLUTION OF THE EU-MERCOSUR AGREEMENT

The EU-Mercosur Agreement is the product of over two decades of political ambition, regional dynamics, and institutional evolution.<sup>9</sup> While formal negotiations were launched in 1999, their diplomatic and legal foundations were laid several years earlier with the 1995 EU-Mercosur Framework Cooperation Agreement.<sup>10</sup> This instrument reflected a shared vision for interregional collaboration based on economic cooperation, political dialogue, and gradual trade liberalisation aligned with WTO principles. It also exemplified the EU's strategic use of interregionalism as a tool of external governance in the post-Cold War order.<sup>11</sup>

Mercosur, created in 1991 by the Treaty of Asunción<sup>12</sup>, drew inspiration from the European integration model, albeit without supranational authority. Despite

<sup>9</sup> Haboba, S. E., *et al.*, *Hacia el acuerdo de asociación birregional Mercosur-UE. Proceso de negociación y factores condicionantes*, Revista Electrónica Iberoamericana, Vol. 12, No. 1, 2018, p. 122.

<sup>10</sup> EU-Mercosur Framework Cooperation Agreement [1995], OJ L 112/3.

<sup>11</sup> Torres Jarrín, M.; Daza Aramayo, L. G., *EU-MERCOSUR Interregionalism: Diplomatic and Trade Relations*, Springer, 2023, pp. 11-14.

<sup>12</sup> Mercosur (*Southern Common Market*): composed of Brazil, Argentina, Uruguay and Paraguay; Bolivia is in the process of accession, while Venezuela has been suspended since 2016 for failing to com-

ambitious goals, the bloc has often been described as an “incomplete customs union” due to persistent tariff barriers, regulatory fragmentation, and divergent national interests.<sup>13</sup> Nevertheless, it has remained a significant partner for the EU -both politically and commercially- with over 60,000 European companies active in the region.<sup>14</sup>

The negotiation process has unfolded in four main phases.<sup>15</sup> The first (2000-2004) began with optimism but quickly stalled amid dissatisfaction over the EU’s limited offer on agriculture and the rise of left-leaning governments in South America that were less receptive to liberal trade agendas. The second phase (2005-2009) was marked by a complete impasse. Mercosur criticised what it viewed as an unbalanced proposal favouring EU industrial exports, while external factors -most notably the collapse of the WTO Doha Round- undermined the broader multilateral context. A third phase (2010-2015) saw cautious attempts to revive negotiations following the EU-CELAC summit in Madrid. However, internal crises on both sides constrained progress. The EU was contending with the Eurozone debt crisis, while Mercosur faced instability in Paraguay, institutional uncertainty

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ply with democratic obligations under the Ushuaia Protocol. Treaty Establishing a Common Market between the Argentine Republic, the Federal Republic of Brazil, the Republic of Paraguay and the Eastern Republic of Uruguay (*Treaty of Asunción*), signed on 26 March 1991, entered into force on 29 November 1991,

[<https://www.mercosur.int/documento/tratado-asuncion-constitucion-mercado-comun/>], Accessed 5 April 2025.

<sup>13</sup> Ortiz-Hernández, E., *Acuerdo UE–Mercosur más allá de la dimensión comercial ¿una ventana de oportunidad?*, in Díaz Galán, E. (dir.), *La Unión Europea como actor global: desafíos políticos, jurídicos y de seguridad*, Ediciones Olejnik, 2024, pp. 278-302; Caichioloü, C.R., *The Mercosur experience and theories of regional integration*, Contexto Internacional, Vol. 39, No. 1, January/April 2017, pp. 117-134.

<sup>14</sup> European Commission, Press statement by President von der Leyen on the occasion of the Mercosur leaders’ meeting, 2024, [[https://ec.europa.eu/commission/presscorner/detail/da/statement\\_24\\_6261](https://ec.europa.eu/commission/presscorner/detail/da/statement_24_6261)]. Accessed 5 April 2025.

<sup>15</sup> Concerning the phase of the negotiations, *Vid.*, Aldecoa Luzárraga, F., *El acuerdo entre la Unión Europea y el Mercosur en el marco de la intensificación de relaciones entre Europa y América Latina*, Revista de Instituciones Europeas, Vol. 22, No. 3, 1995, pp. 761-792; Blanc Altemir, A., *¿Hacia un nuevo paradigma de los Acuerdos de Asociación de la Unión Europea? La negociación del nuevo acuerdo con el Mercosur*, Anuario Español de Derecho Internacional, Vol. 34, 2018, pp. 921-968; Thudium, G.; Geiger, L.M. Castilo, M.; Sapper, S., *Décadas en proceso: el Acuerdo UE-Mercosur*, Revista de la Secretaría del Tribunal Permanente de Revisión, No. 17, March 2021, pp. 220-233; Cienfuegos Mateo, M., *La anhelada asociación euromercosureña tras quince años de negociaciones*, Revista CIDOB d’Afers Internacionals, No. 112, 2016, pp. 225-253; Coppelli Ortiz, G., *Acuerdos de la Unión Europea con Chile y Mercosur*, in: Blanc Altemir, A. (dir.), *Las relaciones comerciales de la Unión Europea con el resto del mundo: un análisis desde la postpandemia y la agresión rusa a Ucrania*, Pamplona, Aranzadi, 2023, pp. 375-389; Accioly, E., *Timeline - Acordo Mercosul-UE*, in Molina del Pozo Martín, P. C. (coord.), *Derecho de la Unión Europea e integración regional: liber amicorum al profesor Dr. Carlos Francisco Molina del Pozo*, Valencia, Tirant lo Blanch, 2020, pp. 1029-1042; Bizzozero Revelez, L., *Negociaciones Mercosur-Unión Europea*, Cuadernos de Integración Europea, No. 5, 2006, pp. 10-12.

around Venezuela's membership, and political shifts in Brazil and Argentina. As Malamud notes, these dynamics revealed not only the challenges of asymmetry in interregional integration but also the deep fragmentation within Mercosur itself.<sup>16</sup> The fourth and most decisive phase (2016-2019) was driven by political change in Argentina and Brazil. Former Presidents Macri and Temer, and later Bolsonaro, favoured a return to global markets and renewed the push for trade liberalisation. Although President Bolsonaro initially expressed scepticism towards multilateralism, his administration ultimately supported concluding the agreement with the EU. In June 2019, after intensive rounds of negotiation, the parties announced the agreement in principle.<sup>17</sup> This was followed by further talks that led to a political agreement formally concluded on 6 December 2024. This diplomatic milestone was seen as a powerful signal of commitment to rules-based trade in an increasingly protectionist global environment.<sup>18</sup>

The agreement was negotiated under the "single undertaking" principle, meaning all chapters formed an indivisible package requiring consensus across the board.<sup>19</sup> The resulting instrument is structured around three pillars: political dialogue, cooperation, and trade. The trade pillar, which is the most detailed and operationally significant, addresses tariff reduction, services, procurement, intellectual property rights, geographical indications, and sustainable development.<sup>20</sup>

Legally, the agreement qualifies as a mixed agreement, combining areas under exclusive EU competence (such as trade policy) with areas of shared or national competence (such as cultural cooperation and environmental protection).<sup>21</sup> As a result, it must be ratified not only by the European Parliament and the Council, but also by the parliaments of all Member States: a requirement that introduces considerable political complexity.<sup>22</sup> Moreover, as a mixed agreement, it may be subject to scrutiny before national constitutional courts, potentially challeng-

<sup>16</sup> Malamud, A., *Assessing the Political Dialogue and Cooperation Pillar of the EU–Mercosur Association Agreement*, European Parliament, 2023, p. 6.

<sup>17</sup> European Commission, *EU–Mercosur Trade Agreement: Text of the Agreement in Principle*, 2019, [[https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/mercosur/eu-mercosur-agreement/documents\\_en](https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/mercosur/eu-mercosur-agreement/documents_en)], Accessed 5 April 2025.

<sup>18</sup> Malamud, C.; Steinberg, F., *El acuerdo UE - Mercosur: ¿quién gana, quién pierde y qué significa el acuerdo?*, Documento ARI 78/2019 - Real Instituto Elcano, July 2019, p. 2.

<sup>19</sup> Blanc Altemir, A., *op. cit.*, note 15, p. 922.

<sup>20</sup> Hagemeyer, J., *et al.*, *Trade Aspects of the EU–Mercosur Association Agreement*, European Parliament, DG Internal Policies, 2020, pp. 5–8.

<sup>21</sup> Articles 3 and 4 TFEU (Lisbon).

<sup>22</sup> Cremona, M. (ed.), *EU Foreign Relations Law: Constitutional Fundamentals*, Hart Publishing, 2008, pp. 89–93.

ing the legal validity of certain sustainability or regulatory provisions if they are deemed to impinge on Member States' exclusive competences.

In response to these challenges, the European Commission has considered separating the trade pillar -which falls under exclusive EU competence- from the rest of the agreement. Such a move would allow for its provisional application following approval by the European Parliament and the Council, thus bypassing national ratifications and accelerating implementation.<sup>23</sup>

In short, the EU-Mercosur Association Agreement reflects both longstanding ambitions for closer bi-regional relations and the recurring political and legal hurdles that have shaped its trajectory. These legal-institutional foundations set the stage for examining the agreement's substantive commitments, particularly its trade and regulatory provisions, which are analysed in the following section.

### **3. TRADE COMMITMENTS AND REGULATORY PROVISIONS**

The trade pillar of the EU-Mercosur Agreement constitutes one of the most legally ambitious and politically contested components of the interregional partnership. Its structure encompasses a comprehensive legal framework for reciprocal liberalisation, institutionalised regulatory dialogue, and access to key sectors, advancing the EU's broader strategy of deploying trade agreements as vectors of external regulatory influence.

#### **3.1. Tariff liberalisation and asymmetric commitments**

The agreement foresees the progressive elimination of tariffs on over 90% of bilateral trade flow, with 92% of Mercosur exports and 91% of EU exports becoming tariff-free once fully implemented.<sup>24</sup> These liberalisation schedules -spread over transition periods of up to 15 years- are outlined in detailed annexes and form an integral part of the treaty's legal obligations.<sup>25</sup> While both parties benefit from improved market access, the design reveals a deliberate asymmetry in sectoral priorities. In the agricultural domain, the EU grants tariff-rate quotas for politically sensitive products: 99,000 tonnes of beef at 7.5% duty, 180,000 tonnes of poul-

<sup>23</sup> European Parliamentary Research Service, *Ratification Scenarios for the EU-Mercosur Agreement*, 20 December 2024, [<https://epthinktank.eu/2024/12/20/ratification-scenarios-for-the-eu%E2%80%91mercursosur-agreement/>], Accessed 5 April 2025.

<sup>24</sup> Bank of Spain, *Against the tide: the EU-Mercosur trade deal*, 2025, [<https://www.bde.es/wbe/en/noticias-eventos/blog/a-contracorriente-el-acuerdo-comercial-union-eu-ropa-mercursosur.html>], Accessed 5 April 2025.

<sup>25</sup> Trade in Goods, EU-Mercosur Agreement (consolidated text 2024), art. 2 and Annex I.

try, 180,000 tonnes of sugar, and 650,000 tonnes of ethanol, differentiated by end use.<sup>26</sup> These quotas were subject to extensive negotiation, particularly with regard to beef and ethanol.<sup>27</sup> While these concessions are significant, they are accompanied by regulatory safeguards and phased implementation mechanism<sup>28</sup>.

In return, Mercosur commits to gradually dismantling of tariffs on EU exports in key industrial sectors, including vehicles, pharmaceuticals, chemicals and machinery. For instance, passenger car tariffs will be eliminated over a 15-year period, beginning with a 50,000-unit quota at reduced duties.<sup>29</sup> Analysts have described this as a “managed asymmetry,” whereby the EU retains defensive positions in agriculture while securing offensive gains in high-value industrial exports.<sup>30</sup> Mercosur, conversely, prioritises agri-food liberalisation while cautiously opening its industrial base.<sup>31</sup> This asymmetry reflects traditional North-South trade patterns and mirrors the economic profiles of both blocs.<sup>32</sup> Additionally, the agreement includes provisions to modernise customs procedures through risk-based inspections, digitalisation tools, and cooperation on border facilitation standards exceeding WTO baselines.

### 3.2. Services liberalisation and public procurement

The EU-Mercosur Agreement’s chapter on services adopts a negative list approach, liberalising all sectors except those explicitly excluded.<sup>33</sup> The chapter applies to all four modes of supply defined under the GATS framework and covers key sectors including financial services, telecommunications, maritime transport, and professional services.<sup>34</sup>

Both Parties reaffirm the right to regulate in pursuit of legitimate public policy objectives, and the agreement explicitly safeguards services supplied in the exercise

<sup>26</sup> European Commission, *Questions and Answers: EU–Mercosur Trade Agreement*, 2024, [https://policy.trade.ec.europa.eu/eu-mercrosur-agreement\_en], Accessed 5 April 2025.

<sup>27</sup> Center for Strategic and International Studies, *What Are the Implications of the EU–Mercosur Free Trade Agreement?*, 2024, [https://www.csis.org/analysis/what-are-implications-eu-mercrosur-free-trade-agreement], Accessed 5 April 2025.

<sup>28</sup> Hagemeyer et al., *op. cit.*, note 20, pp. 5-9.

<sup>29</sup> European Commission, *op. cit.*, note 26.

<sup>30</sup> Torres Jarrín et al., *op. cit.*, note 11, pp. 122-124.

<sup>31</sup> *Ibid.*, pp. 133-135.

<sup>32</sup> Pose-Ferraro, N., *The political economy of industry organizations and Mercosur’s North-South trade negotiations: the cases of Brazil and Argentina*, Palgrave Macmillan, 2023, pp. 113-116.

<sup>33</sup> EU-Mercosur Agreement, *Chapter on Services*, Art. 1.

<sup>34</sup> *Ibid.*, Art. 1.8(a)–(d).

of governmental authority, including public health, education, and social security.<sup>35</sup> These exclusions align with the EU's approach in previous free trade areas and ensure that services provided in a non-commercial or non-competitive manner are not subject to liberalisation disciplines.<sup>36</sup> The chapter enhances legal certainty through provisions on national treatment, market access, and transparency, while maintaining general exceptions and carve-outs for sensitive sectors.<sup>37</sup> This legal architecture facilitates access for foreign service providers while preserving domestic regulatory space.

The government procurement chapter of the agreement marks a significant development for Mercosur, as it opens public tenders at the federal level to EU suppliers, under conditions of non-discrimination and transparency.<sup>38</sup> Although the level of access is not as comprehensive as in CETA or the World Trade Organisation (WTO) Government Procurement Agreement, it represents a notable shift toward regulatory convergence and institutional alignment. For the Union, this chapter serves not only commercial objectives but also supports its strategy of promoting good governance, accountability, and legal certainty in partner countries.

### 3.3. Intellectual property and regulatory alignment

The intellectual property chapter establishes a comprehensive and Trade-Related Aspects of Intellectual Property Rights (TRIPS)-consistent framework, covering copyright, trademarks, patents, geographical indications (GIs), industrial designs, trade secrets, and enforcement procedures.<sup>39</sup> While the chapter does not create supranational enforcement powers, it introduces TRIPS-plus standards, reinforcing the EU's objective of exporting its internal regulatory model through external agreements.<sup>40</sup>

A central component of the chapter is the mutual recognition and legal protection of geographical indications. The EU secures protection for 355 GIs, while recognising 220 from Mercosur.<sup>41</sup> These protections include safeguards such as the prohibition of misleading labels (e.g. "style," "type," or "imitation") and transitional clauses for prior users or generic terms, particularly relevant for local producers.<sup>42</sup>

<sup>35</sup> *Ibid.*, Arts. 1.4 and 1.7.

<sup>36</sup> European Commission, *op. cit.*, note 26.

<sup>37</sup> EU-Mercosur Agreement, *Chapter on Services*, Arts. 3-5.

<sup>38</sup> EU-Mercosur Agreement, *Chapter on Government Procurement*, Arts. GP.3-GP.6.

<sup>39</sup> EU-Mercosur Association Agreement, *Intellectual Property Chapter*, Arts. X.1-X.3.

<sup>40</sup> European Commission, *op. cit.*, note 26.

<sup>41</sup> *Ibid.*

<sup>42</sup> EU-Mercosur Agreement, Art. X.35(1)(e)-(f), X.36 and Annex X-B (list of GIs).



While designed to protect commercial reputation and ensure fair competition, they have also raised concerns in Mercosur about market access for traditional denominations.<sup>43</sup>

The chapter also addresses judicial and administrative enforcement, outlining civil and border procedures for IP rights violations.<sup>44</sup> These include access to injunctions, damages, destruction of infringing goods, and border seizure of counterfeit merchandise.<sup>45</sup> The agreement aligns with the EU's broader "external governance" approach, by which the Union promotes its internal regulatory norms abroad via legally binding instruments.<sup>46</sup> Scholars have characterised this strategy as a form of rule export that combines economic interests with regulatory influence.<sup>47</sup>

In the area of technical barriers to trade (TBT), the agreement commits to WTO-plus provisions, including the mutual recognition of conformity assessment procedures, institutionalised regulatory dialogue, and promotion of regulatory convergence in priority sectors.<sup>48</sup> These commitments are particularly beneficial for small and medium-sized enterprises, as they reduce compliance costs and simplify access to markets.<sup>49</sup> They also complement the EU's geopolitical strategy of shaping global regulatory environments in line with its internal standards.

### 3.4. Digital trade and phytosanitary measures cooperation

The EU-Mercosur Association Agreement does not include a dedicated digital trade chapter. Instead, digital matters are addressed only indirectly and minimally, through general commitments consistent with WTO practice, such as the prohibition of customs duties on electronic transmissions and non-discriminatory treatment of digital products. However, the agreement does not contain binding provisions on cross-border data flows, data localisation requirements, or privacy protection, despite the EU's strong regulatory position on these issues under the General Data Protection Regulation.<sup>50</sup> This limited scope has prompted criticism

<sup>43</sup> Bernal-Meza, R.; Cifuentes, M., *Las indicaciones geográficas en el Acuerdo de Asociación entre MERCOSUR y la Unión Europea: el espíritu de la integración en cuestionamiento*, Brazilian Journal of International Relations, Vol. 10, No. 1, 2021, pp. 20-22.

<sup>44</sup> EU-Mercosur Agreement, Arts. X.44–X.58.

<sup>45</sup> *Ibid.*, Art. X.49 (civil remedies), X.57 (border enforcement).

<sup>46</sup> *Vid.*, Lavenex, S., *The power of functionalist extension: how EU rules travel*, *Journal of European Public Policy*, Vol. 21, No. 6, 2014, pp. 938-957.

<sup>47</sup> Torres Jarrín et al., *op. cit.*, note 11, pp. p. 135.

<sup>48</sup> EU-Mercosur Agreement, *TBT Chapter*, Arts. TBT.4–TBT.8.

<sup>49</sup> European Commission, *op. cit.*, note 26.

<sup>50</sup> European Parliament and the Council Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) [2016] OJ L119/1.

from analysts and policymakers, who consider it a missed opportunity to advance the EU's digital normative agenda in line with more recent agreements, such as those with Japan and Chile.<sup>51</sup> According to the European Parliamentary Research Service (EPRS), this omission reflects the fact that the EU's negotiating mandate, issued in 1999 and never updated, predates the Lisbon Treaty and the EU's current digital regulatory framework.<sup>52</sup> As such, the Agreement adopts a minimum baseline approach, offering little in terms of future-oriented digital governance.

In contrast, the chapter on sanitary and phytosanitary (SPS) measures offers a more institutionalised and technically robust framework for cooperation. It seeks to facilitate trade while protecting public, animal and plant health, drawing on principles of science-based risk assessment, equivalence, and recognition of pest- and disease-free zones.<sup>53</sup> It also affirms commitments to international standards, including those of the Codex Alimentarius, the World Organisation for Animal Health, and the International Plant Protection Convention.<sup>54</sup>

The chapter contains operational provisions on approval of establishments, import checks, and pre-listing, and it promotes collaboration in areas such as food safety, technical assistance, and antimicrobial resistance.<sup>55</sup> These measures reflect the EU's external SPS strategy and align with the European Parliament's "One Health" approach, which connects human, animal and environmental health.<sup>56</sup> Nevertheless, the SPS chapter does not enshrine the precautionary principle, a core element of EU environmental law as articulated in Article 191(2) TFEU. While the TSD chapter includes a general reference to precaution, that chapter is not subject to enforceable dispute settlement, limiting its legal effect.<sup>57</sup> The EPRS notes that this omission undermines the EU's ability to justify restrictive SPS measures based on scientific uncertainty, potentially weakening its capacity to uphold high health and safety standards without risking accusations of disguised protectionism.<sup>58</sup> As Torres Jarrín and Daza Aramayo observe, this reflects an un-

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<sup>51</sup> Patrocínio, J.C.P., *Electronic commerce and digital services: from international concepts and normative development in the European Bloc to prospects for the European-Mercosur Agreement*, Editora Dialética, Belo Horizonte, 2023, pp. 88–91.

<sup>52</sup> European Parliamentary Research Service (EPRS), *EU-Mercosur Partnership Agreement: Trade Pillar*, PE 769.537, March 2025, p. 5.

<sup>53</sup> EU-Mercosur Agreement, *Sanitary and Phytosanitary Measures Chapter*, Arts. 1–5.

<sup>54</sup> *Ibid.*, Art. 3.

<sup>55</sup> *Ibid.*, Arts. 6–10, 15–17.

<sup>56</sup> European Parliament, *Resolution on the "One Health" approach*, P9\_TA(2020)0157, 17 April 2020.

<sup>57</sup> EU-Mercosur Agreement, *Trade and Sustainable Development Chapter*, Annex.

<sup>58</sup> EPRS, *EU-Mercosur Partnership Agreement: Trade Pillar*, PE 769.537, March 2025, p. 10.

derlying regulatory asymmetry in the agreement's institutional architecture.<sup>59</sup> The agreement establishes a Joint SPS Subcommittee to oversee implementation, encourage dialogue, and address technical barriers.<sup>60</sup> While this supports regulatory cooperation, it also raises concerns about democratic accountability, as much of the decision-making authority is delegated to a technocratic body with limited political oversight.

This contrast between the limited scope of the digital commitments and the relative legal sophistication of the SPS chapter highlights a broader normative asymmetry within the EU-Mercosur Agreement. While the SPS provisions reflect institutional ambition and technical detail -albeit with critical gaps such as the omission of the precautionary principle- the digital dimension remains underdeveloped, offering little beyond baseline WTO-level principles. Such divergence illustrates a recurring pattern in the Agreement: the EU succeeds in projecting its regulatory preferences in areas like food safety and animal health, but refrains from embedding its digital governance model where political sensitivities or outdated mandates prevail. This imbalance raises questions about the coherence, enforceability, and strategic consistency of the EU's external trade agenda. These tensions become even more evident in the TSD chapter, which aims to operationalise the EU's normative leadership on climate and labour standards but encounters limitations in legal enforceability. The next section turns to this critical dimension, where the agreement's ambition and credibility are most directly tested.

#### 4. SUSTAINABILITY AND NORMATIVE AMBITIONS

The sustainability chapter of the EU-Mercosur Agreement occupies a pivotal position in both the political debate and the normative self-perception of the EU. It is in this chapter that the Union's ambition to act as a normative power -that is, a global actor promoting environmental and labour standards through trade-faces its most acute tests of enforceability, legitimacy, and geopolitical balance. The original 2019 version of the TSD chapter was widely criticised for its limited legal effect, lack of binding commitments, and detachment from the agreement's core dispute settlement mechanisms.

The revised 2024 text, however, significantly upgrades this framework. It introduces a legally binding annex that gives treaty-level enforceability to several sustainability commitments, including obligations on deforestation, labour rights, and gender equality, as well as references to the Paris Agreement as an "essential el-

<sup>59</sup> Torres Jarrín et al., *op. cit.*, note 11, pp. 126-127.

<sup>60</sup> EU-Mercosur Agreement, *Sanitary and Phytosanitary Measures Chapter*, Art. 18.

ement” of the broader agreement.<sup>61</sup> These reforms emerged in response to internal pressure from EU Member States, civil society organisations, and the European Parliament, as well as external contestation from Mercosur stakeholders.<sup>62</sup> Yet, the new framework also raises fresh legal and political questions about coherence with EU law, proportionality, and the practical feasibility of enforcement in an inter-regional context.

#### 4.1. Labour and environmental commitments

The upgraded TSD chapter reaffirms the parties’ commitments to the International Labour Organisation Core Conventions and to multilateral environmental agreements, including the Paris Agreement, the Convention on Biological Diversity, and the United Nations Framework Convention on Climate Change.<sup>63</sup> It addresses a broad spectrum of sustainable development priorities, such as non-discrimination, corporate due diligence, labour inspections, and the sustainable management of forests and biodiversity.<sup>64</sup> Crucially, the 2024 legally binding annex grants enforceable status to several of these commitments.<sup>65</sup> Among the most significant innovations is the explicit and justiciable obligation to halt deforestation by 2030. This is the first time that such a commitment has been made subject to dispute settlement procedures in a bilateral EU agreement.<sup>66</sup> It also reinforces ILO obligations, particularly with regard to forced and child labour, and introduces dedicated provisions on women’s economic empowerment, the development of green supply chains, and the protection of Indigenous livelihoods.<sup>67</sup>

Despite these developments, academic commentators have raised concerns about the legal and normative consistency of the chapter. Krämer and Verheyen and Winter argue that the revised agreement fails to translate the EU’s environmental objectives into binding legal duties compatible with the Union’s broader climate obligations.<sup>68</sup> In particular, they highlight the weak integration of EU secondary

<sup>61</sup> European Commission, *The upgraded EU–Mercosur agreement: What is new compared to the 2019 agreement*, December 2024, pp. 2–3.

<sup>62</sup> *Ibid.*, p. 3.

<sup>63</sup> EU–Mercosur Agreement, *Trade and Sustainable Development Chapter*, Art. TSD.2; Annex 2024.

<sup>64</sup> European Commission, *Factsheet: Trade and Sustainable Development in the EU–Mercosur Agreement*, 2024.

<sup>65</sup> EU–Mercosur Agreement, *Annex to the Trade and Sustainable Development Chapter*, 2024, Section I.

<sup>66</sup> *Ibid.*, Section III, para. 2(c); see also *Dispute Settlement – Annexes*, 2024.

<sup>67</sup> EU–Mercosur Agreement, *Annex to the TSD Chapter*, Section IV.

<sup>68</sup> Krämer, L., *A lost opportunity? The environment and the EU–Mercosur Trade Agreement*, *Journal for European environmental and planning law*, Vol. 18, No. 1-2, 2021, pp. 143-163; Verheyen, R.; Winter,

legislation, including the European Climate Law and the Regulation on deforestation-free products.<sup>69</sup>

From a Mercosur perspective, the sustainability annex is sometimes perceived as a vehicle for regulatory imposition, especially in sectors like agriculture, land use, and extractive industries, where environmental clauses could constrain development autonomy. González and Cesar de Oliveira et al. warn that such conditionality risks reinforcing North-South asymmetries, locking Mercosur countries into low-value commodity exports while the EU retains regulatory control over high-value segments of global value chains.<sup>70</sup> The upgraded text does include provisions for technical assistance and cooperation, but these remain politically dependent and financially underdefined. As such, the chapter reflects the ambivalence of the EU's normative ambitions: it strengthens legal enforceability and institutional mechanisms, yet remains contested in both substantive content and practical application.

#### 4.2. Climate commitments and regulatory asymmetry

One of the most significant legal upgrades in the 2024 version of the agreement is the inclusion of the Paris Agreement as an “essential element”. This formulation, previously absent from the 2019 text, allows either party to suspend trade benefits if the other withdraws from or acts in bad faith towards the Paris Agreement's objectives.<sup>71</sup> The inclusion of this clause aligns the agreement with the EU's revised approach to conditionality and reflects increasing political pressure from both European institutions and Member States for enforceable environmental standards in external trade.<sup>72</sup>

This innovation provides a symbolically powerful mechanism, but its operational impact remains uncertain. Although suspension is legally permitted, it depends on a high threshold of evidence, and its application may risk politicisation. Moreover,

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G., The compatibility of the draft EU-Mercosur Free Trade Agreement with EU and International Climate Protection Law, *Journal of world trade*, Vol. 58, No. 6, 2024, pp. 963-988.

<sup>69</sup> European Parliament and the Council Regulation (EU) 2023/1115 on the making available on the Union market and the export from the Union of certain commodities and products associated with deforestation and forest degradation and repealing Regulation (EU) No 995/2010 [2023] OJ L150/206.

<sup>70</sup> González, G., *Sustainable development in the EU-Mercosur agreement*, *Latin American Journal European Studies*, Vol. 2, No1 2, 2022, pp. 145-171; Cesar de Oliveira, S.E M. et al., *The European Union-Mercosur Free Trade Agreement as a tool for environmentally sustainable land use governance*, *Environmental science & policy*, 2024, Vol. 161, pp. 1-12.

<sup>71</sup> EU-Mercosur Agreement, *Paris Agreement as an Essential Element*, 2024; *Annex to the Trade and Sustainable Development Chapter*, Section III.

<sup>72</sup> European Commission, *op. cit.*, note 61, p. 3.

from a Mercosur standpoint, this form of climate-based conditionality is viewed with deep scepticism. Several governments in the region, notably Brazil, have expressed concerns that such provisions may function as disguised trade restrictions, undermining sovereignty over domestic environmental regulation.<sup>73</sup>

These concerns have been intensified by the entry into force of Regulation (EU) 2023/1115 on deforestation-free supply chains, which prohibits the placing on the EU market of commodities such as beef, soy, cocoa and palm oil if linked to deforestation after 31 December 2020. Although this regulation is formally external to the agreement, its extraterritorial implications directly affect Mercosur's main exports. The 2024 annex attempts to mitigate this friction by including cooperation mechanisms to support traceability, capacity-building, and access to geospatial data.<sup>74</sup>

However, scholars such as Lehmen and Vidigal highlight that this regulatory asymmetry reveals a persistent strategic ambiguity in EU trade policy: while the EU affirms climate leadership rhetorically, it avoids binding bilateral emissions reduction targets or specific obligations on carbon pricing or methane control.<sup>75</sup> In contrast, Rudloff argues that the EU's unilateral sustainability regulations -such as the carbon border adjustment mechanism or the deforestation regulation- may undermine the cooperative spirit of bilateral trade and reinforce perceptions of regulatory imperialism, particularly in North-South relations.<sup>76</sup>

This asymmetry is also evident in Mercosur political discourse. Statements by Brazilian officials have criticised the selective use of environmental clauses to restrict agricultural exports, especially beef and soy, while the EU continues to subsidise its own agricultural sector and apply trade defence instruments that limit Mercosur competitiveness.<sup>77</sup> In this context, sustainability is often perceived not as a shared goal, but as a precondition for market access imposed unilaterally by the EU. Nonetheless, it would be misleading to portray Mercosur as a monolithic bloc of resistance. Civil society organisations -including environmental NGOs, Indigenous groups, and academic institutions in countries such as Brazil and Para-

<sup>73</sup> El País, *El ministro de Exteriores de Brasil: El acuerdo de Mercosur con la UE es importantísimo en un momento de amenazas de guerras comerciales*, 2025, [<https://elpais.com/internacional/2025-02-19/el-ministro-de-exteriores-de-brasil-el-acuerdo-de-mercursos-con-la-ue-es-importantisimo-en-un-momento-de-amenazas-de-guerras-comerciales.html>], Accessed 1 April 2025.

<sup>74</sup> *Annex to the TSD Chapter*, Section IV, paras. 5-7.

<sup>75</sup> Lehmen, A.,; Vidigal, G., *Trade and Environment in EU–Mercosur Relations: negotiating in the shadow of unilateralism*, *European foreign affairs review*, Vol. 30, No. 1, 2025, pp. 87-114.

<sup>76</sup> Rudloff, B., *The EU between sustainability unilateralism and bilateral trade agreements. Paths to better partnerships*, SWP, No. 5, March 2025, pp. 12–14.

<sup>77</sup> *Vid.*, Krämer, L., *op. cit.*, note 68.

guay- have mobilised in support of stronger sustainability safeguards.<sup>78</sup> For them, the agreement offers a platform to leverage external scrutiny in the face of weak domestic governance, and to promote accountability in land use, deforestation, and human rights.

### 4.3. Dispute settlement, dialogue and institutional architecture

The institutional design of the TSD chapter has undergone a substantial upgrade in the 2024 revision. While the original 2019 text was criticised for being legally toothless and detached from the core enforcement mechanisms of the Agreement, the revised version introduces a legally binding annex that elevates several sustainability obligations to the level of the core treaty.<sup>79</sup> Crucially, the revised framework allows for the activation of formal dispute resolution mechanisms through expert panels, the issuance of public recommendations, and -in cases of persistent non-compliance- the possibility of invoking “appropriate measures”.<sup>80</sup> Although the TSD chapter remains outside the general dispute settlement procedure under the main agreement, the annex’s language provides greater legal certainty by linking sustainability breaches to structured follow-up procedures.<sup>81</sup>

In line with this architecture, the agreement establishes a Committee on Trade and Sustainable Development, complemented by subcommittees, expert groups, and civil society dialogue fora. These bodies are tasked with overseeing implementation, reviewing progress, and facilitating transnational stakeholder engagement.<sup>82</sup> NGOs, trade unions, employer associations, and academic institutions are formally recognised as participants in the monitoring process, with rights to provide feedback, request clarifications, and publish shadow reports. However, the effectiveness of these mechanisms depends heavily on political will, institutional capacity, and resource availability on both sides. In the EU, civil society participation in TSD mechanisms is relatively well institutionalised, supported by the Domestic Advisory Groups and the European Economic and Social Committee. In contrast, Mercosur countries often face significant structural constraints, including limited

<sup>78</sup> *Vid.*, Cesar de Oliveira, S.E.M., *et al.*, *op. cit.*, note 70.

<sup>79</sup> EU-Mercosur Agreement, *Annex to the Trade and Sustainable Development Chapter*, Section I; see also *Dispute Settlement – Annexes*, 2024.

<sup>80</sup> *Ibid.*, Section III, paras. 3-6.

<sup>81</sup> EU-Mercosur Agreement, *Dispute Settlement Chapter*, Art. 4 and Annex; *European Commission, Fact-sheet: Trade and Sustainable Development in the EU-Mercosur Agreement*, 2024.

<sup>82</sup> EU-Mercosur Agreement, *TSD Chapter*, Art. TSD.13-TSD.15; *Annex*, Section V.

funding, weak administrative coordination, and low participation from non-state actors, particularly in rural and Indigenous communities.<sup>83</sup>

From a critical perspective, scholars warn that these institutions -while formally symmetrical- may become asymmetrical in practice. If the EU is able to mobilise legal, technical, and civil society resources to interpret and enforce sustainability standards, while Mercosur counterparts struggle to do so, the dialogue fora risk functioning as vehicles of EU regulatory projection rather than as platforms for genuine co-governance.<sup>84</sup> This concern is amplified by the fact that sustainability disputes are not subject to traditional sanctions, but rather to flexible instruments whose deterrent effect remains uncertain.<sup>85</sup> Yet, the institutional framework is not without promise. The inclusion of a review clause -allowing the agreement's sustainability commitments to be reassessed three years after entry into force- offers a potential safeguard for adaptation and recalibration.<sup>86</sup> If combined with adequate funding, inclusive participation, and independent monitoring, this structure could evolve into a meaningful tool for democratic accountability and regulatory convergence.

#### **4.4. Contestation, conditionality and the rebalancing of normative power**

The sustainability provisions of the EU-Mercosur Agreement lie at the heart of ongoing interregional tensions. On the European side, the revised 2024 framework -anchored in legally binding commitments on deforestation, labour standards, and climate obligations- has been presented as a landmark in value-based trade policy. However, within the EU itself, Member States such as France, Ireland, and Austria have continued to oppose the agreement's ratification, arguing that the chapter falls short of the EU's environmental and climate goals. These critiques are reinforced by civil society actors who view the agreement as insufficiently aligned with the EU's Green Deal and biodiversity strategies.

From the perspective of Mercosur governments, these demands are often perceived as a form of regulatory unilateralism.<sup>87</sup> Officials from Brazil and Argentina have warned that linking trade benefits to environmental conditions amounts to

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<sup>83</sup> Torres Jarrín et al., *op. cit.*, note 11, pp. 133-135.

<sup>84</sup> Rudloff, B., *op. cit.*, note 76, pp. 12-14.

<sup>85</sup> *Vid.*, Harrison, J.; Paulini, S., *Reinventing trade, environment and development interlinkages: lessons from the EU-Mercosur Association Agreement*, *Journal of international economic law*, Vol. 27, No. 4, 2025, pp. 723-740.

<sup>86</sup> EU-Mercosur Agreement, *Annex to the TSD Chapter*, Section VI, para. 2.

<sup>87</sup> Rudloff, B., *op. cit.*, note 76.



a redefinition of negotiated terms and a potential infringement on sovereignty.<sup>88</sup> This position has been reinforced by recent EU actions -particularly the adoption of Regulation (EU) 2023/1115 on deforestation-free products- which, while formally external to the Agreement, exert direct pressure on Mercosur's agricultural exports, especially beef and soy.

This asymmetry between regulatory power and economic exposure has led to accusations of conditional market access. Latin American scholars and negotiators argue that sustainability clauses may entrench a global division of labour: Mercosur countries remain suppliers of primary commodities, while the EU consolidates control over regulatory frameworks and high-value segments of trade. According to Rudloff, such strategic unilateralism threatens the legitimacy of bilateral cooperation and may foster resentment rather than convergence.<sup>89</sup> At the same time, civil society across Mercosur is not uniformly opposed to stricter sustainability provisions. Environmental NGOs, Indigenous communities, and progressive unions in Brazil, Paraguay, and Uruguay have expressed support for stronger safeguards, especially where national enforcement mechanisms are weak or absent.<sup>90</sup> These actors see the agreement as a lever for externalising accountability, improving transparency, and embedding sustainability standards into domestic legal systems.

To reconcile normative ambition with geopolitical legitimacy, the upgraded agreement introduces a rebalancing mechanism. Inspired by WTO non-violation complaints, this instrument allows either party to request compensation where regulatory changes -though legal- undermine the balance of concessions.<sup>91</sup> A panel must confirm the impairment before rebalancing measures (e.g., adjustments in concessions or other compensatory actions) are authorised. Importantly, the mechanism respects each party's right to regulate: no government is obliged to amend or repeal its laws. In principle, this approach offers a pragmatic compromise between flexibility and legal certainty. It acknowledges the reality of regulatory divergence in a multipolar world while providing a structured forum for managing disputes that fall outside the scope of formal violations. However, its effectiveness will depend on institutional balance, mutual trust, and transparency in implementation. Without political commitment and meaningful civil society involvement, it may remain a procedural buffer rather than a transformative tool.

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<sup>88</sup> El País, *op. cit.*, note 73.

<sup>89</sup> Rudloff, *op. cit.*, note 76, pp. 12-14.

<sup>90</sup> Torres Jarrín et al., *op. cit.*, note 11, pp. 126-127.

<sup>91</sup> EU-Mercosur Agreement, *Annex to the TSD Chapter*, Section V.

As Harrison and Paulini argue, a normative power must do more than codify principles -it must create enforceable, inclusive, and participatory frameworks that redistribute authority and empower marginalised voices.<sup>92</sup> For Mercosur, the true test of sustainability conditionality will not lie in the legal text but in the material consequences of implementation: Will the EU provide co-financing for forest protection? Will Mercosur governments invest in traceability, inspections, and civil oversight? Will smallholders and Indigenous communities be included in benefit-sharing mechanisms? In this light, the TSD chapter reflects both the ambitions and contradictions of the EU's external trade policy: it is normatively assertive, legally improved, yet still politically contested and structurally asymmetrical. Bridging this gap requires not only technical instruments -such as rebalancing and review clauses- but a deeper commitment to co-governance, transparency, and shared responsibility.

## 5. RATIFICATION CHALLENGES AND GEOPOLITICAL IMPLICATIONS

The ratification of the EU-Mercosur Association Agreement has proven to be a complex and politically fraught process. While the trade negotiations concluded in principle in 2019 and the legal scrubbing of the text was completed in December 2024, the agreement's final approval remains uncertain. This uncertainty is not merely procedural but reflects deeper institutional, legal, and normative tensions across both blocs. At the legal level, the agreement is classified as a mixed agreement, involving both EU and Member State competences. Under Articles 3 and 4 of the TFEU, trade policy is an exclusive competence of the Union, while areas such as environmental protection, labour rights, and cultural cooperation remain shared. As a result, the agreement requires ratification not only by the Council and the European Parliament under Article 218 TFEU, but also by the national parliaments of all 27 Member States. This renders the process vulnerable to vetoes at multiple levels, increasing the political sensitivity and legal exposure of the agreement.

Yet, the debate around the EU's role in global trade cannot be fully understood without considering conceptual frameworks such as "normative power Europe"<sup>93</sup>, "market power Europe"<sup>94</sup>, and the internal constraints arising from the EU's own

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<sup>92</sup> *Vid.*, Harrison; Paulini, *op. cit.*, note 85.

<sup>93</sup> Manners, *op. cit.*, note 2, pp. 235-258.

<sup>94</sup> Damro, *Market Power Europe*, *Journal of European Public Policy*, Vol. 19, No. 5, 2012, pp. 682-699.

political structures and treaties<sup>95</sup>. Manners' concept of "normative power Europe" highlights the EU's self-perception as a promoter of universal norms, while Damro's "market power Europe" underscores the Union's ability to influence through sheer economic weight. In practice, the EU-Mercosur deal illustrates how these two roles intersect, exposing tensions between rhetorical value promotion and strategic trade imperatives. These perspectives shed light on the inherent tension between the Union's aspirational identity as a guardian of sustainability standards and the pressures of realpolitik embedded in large-scale trade deals.

This institutional complexity is compounded by a strong wave of domestic political opposition in several Member States. France, Germany, Ireland, Austria, the Netherlands and Belgium have all expressed concerns regarding the environmental implications of the agreement, particularly with regard to deforestation in the Amazon and the initial lack of enforceable commitments under the TSD chapter. Although the 2024 annex introduces binding obligations on deforestation and social rights -enforceable through dedicated expert panels and follow-up procedures- the political feasibility of ratification remains contested, especially among those demanding stronger enforcement of the sustainability chapter. In Germany, while the federal government has shown cautious support for the agreement, significant opposition has emerged from the Green Party, civil society organisations, and regional parliaments. In particular, the Bundesrat passed a non-binding resolution expressing environmental and procedural concerns regarding the EU-Mercosur deal.<sup>96</sup> This has raised doubts about whether Germany's eventual ratification can be secured without further sustainability guarantees. Austria's parliament was among the first to formally oppose ratification, citing risks to both climate action and domestic agriculture.<sup>97</sup> France's position has been especially forceful: President Macron has repeatedly declared the agreement unratifiable in its current form, aligning with the recommendations of the Ambec Report commissioned by the French government.<sup>98</sup> The Belgian regional parliament of Wallonia, a historical actor in European trade resistance, has also threatened to block ratification,

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<sup>95</sup> Meunier, S.; Nicolaïdis, K., "The European Union as a conflicted trade power", *Journal of European Public Policy*, Vol. 13, No. 6, 2006, pp. 906–925.

<sup>96</sup> Bundesrat, *Entschließung des Bundesrates zur Ratifizierung des EU-Mercosur-Abkommens*, Drucksache 508/22, 2022, [[https://www.bundesrat.de/SharedDocs/drucksachen/2022/0501-0600/508-22\(B\).pdf](https://www.bundesrat.de/SharedDocs/drucksachen/2022/0501-0600/508-22(B).pdf)], Accessed 14 April 2025.

<sup>97</sup> The Guardian, Austria rejects EU-Mercosur trade deal over Amazon fires, 2019, [<https://www.theguardian.com/world/2019/sep/19/austria-rejects-eu-mercotur-trade-deal-over-amazon-fires>], Accessed 5 April 2025.

<sup>98</sup> Ambec, S., *Impact de l'accord UE–Mercosur sur le développement durable* (Gouvernement de France 2020), pp. 2-6.

echoing its role in the CETA debate.<sup>99</sup> These political dynamics reflect a broader unease with the asymmetries embedded in the Agreement, between market access and sustainability, between liberalisation and enforceability.

The European Parliament has played a particularly active role in scrutinising the agreement's normative coherence. In several resolutions adopted since 2020, the Parliament has warned that the agreement fails to meet the environmental and labour standards necessary for ratification under the EU's Green Deal and the commitments made under the Paris Agreement.<sup>100</sup> While the Parliament does not have a direct veto over Member State ratifications, its consent is required for the agreement's entry into force at EU level, and its symbolic weight is considerable. Civil society organisations, ranging from environmental NGOs and trade unions to consumer associations, have mobilised extensively against the agreement. Their critiques centre on the risk of carbon leakage, regulatory dilution, and democratic deficit in the implementation and monitoring phases.<sup>101</sup> These critiques gain additional weight when contrasted explicitly with prior EU trade agreements, notably the CETA with Canada and the EPA with Japan. Like the EU-Mercosur Agreement, CETA includes a TSD chapter that affirms commitments to environmental and labour standards. However, both CETA and the 2019 version of the EU-Mercosur Agreement relied primarily on soft enforcement tools: consultations and expert panels. In contrast, the revised 2024 annex to the EU-Mercosur Agreement introduces binding obligations and structured dispute resolution, placing it -at least on paper- beyond baseline set by CETA and the EU-Japan EPA.

In contrast, the EU-Japan EPA includes structured frameworks for civil society dialogue, monitoring, and review, which, despite also lacking sanctions, offer greater procedural transparency and participation.<sup>102</sup> The EU-Mercosur Agreement has adopted similar participatory structures, including subcommittees and civil society fora, but their effectiveness will depend on institutional capacity and balanced implementation across both regions.

Regarding dispute resolution, CETA introduced the Investment Court System as a transparent alternative to traditional investment dispute settlement mechanisms,

<sup>99</sup> *Vid.*, Van der Loo, G.; Pelkmans, J., *Does Wallonia's veto of CETA spell the beginning of the end of EU trade policy?*, CEPS Commentary, October 2016.

<sup>100</sup> European Parliament, *Resolution on the Implementation of the Common Commercial Policy*, (2020/2015(INI), 7 October 2020.

<sup>101</sup> Greenpeace EU, *Why the EU-Mercosur Deal Fails the Climate Test*, Brussels 2021.

<sup>102</sup> Suzuki, H., *The New Politics of Trade: EU-Japan*, *Journal of European Integration*, Vol. 41, No. 7, 2019, pp. 875-889.

intended to ensure impartiality and legal certainty in investment protection.<sup>103</sup> The EU-Mercosur Agreement, by contrast, does not currently contain an investor-state dispute settlement mechanism. Although it leaves open the possibility of a future protocol, the issue remains undefined, creating uncertainty over how potential investment conflicts will be handled.

Finally, lessons can be drawn from how CETA's "Joint Interpretative Instrument" clarified politically sensitive provisions without altering the treaty's text. A similar tool in the EU-Mercosur context could enhance ratification prospects especially when coupled with the new rebalancing mechanism, which offers a path to address perceived asymmetries without renegotiating the core text. Conversely, sectors of European industry-particularly chemical and agricultural exporters have welcomed the finalisation of negotiations, viewing the agreement as a valuable opportunity to expand access to Latin American markets.<sup>104</sup> This support illustrates the competing economic and normative priorities that have shaped the internal debate.

On the Mercosur side, ratification also presents structural challenges. While the legal procedure varies among Member States, the lack of supranational authority within Mercosur means that each national parliament must individually approve the agreement. This creates potential for divergence, delay, or even rejection-especially in politically volatile contexts such as Brazil and Argentina. Moreover, domestic opposition exists within Mercosur as well: agricultural cooperatives in Argentina have expressed scepticism about increased European competition, while indigenous movements and environmental groups in Brazil have denounced the absence of strong social and environmental guarantees.<sup>105</sup> Recent academic research has also highlighted how the agreement has been perceived within Brazil as an example of normative asymmetry and externally imposed conditionality. Tostes and Albuquerque argue that the EU's approach to sustainability and trade liberalisation has created both institutional tensions and political backlash among domestic actors in the South.<sup>106</sup>

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<sup>103</sup> Schill, S.W., *The European Union's Investment Court System: A Model for Reform?*, Columbia FDI Perspectives, No. 217, 2017.

<sup>104</sup> Frantzas, S., *Industry Welcomes Finalisation of EU-Mercosur Trade Negotiations*, Chemical Week, 2024 .

<sup>105</sup> Fundación Carolina, *Percepciones Sociales del Acuerdo UE-Mercosur en América Latina*, Documento de Trabajo No. 15, 2021.

<sup>106</sup> Tostes, A.P.; Albuquerque, M., *Unpacking the Impact of Mega-Regional Agreements: The EU-Mercosur Case*, *Third World Quarterly*, Vol. 45, No. 8, 2024, pp. 1418-1435.

Beyond these legal and political hurdles, the ratification process is also shaped by intensifying geopolitical tensions involving China and the United States. Following the reelection of Donald Trump in 2024, the U.S. has raised tariffs on a range of Chinese imports to 145%, prompting retaliatory measures from Beijing.<sup>107</sup> Analysts note that this renewed escalation has disrupted global supply chains and undermined confidence in multilateral frameworks. According to the Real Instituto Elcano, the EU must reinforce its industrial and technological resilience in sectors such as semiconductors and artificial intelligence, to maintain global competitiveness amid a deepening U.S.-China rivalry.<sup>108</sup> The European Parliament's internal think tank similarly highlights the need for greater strategic autonomy, including more robust mechanisms to shield European markets from external protectionism.<sup>109</sup>

Against this backdrop, China continues expanding its footprint in Latin America through the Belt and Road Initiative, offering flexible financing and infrastructure investments that often come with fewer regulatory constraints than those demanded by the EU.<sup>110</sup> For Mercosur countries, balancing these offers with the EU's stricter sustainability clauses presents a dilemma: embracing EU standards might secure better long-term market access and environmental credibility, but it could also bring immediate challenges compared to China's more flexible terms. This dynamic underscores the broader competition for influence in the region, one in which the EU, the U.S. and China all vie for economic and strategic partnerships.

For the EU, the Mercosur agreement was initially framed as a response to the erosion of multilateralism, a way to reaffirm its role as a defender of rules-based trade in the global order. However, early criticisms regarding the absence of enforceable sustainability provisions, partially addressed in the revised 2024 framework, have led to accusations of inconsistency between the EU's normative discourse and its trade practice. The EU is perceived by many as willing to compromise on its values for the sake of geopolitical influence, particularly in the context of growing Chi-

<sup>107</sup> The New York Times, *Tracking Trump's on-again, off-again tariffs and the global trade war*, 2025, [<https://www.nytimes.com/article/trump-tariffs-canada-mexico-china.html>], Accessed 12 April 2025.

<sup>108</sup> Real Instituto Elcano, *La guerra tecnológica EE.UU.-China y sus efectos sobre Europa*, 2025, [<https://www.realinstitutoelcano.org/analisis/la-guerra-tecnologica-eeuu-china-y-sus-efectos-sobre-europa/>], Accessed 12 April 2025.

<sup>109</sup> Real Instituto Elcano, *Cómo debe responder Europa a los aranceles de Trump*, 2025, [<https://www.realinstitutoelcano.org/comentarios/como-debe-responder-europa-a-los-aranceles-de-trump/>], Accessed 12 April 2025.

<sup>110</sup> *Vid.*, EPRS, *China's increasing presence in Latin America: implications for the European Union*, 2025.

nese and US engagement in Latin America.<sup>111</sup> This tension is particularly stark in light of Article 21 of the Treaty on European Union, which obliges the Union to ensure consistency between its internal values and its external actions.

From a legal perspective, the complexity of mixed agreements has been further clarified by the Court of Justice of the European Union in *Opinion 2/15*, which established that trade agreements encompassing areas of shared competence require full ratification by all Member States.<sup>112</sup> This reinforces the multidimensional nature of ratification, but also subjects EU external action to greater democratic scrutiny and potential fragmentation.

One possible way forward lies in the adoption of interpretative instruments and in using the review clause foreseen three years after entry into force to reinforce enforcement and monitoring frameworks. Such instruments have precedent in EU practice, including in the case of CETA, and could serve to bridge the gap between formal ratification and political acceptability. Yet, even such mechanisms may not suffice to overcome the structural asymmetries and political distrust that now surround the agreement.

In sum, the ratification of the EU-Mercosur Agreement faces a convergence of legal complexity, political opposition, and normative contention. These challenges do not simply reflect technical hurdles, but go to the heart of what the EU claims to be: a normative actor, a democratic union, and a global trade leader. Whether these identities can be sustained simultaneously in the face of contested agreements like Mercosur remains an open and pressing question. The Mercosur case may ultimately compel the Union to rethink not just the contents, but the very structure and instruments of its external trade architecture.

## 6. CONCLUSION

The EU-Mercosur Association Agreement encapsulates both the promise and fragility of the EU's strategy to align economic liberalisation with value-based trade. While the agreement aims to embed sustainability into interregional cooperation, its ratification has been delayed by legal complexity, political resistance, and questions over the credibility of enforcement. The sustainability chapter, originally criticised for weak legal effect, has become a focal point of debate. Although the 2024 annex introduces binding commitments on deforestation, labour rights, and gender equality, Member States like France, Germany and Austria continue

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<sup>111</sup> Sanahuja, J.A.; Rodríguez, J.D., *El acuerdo Mercosur-UE y la autonomía estratégica europea*, Fundación Carolina, Documento de Trabajo No. 30, 2021.

<sup>112</sup> CJEU, *Opinion 2/15 (EU–Singapore Free Trade Agreement)*, ECLI:EU:C:2017:376, paras 292–293.

to question its sufficiency. In parallel, Mercosur governments see these obligations as potential constraints on development autonomy, highlighting structural asymmetries in how trade conditionality operates. Without credible enforcement, inclusive monitoring, and sustained political support, these commitments risk remaining aspirational.

Geopolitically, the EU faces mounting pressure. Rising protectionism under the re-elected U.S. administration and China's expanding influence in Latin America challenge Europe's strategic positioning. Delays or fragmentation in the EU's trade agenda weaken its leverage, especially when alternative partners offer flexible financing without strong sustainability clauses. Think tanks such as the Real Instituto Elcano warn that the EU's credibility as a global actor may suffer if major agreements like this fail to materialise. From a legal perspective, the agreement's classification as "mixed" triggers a demanding ratification process, requiring unanimity across 27 Member States. While tools like interpretative declarations or review clauses -as used in CETA- offer ways forward, they may prove insufficient unless they directly address enforcement gaps and institutional asymmetries.

At the heart of the matter lies a deeper test: whether the EU can reconcile trade liberalisation with credible, enforceable sustainability obligations. Strategic autonomy cannot rest on market access alone; it requires consistent normative leadership. The revised EU-Mercosur Agreement moves in that direction, but its success depends on the Union's capacity to deliver not just texts, but outcomes.

Ultimately, the EU–Mercosur deal will be judged on three fronts:

- i. Enforceability: Are sustainability provisions implemented, monitored, and backed by dispute resolution?
- ii. Fairness: Are Mercosur partners supported to meet higher standards without compromising development?
- iii. Unity: Can the EU overcome internal fragmentation to uphold a coherent, strategic position?

If these conditions are met, through rebalancing mechanisms, inclusive governance, and targeted support, the agreement could mark a turning point for rules-based trade. If not, it may come to symbolise the EU's limits as a normative power, undermined by internal divisions and external competition. The EU-Mercosur Agreement is thus more than a commercial pact: it is a test of the Union's ability to lead by law in a fractured world.



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