

EU-Mercosur Joint Instrument

DRAFT - SENSITIVE

Version of February 2023

Preamble

Recalling historic links between the regions and shared values;

Having concluded negotiation for a comprehensive Association Agreement (AA) between the two regions;

Recalling the need to take urgent action to tackle the triple planetary crisis of climate change, biodiversity loss and pollution, as clearly pointed out by the most recent scientific evidence, including the Sixth Assessment Report of the IPCC published in August 2021, the 2019 IPBES global assessment report on biodiversity and ecosystem services, the 2022 Global Land Outlook and the IRP Global Resources Outlook 2019;

Recalling international commitments (as mentioned in the AA):

Rio Conference (UNCED) and subsequent Sustainable Development Conferences > 2030 Agenda for Sustainable Development

UN Declaration on Human Rights and UN Declaration on Rights of Indigenous Peoples

UNFCCC/ Paris Agreement and the need to pursue its objectives in an ambitious manner

Convention on Biodiversity (CBD) and the Kunming-Montreal Global Biodiversity Framework and other biodiversity related Multilateral Environmental Agreements (MEAs), in particular the Convention on Migratory Species, the Convention on International Trade in Endangered Species of Flora and Fauna and the Ramsar Convention on Wetlands

Montreal Protocol on Substances that Deplete the Ozone Layer

UN Convention to Combat Desertification

Global Forest Goals set out in the UN Strategic Plan on Forests

ILO Declarations

Convinced that the Agreement will be beneficial to both sides and further strengthen relations;

Determined to make the best use of the agreement to support a green transition, promote responsible and sustainable value chains and address the interlinked challenges of climate change, biodiversity loss and pollution;

Convinced that healthy ecosystems and the services they provide represent the foundation for sustainable development and long-term sustainable growth is dependent on nature;

Reiterating the urgency of achieving SDG target 15.2 "By 2020, promote the implementation of sustainable management of all types of forests, halt deforestation, restore degraded forests and substantially increase afforestation and reforestation globally"

Acknowledging with concern that according to the latest FAO data almost 90% of deforestation worldwide is due to agricultural expansion;

Reaffirming their commitment to effectively implement the Paris Agreement as well as to the CBD, and to pursue the objectives of these agreements and instruments in an ambitious and mutually supportive manner;

Highlighting in this respect the important role of ecosystem protection, restoration and sustainable use and management, including tackling emissions from Land Use, Land-Use Change and Forestry, and of increasing the implementation of Nature-Based Solutions in line with UNEP/EA.5/Res.5 to achieve the 2030 Agenda for Sustainable Development and the objectives of the Paris Agreement and the Convention on Biological Diversity;

Convinced that ratification and implementation of the Agreement will contribute to a sustainable post-COVID-19 recovery;

Underlining the mutually reinforcing nature of the two sides' economic, social and environmental objectives;

Determined to work together so that the trade relationship enhances sustainable development, in particular in support of a just transition to a green and low emissions net zero economy by or around mid-century.

This joint instrument, provides, in the sense of Article 31 of the Vienna Convention on the Law of Treaties, a statement of what Mercosur and the European Union agreed in a number of provisions under the EU-Mercosur Agreement that have been the object of public debate and concerns and an agreed interpretation thereof.

Under the Trade and Sustainable Chapter, the EU and Mercosur agreed to renew their commitment to sustainable trade. Given the high level of public interest, particularly in the fields of environment, labour and human rights, the EU and Mercosur have agreed to the following shared interpretation:

Non-regression and High and Effective Levels of Environmental and Labour Protection

In Article 2.2 of the TSD Chapter, the EU and Mercosur express their intention to strive to improve their relevant laws and policies so as to ensure high and effective levels of protection of the environment and of labour rights. This is in line with their overall objective expressed in Article 1 of the TSD Chapter to implement the trade agreement in a manner that contributes to sustainable development. These provisions will avoid a "race to the bottom" with regard to environmental and labour protection.

In addition, the EU and Mercosur commit in Article 2.3 of the TSD Chapter not to lower their environmental or labour standards with the intention of attracting foreign trade or investment. Furthermore, under Articles 2.4 and 2.5, the EU and Mercosur agree that they shall not fail, through action or inaction, to effectively enforce their domestic legislation, or allow derogations from such legislation, in order to encourage trade or investment.

Furthermore, the promotion of sustainable economic and social development is among the guiding principles underpinning the Political and Cooperation part of the Agreement. In addition, in Art 26, the parties commit to step up cooperation with a view to strengthening implementation of international commitments in the field of environment and labour protection.

While reasonable discretion should be permitted for budgetary allocations between different policy or enforcement priorities, the EU and Mercosur understand that effective enforcement of environmental and labour laws requires that the resources allocated to relevant bodies responsible for enforcement of labour and environmental law at every level of government be maintained at a level such that domestic laws can be effectively implemented, monitored and enforced.

2. Climate Change

The commitment in Article 6.2 of the TSD Chapter and Article 29 of the Political and

Cooperation chapter to effectively implement the UNCCC and the Paris Agreement in line with the best available science includes:

Timely communication and implementation of successive and progressive Nationally Determined Contributions (NDCs) reflecting the highest possible ambition, in accordance with Art. 4.2 and 4.3 of the Paris Agreement, and that therefore there will be no reduction in the level of ambition of each Party's NDC, including with respect to deforestation targets existing on 28 June 2019, i.e. the date of the political agreement on the EU-Mercosur text, and as reflected in each Party's national laws;

Pursuit of domestic mitigation measures, with the aim of achieving the objectives of such NDCs, in accordance with Art. 4.2 of the Paris Agreement;

Engagement, as appropriate, in adaptation planning processes and the implementation of actions, in accordance with Art. 7.9 of the Paris Agreement, with the aim of contributing to the global goal on adaptation established in Article 7.1 of the Paris Agreement;

Submission and periodical update of an adaptation communication, in accordance with Article 7.10 of the Paris Agreement;

Submission of long-term low greenhouse gas emission development strategies, in accordance with Art. 4.19 of the Paris Agreement, and timely implementation thereof;

Legislative, regulatory and policy action aiming at making finance flows consistent with a pathway towards low greenhouse gas emissions and climate-resilient development, in accordance with Art. 2.1.c. of the Paris Agreement;

Reflection of the best available science in all aspects of implementation;

Updating and enhancing actions and support to the Paris Agreement objectives and goals by taking into account the outcome of the periodical global stocktake, in accordance with Articles 4.9 and 14 of the Paris Agreement;

Any further decisions made by the governing bodies of the UNFCCC and the Paris Agreement.

Recalling the objective in Article 1 of the TSD Chapter of integrating sustainable development in the Parties' trade and investment relationship, information submitted by each Party to the UNCCC Secretariat under Art. 13 of the Paris Agreement will be taken into account in the monitoring of progress in effective implementation of the Paris Agreement in

Article 6 of the Trade and Sustainable Development Chapter of the EU - Mercosur Agreement.

3. Biological Diversity

The commitment to effectively implement multilateral environmental agreements in Article 5.3 of the TSD Chapter, including the Convention on Biological Diversity (CBD) implies, i.a.

Timely revision, updates, communication and implementation of National Biodiversity Strategies and Action Plans (NBSAPs), in accordance with Article 6a of the CBD and COP decision 15/6, including:

communication of national targets as foreseen in paragraphs 6 and 7 of the same decision

communication of national reports as foreseen in paragraphs 11 and 13;

taking the outcomes of the global reviews into account in future revisions and implementation of their NBSAPs, as foreseen in paragraph 20.

Effective implementation and monitoring of the Kunming-Montreal Global Biodiversity Framework (KMGBF) as agreed by the Conference of the Parties of the CBD in Decision 15/4, as well as Decisions 15/5, 15/7, 15/8 and 15/9, in particular the monitoring, reporting on and review of implementation of the KMGBF as well as the mobilisation of resources and sharing of benefits of the use of Digital Sequence Information on Genetic Resources.

Integration of the conservation and sustainable use of biodiversity into relevant sectoral or cross-sectoral plans, programmes and policies, and their implementation, in accordance with Article 6b of the CBD.

Any further decisions made by the governing bodies of the CBD.

The EU and Mercosur also highlight that Article 7.2 of the TSD Chapter further elaborates how the Parties intend to address trade-related aspects of biodiversity when implementing the agreement. Furthermore, in Article 27 of the Political and Cooperation Agreement, the parties commit to enhance environmental cooperation, including in the area of biodiversity, with the aim to contribute to the protection, conservation and sustainable use of natural resources.

4. Forests

The EU and Mercosur agree in Article 8 of the Trade and Sustainable Development chapter of the agreement to:

combat illegal logging and related trade, and

promote trade in forest products from sustainably managed forests.

Furthermore, the commitment on implementation of the Paris Agreement in Article 6.2 of the TSD Chapter requires them to:

take effective action to conserve and enhance sinks and reservoirs of greenhouse gases, including forests (Art. 5 Paris Agreement)

In Article 29 the Political and Cooperation Chapter of the Agreement, the parties also commit to enhance cooperation and policy dialogue on deforestation and forest degradation and restoration, with the objective to strengthen domestic policies.

In addition, the two sides are signatories to the Glasgow Leaders' Declaration on Forests and Land Use, where both sides committed to:

trade and development policies, internationally and domestically, that promote sustainable development, and sustainable commodity production and consumption, that work to countries' mutual benefit, and that do not drive deforestation and land degradation.

halt and reverse forest loss and land degradation by 2030 while delivering sustainable development and promoting an inclusive rural transformation. To this end the EU and Mercosur will set an interim target of reduction of deforestation of at least 50% from current levels by 2025.

In addition, the two sides are committed by 2025 to make significant progress in restoration of forests, maximizing the contributions to biodiversity conservation, climate change objectives and other co-benefits, such as those included in relevant national strategies and policies, the respective NDCs or international initiatives such as the Bonn Challenge or the G20 Global initiative on land restoration;

The EU and Mercosur recognise that forests have a key role to play in climate change mitigation and adaptation, as well as in the conservation and sustainable use of biological diversity. Therefore, the two sides will monitor the state and extent of forests so that their role as sinks or as sources of greenhouse gas emissions and ecosystem service providers can be better understood and action taken. In accordance with Decisions of the UNFCCC the role of forests in climate change emissions and carbon storage shall be reflected in their Nationally Determined Contributions under the Paris Agreement and reporting thereof, including actions to reduce deforestation and increase afforestation.

The EU and Mercosur will cooperate on measures to ensure that the products that EU and

Mercosur citizens consume do not contribute to deforestation and forest degradation.

Both parties recognize the importance of taking action to eliminate sources of wild fires in or near forest areas, to further reduce deforestation and forest degradation.

Recalling Principle 10 of the Rio Principles, the EU and Mercosur also recognise that effective national and regional frameworks on rights of access to environmental information, public participation in the environmental decision-making process and access to justice in environmental matters and their regular review are crucial for the implementation of environmental policy, including in ensuring that drivers of deforestation are properly addressed.

Articles 11.2, Art. 13(n) and 13(o) of the TSD Chapter provide for the EU and Mercosur to cooperate on sustainable supply chains, including supply chains of products not linked to deforestation. Improved traceability, transparency and due diligence will be a key means to develop sustainable supply chains. This will be a priority during implementation, and to this end they will promote and support actions by the private and public sector.

5 Labour Rights

Both the EU and Mercosur are committed to the protection of labour rights and recognise the role of the International Labour Organisation as the key multilateral organisation in this field.

The EU and Mercosur understand that the obligation in Article 4.4 of the Trade and Sustainable Development (TSD) Chapter of the Agreement and Article 45bis of the Political Dialogue and Cooperation chapter to make continued and sustained efforts to ratify the fundamental ILO Conventions and other relevant Conventions imposes an ongoing obligation on a Party that has not ratified such a Convention to make efforts in this regard, while respecting the sovereign right of a Party to enter into additional international obligations. The commitment to respect, promote and effectively implement the ILO core labour standards is binding on both the EU and Mercosur, in accordance with Article 4.3 of the TSD Chapter.

In implementation of these commitments, the EU and Mercosur intend to place a specific focus on the eradication of child labour as well as on freedom of association and the effective recognition of the right to collective bargaining. The EU and Mercosur understand that the commitment to the effective implementation entails that each Party adopts relevant laws and regulations, and exercise its jurisdiction and control by establishing a system for ensuring compliance with the requirements of the ILO core labour standards.

Furthermore, in line with the commitment to promote decent work in Article 4.10 of the TSD Chapter, Article 45bis of the Political Dialogue and Cooperation chapter and the ILO Declaration on Social Justice for a Fair Globalization of 2008, the EU and Mercosur

underline the principle of social dialogue, which is a guiding principle of the ILO, and understand that the ratification of fundamental and other relevant ILO Conventions should be carried out in a manner consistent with this principle.

6. Cooperation

The Parties have agreed in the Trade and Sustainable Development and Political Dialogue and Cooperation Chapters to promote the development of international trade in such a way as to contribute to the objective of sustainable development.

In order to achieve this objective, Mercosur and the EU highlight the importance of interregional cooperation and agree to prioritize in particular the following areas:

the implementation of multilateral commitments in the areas of climate change, biodiversity and the environment and of ILO labour standards;

the development of sustainable value chains across the EU and Mercosur, including by improving traceability, transparency, due diligence as well as the promotion of circular economy and resource efficiency; the conservation and sustainable management of natural resources;

support for the role of indigenous and local communities in forest protection; the promotion of research and development, e.g. in the field of satellite monitoring of deforestation and forest fires.

The Parties emphasise that such cooperation should not only involve governments, but also businesses, academia and civil society, in line with their respective roles in promoting sustainable development.

7. Human Rights

In Art 11 of the Political Dialogue and Cooperation chapter, the EU and Mercosur have committed to cooperate on the promotion and protection of human rights, including the ratification and implementation of international human rights instruments. This includes the rights of indigenous peoples, as defined inter alia in the UN Declaration on the Rights of Indigenous Peoples as well as, where relevant, in the Parties' Constitutions. It is understood that such rights include rights to land under traditional use by such communities.

8. Civil Society

Pursuant to Article 10 of the Political and Cooperation agreement, Mercosur and the EU

highlight the key role of civil society organisations in the effective implementation of the Agreement. Through the establishment of a consultation mechanism and the promotion of interaction between the representatives of their civil society, the Agreement will leverage a broad-based involvement of civil society actors, including non-governmental organisations, business and employers' organisations and trade unions.

The active involvement of civil society organisations will play a key role in the monitoring and implementation of all aspects of the agreement, including the trade and sustainable development objectives.

9. Monitoring and Review

Pursuant to the institutional provisions of the Trade and Political and Cooperation Agreement [parts], the Parties will meet to monitor and assess implementation of the Agreement and to oversee the fulfilment of its objectives, as set out in Article 1.2, Chapter 1 [Initial Provisions] of the Trade [part], which include (but are not limited to) the development of international trade and of trade between the Parties in a manner that contributes to sustainable development as well as the establishment of a framework for the participation of civil society to support the effective implementation of this Agreement. As these objectives are mutually reinforcing, the Parties will seek to build synergies between them using the mechanisms established in the Agreement, as well as other domestic mechanisms, as appropriate.

The Agreement provides for a specific forum to monitor the implementation of the Trade and Sustainable Development Chapter, as set out in Article 14 of the TSD Chapter.

The Parties agree that to ensure an effective implementation of TSD commitments they will develop a roadmap towards meeting these commitments and put in place a series of actions and cooperation activities.