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EU-Mercosur trade deal breaches EU climate laws – legal analysis

A trade deal between the EU and Mercosur countries would lead to an increase in greenhouse gas emissions and is incompatible with EU and international climate laws, according to [new legal analysis](#) commissioned by Greenpeace Germany. This opens up the possibility that the deal could be challenged in the European Court of Justice by an EU government or the European Parliament, said Greenpeace. [1]



Large sections of forest are set on fire by farmers in Brazil to be cleared for soy farming or cattle breeding.

Despite widespread opposition by farmers and environmental groups, the [European Commission has said](#) it wants to continue negotiations with the aim of reaching an EU-Mercosur trade deal as soon as possible. However, a legal analysis, commissioned by Greenpeace Germany and carried out by Dr. Roda Verheyen and Prof. Dr. Gerd Winter, concludes that the free trade agreement (FTA) would not comply with existing EU and international law, because it is expected to lead to an overall rise in greenhouse gas emissions and increased deforestation. [2]

A 2023 [UN report](#) already warned that without aggressive action to reduce greenhouse gas (GHG) emissions, global average temperatures are bound to rise by up to **3°C** by the end of the century. According to the [IPCC](#), without immediate and deep emission reductions across all sectors, limiting global warming to 1.5°C and avoiding the worst impacts will be beyond reach. Deforestation, especially in tropical forests, is a major driver of carbon emissions through the destruction of carbon sinks.

Greenpeace Germany trade campaigner Lis Cunha said: “When countries started negotiating the EU-Mercosur trade deal in the 90s, the world looked very different and we were just starting to understand the consequences of climate breakdown. In 2024, it would not only be morally irresponsible for the EU to sign a deal that is responsible for massive amounts of CO2 and the destruction of entire ecosystems, it would also be illegal. The EU Commission and EU governments must put a stop to this toxic deal once and for all.”

Dr Roda Verheyen, an environmental lawyer who obtained a [landmark ruling](#) against the German government for violating its climate commitments, said: “The EU-Mercosur trade deal infringes the EU’s climate obligations under international law, as well as other EU law. Our analysis shows that the current version of the EU-Mercosur deal simply cannot be signed or ratified by the EU institutions. Patchy amendments to this draft will not suffice. It would be a shame if the EU courts would have to be called on again – lawmakers should act in consistency with and implement climate and human rights law.”

The legal analysis checks the draft trade deal against a number of EU and international treaties, to assess whether it complies with EU and international law, including the Treaty on the European Union (TEU), the Treaty on the Functioning of the European Union (TFEU), the Charter of Fundamental Rights (CHFR), and the [Paris Agreement](#) on climate change. The FTA was also assessed against the *general principle of consistency*, which requires that the Commission and EU governments ensure it is “compatible with internal Union policies and rules” (Art 207.3 TFEU)

Box1: What is the EU-Mercosur Free Trade Agreement?

The EU and Mercosur countries Brazil, Argentina, Paraguay and Uruguay reached an “agreement in principle” for a trade deal in 2019. But the agreement was put on hold while then-president of Brazil Jair Bolsonaro was in office, largely due to concerns about his support for mass [deforestation](#) in the Amazon. Under the agreement, Mercosur countries would eliminate tariffs on more than 90% of goods imported from the EU, including manufactured goods and industrial products, such as [pesticides](#), [combustion-engine cars](#) and [plastics](#). In return, the EU would cut tariffs on more than 90% of goods imported from Mercosur, and liberalise more than 80% of agricultural imports, such as beef, poultry, sugar and bioethanol.

Devastating impact on biodiversity, forests and climate

The FTA will increase the volume of [production](#) in certain sectors in both the EU and Mercosur countries and, due to increased trade incentives, maritime and air transport will increase as well, leading to a rise in GHG emissions. The FTA’s official Sustainability Impact Assessment, conducted by the London School of Economics (LSE), did not take into account GHG effects from transport, nor from land use change and emissions from deforestation, despite their relevance for the FTA’s tariff cuts and agricultural quotas.

While the EU-Mercosur FTA recalls countries’ existing international commitments, including Multilateral Environmental Agreements (MEAs), in particular on biodiversity (Art. 7), forests (Art. 8) and climate change (Art. 6), it fails to take into account the devastating impact of a massive increase in trade on these three areas.

Box2: EU-Mercosur FTA, deforestation and climate change

The FTA’s [Sustainability Impact Assessment](#) (SIA), conducted by LSE for the EU Commission, calculates that the FTA would lead to a global increase of methane and nitrous oxide, as well as a rise in CO2 emissions in the EU, Brazil and Argentina, and an “overall moderate increase” in GHG emissions in other Mercosur countries. Based on the assumption that GHG will decrease in the rest of the world to balance the rise in emissions in Mercosur countries, the study projects that global GHG emissions will remain more or less unchanged overall.

However, LSE admits that these projections exclude any calculation of emissions from changes in land use and deforestation. This is surprising, given the task to assess the impact of the EU-Mercosur FTA as a whole. Under EU law, a sustainability impact assessment must include all relevant impacts. The study itself notes that emissions from changes in land use and deforestation make up 55% of Brazil's and 70% of Paraguay's CO₂ emissions.

Clearly, the SIA omitted an important share of the FTA's effect on GHG emissions. Experts [project](#) that land-related emissions as a whole will rise significantly due to the FTA. Due to the expected increase in beef exports generated by the EU-Mercosur FTA alone, deforestation rates in the Mercosur region will accelerate by an estimated [5 % per year](#) for six years, with other projections suggesting this would affect an area of [between 620.000 ha and 1.35 million ha](#). Overall, increased deforestation due to higher trade volumes is estimated to lead to an immense [rise in GHG emissions](#).

In addition, experts have noted that the SIA has not sufficiently taken into account [emissions linked to the international transport of goods](#), which make up [approximately a third](#) of trade-related emissions around the world.

EU-Mercosur deal infringes EU legal obligations, in particular under the UN climate regime

Both the EU and Mercosur countries are parties to the [United Nations Framework Convention on Climate Change](#) (UNFCCC) and the 2015 Paris Agreement. Yet, the FTA could seriously jeopardise the overall binding objectives of these international treaties, as a result of its incentives for deforestation and resulting increase in GHG emissions.

Regarding the FTA's increase in GHG emissions and loss of carbon sinks within the EU due to growth in automobile production, intensified agriculture and chemicals production, the authors of the analysis conclude that: *any new international agreement must support a reduction of greenhouse gas emissions, and at the very least be neutral to that aim*, particularly given the UN's projection for 3°C of global heating. An overall increase of emissions and reduction in carbon sink capacity, as expected if the FTA enters into force, is not in line with this obligation.

Regarding GHG emissions and loss of carbon sinks outside the EU but caused by the EU (e.g. via supply of cars, or by demand for animal feed, meat and minerals), the authors conclude that: The "no harm" rule in international law covers all effects caused by a state; it does not restrict obligations of states to internal GHG emissions, and therefore supports the finding that the EU must not conclude a new FTA which would lead to an overall rise in GHG emissions and deforestation levels.

EU-Mercosur deal breaches EU Charter of fundamental rights

All EU initiatives, including drafting and adopting a treaty, must respect the EU Charter of fundamental rights (ChFR). These fundamental rights include human life and health (Arts. 2 and 3), freedom of occupation (Art. 15), freedom of enterprise (Art. 16), property (Art. 17) and children's rights (Art. 24). These can all be affected by climate change.

EU fundamental rights extend to the impacts of both internal and external emissions and carbon sink losses under the control of the EU. The impacts of emissions caused by EU countries already interfere with fundamental rights, [3] and any further source of emissions, such as trade growth generated by an FTA, will exacerbate the situation, add to catastrophic climate impacts and further infringe fundamental rights. Many people living both within and outside the EU will be affected.

EU-Mercosur deal breaches EU Climate Law

The current draft FTA goes against Art. 2 of the EU Climate Law, which requires the EU to adopt measures to achieve its emissions reduction targets, and against Art. 6 of the EU Climate Law, which requires the Commission to assess the compatibility of EU measures with the Union's climate-neutrality objectives.

Conclusions

The EU-Mercosur trade agreement will lead to increases in GHG emissions rather than contributing to climate change mitigation and the protection of carbon sinks.

Concluding a trade agreement that would lead to emission increases both within and outside the EU and to losses of carbon sinks is legally unacceptable. The EU and Mercosur would need to conduct significant renegotiations to remove legal infringements from the current text.

According to the legal analysis, the current version of the EU-Mercosur FTA cannot be signed or ratified by the EU and its member states, because:

- It infringes the EU's obligations under international law, and in particular the UN climate regime;
- It is not in line with EU primary law, i.e. the EU Treaties and the Charter of Fundamental Rights;
- It is inconsistent with EU secondary law, such as the EU Climate Law.

Notes:

[1] [Legal analysis](#) by Professor Dr. Markus Krajewski and Julian Werner, May 2023.

[2] [The EU-Mercosur Free Trade Agreement's impact on greenhouse gas emissions and its compatibility with EU and international law](#), by Dr. Roda Verheyen and Prof. Dr. Gerd Winter, commissioned by Greenpeace Germany, February 2024.

Roda Verheyen played a leading role in the successful constitutional complaint against Germany's 2019 Climate Protection Law, co-initiated by Greenpeace Germany. That case resulted in a German Constitutional Court ruling which found the 2019 climate law to be partially unconstitutional and ordered the government to bring the law into line with the 2015 Paris climate agreement.

[3] <https://climatecasechart.com/non-us-case/neubauer-et-al-v-germany/>;
<https://climatecasechart.com/non-us-case/urgenda-foundation-v-kingdom-of-the-netherlands/>

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