

To: LSE Consulting

From: ClientEarth, Fern and Conservation International

Date: 30/10/2019

Subject: Comments on the draft interim report / Sustainability Impact Assessment (SIA) in Support of the Association Agreement Negotiations between the European Union (EU) and Mercosur.

Please find below our comments and recommendations on the SIA in Support of the Association Agreement Negotiations between the EU and Mercosur. They focus mainly on the Environmental and Human Rights analyses. We are available for further discussion – see contacts at the bottom of the document – and thank you for the opportunity to contribute.

General comment

As highlighted in the Trade for All Communication, SIAs are a key instrument in the formulating sound, transparent and evidence-based trade policies.

Firstly, we would like to recall that the purpose of the SIA studies is to inform trade negotiators and other stakeholders on the potential economic, social and environmental impacts of a proposed trade agreement while its negotiation is ongoing. However, given that negotiations were closed on 28 June 2019,¹ the timing of the present draft interim report raises questions about the extent to which the (ongoing) SIA process has actually fed into the work of the negotiators. This is even more questionable since the present SIA draft interim report devotes only an extremely brief analysis of the likely agreement impacts, particularly on the environment and indigenous peoples' rights.

Furthermore, the absence of preliminary findings in these regards severely restrains the stakeholders' possibility to respond to proposed recommendations before the SIA is finalized.

Secondly, the baseline scenario is not based on the best available research, information and data. The failure to take recent data or events into account risks creating incorrect and biased results. This is particularly critical across the different parts of the environmental analysis, where the study fails to take into account the latest data on the deforestation situation and to draw conclusions from them to make sure future risk is taken into account.

Thirdly, the modelling of the draft interim report is based on two scenarios: conservative and ambitious. However, given that the final terms of the trade agreement are known, the SIA should take them into account to properly reflect their impacts on sustainability.

Specific comments on the Social Analysis (section 4)

¹ See p. 4 of the Minutes of the Civil Society Dialogue Meeting on the EU-Mercosur Trade Agreement of 15 July 2019, available at: https://trade.ec.europa.eu/doclib/docs/2019/august/tradoc_158315.pdf

Section 4.1 Methodology

On Corporate Social Responsibility (CSR) / responsible business conduct (RBC), it is stated that: “*This SIA also assesses how the potential agreement could contribute to the uptake of internationally agreed principles and guidelines on corporate social responsibility (CSR)/responsible business conduct (RBC)*”. (p. 39). However we have noticed that this assessment is not yet part of the report.

Specific comments on the Environmental Analysis (section 5)

Section 5.2. Baseline scenario

5.2.1. Background: the EU-Mercosur environmental relationship

In the section dealing with the EU approach in Trade and sustainable development (TSD) chapters, it is mentioned that this “*approach has considerably raised the visibility of social and environmental issues in EU FTAs*”. However, in the interim SIA, the EU’s approach to TSD issues is not evaluated to understand whether it has actually worked in previous trade agreements. Rather, the EU’s ambitions are set out, and the aims of its TSD chapters are elaborated (e.g. p. 67).

The main criticism of the TSD chapters, by NGOs, Trade Unions and academics, concerns the fact that the clauses under these chapters are not subject to the same state-to-state dispute settlement mechanism as the rest of the FTA. The absence of sanctions in case of a violation of the TSD chapter and its weak language, make the commitments under TSD difficult to enforce. Additionally, TSD chapters are lacking formal complaint procedures and mechanisms for civil society organisations (CSOs) to report breaches of TSD chapters.

In the section dealing with trade related multilateral environmental agreements (MEAs), it is mentioned that the “*analysis of the potential synergies, frictions or conflicts between the EU-Mercosur AA and MEAs will rely on the quantitative and qualitative analysis in the present section as well as capitalize on the findings from other chapters. (...)*” (p. 69). An overview of MEAs implementation issues at this stage, in combination with a detailed analysis in further relevant sections, would be useful to assess the extent to which the EU Mercosur AA can improve/undermine the parties’ ability to meet their MEAs obligations. Clearly identifying the parties’ issues in implementing relevant MEAs would guide the reader.

5.2.2. Overall environmental performance

The 2016 EPI was used, whereas there is an updated version for 2018.² In this latest version, three of the Mercosur countries **rank lower than in 2016** – e.g. Brazil (69th), Argentina (74th) and Paraguay (105th). These latest data should be taken into account, and conclusions on these evolutions should be drawn.

5.2.6. Forests

- *Increased deforestation rate in Brazil*

This part of the SIA mentions briefly the fires in the Amazon in August 2019, without drawing conclusions or assessing whether there is a risk that new trends emerge in the coming

² [See EPI 2018](#)

years. Looking at the recent analysis by the New York Declaration on Forests Assessment Partner and quoted below, we believe that the SIA should detail the implications of the change of government in Brazil, in terms of forest governance, and the extent to which the EU-Mercosur FTA could lead to further deforestation in this changed political climate.

The 2019 New York Declaration on Forests Five-Year Assessment Report states that: *“In June 2019 alone, deforestation rates in the Brazilian Amazon increased by 88 percent compared to the same month last year (page 15).*

After a change of government in 2019, deforestation in Brazil has increased due to reversals of existing legal and institutional forest protection policies and frameworks (page 18).

Changes to Brazil’s mining code could open up 9.8 Mha of protected area to mining development by 2025...(page 43) The new government administration has further loosened environmental controls and enforcement. In its first months, the new administration dissolved climate and forest departments; transferred the Brazilian Forest Services (previously housed under Ministry of Environment) to the Ministry of Agriculture, and forcibly sought to transfer demarcation of indigenous lands to the Ministry of Agriculture (page 75).”³

- Timber trade

The SIA interim report states: *‘However, international trade in roundwood logs from natural tropical forest has been banned progressively since 1980 and most of the Brazilian exports come from planted forests (FAO, 2018)’ the EU accounts for about 10% of total wood exports.*

Regarding the reference to the FAO report, we could not find the data you are mentioning in the SIA interim report. For the data concerning the Share of the EU on the export, there is no reference in the report.

Finally, there is no data on illegal logging and its contribution to land use change.

- Expansion of agriculture

We also encourage the authors to broaden the scope beyond wood products, and to identify and assess the impact of other commodities on forests.

Finally, we would encourage the integration of other biomes, which do not qualify as forests, but are primary natural ecosystems which are particularly relevant for some Mercosur countries – e.g. the Cerrado in Brazil.

Section 5.3. Analysis

5.3.1. Impacts on GHG

The study states that *“Overall, the Association Agreement is expected to have a negligible impact.”* Small increases in Argentina and Brazil would be partly offset by decreases in Uruguay and Paraguay, while the EU’s CO2 emission profile would be barely affected. (p. 83). However, it should be noted that one of the limitations of using GCE model is that it

³ NYDF Assessment Partners. (2019). Protecting and Restoring Forests: A Story of Large Commitments yet Limited Progress. New York Declaration on Forests Five-Year Assessment Report. Climate Focus (coordinator and editor). Accessible at forestdeclaration.org.

looks at the overall impact of the agreement on e.g. CO2 emissions for the whole trade area.⁴ Therefore, any effects found are bound to be small.

5.3.2. Further Analysis

As stated in the study, the final version of the report “*will lay a particular focus on the impact on deforestation, pesticides use, fisheries for Argentina and Uruguay, and water resources, mostly for Paraguay and Uruguay.*”

Impact on the environment is one of the major concerns about the agreement. We therefore regret the absence of preliminary discussions on the impacts of the agreement on environmental variables (in particular deforestation or land use change) and the absence of analysis on the potential impact of the EU-Mercosur AA with MEAs (in particular the Paris Agreement and the Convention on Biological Diversity). It undermines the possibility for stakeholders to review and contribute to preliminary findings before the report is finalized. This is a major failing in terms of the transparency of the whole process.

We recommend that the assessment of deforestation trends in the final report is done thoroughly for all (relevant) Mercosur countries at an individual level, since aggregated trends do not necessarily provide a good visibility on risks. We also recommend that we can capture the impact on deforestation with a baseline scenario as well as with the scenario of the adoption of the trade agreement, with specific attention paid to timber, agricultural commodities, investment and infrastructure sectors.

We noticed that within the more detailed sectoral analysis on beef, an initial assessment of the impact of the agreement has been done for the use of land. The report says that the agreement may have the effect of the industry requiring additional land including forests and other natural ecosystems (page 113). More detailed data will be needed to understand the scale of the potential expansion into forested land and natural ecosystems. The expansion of agriculture land into forests is a major concern for civil society organisations and recommendations to avoid such expansion will be needed in the final report.

We also recommend that the final report analyses the TSD chapter’s scope, in particular how its provisions might engage with relevant environmental and human rights issues in Mercosur or the EU once the agreement is signed. We advise in particular that the provisions on forests include the impact of agricultural production.

Specific comments on Human Rights Analysis (section 6)

Rights of Indigenous Peoples

In this part, we would welcome the inclusion of an overview of the legal frameworks regarding indigenous peoples, and how their rights are recognised.

Property, Housing, and Land Rights (Page 95)

We would welcome inclusion in this section of some baseline data about the current state of land rights recognition for indigenous peoples across Mercosur countries, and an overview of domestic policies and practice in this regard, as these data will help to contextualise the

⁴ The use of GCE modelling as an appropriate basis or modelling economic, social and environmental effects is questionable. See https://rodrick.typepad.com/dani_rodricks_weblog/2015/05/the-war-of-trade-models.html ; https://mpr.ub.uni-muenchen.de/81394/1/MPra_paper_81394.pdf.

analysis. Where possible, it would be useful to include reflections on some of the most recent policy developments towards indigenous peoples in Mercosur countries, particularly Brazil.

We also advise that a review of how their political and participatory rights are ensured – e.g. how and to what extent they are included in decisions that concern their lands and communities and if/how they are represented in relevant decision-making bodies.

We also strongly encourage reporting on the violations of indigenous peoples' rights, as documented in several reports⁵, and to draw conclusions regarding future trends/risks.

Analysis of the likely impact on land rights disputes (frequency) as a result of changing pressures on land use in particular regions would also be welcome.

In the analysis (6.3.2 page 103), the report indicates that *'The relevant impact analysis demonstrates that the CGE model predicts increased output in some agricultural sectors in Mercosur, where risk to indigenous populations may be of concern regarding the sector labour force, land allocation, and proper distribution of surrounding natural resources. Additional production of some agricultural products may lead to pressure on land use with adverse impacts on indigenous peoples' livelihoods and environmental conditions'*

It is key to have additional information about the adverse impacts on indigenous peoples' livelihoods and environmental conditions and to also have a set of strong recommendations to avoid such adverse impacts, recognising that indigenous peoples' rights, including the right to free prior and informed consent (FPIC) as enshrined in ILO Convention 169 (to which all Mercosur countries except Uruguay are signatories) and UNDRIP will be violated without meaningful consultation mechanisms.

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⁵ IWGIA 2019; Front Line Defenders Global Analysis 2018