

EU-Mercosur FTA: An Assessment of the Trade and Sustainable Development Chapter

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Summary

In the **published version** of the EU-Mercosur Trade and Sustainable Development (TSD) Chapter, the Commission has added a weak and ineffective "enforcement review" mechanism to its former model. This does not fulfill the demands of the EU Parliament to make the TSD provisions enforceable. Other elements are comparable to previous EU agreements, and are similarly vague or weakly drafted.

In the **unpublished consolidated negotiating text**, several specific problems are apparent:

- **Mercosur opposes the EU's position on including a reference to the "precautionary principle" in the negotiated TSD Chapter.** Mercosur proposes an addition to the negotiated Sanitary and Phytosanitary (SPS) Chapter, which potentially imposes an obligation on the EU to ensure that any "standards" which are "generated by non-governmental organizations" do not undermine SPS-related trade. Such "standards" may include "GM-free" labeling schemes or other initiatives related to food safety, animal or plant life, or health. In Argentina, Brazil and Paraguay, soybean cultivation is nearly 100% genetically modified.
- **Clarity on the relationship of the FTA obligations to Multilateral Environmental Agreements (MEAs) is lacking.** The relationship between WTO rules and MEA obligations is much disputed where only one party has signed the MEA. Clarity is needed to ensure that the EU is free to fulfill its obligations under MEAs it has signed. Mercosur's proposals potentially curb the EU's right to take such measures if they affect trade; the EU's proposals remain unclear and obfuscate the issue.
- **Mercosur proposals attempt to address concerns over the patenting of genetic resources and "bio-piracy".** These include obligations on prior informed consent and the fair and equitable sharing of benefits, including origin disclosure obligations. **The EU has not accepted Mercosur's proposals** in the negotiated TSD or intellectual property chapters – despite being publically supportive of such measures in multi-lateral fora.
- **Many serious concerns around the impacts of the FTA are not addressed at all, a number of which were detailed in the 2009 EU-Mercosur Trade Sustainability Impact Assessment (SIA).** These include **severe environmental impacts** (deforestation and loss of biodiversity) resulting from **biofuel** and **beef** production, and the use of **slavery** in the region's agricultural sector. Since then, Argentina has initiated consultations at the WTO to challenge the EU's sustainability criteria for biofuels and bioliquids. The reform of Brazil's labour laws in 2017 is widely

regarded to be in violation of the country's obligations under international law as well as the Brazilian Constitution, and to have weakened efforts to tackle slavery. The negotiated Article on labour standards has been amended and now begins with the "business case" for labour regulation.

I. The Public Textual Proposal on Trade and Sustainable Development (TSD)

The published TSD Chapter¹ contains little exceptional in comparison to previous agreements (CETA/JEFTA). In that regard, the criticisms regarding the weaknesses of those agreements also apply here. In the areas covered, the provisions cannot be considered adequate to address multiple concerns about environmental impacts. It is worth noting that many of these impacts are raised in the EU's Sustainability Impact Assessment (SIA) for the FTA, published in 2009.

A new Article on Responsible Management of Supply Chains (Art. 9) has been included but is **weakly** drafted (Parties shall "promote, support, recognize"). It covers CSR initiatives but does not encourage mandatory regulation.

State-state dispute settlement will not apply (Art. 15). This is contrary to the EU Parliament's explicit demand to ensure that TSD Chapters are covered the general dispute settlement "on an equal footing with the other parts of the agreement... to ensure compliance with human rights and social and environmental standards".² The Chapter also does not envisage any "effective deterrent measures", such as "reduction or even suspension of certain trade benefits provided under the agreement" in order to promote compliance – also demanded by the Parliament. Arguably following the Opinion of the Court of Justice of the European Union (CJEU) on the EU-Singapore FTA, the EU is already entitled to suspend trade liberalisation commitments in the event of a breach of environmental and labour provisions undertaken in its FTAs.³

The EU envisages instead the **standard dispute resolution mechanism for TSD Chapters**: government consultations (Art 16), domestic advisory groups (referred to in Art 17(9)), and a Panel of Experts to report on fact-finding and make

recommendations. The only significant modification to this established structure is the **addition of a review mechanism** “for the purpose of enhancing the effective implementation” of the Chapter (Art 18). Discussions of the TSD Sub-Committee may include “a possible review of the effectiveness of its enforcement”, which may lead the Committee to “recommend modifications to the relevant provisions of this Chapter”. This addition is **very weak** and does not guarantee either that such amendments would be made, or that they would necessarily strengthen enforcement.

The TSD Chapter in the unpublished consolidated negotiating text⁴ of the EU-Mercosur FTA does differ from **the published EU textual proposals (TP)**. Most of the changes to wording / chronology do probably not have any significant effect on their substantive meaning.

However, the consolidated text (hereinafter CT) shows which areas had not yet been agreed, and indicates alternative textual proposals from Mercosur contradicting the EU position in several key areas – some negative, some positive.

II. Contested Provisions

A. Precautionary Principle

The TP includes the precautionary principle (Art 11), with reference to the text of the Rio Declaration (“threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation”). Parties shall “*take into account* available scientific and technical information... including the precautionary principle”.

The CT (Art. 10) shows that Mercosur does not accept this and wants to oblige Parties to “*ensure*” measures “*are based on* available and scientific information from international technical and scientific bodies *to which they are parties.*”⁵

The inclusion of the precautionary principle in the TSD Chapter is therefore not guaranteed.

Even if it were included in the TSD, there is no certainty as to how effective such a provision would be if not included in the SPS / TBT Chapter – where it might be relevant to a dispute between the Parties. Failing to include any express reference to the principle in those Chapters, risks endorsing the status quo, i.e. the decisions taken in the *EC – Hormones* and *EC – Biotech* cases. This is particularly relevant for GMOs: the EU’s approach GMOs is based on the “precautionary approach imposing a pre-market authorisation for any GMO to be placed on the market and a post-market environmental monitoring for any authorised GMO...”⁶

Argentina in particular has pioneered the planting of GM crops and was one of the three countries in *EC-Biotech* (with the US and Canada) to challenge the EU’s application of a general de facto moratorium on approval of GM products from June 1999 to August 2003.⁷ The EU’s defence tried to rely on the Cartagena Protocol on Biosafety to the Convention on Biological Diversity, which incorporated the precautionary principle (in the language of the Rio Declaration).⁸ Argentina has signed the Cartagena Protocol (2000), but still not ratified it.

The WTO found in favour of the complainants in *EC-Biotech*. Under Article 5 of the SPS Agreement, measures must be based on a risk assessment, and “provisional” measures may be adopted only where no sufficient scientific evidence is available. This potentially allows for the temporary implementation of precautionary measures. Any application of the precautionary principle is however limited and will apply only to interpretation of “particular treaty terms” and cannot “override any part of the SPS agreement”.⁹

Neither the TSD Chapter nor the SPS Chapter refers to the Cartagena Protocol. The CT’s SPS Chapter includes alternative EU and Mercosur provisions regarding the basis for an SPS measure which “results in a higher level of SPS protection than would be achieved with a measure based on an international standard” (Art. 12, p

253)¹. This provides that the Parties must provide either the “scientific justification” (EU proposal) / “risk assessment” (Mercosur proposal) for a measure in the process of consultations over its compatibility with SPS obligations. There is no attempt however to exclude the issue of risk assessment from the general dispute settlement mechanism. This was the case in JEFTA’s draft SPS Chapter (Art. 16.1) – although that attempt was far from perfect.

The scale of this issue is worth emphasising: “EU imports of soymeal and soybean mainly originate from third countries where the cultivation of GMOs is widespread... In 2013, 43.8% originated from Brazil, where 89% of soybean cultivation was GM – 22.4% originated from Argentina, where 100% of soybean cultivation was GM... 7.3% originated from Paraguay, where 95% of soybean cultivation was GM... The EU legislation imposes GM labelling on any GM food and feed containing, consisting of, or produced from a GMO, except if the presence is below 0.9% of the food/feed, or the ingredient is adventitious or technically unavoidable...”¹⁰ EU legislation however “does not forbid the use of "GM-free" labels signalling that foodstuffs do not contain GM crops...”

Mercosur is also proposing an Article in the SPS Chapter on “PRIVATE STANDARDS” which could **potentially harm** non-governmental labelling initiatives or other standards (Art 3bis p 245). The proposed Article commits the Parties to “**undertake to exert every precaution to avoid that the commitments under this Chapter are undermined by the application of private standards related to Sanitary and Phytosanitary issues generated by no-governmental [sic] organizations.**” The provision reaffirms the commitment to Article 13 of the WTO SPS Agreement, which obliges Parties to “**take such reasonable measures** as may be available to them...” in this regard. The **much stronger language** proposed significantly ratchets up the obligation. Ironically, this reference to “precaution” is the only use of the word in the SPS Chapter.

Article 13 of the SPS referred to here is very contentious. The term “non-governmental entities” is undefined in the SPS agreement, there is little guidance

¹ NB. All page references use the .pdf pagination

regarding the implementation of Article 13 and it has not been invoked in disputes. An ad-hoc working group of the WTO SPS Committee concluded in 2011, that “Members have differing views on whether the term “non-governmental entities” **includes entities involved in the development, adoption, implementation, certification and enforcement of SPS- related private standards.** Some argue that Article 13 applies only in cases where Members rely on the services of non-governmental entities to implement SPS measures.”¹¹ There have been concerns raised among legal scholars have that the provision could give “grounds to hold a WTO Member **accountable for the actions of a private entity within its national territory**” – accountability would therefore arise from an **omission** to act, not a measure taken by the government itself.¹² This is certainly what the proposed provision seems to aim for.

B. Relationship to Multilateral Environmental Agreements (MEAs)

It is still contested how to resolve potential conflicts between WTO obligations and obligations under an MEA. It is widely accepted that if *both countries concerned have signed the environmental agreement* actions taken pursuant to an MEA is “probably not the WTO’s concern”. But **where only one of the disputing countries has signed the MEA “the situation is unclear and the subject of debate”** – such measures may breach WTO rules.¹³ The need for a clear position on this relationship in the FTA is evident.

The CT shows that the EU and Mercosur are yet to definitively agree. The positions are shown in the Article on MEAs.

Art. 5.3 reaffirms “commitments to promote and effectively implement” MEAs, protocols and amendments “[**EU: to which it is a party**] [**MS: applicable to the Parties.**]” A further provision (Art. 5.6) states that “[The Parties acknowledge their right to invoke Article [insert article number - General Exceptions] in relation to environmental measures, including those taken pursuant to multilateral environmental agreements to which [**MS: the Parties**] [**EU: they**] are party.” The use of “the Parties” merely confirms what is already the established position regarding the

relation of WTO rules to MEAs. The use of “they” is also grammatically ambiguous. The EU’s proposal for Art 5.3 is not really helpful (“it”), because that provision does not say anything to the relationship between the MEA and the FTA.

In comparison to prior EU agreements, the CT incorporates different texts used in **CETA and JEFTA**. The EU’s proposal for Art 5.6 would reproduce CETA’s¹⁴ clarification on the application of the exceptions provisions and may provide a level of legal certainty regarding the interaction of CETA with MEAs. The Mercosur option would tend to deny this interpretation (both “Parties” must have signed the MEA for the exception to apply). Such wording could potentially taint even the interpretation of CETA, given its ambiguity.

The equivalent provision in **JEFTA** referred to a Party’s right to adopt or maintain measures pursuant to an MEA “**to which it is a party...**”¹⁵ This different approach was undermined by the incorporation of the Chapeau (from GATT Art. XX) in the same provision.

The CT of EU-Mercosur currently presents a mix of these options, and may deliver the worst of all worlds. The JEFTA text is also incorporated (Art 5.7), with the word “it” replaced by “they”, and the Chapeau again reproduced.

C. Genetic resources, biodiversity and intellectual property

The Article on biodiversity (Art 7) largely reproduces what has been formerly proposed in JEFTA. Interesting to note that however is that Mercosur has proposed a provision (Art. 7.2(c)) which commits Parties to “promote the establishment of measures on access to genetic resources, prior informed consent and the fair and equitable sharing of benefits arising from the use of genetic resources.”

As it is not incorporated, this appears to have not been accepted by the EU. Nor have any of the more detailed proposals from Mercosur which relate to patenting of genetic materials under the Chapter on Intellectual Property Rights (see Mercosur proposals for Arts. 5 and 13 of the IP Chapter, p 385 et seq). This is interesting because the EU

has expressed support in principle for the adoption of a mechanism requiring mandatory disclosure within WIPO discussions, provided it does not affect the validity of a granted patent.¹⁶ Developing countries (predominantly Brazil, China, India, South Africa and countries of the Andean Community) and some NGOs have long advocated that the international intellectual property regime needs to adopt such obligations for patents and plant variety protection in order to tackle large-scale appropriation without benefit-sharing.¹⁷ Disclosure obligations were mooted by Parties to the Convention on Biological Diversity (CBD) in 2002 as an effective way to tackle the issue of genetic resources, but the resulting Bonn Guidelines only “encourage” disclosure.¹⁸ Neither the CBD itself nor the Nagoya Protocol contains provisions for mandatory disclosure obligations.

The JEFTA proposal has also failed to address the issue, although its impact might have been significant given that the EU and Japan markets account for some 40% of biotechnology patents worldwide – 28.1% and 11.9%.¹⁹ This failure might have been put down to intransigence of the other negotiating Party - the Japanese government²⁰ and Japanese industry²¹ have strongly opposed disclosure measures to improve sharing of benefits arising from the use of genetic resources.

But the fact that the text has not yet been adopted suggest that the EU opposes Mercosur’s proposal on this issue.

D. Forestry

The CT contains two provisions in the Article on Sustainable Management of Forests absent from the TP.

The first has been adopted and was presumably Mercosur’s proposal (since it is not in the TP). It concerns the “inclusion of forest-based local communities and indigenous people in sustainable supply chains for responsible business of timber and non-timber forest products, as a means of enhancing their livelihoods and of promoting the conservation and sustainable use of forests”. It refers to “prior informed consent”. It is unclear whether consent refers to their “inclusion” or the “use” of forests. In any case,

it is far from the meaning of Free, Prior and Informed Consent codified in the UN Declaration on the Rights on Indigenous Peoples 2007²², which seeks to guarantee indigenous peoples’ enhanced participatory rights to ensure their inclusion with respect to decisions affecting their territories and the resources therein.²³ Whether the meaning of FPIC amounts to a veto right of indigenous peoples over such resources is a highly contentious topic.²⁴ The text proffered here however unambiguously weakens the content of international law on indigenous peoples.

The second concerns implementation of “measures to promote forest conservation and sustainable use.” It was apparently not agreed by the EU – again whatever opposition to the proposal they have can only be inferred.

E. Agriculture

A final provision proposed by Mercosur (Art 13(p)) suggests cooperation on the “trade-related aspects” of “the promotion of sustainable agricultural practices and trade including through the use of biotechnology, no-till, precision and conservation agriculture, agro- ecology, improved livestock efficiency, animal welfare, sustainable grazing and sustainable forest-livestock systems.” Given the Parties’ differences on approaches to biotechnology, concerns about deforestation and its impacts on climate change and biodiversity, this list glosses over a number of contentious subjects. For example, “no till” is promoted as a “sustainable” practice by the agritech industry – which recommends it in combination with intensified use of pesticides and GM crops.

The provision creates an option to work together on this issue.

III. Other issues

A. Biofuels

Nothing in the Chapter addresses fears that the agreement weakens the EU’s attempts to introduce sustainability criteria for biofuels.²⁵ Argentina has initiated consultations

at the WTO²⁶ complaining that the EU's 35% threshold for savings in greenhouse gas emissions – required for biofuels and bioliquids to be considered “sustainable” – is arbitrarily high. That threshold is however set to raise (to 50% and 60%) over coming years. Brazil has been lobbying for the removal of sustainability criteria for bio-fuels in the UN's aviation agency (ICAO).²⁷

B. Labour

The CT includes a preambular provision to the Article on Labour Standards (Art. 4), which states that the Parties recognize that “decent work... core labor standards, and high levels of labor protection” have a “beneficial role... on economic efficiency, innovation and productivity, including export performance”.

This is not included in the PT, so is presumably a proposal of Mercosur accepted by the EU.

Putting the so-called “business case” for labour regulation at the top of this Article is an affront to the labour movement, in particular given the complete failure to enforce these provisions in the EU-South Korea FTA.²⁸

Reforms of Brazil's labour laws in 2017 have been held to violate the country's obligations under international human rights treaties, the fundamental ILO conventions, and the Brazilian Constitution,²⁹ as well as severely weakening efforts to tackle slavery.³⁰ It is already clear that in respect of a number of commitments listed, Brazil would be in immediate breach of its obligations.

C. Sustainability Impact Assessment

More generally it should be noted that, many wide-ranging and serious concerns around the impacts of the FTA in relation to biofuel production are comprehensively laid out in the EU-Mercosur Trade Sustainability Impact Assessment (SIA) of 2009.³¹ The SIA report also highlights concerns around environmental impacts of beef production,³² and the use of slavery in the region's agricultural sector.³³ The TSD

Chapter does not adequately address any of these concerns, or even adopt the proposals to address them.

The March 2017 terms of reference for a new (still ongoing) Mercosur SIA provide the authors with a maximum of 14 months (from initiation) to finalise the study, meaning that the FTA is due to be concluded first.³⁴

Abbreviations

CETA	EU-Canada Comprehensive Economic and Trade Agreement
CT	consolidated text (unpublished)
EU	European Union
FTA	Free Trade Agreement
JEFTA*	EU-Japan Economic Partnership Agreement
MS	Mercosur countries (participating in the negotiations**)
TP	textual proposals (published by the EU)

* JEFTA (for Japan-EU Free Trade Agreement) is a non-official but commonly used abbreviation as there is no official abbreviation for this FTA in Europe.

** Argentina, Brazil, Uruguay, Paraguay

Endnotes

¹ Published by the Commission in two parts: articles 1-13 published on 10 April 2017 (text as of 10 March 2017, see http://trade.ec.europa.eu/doclib/docs/2017/april/tradoc_155481.pdf) and articles 14-20 published on 10 October 2017 (text as of September 2017, see http://trade.ec.europa.eu/doclib/docs/2017/october/tradoc_156339.pdf)

² European Parliament resolution of 5 July 2016 on implementation of the 2010 recommendations of Parliament on social and environmental standards, human rights and corporate responsibility (2015/2038(INI)) para 21(b) and (d). P8_TA(2016)0298. <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P8-TA-2016-0298+0+DOC+XML+V0//EN>

³ Opinion 2/15, EU-Singapore Free Trade Agreement, para. 161. See discussion in Nesbit, Ankersmit, Friel and Colsa, Ensuring compliance with environmental obligations through a future UK-EU relationship, (IEEP), October 2017: “it is hard to imagine the EU doing so. First of all, it would require a Commission proposal and a Council decision by qualified majority to resort to such a suspension, an endeavour the EU has only resorted to once in relation to non-economic aspects of a trade agreement [citing the suspension of the operation of the EU trade agreement with Syria]. Second, the Commission itself has never even commenced consultations under sustainable development chapters in free trade agreements even in situations where breaches of these chapters were evident.” p 27-8

⁴ EU-MERCOSUR: Consolidated texts of the trade part of the EU-Mercosur Association Agreement, Brussels, 19 July 2017. The TSD Chapter is at p 440 et seq.

⁵ NB. Further text in red (awaiting approval from Parties) suggests the alternative “[from recognised technical and scientific bodies] [, relevant international standards, guidelines or recommendations]”. It is unclear of the origin of this – but in any case, such an alternative would still not include the precautionary principle.

⁶ http://europa.eu/rapid/press-release_MEMO-15-4778_en.htm

⁷ <http://www.new-ag.info/en/developments/devItem.php?a=32>

⁸ Preamble, Article 1, Article 10.6 and 11.8, and Annex III on risk assessment

⁹ EC – Biotech, Panel Report, 29 September 2006, para. 4.540

¹⁰ http://europa.eu/rapid/press-release_MEMO-15-4778_en.htm

¹¹ See REPORT OF THE AD HOC WORKING GROUP ON SPS-RELATED PRIVATE STANDARDS TO THE SPS COMMITTEE, G/SPS/W/256. 3 March 2011 (11-1080), Action 8, page 7 et seq.

¹² See Fabrizio Meliado, Private Standards, Trade, and Sustainable Development: Policy Options for Collective Action. International Centre for Trade and Sustainable Development (ICTSD), 2017. p 27

¹³ World Trade Organisation, ‘The environment: a specific concern’. UNDERSTANDING THE WTO: CROSS-CUTTING AND NEW ISSUES, at

https://www.wto.org/english/thewto_e/whatis_e/tif_e/bey2_e.htm

¹⁴ CETA, Art. 24.4.4

¹⁵ JEFTA, TRADE AND SUSTAINABLE DEVELOPMENT. Art. 4.5

¹⁶ Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC), Report of the Twenty-Eighth Session Geneva, July 7 to 9, 2014 (WIPO/GRTKF/IC/28/11, 15 Feb 2016), para 55: “[The EU delegation] had proposed a mechanism under which it could contemplate agreeing to a requirement to disclose the origin, or source, of GRs in patent applications. That did not mean that it could accept any form of disclosure requirement. To be acceptable, the disclosure requirement would have to contain safeguards as part of an overall agreement to ensure legal certainty, clarity and appropriate flexibility. If that question was resolved, and in accordance with its position expressed in document WIPO/GRTKF/IC/8/11, it could eventually consider a mandatory requirement in that regard.”

¹⁷ Catherine Saez. Genetics Disclosure Requirement In IP Applications Necessary To Comply With Obligations, Speakers Say, IP-Watch, 19/02/2016.

<https://www.ip-watch.org/2016/02/19/disclosure-requirement-in-ip-applications-necessary-to-comply-with-obligations-speakers-say/>

¹⁸ See Bonn Guidelines on Access to Genetic Resources and Fair and Equitable Sharing of Benefits Arising out of their Utilisation (6th Conference of Parties to the Convention on Biological Diversity) para. 16(d), which provides Members should consider “taking measures to encourage disclosure of the country of origin of the genetic resources and of the origin of traditional knowledge, innovations and practices of indigenous and local communities...”

¹⁹ Respectively 28.1% and 11.9%. See OECD Key Biotechnology Indicators: www.oecd.org/sti/inno/keybiologicalindicators.htm

²⁰ IGC, Report of the Twenty-Eighth Session Geneva, July 7 to 9, 2014 (WIPO/GRTKF/IC/28/11, 15 Feb 2016), para 71: “Regarding the issue of compliance with ABS requirements, the [Japanese] Delegation strongly believed that the existing IP system should not be used as a means of enforcement of provisions under the CBD and the Nagoya Protocol. In addition, it strongly felt that the effectiveness of a mandatory disclosure requirement for this issue had not been fully demonstrated.”

²¹ Nippon Keidanren (Japanese Business Federation). Basic Position on Access to Genetic Resources and Benefit Sharing under the Convention on Biological Diversity). Committee on Intellectual Property, March 16, 2010. See Section II. Unadvisable Policies:

<https://www.keidanren.or.jp/english/policy/2010/023.html>

²² UN Declaration on the Rights of Indigenous Peoples, art. 31, G.A. Res. 61/295, U.N. Doc.

A/RES/61/295 (Sept. 13, 2007), available at <http://www.un.org/esa/socdev/unpfii/en/declaration.html> Accessed Jan 2, 2015

²³ In particular UNDRIP Article 32, also Articles 10, 19, 28(1), 29(2)

²⁴ Eg. S.H. Baker, “Why The IFC’s Free, Prior, And Informed Consent Policy Does Not Matter (Yet) To Indigenous Communities Affected By Development Projects” 30 Wis. Int’l L.J. 3 (2012)

²⁵ See <https://www.euractiv.com/section/agriculture-food/interview/sr-tue-green-mep-sustainability-criteria-will-distinguish-good-and-bad-biofuels> . And Transport & Environment assessment here: <https://www.transportenvironment.org/press/eu-trade-deals-could-undermine-europe%E2%80%99s-shift-clean-biofuels-%E2%80%93-report>

²⁶ EUROPEAN UNION AND CERTAIN MEMBER STATES – CERTAIN MEASURES ON THE IMPORTATION AND MARKETING OF BIODIESEL AND MEASURES SUPPORTING THE BIODIESEL INDUSTRY- REQUEST FOR CONSULTATIONS BY ARGENTINA. DS 459/1, 23 May 2013

²⁷ <https://www.transportenvironment.org/press/eu-commission-surrenders-united-nations%E2%80%99-icao-aviation-biofuels>

²⁸ See letter from the European Domestic Advisory Group to Trade Commissioner Malmström (dated 16 December 2016) on serious and widespread violations of the right to freedom of association and collective bargaining in South Korea. Available from European Public Service Union website: www.epsu.org

²⁹ See <https://www.reuters.com/article/us-brazil-labor/brazil-prosecutor-says-temer-labor-reforms-illegal-idUSKBN1582UI> and www.ictur.org/pdf/ICTUR_BRAZIL.pdf

³⁰ <https://www.theguardian.com/global-development/2017/oct/17/fewer-people-will-be-freed-brazil-accused-of-easing-anti-slavery-rules>

³¹ See in particular p 24-28, TRADE SUSTAINABILITY IMPACT ASSESSMENT (SIA) OF THE ASSOCIATION AGREEMENT UNDER NEGOTIATION BETWEEN THE EUROPEAN COMMUNITY AND MERCOSUR: FINAL OVERVIEW TRADE SIA EU-MERCOSUR FINAL REPORT. Revised March 2009. Available: http://ec.europa.eu/trade/policy/policy-making/analysis/policy-evaluation/sustainability-impact-assessments/index_en.htm

³² Ibid. p 28,29 and 33

³³ Ibid. p 27 and 29, plus footnotes 26 and 39

³⁴ Terms of reference, available here: http://ec.europa.eu/trade/policy/policy-making/analysis/policy-evaluation/sustainability-impact-assessments/index_en.htm