



Study

# Analysis of the agreement between the European Union and the Mercosur

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**PowerShift**



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## 0. FOREWORD

With every passing month, the gravity of the climate crisis and the current inadequacy of our response to date become more obvious. In December, the European Commission and the Council finally declared that all EU policies must contribute to reaching carbon neutrality targets. Unfortunately when it comes to reconciling trade and climate, this work seems barely to have begun.

Trade agreements negotiated today shape economic exchanges in the long run. Industries and governments adapt to their rules, trade flows change, and development models are constrained or enabled by their content. Their effects are felt throughout economies, from the top right down to ground level. Sustainable farms go bankrupt, trees get cut and burned to make space for more pesticide-drenched monoculture. When trade is treated as an end in itself, trade agreements lock our societies into an unsustainable economic model.

The deal with Mercosur is a case in point. The EU will import more meat and other agriculture products. With them, we will import emissions, deforestation, soil contamination and human rights abuses — while endangering local farmers' livelihoods.

Already, the Amazon is in flames to feed this trade. In exchange, the Mercosur block will import more European cars, chemicals and machines, will risk the dislocation of its regional value chains and the disruption of its economy. This type of trade and trade agreement was never acceptable. But as we watch the world burn, they become truly scandalous.

There can be no continuation of business as usual, and trade policy must play its part. Firstly, trade policy must stop doing harm. Each provision in current and future agreements must be assessed on the basis of its sustainability, and removed if need be. We also need strong due diligence rules, and to ensure that no product linked to deforestation and human rights abuses abroad enter the single market.

Secondly, trade agreements must contribute to strengthening clean supply chains, for example, by treating products differently according to their carbon footprint and production processes. Agreements must include binding and enforceable labour and environmental standards.

One thing is clear, the EU-Mercosur agreement is not up to the task.

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# 1. INTRODUCTION

On June 28 2019, the Mercosur group and the European Union (EU) announced the end of the negotiation process to conclude a free trade agreement, after 20 years. Nevertheless, five months after this announcement, at the time of finishing this report, there is still considerable uncertainty about the future of the agreement and the next steps. Just two days after the June announcement in Brussels, Emmanuel Macron, President of France, said that as far as France was concerned, the agreement had yet to go through a "complete revision."

Both government representatives and the media have continuously stressed that the agreement between Mercosur and the EU represents the most significant trade agreement in the world. For Mercosur, it enables some of its products to access the European market with 0% tariff and others via a preferential access quota. The EU's 500 million inhabitants represent a massive market; the region generates 20% of world GDP, and it is the first global investor with a stock that exceeds 30% of total global investments. It also imports 17% of the total world purchases of goods and services (Ministry of Foreign Affairs of Argentina, 2019).

Within Mercosur, Brazil is the leading trade partner of the EU. In 2018, the EU accounted for 18% of total exports from Brazil, registering a trade of USD 76 billion. It is estimated that mutual exports (Brazil - EU) generate about 855,000 jobs in the EU and another 436,000 in Brazil [1]. The EU is also the largest foreign investor in Mercosur countries, and Brazil is the largest destination for Foreign Direct Investment (FDI) from European companies within Mercosur as well as the fourth largest FDI destination of these companies outside the EU [2]. On the other hand, the EU is Argentina's second trading partner after Brazil, while the most significant source of FDI for Argentina is also European companies.

For the EU meanwhile, the association with Mercosur allows commercial access to the most developed region in South America, which also contains the countries that have received the largest amount of European investment and products in the last few decades. The conclusion of this long negotiation also supports the EU's ongoing efforts to be an international advocate of free trade. In fact, against the USA of Donald Trump, which is prone to national economic defence in the context of the trade war with China, the EU has become a compulsive negotiator of trade agreements that involve the reduction of tariffs and facilitation of the circulation of capital flows.

## 1.1 Talks conclude: The June 28 announcement

The announcement on June 28 2019 confirmed the conclusion of the negotiations, but not the signing of the agreement. There is still no clarity as to whether the agreement will be signed in the short or medium term. Tensions within the EU regarding this agreement have become decisive. The agricultural sector continues to oppose the agreement with Mercosur, as it estimates that the increase in quotas for access to European markets, especially for products like beef, would negatively affect meat producers in the European territory. On the other hand, the medium and high technology manufacturing sectors are strongly in favour

of the agreement. The struggle between these economic sectors has not been resolved at the national level and, therefore, clearly cannot be resolved in the European supranational institutions. On the Mercosur side, criticism from the productive sectors that are likely to be negatively affected has not yet taken the form of government opposition to the agreement, except perhaps in Argentina with the recent presidential victory of Alberto Fernández.

On the other hand, tensions can also be observed regarding environmental protection and the fight against climate change. After news of the fires caused by farmers and ranchers in the Amazon in order to expand the border for soybean plantation and livestock broke in August, President Macron lashed out at the government of Jair Bolsonaro. He announced that France was no longer supporting the agreement because the Brazilian president had violated his promise to respect the Paris Agreement [3]. It is currently unclear what conditions France would require to renew its support for the agreement.

Although the rejection of the agreement by some EU countries is ostensibly related to the meagre climate change mitigation efforts by Brazil, these words in defence of the Amazon hide political tensions between the European economic sectors. Governments have understood that these tensions can lead to potential internal governance problems, as in the case of France and Ireland. The European protests about the EU-Mercosur agreement are as much about the concerns of French and Belgian farmers, as they are about popular concerns about climate change. A recent Eurobarometer survey estimates that climate change has become the second most important global problem as ranked by Europeans, with climate crisis having exceeded international terrorism as a concern [4]. Therefore, moving forward with an agreement that does not give guarantees for any of these areas of concern could imply a potentially high political cost for leaders.

The political effects of the fires in the Amazon became global news, and quickly had an impact on this agreement. Not only did France remove its support, but Ireland, Luxembourg, and recently Austria, have moved in the same direction. Lawmakers in the Austrian parliament's EU subcommittee voted to reject the draft free trade agreement, thus obliging their government to veto the pact at EU level. These developments have increased the uncertainty about the future of this agreement. Donald Tusk, former President of the European Council, said that in the context of fires in the Amazon, it is "difficult to imagine" an agreement with Mercosur being implemented [5].

The agreement is currently in the process of technical and legal revision (known as legal scrubbing). Despite the public announcement of the end of negotiations, during this technical and legal process, negotiations in some areas in fact continue. According to the texts that were made public between July 2nd and 3rd 2019, several points are still open. The end of the negotiations in June 2019 implied a general agreement on the most problematic points for both blocs, especially export quotas on agricultural products such as beef, poultry, and swine. In early September, the final wording of the Intellectual Property chapter was released, which, unlike the text published in July, included some key issues such as medicinal and biotechnological patents. These have been a point of disagreement between the two blocs in the past.

Despite the fires, negotiations on some problematic issues are likely to continue. Experience shows that significant changes could still occur during this process. This was previously seen



with the Comprehensive Economic and Trade Agreement between the EU and Canada (CETA), in which almost 20% of the text was modified from its original content during the process of legal scrubbing.

## 1.2 The longest trade negotiations in the world

The negotiations for the association agreement between Mercosur and the EU took more than 20 years. Although technically speaking the negotiations officially began when the European Commission adopted the Negotiation Directives in 1999, the process can in fact be traced back to the 1995 Interregional Framework Agreement. It has been the longest-running agreement in negotiation in the world. Other equivalently complex treaties took only a few years to complete the process of negotiation, signing and coming into force, for example the Transpacific Partnership (TPP), which was negotiated and signed between 2013 and 2016.

Negotiations between the two blocs have suffered various ups and downs, halting several times. Also, during these almost 25 years, the international system underwent enormous transformations, which inevitably had an impact on the course of the negotiations. First, by 2003, the crisis in the multilateral trading system and the Doha Round of negotiations within the framework of the World Trade Organisation (WTO) became evident. Since then, this body has not been able to generate any multilateral agreement of relevance (except the Agreement on Trade Facilitation in 2015) and is currently in a deep crisis and process of reform. Second, the international crisis of 2008 resulted in a decrease in the international flow of goods, and had a substantial impact on EU exports. Third, the indisputable rise of China as a central actor in global trade saw it become a significant investor in Mercosur, creating a challenge for European companies in the region. Fourth, the recent commercial war unleashed between the US and China, resulted in the EU playing the role of a "defender of the multilateral system," adopting an offensive commercial position framed in its 2015 *Trade for All* policy. Fifth, the recent political changes in the Mercosur countries brought to power governments more supportive of free trade, who initiated a series of trade and investment negotiations with several countries. During 2019, the Mercosur block finished the negotiation of a trade agreement with the European Free Trade Area (EFTA) and held advanced negotiations with Canada, Singapore, and South Korea.

Despite the ups and downs, the negotiation process has had one constant: secrecy, opacity, and lack of democratic control. While EU parliamentarians had access to the draft texts of the agreement, civil society did not. The most recent texts that academics and civil society were able to analyse were part of several leaks by Greenpeace in December 2017 [6]. Only large trade union confederations, such as the Southern Cone Confederation of Trade Unions (CCSCS) and the European Trade Union Confederation (ETUC) have been allowed to participate at some moments of the negotiations, but always as observers. This lack of transparency and dialogue with actors from civil society has been the subject of constant criticism and complaint [7].

On the other hand, the impact studies have been insufficient in the EU, and non-existent in Mercosur. The EU commissioned two Sustainability Impact Assessments (SIA) from the

London School of Economics (LSE), published in 2018 and 2019 (LSE, 2018 and 2019). The methodology used by the LSE team (the Computable General Equilibrium Model) has been widely criticised by academics, especially in the case of CETA and the Transatlantic Trade and Investment Partnership with the USA (TTIP), since its use usually determines more significant positive impacts than other models [8]. In turn, the most recent study by the LSE was published by the European Commission on October 4 2019, three months *after* the announcement of the end of negotiations, showing that this study in no way guided the negotiation and the decision-making processes.

On the Mercosur side, after the announcement that the agreement had been concluded, the industrial sectors demanded that the government of Mauricio Macri, then President of Argentina, make public its own impact studies, which has not happened [9]. Nevertheless, government officials and negotiators have commented off the record that some impact studies showed no profits for Argentina and that finally, negotiators moved "blindly" at the negotiating table. Recently, the Argentine chief negotiator, Horacio Reyser Travers, commented publicly at an International Conference organised by the Austral University in the National Congress, that "the importance of impact studies must be demystified," evidencing the vision of his government [10].

## 1.2.1 The evolution of the negotiation

### *The mandate*

The bi-regional relationship was marked by the signing of an Interregional Framework Cooperation Agreement in December 1995. The objective was to create a free trade area. The official negotiations were launched in April 2000, after the European Commission was granted the negotiation mandate in June 1999 (European Council, 1999). This mandate was kept private until a leak recently occurred through the *Bilaterals.org* webpage [11]. The only version available is in French, under the name *UE-Mercosur; Directives de negotiation, par la Commission, d'un accord d'association entre les parties*.

These Directives describe the path for the negotiation process. The document is composed of three parts that respond to the three axes which the EU includes in an Association Agreement: Trade, Political Dialogue, and Cooperation. It also includes some points about the administrative provisions of the agreement.

Like with other trade agreements, this mandate establishes that the agreement shall promote economic and social progress, taking into account the principle of sustainable development and environmental protection requirements. The most detailed part is the one on Cooperation (which has 11 pages), and covers areas such as transport, fishing, investment protection, telecommunications, as well as customs, agricultural, statistical, technological and educational cooperation, etc. In general, it can be said that this section has in mind cooperation to bring about administrative modernisation of the Mercosur countries' bureaucratic systems, with the objective of facilitating trade and investment between the parties. To this end, it proposes measures such as the exchange of information on implemented methodologies, technical assistance, and cooperation between institutions,

training programs, and the running of workshops, conferences and round tables, among others. On the other hand, no relevant element is detailed in the Political Dialogue section, except that the dialogue will be multilevel: it will be held both at the ministerial sphere, as well as between officials and parliamentarians.

The section on trade establishes the objective of the liberalisation of trade in goods over 10 years, taking into account the sensitivity of some products. The agreement will advance the harmonisation of customs and administrative systems of both parties, so the standardisation of technical criteria becomes central. Mechanisms of "regulatory cooperation" are incorporated, establishing open consultation for the discussion of standards, based on "the harmonisation of regulatory requirements based on international or European standards" (Title III, 2.2, p. 7). The Directives also aim to see the progressive liberalisation of services in a maximum of 10 years, covering a substantial number of sectors (at least all those included in the WTO GATS agreement) and eliminating all discrimination between the parties.

### *Beginning of the negotiations*

The negotiations were subject to discussions in the WTO sphere, in the context of the failure of the launch of the Millennium Round in Seattle in 1999. During the first five years of the new century, negotiations were directly linked to discussions on agriculture in the WTO and the progress made there concerning the liberalisation of agricultural products. In fact, from the Mercosur side, the main focus of the negotiations with the EU was on gaining access to agricultural markets because of its agro-export capacity. At that time, the EU had become the primary recipient of exports from the southern bloc: in the period 1998-2000, about 30% of Mercosur's total trade went to the EU (Makuc, Duhalde, and Rozemberg, 2015).

In negotiations in the Bi-regional Negotiations Committee (BNC) between 2000 to May 2004 the EU committed an opening of 90%, but without liberalisation in sensitive products, which were those of most interest to Mercosur: agricultural products. The EU offered the entry of these products under the quota system, while expanding them would depend on the outcome of the WTO rounds (Molle, 2008). However, the last offer exchanged was unsatisfactory, because both parties had remained inflexible in their positions, so the negotiation was locked.

In 2005, the negotiation of the Free Trade Area of the Americas (FTAA) between the Latin American and Caribbean States and the USA – that had had an impact on the negotiations between the EU and the Mercosur – failed due to massive mobilizations and the final veto of some Latin American countries, among them the Mercosur members Argentina and Brazil.

### **Table 1: Timeline of the Mercosur-EU negotiations**

<b>1995:</b>	Inter-regional Framework Cooperation Agreement
<b>1999:</b>	European Council issues the Directives for negotiations with Mercosur
<b>2000:</b>	Official launch of the negotiations
<b>2000-2004:</b>	15 meetings of the BNC and three ministerial meetings



- 2004:** Stagnation of the bi-regional dialogue
- 2004-2008:** Political meetings expressing the need to resume dialogue
- 2010:** Negotiations resume within the framework of the VI EU-Latin America Summit
- 2012:** Slow progress of the negotiations
- 2015:** Ministerial Meeting, both parties reaffirm their total commitment to conclude the negotiations
- 2016:** Negotiations are resumed, and the exchange of market access offers occurs
- 2017:** Failure to announce the end of negotiations during the 11th WTO Ministerial Conference in Buenos Aires
- 2018, June:** Announcement of the conclusion of negotiations on the Cooperation and Political Dialogue pillars
- 2019, June 28:** End of negotiations

### *The phase of stagnation*

Between 2004 and 2009, the period can be called one "of mutual disinterest" (Sanahuja, 2019). It was marked by meetings of officials trying to resume negotiations, but with no internal political conditions for this. Only the financial crisis of 2008 and its consequent impact on the reduction of bloc exports, in addition to the WTO crisis, pushed the Commission to seek the revival of bilateral negotiations globally, including with Mercosur. The reopening of the dialogue was announced at the VI EU-LAC Summit in Madrid in May 2010. However, a group of European countries opposed the reopening of the negotiations. This group, led by France, among which was Poland, Ireland, Hungary, Luxembourg, Austria, and Finland, sent a letter to the Commission rejecting the negotiations. They criticised the secrecy of the process and warned that an agreement with Mercosur would immediately lead to an increase by 70% of beef imports and 25% in poultry imports [12].

As of 2010, a new stage of negotiations began in a two-speed scheme: the development of regulatory frameworks, on the one hand, and the preparation of offers on the other (Makuc, Duhalde, and Rozemberg, 2015). However, the impossibility of complying with the submitted schedules was a constant in this period. During the 2011 and 2012 rounds, there was no exchange of offers, and progress was made only in the regulatory chapters (services, public purchases, customs, and trade facilitation, intellectual property). For its part, Mercosur proposed the incorporation of several figures in order to balance trade asymmetries. Argentina proposed the infant industry clause, which would enable the elevation of tariffs applied in those industrial sectors that the government intended to strengthen or restructure. Also, Argentina insisted on sustaining temporary admission and drawback regimes to foster competitiveness, and the use of import licenses and export duties, among others. It should be noted that some of these elements were eliminated during the last part of the negotiations (such as the infant industry clause) or limited (the use of drawback and export duties).

Without exchanging offers, the negotiations resumed. The announcement by the European Commission that from 2014 onwards it would eliminate several middle-high-income countries (such as Argentina, Brazil, Uruguay, and Venezuela) from the General System of Preferences (GSP) put pressure on Mercosur to conclude the agreement. In that context,

Brazil's response, during Dilma Rousseff's government, was to attempt to accelerate negotiations, primarily driven by pressure from the agribusiness sector, eager to export with tariff preferences to the EU (Míguez and Crivelli, 2014). However, the government of Argentina stuck to its strong "red lines" and the defence of commercial instruments that accounted for asymmetries, intending to achieve a balanced agreement (Larisgoitia and Bianco, 2018).

### *Unlocking negotiations*

Only in May 2016, with newly elected neoliberal governments in the region, were the negotiations finally unlocked. In particular, the governments of Brazil and Argentina set aside several of the demands that had previously blocked the negotiations. Political conditions had changed (Sanahuja, 2019), and the Argentine and Brazilian governments advocated for what they called 'an intelligent insertion in the world'. This meant negotiating Free Trade Agreements (FTA) that would allow them to move beyond their increasing dependence on purchases from China (Pascual and Ghiotto, 2019).

In this last part of the negotiations, Mercosur abandoned its interest in achieving a balanced agreement. Therefore, beginning in May 2016 with the exchange of new offers, an accelerated process began. Yet, during the short government of Brazilian president Michel Temer, no significant advances were made, since he continued the dialogue with the Brazilian business sectors, without generating a significant change in the positions held by the previous governments of the *Partido dos Trabalhadores* (PT). It was not until January 2019, with Jair Bolsonaro becoming president of Brazil, that negotiations took the necessary turn to enable them to finally conclude. Brazil's historical claims were set aside in order to close the agreement. Hence, of the 20 year long negotiations, it was the last six months that were decisive.

### *Other negotiations of FTAs*

On the other hand, during the period in which the bilateral negotiations did not advance, the EU was active in signing agreements with third countries in the region. As can be seen in Table 2, the EU signed Association Agreements with Mexico (1999), Chile (2002), Peru and Colombia (2010), Central America (2012) and Ecuador (2014) and a Dialogue and Cooperation Agreement with Cuba (2016), which does not include a trade pillar. With Mexico and Chile, agreements have recently been renegotiated to adapt them to the "modern" standards of the European trade agenda, which includes adding a chapter on investment protection that incorporates the Investment Court System (ICS) (Olivet and Pérez Rocha, 2017).

**Table 2: Dates of signature and entry into force of the Association Agreements between Latin American countries and the European Union**

<i>Association Agreement</i>	<i>Signed</i>	<i>Entry into force</i>
<b>Colombia</b>	June 2012	August 1st 2013
<b>Central America</b>	June 2012	August 1st 2013 (provisional application)[13]
<b>Chile</b>	November 2002	March 1st 2005
<b>Ecuador</b>	November 2016	January 1st 2017 (provisional application)
<b>Mexico</b>	May 2000	July 23rd 2000
<b>Peru</b>	June 2012	March 1st 2013

*Source: Luciana Ghiotto, Javier Echaide 2019*

For its part, Mercosur was much less active than the EU - it only signed trade agreements with Morocco (2004), Israel (2007), and Egypt (2010). More recently, new intra-regional FTAs were signed in the process of convergence between Mercosur and the Pacific Alliance (Chile, Peru, Colombia, Mexico), which is why Argentina, Brazil, and Uruguay signed FTAs with Chile in 2017 and 2018 and advanced negotiations with Mexico. Two months after the end of the negotiations with the EU, Mercosur announced the closing of negotiations with the EFTA block. Also, each member state continued negotiating its own bilateral investment treaties. Brazil launched the Investment Cooperation and Facilitation Agreements in 2014, a particular investment protection model which did not include the Investor-State Dispute Settlement mechanism (ISDS), and signed agreements with several African and Asian countries, as well as Mexico, Chile, and Colombia. More recently, Argentina, Paraguay, and Uruguay also signed investment treaties with Qatar and Saudi Arabia. These were presented as "new generation" treaties, although they barely limit the Indirect Expropriation clause, retain a wide understanding of Foreign Investment, and still include the ISDS mechanism.



### 1.3 Notes

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## 2. THE TRADE PILLAR

### 2.1 An overview of the bilateral trade relationship

The EU and Mercosur have structural economic and productive differences, as a result of a differentiated insertion in the global value chains. While the EU countries are more industrialised and have significant complementarities of their productive structures, Mercosur specialised in the production of raw materials, with lower levels of intra-bloc commercial exchange (Olivera and Villani, 2017). The productive capacity of the EU is four times larger than that of its South American partner, with a GDP per capita of USD 41,890 compared to USD 10,600 in Mercosur in 2018. According to the Observatory of International Conjuncture and Foreign Policy (OCIPEX), Germany alone has a GDP almost equal to that of Argentina, Brazil, Uruguay, and Paraguay combined [1]. These differences are crucial when evaluating the impact of trade liberalisation on the two regions.

European industry is much more competitive than the industry in Mercosur countries. It is, therefore, an asymmetric trade relationship (Español, 2018; Zelicovich, 2019; Sanahuja, 2019; Makuc, Duhalde, and Rozemberg, 2015), which is one of the main problematic aspects of the agreement. Mercosur countries specialise in the export of agricultural products and commodities to the EU (in 2011 these exports exceeded 73% of its total exports to the region), while the EU primarily exports products with medium and high added value to Mercosur (in 2011, these represented close to 70% of total exports of its exports to Mercosur) (see Figure 1). Also, Paraguay and Uruguay, the smallest countries in the bloc, promote the production of agricultural goods, such as beef, dairy products (Uruguay), fruits and vegetables, and some processed agricultural products. For its part, Brazil has established itself as a producer and exporter of agri-food: beef, poultry, and pork; other processed agricultural products that include sugar, flour, fruits, and vegetables; traditional products such as cocoa, coffee, bananas and dairy.

Moreover, while the EU sells only 1.3% of its exports to Mercosur, for the Southern bloc, the importance of the European trading partner is more significant: almost 21% of their exports go to the EU [2]. Despite very high tariffs, 42% of income from Mercosur's fresh beef exports, which face a 59% Most Favoured Nation (MFN) tariff out of quota, is realised in the EU. Also, a third of Mercosur's honey exports and around 10% of poultry meat exports go to the EU (Baltensperger and Dadush, 2019). The dependence on European purchases was a significant factor at the time of closing the agreement.

The asymmetric trade relationship has lasted throughout the 20 years of negotiations. As we will see in Tables 3 and 4, Mercosur has specialised in the production and export of agricultural goods, while the EU exports to Mercosur goods with medium and high technological content. During the period 2014-2016, the top twelve products that Mercosur imported from the EU were industrial goods. For example, the first six products were as follows: 1) medicine, vaccines, and immunological products; 2) airplanes and airplane parts; 3) parts and accessories for motor vehicles, motor cars, and vehicles; 4) light and medium oils and preparations; 5) fungicides; 6) light vessels and floating cranes. Mercosur, on the other hand, in the same period, exported products related to agricultural activities and



mining to the EU: 1) products related to soybeans (soya-beans and oils); 2) wood pulp; 3) copper and iron ores and concentrates; 4) coffee; 5) petroleum oils; 6) orange juice; 7) bovine meat. In Table 4, we see that these products already enter the EU with zero tariffs, except for some of the most protected sectors in Europe, for example bovine meat production and orange juice.

**Table 3 - Top 12 products exported from the EU to Mercosur (2014-2016)**

<i>Name of product</i>	<i>Export share in %</i>	<i>Average MFN tariff in Mercosur</i>
<b>Medicine</b>	3.8	10.5
<b>Aeroplanes</b>	3.6	0.0
<b>Parts and accessories for motor vehicles</b>	1.9	8.7
<b>Antisera and immunological products</b>	1.7	2.7
<b>Motor cars and vehicles (cylinder capacity 1,500 to 3,000)</b>	1.5	23.3
<b>Light vessels, fire floats, floating cranes and other vessels</b>	1.4	7.0
<b>Medium oils and preparations</b>	1.4	1.2
<b>Light oils and preparations</b>	1.4	0.0
<b>Parts and accessories of bodies for motor vehicles</b>	1.3	10.9
<b>Fungicides</b>	1.3	12.0
<b>Part of airplanes or helicopters</b>	1.2	0.0
<b>Vaccines for human medicine</b>	1.2	2.1

Source: SIA (LSE, 2019)

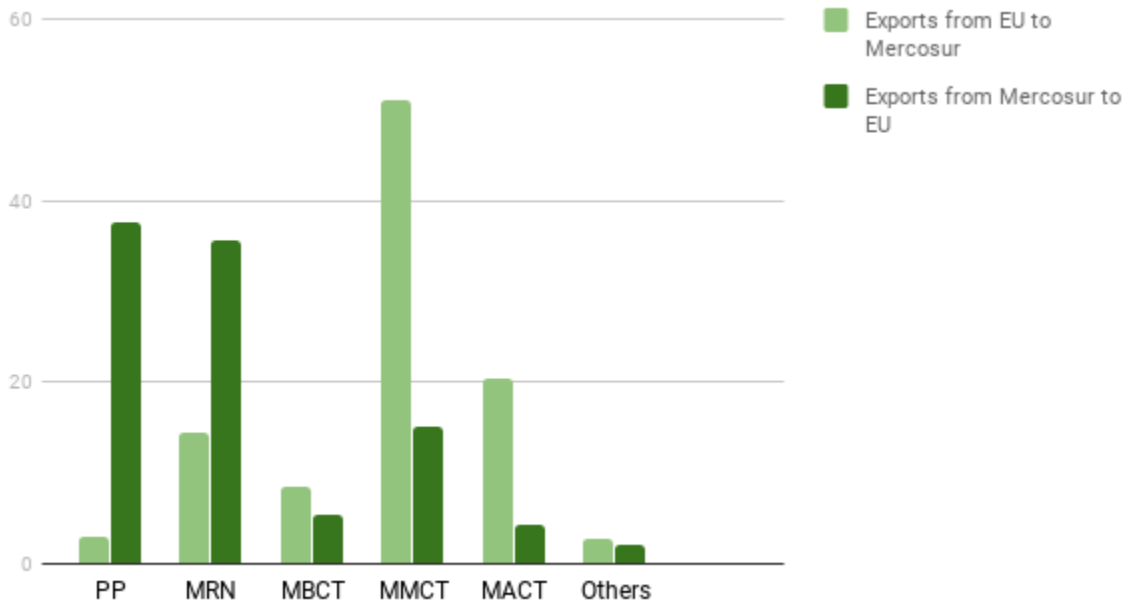
**Table 4 - Top 12 products exported from the Mercosur to EU (2014-2016)**

<i>Product</i>	<i>Import share in %</i>	<i>Average EU MFN tariff</i>
<b>Oilcake &amp; residues, resulting from extraction of soya-bean oil</b>	15.5	0.0
<b>Soya beans</b>	7.0	0.0
<b>Chemical wood pulp, soda or sulphate</b>	5.8	0.0
<b>Non-agglomerated iron ores and concentrates</b>	5.8	0.0
<b>Coffee (excluding roasted and decaffeinated)</b>	5.7	0.0
<b>Copper ores and concentrates</b>	3.7	0.0
<b>Petroleum oils and oils obtained from bituminous minerals</b>	2.4	0.0
<b>Agglomerated iron ores and concentrates</b>	2.4	0.0
<b>Orange juice</b>	2.1	38.6
<b>Fresh chilled bovine meat, boneless</b>	2.0	62.2
<b>Gold, in semi-manufactured forms</b>	1.8	0.0
<b>Aeroplanes</b>	1.8	1.4

*Source: SIA (LSE, 2019)*

According to the “Agreement in Principle” document released by the European Commission on July 1, 2019, the agreement establishes that the EU will eliminate tariffs on 100% of goods “for industrial use” over a period of up to ten years (European Commission, 2019a). However, we see in Figure 1 that this liberalisation will not have a significant impact on bilateral trade, since the main products exported from Mercosur to the EU are primary products and processed products based on raw materials. The percentage of goods with medium and high technological content in the export basket of the Mercosur bloc is low. This is evident when viewed alongside exports from the EU to Mercosur.

**Figure 1 - Bilateral trade, Mercosur-EU (2005-2015)**



Legend: PP - Primary Products; MRN - Goods with Origin in Natural Resources; MBCT - Goods with Low Technological Content; MMCT - Goods with Medium Technological Content; MACT - Goods with High Technological Content.

Source: Luciana Ghiotto, Javier Echaide, 2019 (based on Olivera and Villani (2017))

While Mercosur specialises in the exports of agricultural products, at an intra-bloc level, exports between Brazil and Argentina are mainly of goods, notably car parts (Olivera and Villani, 2017). Therefore, boosting trade with European countries will deepen the specialisation in primary production, instead of increasing intra-bloc trade could encourage the production of manufactured goods. The EU-Mercosur agreement is expected to replace the purchase of Argentine products by Brazil, both from the metallurgical sector and auto parts, as well as in processed products of agricultural origin such as olive oil, with the EU gaining at Argentina's cost.

Concerning tariff levels, within the Mercosur region, a high number of exceptions are in place on agreed tariff levels, which is why the bloc is referred to as an "imperfect customs union." In general, the EU maintains lower tariffs than Mercosur, as seen in Tables 3 and 4. While in the EU, the average tariff level for third countries in 2018 was 1.8%, countries such as Argentina and Brazil continued to maintain high tariffs, close to 8% [3]. These high tariffs correspond mainly to finished manufactured products, as in the case of automobiles. Therefore, a liberalisation agreement that reduces tariffs would not significantly improve the conditions for manufactured products sold by the Mercosur to the EU, since they already access the European market with very low tariffs.

What has been of particular interest to Mercosur is the EU's subsidy policy for agricultural products (the Common Agricultural Policy, CAP), as it prevents real free trade between the blocs. EU agriculture remains highly subsidised and protected, with EU farmers receiving



37% of their income on average from public sources [4]. Also, the EU negotiated market quotas in the agreement with Mercosur, an approach which is the opposite of the idea of a free market (Paikin, 2018). Mercosur accepted the "quota" model imposed by the EU, which opens up the possibility of a dispute within the Mercosur about the distribution of the access quota for each agricultural product by country.

The June 2019 agreement states that tariffs should be reduced to 0%: Mercosur will eliminate tariffs in sectors such as cars, car parts, machinery, chemicals, and pharmacological products. For each of these sectors, liberalisation will occur in more than 90% of the products exported from the EU. All reductions of tariffs offered by Mercosur are linear, except those related to passenger vehicles, where Mercosur will completely liberalise the sector over 15 years. A seven-year grace period is incorporated here, which will be accompanied by a transitional quota of 50,000 units halfway through the tariff.

In general, the agreement will have a profound impact on the Mercosur countries, as it will push for a restructuring of the model of production, with particular impacts on the manufacturing industry in important sectors such as cars, car parts, textiles, and footwear. Within Mercosur, the effects will be differentiated. The economies of Brazil and Argentina account for almost the total gross product of the bloc: in 2011, they represented 97% of the Mercosur economy (Olivera and Villani, 2017). Manufacturing industries are particularly located in these two countries.

An impact study conducted by the University of Manchester (2007) indicated that in Mercosur countries, the agreement would bring about a decrease in the production of textiles, clothing, wood, pulp, and paper. Also, it would cause a loss in market share in the chemical industry, metals, motor vehicles, transport equipment, and machinery.

It is important to note that towards the end of the preparation of this report (December 2019), the parties published the specific lists of product offers, but with insufficient information to enable a proper analysis. We are thus guided here by the "Agreement in Principle" document published by the European Commission (2019a), in addition to the explanatory documents of the agreement published by the Foreign Ministries of Argentina and Brazil. On October 25<sup>th</sup> 2019, the Ministry of Foreign Affairs of Argentina published two listings of offers on its website [5], but these are not complete. The periods of tariff reduction are missing, that is, the first agenda of each nomenclature, and they do not include explanatory notes by product. So, conclusions cannot be drawn from the newly available documents.

## **2.2 Reduction of tariffs on industrial goods**

For industrial goods, the balance of what was agreed creates, in principle, a complicated scenario for Mercosur countries. The bloc agreed to liberalise 91% of its bilateral trade with the EU in a period that, for the vast majority of products, will be only ten years, with a small basket of exclusions. Among the sectors to be liberalised are key sensitive sectors for Mercosur, such as cars, car parts, machinery, chemicals, and medicines. On the highly sensitive car parts sector, Mercosur agreed to remove tariffs linearly over a period between 10 (60%) and 15 years (30%). In the case of finished vehicles, the total liberalisation is in 15

years, but with a grace period of 7 years, which will be compensated with an annual quota of 50,000 units for the EU with tariff preference of 50%.

This agreement shows that the EU's tariff reduction objective has been achieved, even in Mercosur's most sensitive sectors. The removal of tariffs in critical sectors of industry is one of the main benefits for European companies, which until now had faced higher costs to introduce cars (35% tariffs), car parts (14-18%), machinery (14-20%), chemicals (up to 18%) and medicines (up to 14%) into the Mercosur market. In tariff matters alone, the agreement represents a saving of 4,000 million euros for European companies, a sum that is four times more than the gains for EU industry under the EU-Japan Free Trade Agreement (JEFTA) and six times more than those made from the Comprehensive Economic and Trade Agreement with Canada (CETA) [6]. So, industries in Mercosur have a maximum of 15 years to adapt to the levels of competitiveness of European companies.

The large industrial European business sectors were very pleased with the agreement. *Business Europe* stressed that the agreement opens a market of 266 million consumers who were eager to access European goods and services and that this agreement would protect European interests [7]. The European Chamber of Commerce also supports the agreement and considers it an advantageous opportunity, because the EU will benefit from zero-tariff products in crucial sectors, such as the automotive, heavy industry, chemicals, and the pharmaceutical industry.

The liberalisation process will not have the same impact on each of the four Mercosur countries. The productive structure of industrial goods in Argentina and Brazil is very different from that presented by Paraguay and Uruguay. The larger economies produce a fairly diversified set of goods in a large number of sectors. Yet, in the case of the Argentine industry, without a profound restructuring, many of the national industrial sectors will not be able to resist free competition. Argentinian agro-export entrepreneur Gustavo Grobocopatel has commented that there are economic sectors that will "disappear," because of the agreement (Frenkel and Ghiotto, 2019). On the other hand, liberalisation in these areas also poses a problem for the regional value chains already established in Mercosur, cutting off the supply chain and creating substantial uncertainty. The arrival of low-tariff European products will bring about a decline in trade within Mercosur itself.

This would bring about a double-edged impact. On the one hand, there would be an increase in imports that will displace local production, especially in Brazil and Argentina. In other words, local production will be replaced by the import of car parts, or of entire cars produced in the EU. On the other hand, there will be a rupture in bilateral trade between Brazil and Argentina in the manufacture of automobiles. In other words, this agreement will negatively affect the regional production chain.

In the case of Argentina, an impact study on the agreement conducted in December 2017 by the Observatory of Employment, Production and Foreign Trade of the Metropolitan University (ODEP, 2017) in Argentina estimated that in terms of employment, 186,000 jobs of the industrial sector are at risk in the country. The main sectors affected in absolute terms would be metal-mechanic (48,000 jobs would be lost), footwear, textiles, leather goods and furniture (47,000), car parts (32,500), chemicals (19,000) and automotives (9,500). In the metal-mechanic sector, the manufacture of motors, pumps, compressors, and valves, as well

as agricultural machinery and the production of electrical equipment, would be particularly affected (Español, 2018).

Regarding access to the European market, the Association of Small and Medium Businesses (APYME) of Argentina estimates that the agreement will have a substantial impact on Argentine companies. They are concerned about future asymmetric competition with developed economies that have more manageable financial and energy costs compared to Argentine companies, and express concern about the lack of protection measures available to the state. They explain that: “Of the 610,000 companies that exist in the country, 99% are SMEs, and of those in the last year only 9,000 companies have exported, and some occasionally did. Therefore, having our companies compete internationally without the protection of the internal market is dangerous” [8]. Likewise, the SME sector maintains that this agreement will generate a deepening of the crisis in the industry, especially in sensitive sectors such as textiles, footwear, metallurgical and metal-mechanic, sectors which in the last years of the Macri government have already lost about 200,000 jobs [9].

### **2.2.1 The impacts on the automotive sector**

Within Mercosur, the automotive industry has a special trade regime and has been excluded from free trade within the bloc. The exchange of vehicles and car parts is regulated by bilateral agreements that allow duty-free import as long as a specific proportional relationship is maintained between the trading partners (Makuc, Duhalde, and Rozemberg, 2015). A high standard external tariff of 35% was agreed to encourage the installation of automotive terminals, and thus the production of cars, in the Mercosur countries. Most of Mercosur's automotive trade takes place between Argentina and Brazil, and a significant portion corresponds to intra-firm exchange, especially between companies of European origin, such as Volkswagen and Fiat. On the other hand, Argentina and Brazil do not have sufficient levels of car parts production to supply terminal companies and thus must import from the rest of the world: from the EU, the USA, Japan, and China.

European car companies will greatly benefit from the provisions in the agreement. In fact, Germany's position in favour of the agreement reflects the position of the automotive sector. The impact study conducted by the University of Manchester on the automotive sector estimates that “the economic impacts for the EU should be beneficial in terms of production and employment. Foreign investment flows from Europe to the Mercosur automotive sector will be encouraged by trade and investment liberalisation, and by any concomitant reduction in trade facilitation costs” (2007: 2). The liberalisation of the market brought about by the agreement favours these companies' logic of productive organisation on a global scale (Paikin, 2018). Car parts companies that currently buy from local industry can start importing those same products, without the need for them to be manufactured in the region. The most significant impact will be on the amount of employment that these industries generate in Mercosur countries.

The agreement maintains that trade in car parts will be liberalised by 60% over 10 years and the rest within 15. Cars are one of the "sensitive" items due to the intense competition between Brazil and Europe. In 2018, the EU ranked first for exports in this area, with 25% of the trade deficit in car parts for the region, according to data from the Association of

Component Manufacturers (AFAC). As a result of this, already cars manufactured in Argentina contain only 20% local components [10].

In the case of Mercosur, the automotive sector will be badly hit, including car parts. It is a sector with a strong production network that creates jobs, especially in Argentina and Brazil. As noted earlier, an impact study on the impacts of the agreement on employment in the sector carried estimates that the agreement puts 32,000 jobs at risk in Argentina, representing 28% of the sector's labour force (ODEP, 2017). Sources from the Association of Car Manufacturers (ADEFA) reported that the liberalisation of cars (light and heavy commercials cars) in countries like Brazil would have a substantial impact on the sector in Argentina. The 35% tariff in Mercosur has permitted companies located in Argentina to produce almost entirely for that market: 70% of their production goes to Brazil [11]. Thus the agreement would reduce the Brazilian market for Argentine cars.

Meanwhile, the University of Manchester study argues that the impacts on the automotive sector in Mercosur countries would be positive. This study works on the hypothesis that greater openness will improve the international competitiveness of automotive and car parts manufacturing in Brazil and Argentina. It states that there may be "temporary pressure on domestic producers, especially in the car parts sector, while they adjust their product design and productivity in order to compete with imported parts to be used in national assembly plants. However, with a continuous flow of foreign direct investment, the percentage of exports will increase within total production. The growth of exports and the domestic market should favour the continuous expansion of production and employment, even if this depends in part on the enduring of a predictable and stable macroeconomic environment and investment climate" (2007: 3). It should be noted that this analysis understands that those car companies will continue to manufacture car parts in the region and will not replace those produced regionally by cars imported directly from Europe. The CEO of Fiat in Argentina controversially referred to this issue, stating that currently, in Argentina, there is "an invasion of Brazilian vehicles" and "it is better to have European cars as they are probably of better quality and even cheaper" [12].

At the same time, automotive business leaders in Mercosur were upset with the announcement of the agreement. In fact, in Argentina, a director of AFAC said that "clearly the automotive sector of Mercosur has been a bargaining chip in this negotiation," and that "it will be challenging to maintain the balance of investments that this industry demands to be sustainable from a productive point of view" [13].

The agreement has also received sharp criticism from the worker's unions of the four Mercosur countries. When the end of the negotiations was announced, the Southern Cone Confederation of Trade Unions (CCSCS) rejected the agreement through a statement, saying that the agreement "is the death sentence of our industries and our decent work and quality employment" [14].



## 2.3 Agricultural goods

Regarding market access for agricultural goods, the agreement will generate winners and losers in both blocs. Mercosur agreed to liberalise 93% of its tariff lines for agri-food imports from the EU. The EU will liberalise 82% of agricultural imports. The rest of the imports will be subject to partial liberalisation commitments, including tariff quotas for the most sensitive products, excluding a minimal number of products: beef, poultry, pork, sugar, ethanol, rice, honey, and sweet corn.

One of the most contested issues in this agreement in the EU is the increase of tariff-rate quota for fresh and frozen meat coming from Mercosur.

Before the agreement, Mercosur had preferential access to the EU through two individual quotas: access with a tariff of 20% for 46,800 tonnes of fresh meat under the Hilton Quota; and free access for 20-25,000 tonnes under the Hormone Free Quota.

**Table 5 – Beef exports from Mercosur to the EU before the agreement<sup>1</sup>**

<i>Countries</i>	<i>Volume in 2018</i>	<i>Percentage of total beef imports to EU</i>	<i>Main destinations</i>
<b>Brazil</b>	140,243 tonnes	41.1%	Germany, Italy, Netherlands, Spain, UK
<b>Argentina</b>	69, 996 tonnes	20.5%	Germany, Netherlands, Greece, Italy
<b>Uruguay</b>	52,462 tonnes	15.4%	Italy, Netherlands, UK, Spain, Germany, Portugal
<b>Paraguay</b>	6,287 tonnes	1.8%	Netherlands, Germany, UK, Spain, Italy, Portugal
<b>Total</b>	268,988 tonnes	78.8%	

*Source: Luciana Ghiotto, Javier Echaide, 2019 (based on Eurogroup for Animals (2019) and [15])*

According to Eurogroup for Animals (2019), after the agreement Mercosur beef exporters will have the following market access for their beef exports to the EU, as can be seen in Table 6:

- 1) Duty-free access for 46,800 tonnes under the Hilton Quota;
- 2) A new quota of 54,450 tonnes with a 7.5% in-tariff for fresh beef;
- 3) Potentially 10,000 tonnes more access through the Hormone Free Quota.

<sup>1</sup> This number might include a minimal amount of live animals and processed beef products

**Table 6 - Market access for Mercosur exports of bovine meat to the EU before and after the agreement**

	<i>Before the agreement</i>	<i>After the agreement</i>
<b>Hilton Quota</b>	46,800 tonnes (20% tariff)	46,800 tonnes (duty free)
<b>Hormone-free beef Quota</b>	20,000 - 25,000 tonnes (duty-free)	30,000 - 35,000 tonnes (duty free)
<b>New Quota</b>	--	54,450 tonnes (with 7.5% tariff)
<b>Total</b>	66,800 - 71,800 tonnes, with preferences	106,250 - 111,250 tonnes, with better preferences

Source: Luciana Ghiotto, Javier Echaide 2019 (based on Eurogroup for Animals (2019))

A notable change is that all exports under the Hilton Quota (high-quality meat) will have a 0% tariff. Argentina is the country with the highest Hilton quota, (29,500 tonnes), and has been paying a 20% tariff to sell to Europe under this quota. In Argentina alone, it is estimated that the elimination of the tariff on the Hilton quota will inject USD 70 million annually into the national meat chain [16]. The Brazilian JBS-Friboi (known globally as JBS) and Brasil Foods (BRF) were in 2017 two of the top six global meat processing corporations, and they have also been exporting frozen beef to the EU (Sharma and Schlesinger, 2017).

For poultry, current and new quotas together are 50% larger than Mercosur's current exports to the EU. Thus, there will be an increase in poultry exports. However, the new quotas represent only 1.2% of EU consumption, which is continuing to rise, so it will most likely not have any impact on reducing consumer prices.

For pork, Mercosur will have access to a 25,000 tonnes Tariff Rate Quota (TRQ), which will be divided into six annual installments. The in-quota tariff will be €83 per tonne, which is lower than full MFN tariffs and most in-quota tariffs at present. The meat eligible for import under this TRQ must be from ractopamine-free pigs.

The amount of pig meat currently imported into the EU from Mercosur is quite small (around 37 tonnes between 2014 and 2018) [17]. Although the TRQ negotiated in the agreement is much larger than this, the overall quantity of the TRQ is a mere fraction of the amount of pork which the EU produces, consumes, and exports. Between 2014 and 2018, EU pig meat exports (including offal) have averaged around 8,500 tonnes. Only around half of this is fresh/frozen pork, with processed products and offal also exported. It is not yet clear if there will be a complete liberalisation of all pig meat products.

In the case of ethanol, imports to the EU are subject to the 21% MFN tariff. The agreement grants a quota of 650,000 tonnes per year. Of this, 450,000 tonnes will be reserved for ethanol for chemical purposes, which will be duty-free. The remaining 200,000 tonnes will have an in-quota duty of a third of the MFN rate and is open for all uses, particularly for fuel use. These quotas are substantial when compared to current trade, as they represent almost

half of Mercosur’s total exports of ethyl alcohol to the world (Baltensperguer and Dadush, 2019). The European bioplastic and biochemical industries, significant buyers of ethanol, are expected to grow significantly in short to medium term. Hence a significant increase in ethanol exports from Mercosur to the EU can be expected and the implied increased production in Brazil. Brazil is one of the leading ethanol producers in the world and the first producer of ethanol from sugar cane. In 2019, Brazil is likely to produce 30.3 billion litres of ethanol from sugar cane and another 1.34 billion litres from corn, making a total of 31.6 billion litres [18].

**Table 7 - EU quota for the access of agricultural products from Mercosur**

<i>Product</i>	<i>Existing quotas (in tonnes, per year)</i>	<i>New quotas with the agreement (in tonnes, per year)</i>	<i>New conditions with the agreement</i>
<b>Bovine meat (fresh and frozen)</b>	<p><u>Fresh meat:</u> Exclusive quota: 46,000 <i>Erga omnes</i> quota: 45,000</p> <p><u>Frozen meat:</u> 110,000 (out of several quotas like Hilton Quota)</p>	99,000	<p>With carcass; 55% fresh meat (55,000 tonnes), 45% frozen meat (44,000 tonnes).</p> <p>Will enter with a tariff of 7.5% in 5 years.</p> <p>The tariff for the Hilton Quota is eliminated.</p>
<b>Poultry meat</b>	330,000 tonnes (used by Brazil)	180,000	<p>0% tariff;</p> <p>50% with bone; 50% boneless</p>
<b>Pork meat</b>	0	25,000	<p>In quota rate of 83 euros/tonne.</p> <p>Six annual installments.</p>
<b>Sugar</b>	412,000 tonnes for Brazil (€98/tonne for a quota of 334,000 tonnes, and €11/tonne for a quota of 78,000 tonnes)	10,000	<p>tariff elimination over 180,000 tonnes for refined sugar from Brazil;</p> <p>Duty-free is extended to 10,000 tonnes for Paraguay;</p> <p>Special sugars are excluded.</p>
<b>Ethanol</b>	Imports subject to 21% of MFN tariff	650,000	<p>450,000 tonnes for chemical use duty-free;</p> <p>200,000 tonnes for any use (included as fuel), with a third of the tariff of MFN.</p>
<b>Rice</b>	0	60,000 duty-free	

<b>Honey</b>	0	45,000 duty-free
<b>Sweet corn</b>	0	1,000 duty-free

Source: Luciana Ghiotto, Javier Echaide, 2019 (based on the Agreement in Principle (European Commission, 2019) and Baltensperguer and Dadush (2019))

In turn, both blocs will open reciprocal tariff quotas that will be introduced progressively in ten years, as detailed in Table 8.

**Table 8 - Other agri-food products and tariff reductions**

<i>Product</i>	<i>Quotas (in tonnes)</i>	<i>Notes</i>
<b>Cheese</b>	30,000 duty-free	The tariff will be reduced in 10 annual stages
<b>Powdered milk</b>	10,000 duty-free	The tariff will be reduced in 10 annual stages
<b>Infant formula</b>	5,000 duty-free	The tariff will be reduced in 10 annual stages

Source: Luciana Ghiotto, Javier Echaide, 2019 (based on Agreement in Principle (European Commission, 2019a))

The "Agreement in Principle" also states that Mercosur will liberalise "a number of products of export interest to the EU: wine (with a minimum price for sparkling wine during the first twelve years and reciprocal excluding of bulk wine), spirits, olive oil, fresh fruit (apples, pears, nectarines, plums and kiwis from the entry into force), canned peaches, tomatoes preserves, malt, frozen potatoes, pork, chocolates, cookies and soft drinks" (European Commission, 2019a: 3).

This liberalisation implies a specific interest of European companies to export these products to Mercosur. These companies will be able to introduce into Mercosur countries sophisticated agri-food products with no tariffs: wines (they currently pay a tariff of 27%), chocolates (20%), whiskeys and other distillates (20 to 35%), cheese (28%), cakes and biscuits (16 to 18%) and even soft drinks (which pay 20 to 35%). These, as well as products such as olive oil, fresh fruits, peaches, canned tomatoes, and frozen potatoes are all indicated in the text as crucial products for European export. For some of these listed products, the competition of both blocs is high, as in olive oil.

### 2.3.1 Analysis of liberalisation of agricultural goods

The European agricultural sector has not celebrated this agreement as the industrial sector did. After closing the agreement, the former European Commissioner for Agriculture and now Trade Commissioner, Phil Hogan, acknowledged that the EU had made "significant concessions" in agriculture and food, but said the result is "balanced" [19]. Hogan said that

high-quality and regional EU products would be protected by their geographical indication, "a guarantee for our consumers but also an opportunity for producers to strengthen their position in the market." Also, he said: "This agreement represents the largest ever made on geographical indications within a trade agreement, and as a result, 370 European geographical indications are protected from imitations in the four Mercosur countries".

The commissioner made it clear that European producers "will have time to make the necessary adjustments," just as Mercosur will also have to do "in some sectors." He also announced that the European Commission "is willing to assist our farmers in case there are disruptions in the market" and that, for this, it has "a prepared support package of about one billion euros" that "provides a network of security for producers, if necessary." He also said that when there is a sudden increase in imports, the agreement allows the application of some safeguard measures that will give more protection to European farmers. Hogan refers to chapter IV (as published on July 2 2019), called Bilateral Safeguard Measures. This chapter establishes in its Article 2 that "in exceptional circumstances" the parties may apply bilateral safeguard measures in the event that, once the agreement entered into force, "imports of a product under preferential terms have increased in such quantities (...) and under such conditions that may cause or threaten to cause serious damage to the national industry of the party making the import".

It should be noted that the EU maintained the right to agricultural subsidies for reasons of public interest (although it excludes export subsidies). This is important, since the principal protection of the agricultural sector by the EU is through subsidies via the Common Agricultural Policy (CAP), and not tariffs (Villani, 2017). The maintenance of subsidies for the agricultural sector in Europe set off the alarm for business interests in Mercosur. For example, the Argentine wine sector, which will, in general, benefit from the agreement, notes that there is a significant imbalance between the European and Argentine wine industry, as the EU disburses 900 million euros each year to promote its wines [20]. Subsidies make the European wine industry very competitive and, combined with the reduction of tariffs, could be detrimental to Argentinian producers.

Despite the declarations of Phil Hogan, it is evident that it is not the European agricultural sector but agri-business in Mercosur that is set to gain the most with the agreement.

In fact, in Brazil, the agro-export sectors widely celebrated the agreement. According to the Brazilian Ministry of Foreign Affairs, agricultural products of great strategic interest to the country, such as orange juice, fruits, soluble coffee, fish, crustaceans, and vegetable oils, will see their EU tariffs eliminated. Also, exporters of beef, pork and poultry, sugar, ethanol, rice, eggs, and honey will have preferential access to the European consumer market, as export quotas for these products have been extended. Brazil exported about USD 14,000 million in agricultural products in 2018. These exports represent 32% of Brazilian total exports, and are made up in particular of inputs for animal ration (more than USD 3.4 million), coffee (USD 2.3 million), oilseeds and grains (USD 2 billion), vegetable food preparations (USD 1.3 million), and meats (USD 989 million). Even before the agreement is implemented, Brazil already stands out as among the five largest suppliers to the EU of the first four products.

Regarding ethanol, there will be a clear expansion of exports to the EU. Brazil already exported 34,000 tonnes of sugarcane ethanol to the EU in 2018, but under the proposed



terms of the new Mercosur agreement it plans to increase exports to 650,000 tonnes. So the new quota is very large when compared to current trade. An increase in the production of sugarcane and corn for ethanol in Brazil can thus be expected.

Another example of a sector that will profit from the agreement in Brazil is the wine industry, which lobbied actively to be protected. The most notable example is the Rio Grande do Sul wine sector in Brazil. This sector has affirmed that the wine industry is highly subsidised in Europe and that liberalisation will generate unfair competition since European wines do not face as many taxes as the Brazilian wine sector does. European wine is more competitive than Mercosur's. Negotiators from Brazil concluded that they could not stop the agreement due to this issue, but at the same time, they could not leave the wine sector defenseless. For this reason, a fund was designed which is supposed support modernisation and higher competitiveness of the Brazilian wine sector. It would function as a tool to boost the sector, similar to the programmes of operational funds in the fruit sector, vegetables, and even the wine sector the EU has already established through Regulation (EU) No 1308/2013.

The case of Argentina is different, since the agreement has generated diverse positions amongst the economic groups. In Argentina, in the short term, the sectors that will benefit most are the agribusiness and fishing sector, because they are the sectors where Argentina is currently competitive. According to some foreign trade analysts, Argentina has the potential to increase sales of agricultural products, grinding products, and beef. It also opens an essential opportunity for various regional economies, including fruits, honey, fishing, and some varieties of wines [21].

The honey sector is also satisfied with the agreement. Argentina is the second largest exporter of honey worldwide. With the fall of tariffs from 27% to 0%, and the increase in quota to 45,000 tonnes, the sector in Argentina expects to increase its exports to Europe. Mercosur countries already export 35,000 tonnes of honey to the EU. On the other hand, European honey production is not enough to satisfy internal consumption levels, so it is necessary to import. In 2016, the EU imported 200,000 tonnes of honey, almost twice its own level of production. Chapter 3.3 on Dialogues also discusses the quality of the honey imported by the EU and the regulatory issues around the presence of Genetically Modified Organisms (GMOs) in the product.

When looking at the meat sector, the following observations can be made:

### *Bovine meat*

For the EU, the agreement implies an extension of the import quota with preferential tariff for bovine meat. Yet, the Mercosur countries already represent the primary source of import of bovine meat for the EU. In fact, Brazil, Argentina and Uruguay are already the top three countries from whom the EU imports beef. If we add Paraguay (8th on the list), the Mercosur countries account for almost 80% of all beef imports to the EU today, with a total amount of 270,000 tonnes of beef in 2018 (European Commission, 2019b). Thus, the agreement will mean that the import quota from Mercosur expands, but this does not necessarily mean that exports will increase in total. What the EU has done is to increase the benefits *included* in the preferential quota. Since actual beef exports already exceed the new quotas, some analysts argue that it is unlikely that the new beef quotas will lead to more EU beef imports

(Baltensperguer and Dadush, 2019). What could happen is that the new quotas will be filled by Mercosur exporters who already export to the EU and that they will capture the near totality of the tariff reduction, except in cases when they confront a large, organised purchaser on the EU side.

Nevertheless, the argument that new quotas of 99,000 tonnes of beef will have a small impact on the beef sector is debatable, even though this represents only 1.25% of the meat consumed by the European market [22]. In fact, there is an ongoing debate regarding the effects of the increase in quotas. After the increase in quotas, the prices for beef imports might likely shrink and thus make beef from Mercosur more competitive in the EU market. Also, the increase in quotas will generate a greater gain for big producers and exporters in Mercosur, who want to see the tariffs reduced. They already pay duties of 40%-45% to access the European market. It can be understood that the increase in quotas will expand the bovine sector in Mercosur countries as it will serve as an incentive for production and export. These possible effects have provoked immediate claims of a sell-out among many EU beef producers, with Irish and French farmers prominent among them.

It should be noted that the amount granted by the EU is of meat *with* carcass, while in 2004, Mercosur requested nearly 400,000 tonnes *without* carcass, so it only accomplished a quarter of the originally requested amount. There is still no clarity about how these amounts of beef exports will be divided out amongst the four Mercosur countries.

Finally, it should be noted that the EU is already a net exporter of bovine meat. In fact, the EU exports about 700,000 tonnes of bovine meat yearly, while importing around 300,000 [23]. Thus, the question on the necessity for more beef imports (with the known consequences for the environment and the climate) should be raised.

## Pork

In the pork sector, the EU granted 25,000 tonnes at a low tariff (83 euros per ton). While this might not appear much, taking into account that the EU is a net exporter of pig meat (more than 3.3 million tonnes a year), nevertheless it almost doubles the imports of pig meat to the EU, which at the moment is at 33,500 tonnes per year [24]. Since so far only Uruguay has exported a few hundred tonnes to the EU, this also means an important increase in export of pig meat from Mercosur to the EU. Brazil is the fourth-largest producer of this meat worldwide, although it primarily exports to China. Argentina also produces pork, but opened its market to imports from the US in 2017 (in exchange for the export of lemons), so it has become an importer of this meat.

On the EU side, Spain is the largest producer of pork meat, as it produces four million tonnes of pork per year, of which it only requires 2.5 million to meet domestic demand. Therefore, it allocates 1.5 million tonnes for export to third countries. That figure represents 50% of EU sales. The Spanish pork sector opposed the agreement mainly because of Brazil's competition, arguing that Spain can export pork meat to the other European members, thus there was no need to give free access to Brazilian producers [25]. The European production model is safer than Mercosur's, but, from the market point of view, it is a lot less competitive than Brazilian.

## *Poultry*

In the poultry sector, Brazil has been the global leader in broiler exports since 2012. Just four economic actors (Brazil, the USA, the EU, and Thailand) account for nearly 90% of the world's exports (Sharma and Schlesinger, 2017). In particular, BRF (the Brazilian food company) is now the most significant international exporter of chicken (20% of global exports) and the seventh-largest food corporation in the world. BRF owns Plusfood in Europe, a poultry processor with plants in England and the Netherlands that sells to major supermarkets in Europe. In the poultry sector, the story of the beef and pork sector is repeated, as the EU is also a net exporter of poultry meat (1.6 million tonnes a year) [26]. Nevertheless, it is the prime destination for Brazil's processed poultry, with 86% of Brazilian sales headed to the Netherlands (47%), Germany (20%) and the UK (19%).

The EU Commission has often called the EU poultry meat sector as a "success story" because the sector is independent (no subsidies from the EU), market oriented, and flexible. On top of that, the sector produces affordable products with low CO<sub>2</sub> emissions under the highest standards in the world [27]. Nevertheless, the EU has granted a quota of 180,000 tonnes of new poultry meat to Mercosur countries, mainly Brazil, that exactly doubles the amount of the last offer made at the end of 2017 and agreed by the EU Member States. Under the agreement, the EU will import the equivalent of the entire German or French chicken industry's meat production. According to the Association of Poultry Processors and Poultry Trade in the EU (AVEC), an extra 180,000 tonnes of poultry meat imported to the EU means a significant loss of EU jobs for the sector, mainly located in rural areas. Nowadays, the sector employs 300,000 people in Europe [28]. They explained that: "the EU poultry meat sector feels betrayed by the Commission. Our sector has been sacrificed to satisfy the interests of bigger players" [29].

## *Other important sectors*

A sector that is not happy with the agreement is the Argentine olive sector. Mercosur negotiated a quota for the EU to export olive oil to the region, and the sector warned about the consequences for the local industry. The Argentine Olive Federation (FOA) has insisted that "it is necessary to have a stable, predictable economy to deal with European agricultural industry and fundamentally its olive industry, which is the sector that has the highest percentage of subsidies in the Old Continent." [30].

Among the losers of the Mercosur agri-food sector, is the dairy sector. The tariff will go from 28% to 0% once the agreement enters into force. The European Commission explained that the European dairy sector is one of the "winners" of this agreement [31]. Business people from the entire Mercosur sector, meeting at the Pan American Milk Congress in November 2018, raised their objection to the sector being included in the agreement. At this meeting, the representatives warned that a deepening of the agreement between the blocs would be harmful to a sector that would find itself competing against the subsidies of the support policy for the Dairy Sector (within the CAP), which generates "high distortions outside a framework of free competition." Thus, the European bloc becomes mainly an exporter of its production surplus, while its role as an importer is practically nonexistent.

One of the issues of concern to the dairy sector relates to milk powder and cheeses, since the EU produces them with high subsidies. The sector fears that this may cause a drop in Mercosur prices, since Brazil is an importer of these products from Uruguay and Argentina.

In Brazil, dairy producers are extremely concerned. The Brazilian Association of Milk Producers (Abraleite) explained that while the agreement might be right for other Brazilian agricultural products, it is not clear whether it will cause damage to the milk production chain. Faced with these claims, the Brazilian government announced that it plans to compensate milk producers and help them to modernise production with equipment imported from Europe and with a tax exemption of up to 35% [32]. However, this aid comes via bilateral agreements with governments, depending on the sector and the country. In the agreement itself, no element guarantees the continuity of these compensations over time.

The concerns in Brazil are well-founded if we take into account the assessment that the dairy sector has made of the agreement on the European side. The European Association of Dairy Trade released a statement on July 1, 2019 to assess the impacts of the agreement on the sector in Europe. It said its main objective is to win the Brazilian market [33]. While Argentina and Uruguay are net dairy exporters, Brazil, in 2018, imported a little less than 30,000 tonnes of cheese, so the Association understands that the quota of 30,000 tonnes in the agreement is “quite generous” [34]. In 2018, the EU exported 10,000 tonnes of cheese to Mercosur, which is why the agreement expands market access for European producers.

The liberalisation in the cheese market will have an impact on the sale of dairy products from Argentina and Uruguay to Brazil. In the case of Argentina, Brazil is the leading buyer of its dairy products: 40% of dairy production goes to that country [35]. Products include milk powder and milk whey, followed by skimmed milk powder, hard cheese, semi-hard, and mozzarella. Currently, European cheeses pay a 28% Mercosur entry fee. The liberalisation could bring about the replacement of the purchase of cheeses by Brazil, from Argentina and Uruguay to the EU, affecting the dairy sector in both countries.

On cheeses, Ambassador Valeria Csukasi, representative of Uruguay in the negotiations, said that Europeans would seek to send the highest value cheeses to Mercosur. “They are going to bet on the most gourmet cheeses, camembert, brie, which we have already begun to see in the supermarkets in Uruguay. They aim to have a more present volume in our countries. We have to see how much it will affect our products, since the type of cheese that Uruguay exports to Brazil are very different” [36].

The liberalisation of the cheese sector in other agreements signed by the EU in the region has already harmed local production. One example is Colombia, where in the first months of 2019, dairy imports into the country increased by 53% due to the FTAs with the USA and the EU [37].

The dairy sector is the second biggest agricultural sector in the EU, representing more than 12% of total agricultural output [38]. Despite the described benefits, the agreement does not satisfy this sector, since in the EU, there is a crisis of surplus milk production. “Milk producers in the EU have been working for years to make the dairy sector resistant to crises and future-proof once again. The Mercosur agreement, unfortunately, counteracts these efforts” [39], representatives of the European Milk Board (EMB) argued. Furthermore, “these agricultural products are different from those produced in the EU in terms of standards and production

requirements. This difference leads to unfair competition to the detriment of EU producers” [40].

### *Some words on Uruguay and Paraguay*

The smaller Mercosur countries in economic terms, Paraguay and Uruguay, achieved some small victories in the agreement, but there is also concern about the future impacts of liberalisation. Both secured some specific benefits in the agricultural sector. For example, Paraguay secured an exclusive share in the European organic sugar market of 10 million kilograms with an intra-quota 0% tariff. This difference will directly benefit the small local producers of this good (Foglia, 2019).

On the other hand, Uruguay's exports go to China (28%), the EU (15%), and Brazil (13%) [41]. The main products sold to the EU are cellulose, beef, wood, rice, leather, citrus, and honey. Uruguayan exports pay USD 106 million annually for tariffs on sales to the bloc. Meat, rice, and honey will enter through the quota system to be implemented within 5 years of the agreement entering into force, generating an increase of Uruguayan exports to the EU by USD 100 million per year [42]. Uruguayan negotiators supported the agreement not only because of the stability and investment facilities that it would create, but because they believe that Uruguay will become an international business centre.

However, Brazil is one of the main buyers of Uruguayan products. The agreement between Mercosur and the EU puts regional exports to the Brazilian market at risk. In Uruguay, the wine, cheese and dairy sector are of particular concern [43].

Likewise, the prohibition on the application of export duties that the EU managed to get into the agreement implies that Uruguay will have to stop charging those rights in the case of leathers within five years.

The different business chambers and private sectors of Uruguay were, in general, in favour of the agreement [44]. However, the Chamber of Automotive Industries of Uruguay said they would wait for more details, but that, in principle, "the national automotive sector hardly has any benefit; rather it will be dedicated to mitigating the impacts." For its part, the National Chamber of Commerce and Services also came out in favour of the trade agreement, since the treaty "is an excellent opportunity," although it did not ignore the fact that it will bring challenges [45].



## 2.4 Other measures in the Trade in Goods Chapter

### 2.4.1 Elimination of export duties

The EU managed to ensure the elimination of export duties in bilateral trade. This change in taxation accepted by Mercosur exceeds the provisions of the General Agreement on Tariffs and Trade (GATT) of 1994. The agreement prohibits the use of non-automatic import or export licenses, a fundamental tool of trade administration.

While for Mercosur export duties are taxes that exporters have to pay, the EU understands that these duties represent a hidden subsidy, e.g. to biofuel production. This is because when countries such as Argentina impose the export duties, the cost of soy in the internal market gets cheaper [46]. Thus, soy could be considered to be a subsidised good.

Various productive sectors in Argentina supported this prohibition, such as the fruit sector in the province of Río Negro, which produces pears, apples, peaches, cherries, plums, table grapes, and nuts. Representatives of the Argentine Chamber of Integrated Fruit Growers (CAFI) said that: “It is a challenge for our sector. We must improve our competitiveness and work together to lower labour, tax costs, and incorporate technology to reach that goal” [47]. These products will enter the EU without tariffs, while the agreement will eliminate export duties. The sector currently pays 4 pesos per exported US dollar (which equals 0.067 USD) [48]. In any case, in the context of the negotiations concluded in July 2019, the Argentine government reduced the export duties from 4 to 3 pesos (0.05 USD), meaning a reduction of just over two percentage points on the amount paid per dollar of merchandise placed in external markets [49].

In December 2015, the government of Mauricio Macri announced that his government would remove the export duties imposed by previous governments. However, in the midst of the economic crisis in 2018, the president announced in September that year that the duties were returning. This change shows that export duties are a measure allowed within the framework of the national trade policy, and necessary for improving fiscal budget to confront financial setbacks. However, the agreement between Mercosur and the EU will prohibit the use of this tool. Argentina will collect the sum of USD 6.8 billion in export duties throughout 2019, of which soy alone will contribute USD 3.2 billion [50]. This sum represents 2.4% of the country’s GDP.

Argentina is not the only country that has been applying export duties. In 2017, Paraguay also passed a law that established a duty of 10% for soy exports [51]. Also, Uruguay has a low rate of export duties for the leather industry.

### 2.4.2 Bilateral Safeguard Measures

A chapter on Bilateral Safeguard Measures was incorporated in the EU-Mercosur agreement. Since March 2019, the EU has decided to incorporate such chapters in all the agreements, as in those with Japan, Vietnam, and Singapore. These measures allow the EU to remove preferential tariffs to protect the EU domestic industry from imports from countries with which a trade agreement exists, and which could cause severe damage to European

producers. Of course, this is a bilateral measure, meaning that Mercosur could also apply these clauses against the import of European products.

This chapter explains that “in exceptional circumstances,” the parties may:

apply bilateral safeguard measures (..) if after the entry into force of this Agreement, imports of a product under preferential terms have increased in such quantities, absolute or relative to domestic production or consumption of the importing Party, and under such conditions as to cause or threaten to cause serious injury to the domestic industry of the importing Party.

The measure may consist of the temporary suspension of tariff reduction of the good, or reduction of preferential rates, for at most two years and with the possibility of extending it for another equal period. It is explicitly stated that these measures can only be taken up to 12 years after the agreement enters into force, and that if the EU is the one applying the measure, it will not be applicable to Paraguay. The decision to apply a bilateral safeguard measure must be based on the demonstration of an objective and quantifiable basis that the damage (or the threat of damage) is being generated, and that there is a causal relationship between the importation of the product in question and severe damage, or threat of harm.

## 2.5 Rules of Origin (RO)

The origin of a product is the geographical link that relates it to a specific country, in whose territory the product has been entirely produced or has undergone a process of transformation. Preferential Rules of Origin (RO) are used in trade agreements to define the conditions under which an importing country will consider a product as originating from the country that receives preferential treatment. The objective is the prevention of trade diversion or "triangulation" that can occur from the transshipment of goods from a country that does not have the tariff preference through one of the countries that does. To avoid trade diversion, the RO has become a mechanism that appears in all current trade agreements.

The determination of origin is straightforward when the products are wholly obtained or produced in the exporting country, from raw materials or inputs produced domestically. On the contrary, when products are the result of production processes that are carried out in two or more countries, the determination of origin becomes more complicated.

In the Protocol on Rules of Origin incorporated in the Agreement between Mercosur and the EU, we identify three key points:

- 1) Products that incorporate "non-originating materials."
- 2) "Wholly obtained products": the case of fishing
- 3) Statements of origin

### 2.5.1 Non-originating materials

The RO strengthens internal value chains between the signatory countries, as it avoids competition with products from third countries. So, it is a crucial issue to negotiate for countries that seek to protect their industry. In this case, this part of the agreement was a point of dispute during the whole negotiation. For Mercosur it was a vital issue, as the countries wanted to prevent products from low-wage regions from entering the bloc.

In the RO Protocol released in July 2019, the European position has prevailed in determining what non-originating material is. For Mercosur countries, there are a significant number of sectors that are sensitive to triangulation by European companies. Not only would the intensive labour products such as footwear, leather goods, furniture, textiles, and clothing be affected -other sectors such as metal-mechanic and capital goods, may also be affected. We discuss here some of the included sectors and products.

*Chemical products:* The position of the EU prevailed in chemical products: the mixing of materials will be accepted as originating materials for a large part of the chemical products. For example, an agrochemical that is made up of several substances can be made up of active ingredients from various sources: from China, India, and Germany. When mixed in German territory, and having an active compound that is German, it will be European. In such cases, the mixing provides origin. It can thus enter the Mercosur with a tariff exemption. Many of these types of products are made up of products more than 50% of which are from third countries, but according to the agreement, the final mixture gives origin.

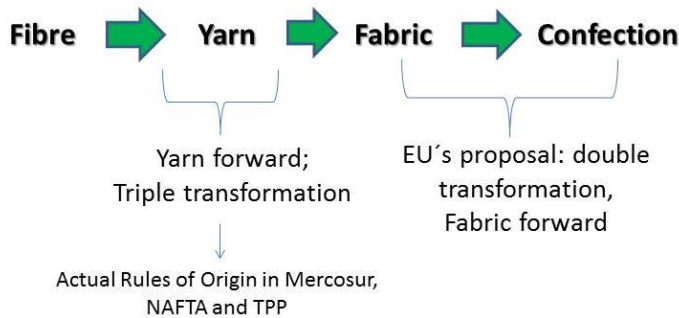
*Machinery:* The European position prevailed. Mercosur currently has an intra-Mercosur rule that states that the percentage of non-originating materials cannot exceed 40% of the ex-factory value. The EU proposed the use of an alternative criterion, which is the "Tariff Jump" rule (Change of Tariff Classification). This change of criteria will have an impact on the automotive and metallurgical sector in general. When there is a Tariff Jump, a European importer can incorporate materials with low added value (for example, a bolt) brought from China to a piece of sophisticated machinery (for example, a hydroelectric turbine) in Germany. The Tariff Jump (of the Chinese bolt) causes that product to lose its origin and be considered native to the country where it is finally incorporated into other more advanced machinery (Germany).

The defense of this position by the EU is that this process involves value-addition, not assembly. For Mercosur, this means that productive regional integration is discouraged, and it spurs competition of lower prices. The general effect is that this generates trade diversion, and what was previously exported intra-Mercosur as Manufactures of Industrial Origin will no longer be exported. Instead, other manufactures will be brought directly from the EU and replace these products.

*Textile sector:* For the textile production chain, Mercosur has historically held the "triple transformation" or *yarn forward* rule, which stipulates that textile is considered original when all elements of the textile are made in that country from the yarn onwards. This rule allows producers to import the fibre from third countries, but the rest (yarn, fabric, and production) must be elaborated at the regional level. As seen in Figure 2, the European proposal for the sector was to consider the origin with double transformation, i.e. from the

fabric onwards. This would include the fabric and the production processes, and leaves open the possibility that the final product can be made with non-originating yarn.

**Figure 2 - Rules of Origin for Textile chain**



*Source: Luciana Ghiotto, Javier Echaide, 2019*

Spinning companies are capital and labour-intensive, which means they generate a large number of jobs (although there is no scope in this report to enter into a discussion about the working conditions for such jobs). In Mercosur, the textile sector has historically been an essential generator of employment. Production in these countries is not export-oriented, like in other American countries (for example, those in Central America and Mexico), but rather to supply the domestic market. In Brazil, the textile sector is another industry that generates an important number of employment: 33,000 companies employ 1.5 million people (LSE, 2019). In Argentina, the textile industry employed 98,000 registered workers in 2018 (a sizeable reduction considering that in 2015, 115,000 registered workers were employed) [52]. In 2015, the spinning and weaving stages covered 23% of the gross production of the sector and employed 53,000 people. The textile sector represents about 10% of the total Argentine industry and is dominated by small and medium-sized enterprises (SMEs).

To achieve a final position by mutual agreement, the textile business chambers of both blocs met in February 2019. The Brazilian Textile Industry Association (ABIT), the Federation of Argentine Textile Industries (FITA), and the European Textile Confederation and Clothing (Euratex) met on behalf of the entire textile industry of the two blocs [53]. The private sector produced an agreement in terms of tariff reduction and specific requirements of origin. After that, they presented the results to the authorities of both parties. This action, on the one hand, guarantees a certain level of agreement between the largest producers, although clearly, not all producers were represented. For example, the Argentine sector's SME organisation, Pro Tejer, was not part of this agreement. This organisation has historically had a critical position against the agreement, even saying that "if the products arrive as Europeans, but are made in China, it is like signing the death certificate of the national industry" [54].

For Mercosur countries, the opening of the textile sector represents a high risk, because EU companies have a considerable presence in the textiles and footwear value chain. For example, the EU is responsible for 50% of leather footwear exports globally (ODEP, 2017).

The European leather sector competes actively with Mercosur's. It is also a sector that Mercosur has strongly protected since the 1990s, consolidating the Common External Tariff (CET) at 35% for most textile products, as well as footwear and leather goods.

In general terms, the EU's position of "double transformation" is the one that prevailed in the textile sector. Thus for many products, a European company can import yarn from Asia (for example, from China or Vietnam) to be included in the spinning, a process that involves a significant amount of labour. Here there is a difference between this provision and agreements involving the USA, which requires the *yarn forward rule*, both in NAFTA and the TPP (before it withdrew). This rule ensures that textiles whose yarn comes from China, but which are then woven and made in Mexico or Vietnam, do not enter the USA to compete at a lower cost.

a) For yarn, the rule of *yarn forward* applies, that is to say, of triple transformation. However the agreement negotiated by the private sector adds the alternative processes of "dyed and twisted". If these two processes are involved they enable the import of yarn from third markets.

b) For fabrics (silk, cotton, wool, natural, artificial and synthetic fibres), the rule of double transformation remains. This means that the weaving process must be done in the region, but spinning can be imported. In these products, the *yarn forward* rule is eliminated.

c) For carpets, the *yarn forward* rule applies and stipulates that yarn must be made in the region, although fibres can be imported. However, previously, Mercosur followed the spinning rule, so this provision jumps in the stage of transformation of the carpet chain to confer origin.

d) For Production in general, as for garments (from flat or knitted fabrics), there is the rule of double transformation, without exceptions. Previously, in other trade agreements (regionally), Mercosur had an exception for White Clothing (bedding, kitchen, and bathroom materials) which required triple transformation. However, that exception was withdrawn in the agreement between ABIT and Euratex of December 2017.

## 2.5.2 Fishing

### *Wholly obtained products:*

The Protocol of Rules of Origin stipulates which are the "Wholly obtained products" either in the EU or in Mercosur (Article 4). This includes minerals, plants, vegetables, live animals "born and raised there", and live animal products, aquaculture products such as fish and crustaceans, among other elements.

This question was a problematic one in the negotiation, especially the issue of fishery products and the reference to the United Nations Convention on the Law of the Sea (UNCLOS). The UNCLOS Convention of 1982 establishes that the attribution of the nationality of ships (determined by the flag they are carrying) is a matter regulated by states. States have a wide margin to establish in their legislation the requirements or the conditions that must be met for the vessel to be authorised. The position put forward by the EU made



no reference to UNCLOS and stated that what determines the origin of fish is the ship, that is, its nationality defined by the flag. However, Mercosur's position (especially pushed by Argentina) was to refer to UNCLOS to resolve this issue.

In Article 4 on the "wholly obtained products", it is stated in paragraph (h) that the products wholly obtained in either of the two parties include: "fishery products or other products taken from the sea by their vessels". Moreover, paragraph (i) adds: "the products made on board of their factory vessels based exclusively on the products referred to in section h." What is relevant is the footnote in paragraph (h), which has a part in square brackets (still under negotiation) and argues that:

"This subparagraph is without prejudice to the sovereign rights and obligations of the Parties [EU: under] [MCS: in accordance with) UNCLOS, [EU: in particular with respect to] [MCS: within] the Exclusive Economic Zone and The Continental Platform. Negotiators' note: for technical review (for legal scrubbing)".

There are two possible conclusions from this footnote. If the final text has a similar meaning to that in the note, then Mercosur's position has been safeguarded. Nevertheless, the fact that it remains in square brackets shows us that the reference to UNCLOS is not yet assured and that this point has been left for "technical review." Therefore, we understand that these paragraphs require some attention when evaluating the final text of the agreement. Besides, it is not accidental that the reference to UNCLOS is not in the body of the text, but relegated to a footnote. Otherwise, it would be of greater importance.

Second, how the clause is finally drafted (and its footnote) will have a differentiated impact on trade in the fisheries sector. If negotiators remove the reference to UNCLOS, for example, it would mean that if a Spanish ship fished in the Argentine Exclusive Economic Zone (EEZ), with a Spanish flag, the extracted fish would automatically become Spanish. This provision would enable the Spanish to clean the fish and treat it on the same factory ship without leaving the EEZ (as stated in paragraph i), and then to "export it" to any of the four Mercosur countries but as Spanish fish, benefiting from the zero tariffs. This is contrary to the current Argentine position, which is established by its National Fisheries Law [55] and protected by UNCLOS. This law states that fish that is caught in the EEZ is Argentine; so, nationality does not depend on the ship, but on the fishing area. Moreover, no ship that does not have an Argentine flag can go fishing in the EEZ or the Argentine Platform without authorisation.

On the other hand, the clauses refer to the EEZ and the Continental Shelf of the Mercosur countries. This leaves a void for ultramarine fishing, that is, fishing which takes place outside the EEZ and the Continental Shelf. Thus, not including a reference to high seas and the nationality of ships in this agreement could enable triangulation in fishing. The agreement states that the flag confers the origin, except in the EEZ and the Continental Shelf. That means that at sea, the flag confers origin, no matter where the resource has been extracted. Therefore, a ship with a European flag could go fishing for hake to Canada, and then process and export the Canadian fish with zero tariffs to Mercosur countries. Because the ship which caught it has a European flag, the fish is considered to be European. This policy could have a negative impact on the fishing industry in Mercosur countries.

The agreement implies that fishery products such as hake, squid, and oysters may enter both blocks with zero tariffs once the agreement has entered into force. Until now, Mercosur has

exported hake to the EU at a rate of 7.5%. In the case of red shrimp from Mercosur, exporters may export 4,000 tonnes in block form with 0% tariff; the rest will remain at 12%. Argentina, which is a net exporter to the EU of these products, exported USD 1.3 billion red shrimp in 2018; a quarter of that amount went to Spain.

The Argentine government presented the agreement as a benefit "to various export sectors in Argentina that previously faced high tariffs, such as fishing, between 8% and 15%. Now we have opened the market for 750 million consumers" [56]. However, it is essential to note that in January 2019, Argentina had already agreed bilaterally with the EU to export 25,000 tonnes of hake per year at 0% tariff under an autonomous tariff agreement that will commence in 2020 [57]. This agreement covers all hake exports from Argentina to the EU, since in 2017 the country exported 22,000 tonnes of hake to the bloc with a tariff of 7.5%. In Argentina, hake is the backbone of fishing. It represents 60% of registered jobs in the sector (about 12,000 workers) and 40% of fisheries exports, representing about 5% of total exports of the country [58]. The Argentinean business chambers are excited about the possibility of opening new markets and the reduction of tariffs, although they warn that they need to analyse the fine print of the agreement [59].

The EU is a strong fishing power. In turn, it is the world's largest market for fishery products and a net importer of fish and associated products. More than 20% of EU fishing is carried out in extra-EU waters [60]. There is a history of agreements with Argentina, since 1994, when the agreement on fisheries between the European Economic Community and the Argentine Republic was signed, and stayed in force until 1997. A study indicates that the effects of this agreement, and the export incentive to the EU had a negative impact, as legal and furtive overfishing increased, the established controls were exceeded, and, in some cases, authorities granted more fishing permits than were authorized. From that moment, the activity went into an emergency due to overfishing, and it was necessary to implement total and partial stoppages. Overexploitation, therefore, had a tremendous economic and social impact since the ban affected coastal populations, meaning months without work for many and a resultant lack of income (Cepparo et al., 2007).

Today clandestine fishing still takes place in the Argentine sea. The practice is far from sustainable, and yet various governments have not promoted the protection of the country's marine resources. The FAO Code of Conduct for Responsible Fisheries not being fulfilled in Argentina (Lerena, 2018).

In turn, the fishing practices of the EU have been a subject of dispute for years. The World Wildlife Fund (WWF) argues that European fishing is far from being a sustainable practice, with high levels of overfishing, destruction of marine habitats, impacts on climate change, and continuing illegal activities and poor management of the fishing sector [61]. In 2019, a change in the Common Fisheries Policy expanded the amount of extra fish that ships can carry, thus avoiding the disposal of edible fish in the sea, forcing them to touch port. However, lobbying by the European fishing sector to maintain practices that guarantee a quick profit has been noticeable. In particular, the Spanish fishing lobby has an enormous capacity to influence the positions that this country takes to the European Commission, the European Parliament and the Council of Fisheries Ministers of the EU. Spain's fleet represents half that of the entire EU. Spanish ship owners also own non-Spanish and even non-EU vessels [62].

In general terms, enabling triangulation with high seas fish has direct impacts on the sustainability of the seas. A study by Science Journal warns that if the current model of fish exploitation continues, within 40 years all fishery stocks will have collapsed [63].

It is interesting to note that the recently published Sustainability Impact Assessment (SIA) made by the London School of Economics (LSE, 2019), devotes just one paragraph of its entire study to the topic of Fisheries. It only mentions, following the Food and Agriculture Organisation (FAO), that fishing grounds in South America are over-exploited and that Mercosur countries committed themselves to implement more sustainable fishing systems. However, this is insufficient, since it does not account for the complexities of the issue of fisheries already outlined in this section.

### 2.5.3 Certification of Origin

Following Article 17 of the Protocol on RO, the certification of origin can be carried out by any exporter, guided by the relevant legislation of the exporting party. A certificate of origin may "be prepared by the exporter on the invoice, the delivery note, or in any other commercial document that describes the original product in sufficient detail to allow its identification (...)" (Article 17.5). According to Article 25, controls of certifications are carried out "at random" or when authorities of any of the parties have a "reasonable doubt" regarding the authenticity of documents presented.

This means that the agreement does not require the mediation of a certification body at the government level. It is enough to have the simple self-certification of an exporter, to ensure that their product meets the RO of the agreement to obtain the tariff preference. This is the policy supported by the EU at the negotiating table since 2016. Mercosur agreed to modify its certification system, which was based on the existence of government authority and certifying entities, to enable the certification by private actors.

Thus, the system that exists at the Mercosur level has to change. For example, in the case of Argentina, the government authority, which is the Ministry of Commerce, granted the business chambers the power to issue the certificate of origin. The chambers have a particular unit dedicated to advising companies when filling out the certificate. The process is under the control of the Unit of Origin of Goods under the Secretary of Commerce. The controls undertaken by the Secretary are not carried out in all cases, only when a complaint is raised by the local business sector regarding a doubt about the origin of a particular import. The system that would be set up under the agreement eliminates the role of the chambers, which functioned as intermediaries, and replaces it with the self-certification by the exporter.

Why does the EU propose this system? The EU already has a well-recorded database and system in place. It has a registry of certified exporters, which is available to all customs officials in the bloc under a centralised database. The exporting businesses to the EU are listed in a register. There is recorded knowledge of the export history and whether exporters previously met RO requirements. It is an *ex-ante* control because there is a system of records. In the Mercosur countries, there is no such registry, so the control is *ex-post* and undertaken randomly.

## 2.6 Notes

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## 3. TECHNICAL BARRIERS TO TRADE

### 3.1 Technical Barriers to Trade: definitions

Technical Barriers to Trade (TBT) have become a topic of relevance in all trade negotiations. The reduction of tariff barriers has been noticeable in recent decades, particularly since the creation of the WTO and the expansion of logistics and transport services that accelerated the movement of goods on a global scale. Along with this expansion, high non-tariff barriers, or the so-called Technical Barriers to Trade, still survive. These barriers have been the subject of a growing concern regarding the transaction costs, both at and behind the border, to international trade. The OECD estimates that the percentage of direct costs related to commercial transactions is between 2 and 15% of the total cost of trade (OECD, 2005).

The most crucial gain for private actors comes from the lower transaction costs of regulatory harmonisation and mutual recognition of certifications. This reduction reduces logistics costs and costs associated with compliance with external quality requirements, technical regulation of trade and sanitary and phytosanitary measures (Sánchez, 2019). Thus, the central objective of regulatory harmonisation is to reduce operating costs for the private sector. The states, in this way, must adapt their internal regulations to increase business profit.

Within TBT, Regulatory Cooperation has begun to appear in various multilateral agreements of the WTO and, with different scope, in almost all FTAs. Both the Agreement on TBT and the Agreement on the Application of Sanitary and Phytosanitary Measures, adopted within the WTO, impose mandatory compliance restrictions for signatory states in production standards and marketing of certain products. In many cases, such standards are created to protect human health, since they cover pharmaceutical restrictions, cigarette packaging, nutritional concerns or quality and packaging regulations, among others.

The WTO Agreement on TBT was incorporated during the Uruguay Round of GATT and is one of the WTO agreements in force since its birth. Its objective is to ensure that states use technical regulations, standards, and conformity assessment procedures in a non-discriminatory manner and that they do not create unnecessary obstacles to trade [1]. At the same time, it does not restrict members from using public policies in order to protect human health or safety, or protect the environment. The Agreement encourages WTO member countries to base their measures on international standards as a way to facilitate trade. Through its provisions on transparency, it attempts to generate a predictable environment for trade.

However, in recent years, there have been two significant global trends that have had an impact on the provisions included in the chapters linked to TBT in this agreement:

- 1) The signing of the Agreement on Trade Facilitation. This agreement was reached at the WTO in 2014 and entered into force in 2017. It is the first multilateral agreement reached at the WTO after years of crisis. All the major trade powers agreed on this issue, including the USA, China, and the EU. The systemic need for global capital to accelerate its circulation is observed here in a context of intense uncertainty about the future of capital accumulation

(Slipak and Ghiotto, 2019). The WTO estimated in 2015 that this Agreement (which would generate administrative simplification for the movement of goods across borders) would reduce total trade costs by more than 14% for low-income countries and by more than 13% for middle and high-income countries (WTO, 2015).

The idea of Trade Facilitation is that “regulators can no longer act in isolation” (WTO-OECD, 2019: 6). Recently, in a report published by the WTO and the OECD, the agencies explain that globalisation has changed the domestic paradigm of rule creation. Moreover, with the increasing flow of trade and the fragmentation of global value chains, new regulatory requirements have emerged that create challenges for the protection of citizens and consumers, as well as unnecessary costs for companies (WTO-OECD, 2019).

2) The impulse of international organisations towards the adoption of “good regulatory practices.” This concept appears in some FTAs, such as TPP, TTIP, and CETA, and has been driven globally by the OECD. “Good regulatory practices” imply the establishment of two types of mechanisms: firstly, those aimed at transparency, which entail each state being obliged to publish an annual list of all the new standards planned at the central level. It also means the opening up of reasonable opportunities for any interested natural or legal person to comment on the normative acts. Here, the private sector gains space within the regulatory act. Secondly, it includes the “regulatory policy” instruments, where the parties undertake to carry out, according to their internal regulations, impact analysis of their proposed new regulations. The effect that the incorporation of this rule would have on bilateral FTAs is the homogenisation of national policies according to international standards.

Several analyses have pointed out the importance of regulatory cooperation instruments, since 80% of the profits that the FTAs supposedly will create result from both the liberalisation of trade in services and public procurement and (fundamentally) from the reduction of costs imposed by technical and customs regulations (Ghiotto and Guamán, 2019). From this perspective, these regulations act as non-tariff barriers, so their reduction or elimination through mechanisms that allow for permanent bilateral regulatory cooperation is essential to achieve the objectives of the treaties.

In the EU-Mercosur agreement, the TBT issue appears in the various chapters published by the European Commission on July 12, 2019. Here we will analyse the elements of each of these chapters.

Chapter 5 - Technical Barriers to Trade

Chapter 6 - Customs and Trade Facilitation

Chapter (no number) - Sanitary and Phytosanitary Measures

Chapter (no number) - Dialogue

### 3.1.1 Chapter on Technical Barriers to Trade

Chapter 5 of the agreement reaffirms the commitments agreed through the framework of the WTO in the Agreement on TBT. This issue already appeared in the 1999 Directives issued by the European Council for negotiation with Mercosur. In the Cooperation pillar, there is a direct reference to mechanisms of “regulatory cooperation.” The text stipulated the need to “avoid technical barriers and facilitate access to the markets of both parties” (European Council, 1999). Thus, the Directives proposed to create a cooperation mechanism that would work on:

“Technical standards and regulations, and includes consultation from the beginning of the development of these regulations. (...) Such cooperation may advance on the harmonisation of regulatory requirements on the basis of international or European standards, as well as on the mutual recognition of conformity assessment”.

However, the TBT chapter sets “TBT-plus” standards (European Commission, 2019; Ministry of Foreign Affairs of Argentina, 2019), which go beyond regulations stipulated by the WTO, especially as it relates to a) the notion of transparency and dialogue with stakeholders; b) the incorporation of “good regulatory practices.”

The chapter applies, according to Article 3, to the process of “preparation, adoption, and application of standards, technical regulations and conformity assessment procedures that may affect trade in goods between the Parties.” On this, in Article 4, the parties:

“agree to make the best use of good regulatory practices with respect to the preparation, adoption, and application of technical regulations (...) including the preference to adopt technical regulations based on performance, use of impact studies or consultations with interested parties.”

This includes: 1) alignment with the use of relevant international standards; the other party has the scope to ask for explanations when such standards are not used in a new regulation; 2) allowing a reasonable interval between the announcement of a new regulation and its entry into force, so that the other party has at least six months to adapt; 3) carrying out an impact analysis of the new planned regulation.

Article 8 on Transparency includes various elements that come from the WTO Agreement but are TBT-plus. This article includes the concept of Transparency, aiming to ensure that stakeholders of the other party, whether private or public, can participate in the decision-making process on trade regulations. We have already seen in Article 3 that good regulatory practices affect the entire decision-making process when launching new regulations: preparation, adoption, and application. On this, in the “Agreement in Principle” of July 1, 2019, the Commission is emphatic: “Companies will be duly consulted before adopting new standards. The regulations in force will be reviewed periodically to respond to the needs of companies and reduce bureaucratic burdens” (European Commission, 2019a). The statement made by the Commission is relevant since this document aims to give certainty to the European business sector about the agreement.

In the Article on Transparency of the TBT-chapter, the Parties undertake to:

1. “Take into account the views of the other Party when part of the process of developing a technical regulation is open for public consultation”;



2. "Ensure, when major technical regulations are developed (...) that may have a significant effect on trade, that there are transparency procedures that allow the parties to provide input (through a formal public consultation process), except when there are urgent problems of safety, health, environmental protection or national security". The consultation must be public, and the Parties will allow stakeholders of the other Party to participate in these consultations based on non-discrimination.
3. "Allow a period of at least 60 days for the other Party to provide written comments on the proposed technical regulation."
4. Provide information on the objectives and the legal basis for the measure that the Party plans to adopt. This implies that the specific impact studies for that measure should be made available, and explanations about the reasons for adopting a technical regulation should be given to the other Party.
5. The Parties must ensure that all technical regulations adopted and in force are publicly available on official websites free of charge.

The concept of stakeholders here includes the private sector and also the other Party itself. Thus this means that the European Commission or the governments of Mercosur would be allowed to intervene in the decision-making process regarding technical standards and trade facilitation of the other bloc.

The Impact Assessment prepared by the University of Manchester in 2009 estimated that for the EU, trade facilitation is a central element of its trade agreement negotiations (University of Manchester, 2009). In the agreement with Mercosur, it would be the most critical measure, since, according to the SIA, it would be responsible for approximately half of the growth of the real income of the EU as a result of the FTA.

### **3.1.2 Customs and Trade Facilitation**

We identify here the central themes of the chapter on Customs and Trade Facilitation:

- a) review of existing customs legislation in both Parties;
- b) the simplification of all administrative processes, including the incorporation of the figure of the Authorised Economic Operator, the use of electronic means and the establishment of the Single Window;
- c) the concept of Transparency, which implies dialogue with the stakeholders.

The chapter on Customs and Trade Facilitation states in its Article 1 that its objective is: "the facilitation of trade in goods between the parties by identifying, preventing and eliminating unnecessary technical barriers to trade and to improve cooperation between the parties." The same Article establishes that:

"Each Party must periodically review its legislation and customs procedures. The Parties recognise that their customs and other trade-related procedures should not be administratively more burdensome or restrictive of trade than is necessary to

achieve legitimate objectives and should be applied in such a way that they are predictable, consistent, and transparent”.

On Customs Cooperation, Article 2 establishes that the Parties will exchange information concerning customs and other laws related to trade and that they will make progress on the following points (from an extensive list, we have made a selection):

- simplification and modernisation of customs procedures;
- application (enforcement) of intellectual property rights by customs authorities;
- international instruments and standards applicable in the area of customs and commerce;
- relationship with the business community.

Simplification is covered via the self-certification procedure for exporters in the Rules of Origin procedure. As we explained in section 2.5.3, this agreement allows exporters themselves to certify the origin of the products they trade. The chapter on Customs and Trade Facilitation (in Article 8) establishes the figure of the Authorised Economic Operator. Trade operators that meet specific criteria are granted prerogatives that facilitate their operations under this designation, such as lower requirements for documents and data, a low number of physical inspections and examinations and fast track for merchandise release, among other things. Self-certification then goes in the same direction of simplification.

To understand the relationship that arises with the private sector, Article 10 is central. This article understands Transparency as transparent actions by the states and the administration towards the customs and trade sector (stakeholders). It establishes that parties will maintain dialogues with the business community. In this article, the parties agree:

“(a) on the importance of timely consultations with trade representatives on legislative proposals and general procedures related to customs and trade issues. To that end, appropriate consultations between administrations and the business community, shall take place in each Party.

(b) to ensure that their respective customs and other trade related requirements and procedures continue to meet the needs of the trading community, follow best practices, and remain as little trade-restrictive as possible.”

Thus, it follows that: "Each member will hold periodic consultations, as appropriate, between border agencies and merchants or other interested parties within their territory." Here it is established that the members of the blocs should undertake consultations with the business sector in the face of new legislative proposals or changes to current regulations that may affect the trade sector. They should guarantee "good practices" according to the needs of the stakeholders, which are the trade operators.

### 3.1.3 The effects of Trade Facilitation and TBT in the agreement

As already noted, the general effect of incorporating the chapter on Technical Barriers to Trade and on Customs and Trade Facilitation into the agreement between the EU and Mercosur will be the lowering of costs and operating times for importers and exporters between the two blocs.

The World Bank developed an index called *Doing Business*, that records the times and costs associated with the trade logistics process, in particular focusing on three sets of export and import procedures: documentation, cross-border controls, and domestic transport. This index shows the differences that exist between both blocs at the time of evaluating the costs and border transaction times. In Table 9, the vast differences between Mercosur countries and OECD countries (highlighting some EU examples), can be observed.

**Table 9 - Comparative data on costs and transaction times (border compliance) in Mercosur and EU**

<i>Country</i>	<i>Exporting time (in hours)</i>	<i>Importing time (in hours)</i>	<i>Exporting cost (in USD)</i>	<i>Importing cost<sup>2</sup> (in USD)</i>
<b>Argentina</b>	21	60	150	1,200
<b>Brazil</b>	49	30	862	375
<b>Paraguay</b>	120	24	815	500
<b>Uruguay</b>	96	6	1,038	500
<b>OECD</b>	2.4	8.5	35.2	100.2
<b>Germany</b>	1	0	45	0
<b>Spain</b>	0	0	0	0
<b>France</b>	0	0	0	0

*Source: Luciana Ghiotto, Javier Echaide 2019 (based on Doing Business, OECD - Cross Border Trade Ranking, 2019)*

This table shows the differences that exist between blocs, as well as between the Mercosur countries themselves. The export cost is high in all countries, except in Argentina. The import cost is similar in Brazil, Paraguay, and Uruguay (about USD 500 per container), whereas the cost in Argentina is USD 1,200. Import and export times are high in all four countries.

In the case of the EU, the costs are significantly lower, much closer to the average costs of the OECD countries. In some cases, such as France and Spain, there are no costs or waiting times associated with export and import.

2 Handling, clearance and inspections costs of goods

According to the SIA prepared by the University of Manchester (2009), the number of documents required in Mercosur for import and export are double the EU average. In the framework of trade facilitation, issues related to product standards and sanitary and phytosanitary standards are also raised. There is no full harmonisation of standards among the four Mercosur countries, thus multiple certifications may be required. For Mercosur, many EU standards (for example, on the chemical industry) impose substantial compliance costs on Mercosur exporters, which can be interpreted as TBT.

Although there is a general agreement that the elimination of TBT reduces transaction costs, it is difficult to estimate the specific impact of such elimination. The SIA of the University of Manchester (2009) and the London School of Economics (2019) agree on this. The lack of exact data is because most TBTs cannot be measured quantitatively (as a tariff), making it challenging to quantify the outcome of the modification of these policies (LSE, 2019). Thus, although these studies conclude that trade facilitation measures can bring considerable potential benefits, it is not possible to make an accurate model of their impacts, both positive and negative.

Yet, although impacts are not easily quantifiable, it is found that TBT and Trade Facilitation chapters could have an impact on the democratic process within the countries as new stakeholders need to be consulted and integrated in the decision making-process. Impact studies usually overlook these four chapters as being purely technical, but they are in fact central in the process of profit-generation and increased participation in legal decision making processes for corporations, especially European ones. From this point of view, states must cease to be an “obstacle” to the free movement of capital and goods.

### **3.2 Chapter on Sanitary and Phytosanitary Measures**

According to the WTO, Sanitary and Phytosanitary Measures (SPS) are measures that seek to: (1) protect human, and animal life from risks arising from additives, contaminants, toxins or causative organisms of food ailments; (2) protect human life from diseases transmitted by animals and/or plants; (3) protect the life of animals and plants in relation to pests or ailments caused by microorganisms; (4) prevent or limit damage to countries, from the entry, establishment, and dissemination of pests [2].

According to the European Commission (2019), the chapter on SPS will create mechanisms to improve and facilitate trade, while preserving the safety of EU consumers at all times, since the European consumer is reluctant to consume food with agrochemical residues. The EU consumer is also most demanding regarding the quality and health of the products that are allowed to enter the EU territory. Therefore, the Commission maintains that the provisions of the agreement would guarantee predictability and transparency, offering a simplification of administrative procedures for European exporters and the competent authorities of the Member States.

According to the European Commission, Mercosur countries will be under the control of strict SPS to protect EU consumers (in the areas of food safety, animal, and plant health). The EU will apply its rules when importing agricultural or fishing products. According to the

Commission, the agreement with Mercosur “will not in any way affect EU rules. The EU SPS rules are and will remain non-negotiable” (European Commission, 2019a).

A series of steps was established in case the chapter's standards are not met. Mercosur countries agreed to these, since they want to “take away the stigma” and avoid “the bad apples” of past cases when there was evidence of a violation of the standards [3]. Therefore, a veto capacity or “red button” was incorporated in the SPS chapter, for cases of risk of violation of the norms, which implies emergency measures according to Article 14. The emergency measure would be available to individual EU member states, who implement phytosanitary measures at the national customs level. If these measures are applied, the farm or production system in question would be removed from the list of entities allowed to export to the EU, with a low chance of being reincorporated again. Article 10 of the SPS chapter incorporates the concept of “regionalisation” and “compartmentalisation,” as well as zones free of pests and diseases. In the event of a problem, the Commission can block the region in question without the need to affect the entire EU or Mercosur. The notion of “region” can be applied to individual farms or private businesses, regions within states, or even countries. They could be blocked individually or at the country level, depending on the scale of the problem.

The SPS chapter maintains in its Article 7 that the exporting party shall only authorise exports of “approved establishments” with the guarantees of the competent authority that such establishments do not violate the sanitary requirements of the importing party. The importing party shall have a list of approved establishments, which shall be public. In order to minimise the TBT, the parties agreed on control and verification simplification. They also agreed on the reduction of the frequency of import checks carried out by the importing party. This connects to Article 15 of the SPS chapter, where the parties establish the conditions for “Verification of the official control system”. It says: “The verification visits shall be carried out without undue delay and notified to the exporting Party at least 60 working days before such verifications are carried out, except in emergency cases”. Hence, the real control rests with the guarantees granted by the competent authorities of the exporting party, and the verification of the official control system is rather permissive. The verification process has to be notified 60 days *in advance* of it occurring, meaning that the official control system has extra time to adjust any loose end in the control process.

However, analysts argue that this type of approach is still deeply flawed. Thomas Fritz (2018) explains that the SPS chapter continues to ignore the precautionary principle. Instead, risk-based regulation, as set out in the WTO SPS agreement, is favoured. In this way, the concept of risk-based regulation prevails over the more consumer-friendly precautionary principle of the EU.

The SPS chapter also creates a Subcommittee on SPS matters. Article 18 establishes that this Subcommittee shall be “composed of representatives of both Parties with responsibility for matters covered by this chapter.” There is no attempt to prevent the corporate capture of the evaluation process, since the wording does not require that such representatives be public officials, meaning that these representatives can also be from the private sector. If we take into account the fact that all the chapters on TBT promote the participation of stakeholders, the same can be understood here.

A problem arises when observing the number of wide-ranging functions that this Subcommittee will have. For example, the Subcommittee is to define advanced details on the procedure for the recognition of areas free of pests and animal diseases, as well as determine the regions and economic units that can be exported from. The Subcommittee may "establish the procedures necessary to solve implementation problems of this chapter" and "arrive at mutually acceptable solutions." It also has almost unlimited capabilities according to paragraph (e), which states that it can "carry out any other task or consider any other matter that is referred to it expeditiously, as agreed by the Parties."

The SPS chapter does not establish any aspect of democratic control of the decisions taken by the SPS Subcommittee and its working groups once the agreement enters into force (Fritz, 2018). It will operate as an independent and "technical" space, far removed from the control of democratic institutions such as national legislatures or the European Parliament.

### 3.3 Chapter on Dialogues

The chapter on Dialogues has no direct link with trade facilitation. Nevertheless, it is relevant because it shows the treatment given to some sensitive issues such as animal welfare, genetically modified organisms (GMO), and antibiotic resistance. These issues have a huge impact on what consumers find on the supermarket shelves.

The chapter on Dialogues first appeared in the drafts of November 2017. The stated objective is to exchange information and improve understanding about: 1) animal welfare issues; 2) issues associated with the application of agricultural biotechnology (mainly GMO); 3) the fight against antimicrobial resistance; 4) scientific issues related to food safety and the health of animals and plants.

In the previous draft version of July 2017, these issues appeared in the SPS chapter as sections on Animal Welfare and Antibiotic Resistance, and were progressive elements of the agreement (Fritz, 2018). However, in the November 2017 text, the new version of the SPS chapter had been reorganised, and both articles were moved to the chapter on Dialogues. The EU wanted this chapter to be called Dialogues while Mercosur proposed the term Cooperation. One element of the chapter on Dialogues particularly needs to be highlighted. In Article 7 on Agricultural Biotechnology the footnote number 1, derived from the title of the article, explains that:

"Note from the EU negotiator - The Mutually Agreed Solution dialogue on July 15, 2009, following the WTO dispute WT/DS293, will be hereinafter referred to in this EU-Mercosur dialogue and replaced by the following text".

This footnote refers to the complaint that Argentina and Brazil, with a group of other countries, made about the EU in the Dispute Settlement Body of the WTO. Argentina and Brazil filed a claim against the European bloc, arguing that the use of the precautionary principle was a non-tariff barrier. The panel that analysed this case issued a judgment in 2006, concluding that the EU had not fulfilled its obligations assumed in the multilateral agreements on SPS measures. The final resolution of the WTO panel, meanwhile, favoured Argentina and Brazil: it considered that the EU decision to "not take a decision," given the absence of data to prove the safety of GMOs, was an arbitrary measure, not supported by



scientific data (Poth, 2019). Therefore, the EU had to lift the moratorium against the entry of transgenic products based on the precautionary principle, and to create a regular dialogue on issues of mutual interest on biotechnology applied to agriculture. As the footnote states, the chapter on Dialogues takes up this Solution and incorporates it.

The character of the chapter on Dialogues reinforces aspects of cooperation, but does not present objectives or elements of execution for its provisions. A Subcommittee on Dialogues is created, which must work – after having established workgroups by area – to solve problems, monitor progress, and provide fora for discussion. Once again a problematic issue arises regarding the members of the Subcommittee. Article 2 establishes that the Subcommittee shall be “composed of representatives of both Parties with responsibility in matters covered by this chapter.” As in the SPS chapter, this type of wording implies that these representatives need not necessarily be public officials, but may be from the private sector, especially companies involved in import and export.

In the chapter on Dialogues, unlike the SPS chapter, the EU proposed the incorporation of paragraph (1) in Article 7, which states that the work of the working groups “will not jeopardise the independence of their respective national or regional agencies (of the Parts). The Subcommittee will establish the rules to determine when there is a conflict of interest for the participants of the working groups”. However, Fritz (2018) argues that, since these rules are still unknown, it is not clear that they will be useful in preventing corporate interests from influencing the various SPS and Dialogues working groups.

Furthermore, no reference is made to the precautionary principle in the chapter on Dialogues. This absence is problematic given the fact that the working group on “Agricultural Biotechnology” shall “discuss specific topics in biotechnology that can affect mutual trade, including GMO testing cooperation” and “exchanging information on topics related to the asynchronous authorisation of genetically modified organisms in order to minimise possible impacts on trade.”

Leaving the discussion about the asynchronous authorisation of GMOs to the working group could be a problem, since the discussions there could move beyond what the agreement itself establishes and have an impact on the internal regulation of the EU. Indeed, there is no harmonisation of regulatory frameworks for planting GMOs between countries. For example, in the USA, GMO crops are usually considered equivalent to the crop from which they are derived. On the contrary, in Europe, transgenic crops are considered to be a new process, and thus each transgenic plant requires a new evaluation and authorisation procedure. In countries like Germany, products containing GMOs are rejected in general by the population: approximately 80% of consumers refuse to accept them [4].

The urge to guarantee asynchronous authorisation is logical from the perspective of Mercosur, where a large part of the crops are transgenic. In 2018, the ranking of countries with the most significant number of hectares planted with GMOs was led by the USA (75 million hectares), followed by Brazil (51 million hectares) and Argentina (23 million hectares). Brazil grows transgenic soy, corn, cotton, and sugarcane, while Argentina cultivates transgenic soy, corn, and cotton. The approval of a transgenic drought-tolerant wheat is currently under discussion in Argentina: the seed was developed by the local company Bioceres in collaboration with the French company Florimond Desprez [5].

Thus, for the Mercosur countries, the slow and complicated process of GMO approval in the EU becomes a problem for the marketing of their products. The approval of GMOs is not harmonious in the EU since its mechanism consists, first, of the authorisation by the European Commission. Then, each country must individually ratify the release of the new plant. As of December 2019, there is only one commercial GMO crop authorized for being planted in the EU, which is Corn MON810, owned by Monsanto, which is resistant to insects. This patent was approved in 1998, but in recent years some countries like Germany, France, and Poland have completely banned the use of this modified corn. Yet, the EU has allowed for the import of 58 GMOs, and almost 60 GMOs are still awaiting authorisation [6].

Also striking is paragraph 5 of Article 4 on Agricultural Biotechnology, which states that the dialogue will include: "The exchange of information in cases of low presence of GMOs not authorised by the Party that imports, but authorised in the exporting Party." Being able to account for this information (low levels of GMOs) can involve two things. The first assumes that, in order to know that there are low levels of GMOs, it is necessary to have a traceability line - that is, that the producers have control of the production throughout all the chain, defining the levels of waste that GMOs leave (Poth, 2019). This process requires that companies carry out this research process and thus can certify levels of GMO presence. However, Argentina, for example, does not have companies that do this for the agricultural export process, since controlling traceability is extremely expensive, and the commitment to export commodities is linked to low production costs.

The second understanding of this paragraph of Article 4 of the chapter on Dialogues is the reduction of regulatory requirements, as it would mean progress on how to proceed in the case of low levels of GMO residues. In the EU, Regulations 1829/2003 and 1830/2003, adopted in 2003, require that food and feed containing or produced from GMOs must be labeled. There is, however, an exemption in case of an accidental or technically unavoidable presence when the genetically modified content (authorised in the EU) is less than 0.9% [7]. This percentage of GMO is classified ingredient by ingredient. When the 0.9% threshold for an ingredient considered individually is exceeded, the presence of the GMO must be mentioned on the label, with the name of the genetically modified species concerned.

However, the situation changed with the case, opened in 2011, of honey imported from Argentina, where the European Commission amended Directive 2001/110/EC by introducing "a special mention that clarifies that pollen is a natural component of honey. Therefore, it is not an "ingredient" liable to contain GMOs" [8]. If pollen is considered a constituent of honey, and not an ingredient, labeling would only apply if the GMO content exceeds 0.9% of the honey, rather than 0.9% of the pollen, which would have been the case if pollen was classified as an ingredient. Without such a modification of the rules, Argentine honey would not have complied with the European regulation, which requires that a product contains less than 0.9% of GMOs in its ingredients to avoid having to notify this information to the consumer via its packaging. This decision of the Commission was rejected by The Greens in the European Parliament [9], but was still passed.

In Argentina, 90% of the honey comes from the central zone of the country, which is the quintessential agricultural zone. Therefore, a large part of the flowers from which the bees pollinate are genetically modified plants. The most recent problem regarding honey in the EU concerned the glyphosate content in honey containers. In August 2016, the European

Union detected that Uruguayan honey had glyphosate levels well above the established maximum of 50 parts per billion (i.e. 0.05 milligrams of the substance per kilogram of honey) [10].

In conclusion, the chapter on Dialogues creates more doubts than certainties, and its articles are extremely inadequate, while any reference to the precautionary principle was left out of the chapter. Moreover, no provisions for adequate safeguards are established that could prevent the corporate capture of future decisions taken by the SPS Subcommittee or the Subcommittee on Dialogues created by the chapters.

Besides, the inclusion of the Article on Agricultural Biotechnology could have impacts on both blocs, since, for the EU, it marks the possibility of increased pressure to accept the asynchronous approval of GMOs from the Mercosur countries, where most agricultural production relies on GMOs. This would mean that more flexible rules might be adopted in the EU which would facilitate imports with higher levels of GMOs. The approval of GMOs in the EU would have a significant impact in Mercosur countries as well, as this would normalise the “agricultural biotechnology model” (Poth, 2019). This model is based on production with genetically modified seeds. It requires a large number of agrochemicals and has a significant negative impact on the health of the local population and the environment.

### 3.4 Impacts of the SPS and Dialogue Chapters

Trade liberalisation promotes the exploitation of the comparative advantages of countries. Moreover, in this case, as we saw in the section on Trade in Goods, the industry that benefits most in Mercosur from this agreement is agribusiness. The expansion of the import quota opens up a window of opportunity for these sectors. Mercosur is a large producer of highly competitive agricultural products, especially meat, soy beans and sugar cane. The bloc slaughters around 55 million cattle each year, as well as 6,600 million chickens, and is home to 394 million laying hens (European Group for Animals, 2019).

The standards governing these activities become central, since they are much lower in Mercosur countries than in the EU. Thus it is not only trade asymmetries that exist between the blocs; but also regulatory asymmetries. Even if all Mercosur countries have legislation against animal cruelty, in many cases, more specific binding regulations to guarantee the implementation of sufficient standards at the farm level are lacking. When such standards do exist, they are not legally binding and are established only in guides, manuals, or voluntary codes.

In fact, although Brazil has basic rules related to slaughter and transportation, they are not sufficient, and there are no sanctions for violations (European Group for Animals, 2019). In Argentina, regulation exists on the transportation and slaughter of animals, but it is outdated, and compliance is difficult to monitor. In Uruguay, there are concerns regarding reports on the slaughter of horses, both on issues of traceability and animal care. Furthermore, in Paraguay, although legislation exists, it is not sufficiently detailed, and there is not enough information for a conclusive survey [11].

The legal vacuum in Brazil is relevant because it is the leading meat exporter in the world, and it was involved in the meat adulteration scandal in 2017. The results of the so-called

“Operation Weak Flesh” (*Operacao Vaca Fraca*) showed that the mega-export meat company, JBS, adulterated bovine and avian meat [12]. The expiration date was changed, and its appearance was “made up” by the use of chemicals to hide a bad smell. Likewise, the use of acids and other chemical products, in some cases carcinogenic, was found to hide the physical characteristics of rotten products. They also injected water into the meat to increase its weight, among other fraudulent practices. According to Brazilian authorities, these are some of the illegal tactics that several companies used to sell meat in poor condition. Another worrying issue was the evidence of a corruption network, with companies such as JBS and BR Foods paying employees from the health section of the Brazilian Ministry of Agriculture, who authorised the sale of expired meat, and even “dead animals” which had perished of ailments.

In the light of the weak SPS chapter, given that exporting countries’ competent authorities are the ones who carry out the SPS compliance controls, this issue is extremely sensitive for European consumers. In order to simplify processes, the real control rests with the guarantees granted by the competent authorities of the exporting party. In this type of case, there is no guarantee that the competent authorities would have an impartial approach, given the corruption scandals that have occurred in the recent past. The only power granted to the EU is the ability to generate audits and verifications as an importing party. That would imply that the European authorities constitute a kind of permanent supervisory mechanism that assesses all authorisation and certification processes in Brazilian territory and Mercosur countries in general. However, controls at the EU border are already grossly insufficient. In its last report, the European Food Safety Authority (EFSA) declares that it only tested 582 Brazilian samples for pesticide residue levels in 2017. Of these, 7.6% exceeded the authorised EU level [13].

Beyond these issues, the manner in which farms raise the cows, and the quality of the meat are not mentioned in the agreement. In Mercosur, 70% of cows are grown using feedlots or fattening pens. The Hilton Quota for meat exported to the EU excludes feedlots, making the meat more expensive, and of better quality. However, the related chapters of the agreement say nothing about the quality of the remaining meat that will be imported within the quota of 99,000 tonnes and beyond.

Brazil and Argentina incorporated feedlots into their process in the early 1990s. The reasons were economic: livestock lost ground against the advance of agriculture, especially soybean cultivation, so there were fewer fields for grazing. During 2007 and 2008, Argentina had a subsidies programme to expand feedlots instead of using pastures for cow breeding. The change in the diet of cattle - from pasture to cereals - has provoked the chemical re-composition of their meat, and little is known about the effects of this change. Studies commissioned by the National Institute of Agricultural Technology (INTA) in Argentina describe food with more saturated fat, more cholesterol, and more calories (Barruti, 2013). In addition, cows raised in feedlots are more likely to generate a mutation of the bacteria that inhabits the intestines of all animals, a type of *Escherichia Coli*. This mutation can give the consumer Hemolytic Uremic Syndrome (HUS), which is potentially fatal, since it can produce multiple attacks on the kidneys, hemolytic, and nervous system. A study by the World Health Organisation (WHO) shows that Argentina is the country with the highest number of people affected by HUS, especially in children under five years [14].

In the case of pork meat, another problem can be detected. Countries like Brazil and Argentina have used a growth hormone called ractopamine for pigs (and potentially cows and chicken) – a product banned in many countries, including across the EU. Ractopamine is used to increase the muscle mass and thus the meat of animals. It also increases the adrenaline of enclosed animals that, lacking any other way to discharge their stress overdose, live with agitation, tremors, and nausea (Barruti, 2013). Critics point out that meat which contains this hormone can cause heart problems and hypertension in humans, especially people with previous pathologies.

In Brazil, the use of ractopamine is allowed. In Argentina, this drug was used between 2011 and 2018, when it was finally banned. However, the ban is the subject of debate. The Argentine Association of Pig Producers (AAPP) recently came out in favour of the use of ractopamine, arguing that there is unfair competition from Brazil, since this product can help bring about a price difference of 30% [15]. However, the product is still forbidden as authorities fear that if it is allowed for pigs then it might also be used for cattle, which would close markets for bovine meat in countries like China.

In 2017, Russia banned the entry of pig and bovine meat from Brazil, since it identified the presence of ractopamine in meat exported from that country. Ractopamine was identified by the Russian Federal Veterinary and Phytosanitary Safety Service after finding the drug in containers of certain vessels from Brazil. The Brazilian Association of Meat Exporting Industries (Abiec) said the sector: "executes all preliminary analyses for the export of beef" without the additive to Russia [16]. The Associação Brasileira de Proteína Animal (ABPA) also stated that: "the agro-industries associated with ABPA respect the sanitary legislation of Russia (...) the sector is sure about the characteristics of its product and guarantees that the production of shipped pork does not use ractopamine".

As for poultry, Brazil is the major exporter in the world. Many cases of salmonella in exported chicken have been detected in recent years. A report revealed that thousands of tonnes of salmonella-contaminated chicken were exported from Brazil over the past two years [17]. Salmonella is a bacteria present in the feces of many animals, including beef and poultry, and often contaminates their meat, milk, or eggs. In the case of eggs, bacteria can be present inside the shell as well as outside. Cooking will kill the bacteria. In humans, salmonella poisoning can be life-threatening, particularly in infants and elderly people.

The Bureau of Investigative Journalists published an expose on the Brazilian broiler industry, which is the largest exporter of frozen chicken in the world. The head of the Brazilian food safety authority has admitted that the country's 20% contamination rate is too high. "Europe is one step ahead of us regarding the control of salmonella," said Ana Lucia Viana, director of Brazil's Department of Inspection of Animal Products. The Brazilian government confirmed in July 2019 that the UK had sent 16 containers of poultry back to Brazil due to the presence of salmonella. According to the Brazilian Minister of Agriculture, the shipments totaled 1,400 tonnes of poultry (almost 1 million frozen chickens), which were returned over a period of 15 months [18]. The EU itself has been running a significant salmonella reduction program for more than a decade for its domestic poultry flocks. In the UK, for example, salmonella rates ranged from 1.5% to 2.2% between 2013 and 2017, according to the Food Standards Agency.

The European Association of Poultry Processors and Poultry Trade (AVEC) complained about the impacts of this agreement on the poultry sector in the EU: "Over the past 20 years, the EU poultry meat sector has made huge efforts to implement stronger policies on animal welfare, food safety, and environment. With the Mercosur deal, the EU Commission is saying our efforts were useless. We are fine with importing poultry meat with lower standards from third countries" [19].

A complicated situation arises around shipments of chicken banned from entering the EU because of salmonella. The ships sent back to Brazil belonged to the meatpackers JBS and BRF Foods, and the chicken was then sold on the Brazilian market, since Brazil has a higher maximum limit for traces of salmonella than the EU. The Brazilian Ministry of Agriculture said that the final destination of the returned poultry is the responsibility of the meatpacking companies: if the product is in line with Brazilian regulations, it can be sold in the country. Brazilian consumer associations, however, criticise the return of contaminated meat to the country. "This kind of practice is a great disrespect to the Brazilian consumers, which are exposed to products of worse quality because of the lower level of sanitary requirements in the country. This can bring negative consequences to the population's health", said the Brazilian Institute of Consumer Defense (IDEC) [20]. The same situation could be imagined in the case of the rejection of shipments of pork and poultry from Brazil.

The provisions in the SPS and the Dialogues chapter have generated numerous criticisms in the EU, given that while the EU searches to import more meat, quality controls cannot be sufficiently guaranteed [21]. Thus, the agreement, instead of pushing for better protection of European consumers, actually puts their safety at stake.



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## 4. TRADE AND SUSTAINABLE DEVELOPMENT

One of the highlights of this agreement is the inclusion of a chapter on Trade and Sustainable Development. The agreement includes 15 pages on this subject, establishing principles and actions on decent work, and environmental aspects of sustainable development in the context of trade and investment (Article 1.1).

The chapter includes the following subtitles, which correspond to different topics. Here we highlight the most relevant:

Article 4: Multilateral Agreements of Labour Standards

Article 5: Multilateral Environmental Agreements

Article 6: Trade and Climate Change

Article 7: Trade and Biodiversity

Article 8: Trade and Sustainable Forest Management

Article 9: Trade and Sustainable Management of Fisheries and Aquaculture

Article 10: Technical and Scientific Information

Article 11: Trade and Responsible Management of Supply Chains

We will review several of these issues here, although some of them, such as fishing, have already been covered in greater detail in other chapters on the previous pages.

### 4.1 Trade, Climate Change, Biodiversity, and Forests

European officials presented the inclusion of the Paris Agreement commitments on climate change in the agreement as a victory, having made adherence to the Paris climate obligations a condition of the trade deal. They argued that this clause would “bind” Brazil to its international climate commitments [1]. Under the Paris Agreement, Brazil is committed to acting against illegal deforestation and delivering 12 million hectares of reforestation in the Amazonian forest, which plays a crucial role in regulating the earth’s climate.

Article 6 of the chapter refers to the link between trade and climate change. It states that each party will effectively implement the Paris Agreement signed in 2015 (Article 6.2 (a)), which makes it binding to commercial matters. Article 6 on Trade and Climate Change states that:

“Each Party shall:

1. effectively implement the United Nations Framework Convention on Climate Change (UNFCCC), and the Paris Agreement established there;
2. in accordance with Article 2 of the Paris Agreement, promoting the positive contribution of trade to a path towards low greenhouse gas emissions and climate-

resilient development, as well as increasing the ability to adapt to the adverse impacts of climate change in a way that does not threaten food production.”

However, the inclusion of these clauses does not mean that Brazil is bound to commitments on climate change mitigation. On the contrary, this agreement includes no enforceable mechanisms in this regard. The chapter establishes no penalties for cases in which the Paris obligations are not respected. Moreover, the language used in these articles weakens the relevance of climate in the agreement, and grants ample room for manoeuvre to the states to avoid fulfilling concrete commitments (Abdenur, 2019). Here the wording of the clauses becomes central. For example, Article 6 on Trade and Climate Change continues: "The Parties shall cooperate, as appropriate, on issues of climate change linked to trade bilaterally, regionally and in international fora such as the UNFCCC." The phrase "as appropriate" removes the obligation for states to cooperate on climate change issues.

The Paris Agreement sets targets for reducing CO<sub>2</sub> emissions in order to limit the increase in global average temperature. Article 2 of the Paris Agreement establishes that its objective is “to maintain the global average temperature increase well below 2°C with respect to pre-industrial levels, and to continue efforts to limit that temperature increase to 1.5°C with respect to pre-industrial levels, recognising that this would significantly reduce the risks and effects of climate change”. In this regard, beyond the incorporation of the reference to the Paris Agreement in this text, the impact of trade liberalisation on the climate involves multiple negative effects, including deforestation, emissions from methane gas, the increase in pollution from maritime transport, and an increase in the use of pesticides.

The environmental impacts of trade liberalisation have become more relevant given the increase in the traffic of goods and its harmful effects on the ecosystem. Nevertheless, the issue of climate change and the EU-Mercosur deal only became a subject of public debate in the wake of the hundreds of fires propagated in the Amazon rainforest in August 2019. This situation generated a political tension between France and Brazil, with numerous declarations being exchanged between the French President, Emmanuel Macron, and his Brazilian counterpart, Jair Bolsonaro.

Bolsonaro was elected president of Brazil with an electoral campaign which focused on “the three Bs” [2]: bullet, bible, and bovine meat. This refers to the hardening of repressive politics, his attachment to religious conservatism (especially evangelical), and his support for the beef sector, which implies the expansion of the agricultural frontier for fodder and livestock grazing.

Bolsonaro has acted to undermine the climate and biodiversity, by putting the agency responsible for protecting indigenous territories (FUNAI) under the authority of the Ministry of Agriculture, which represents the interests of large landowners [3]. His government progressed the reforming of the Forest Code, which makes illegal appropriation of land easier. It has also disarmed the Environmental Protection Agency (IBAMA) and the National Space Research Institute (INPE) that work to control deforestation. The government fired the head of INPE after the Institute revealed that deforestation had increased according to satellite reports (there was reportedly an observable 88% increase in deforestation in June 2019, compared to June of the previous year). Bolsonaro then announced his plan to redirect

foreign aid which was aimed to help combat deforestation. This policy led Germany and Norway to freeze committed donations to that fund [4]. Finally, the issue of Brazilian deforestation gained even more international visibility due to the dramatic fires that were covered by the global media. In particular, Emmanuel Macron requested that the issue be urgently discussed at the G7 Summit in Biarritz in August 2019.

The lack of an apparent reaction from President Bolsonaro to the fires in the Amazon led President Macron to announce that he would oppose the EU-Mercosur agreement. He publicly added that Bolsonaro had lied at the G20 meeting in Japan earlier in the year, where EU leaders agreed to finalise the negotiations. Other countries have also expressed their doubts about an agreement with Mercosur: the Irish Prime Minister also threatened to vote against the agreement, just as the Prime Minister of Luxembourg asked to suspend the ratification process. The Slovakian Minister of Agriculture stated that imports of agricultural products and food that are not produced according to European environmental and animal care standards should be stopped. In Germany, the press asked for sanctions against Brazil, and the Minister of Agriculture threatened the country over the lack of concern shown about the fires in the Amazon [5], with support from the UK government. The EU committee of the Austrian Parliament also surprisingly decided to oblige their government to veto the agreement at the Council of the EU [6].

Macron's position against the agreement with Mercosur has been interpreted as a masterful political move within the framework of a precarious balancing act for France, taking into account the tensions created between CETA and the agreement with Mercosur in France. Thus, Macron can present the “good CETA” against the “bad Mercosur agreement,” sacrificing the latter but saving the agreement with Canada, and thereby giving in to the persistent criticisms by the French agricultural sector of the agreement with the South American bloc. In short, Macron intends to argue that the ecological transition is compatible with free trade, thus saving the very principles of market liberalisation.

#### **4.1.1 Impacts of trade on deforestation and climate change**

The agreement will generate an increase in the emission of greenhouse gases. The existing trade relationship already produces a high amount of gases: trade from Mercosur to EU produces more than 25,000 tonnes of CO<sub>2</sub> per year (Grain, 2019). The proliferation of exports and imports promoted by this agreement will thus inevitably generate an increase in emissions. For example, a higher trade in poultry is likely to produce an increase of 6% in emissions, while the increase in trade of ethanol might generate an extra 4% of CO<sub>2</sub> emissions. Two-thirds of the new emissions will be produced on farms, via the use of increased fertilisers and manure, while about 30% will come from changes in land use, including deforestation (Grain, 2019).

The increase in export quotas and the reduction of tariffs will lead to an increase in production and export of many products. In Mercosur countries this will most likely lead to further deforestation [7], as there is a deeply interconnected relationship between the agricultural biotechnological model (Poth, 2019), deforestation, and climate change. Forests trap and store large amounts of carbon dioxide and contribute significantly to mitigating global warming. When forests are destroyed, the carbon they absorb returns to the

atmosphere, causing a double negative impact. As previously mentioned, it is estimated that between 25 to 30% of the greenhouse gases released into the atmosphere every year are due to deforestation.

Deforestation around the world is directly connected to the EU's trade policy since the region is the largest importer of products from illegally deforested areas [8]. In 2012, the EU imported amounts equivalent to around 6 billion euros of soy, meat, leather, and palm oil originating from land cleared illegally in tropical forests around the world. This sum represents about a quarter of the total world trade of these products. The EU and European consumers are the leading importers per capita of goods that promote deforestation [see 8].

European countries import meat, ethanol from sugar cane as well as soybeans and soybean meal, all of which contribute to deforestation. In the EU there is little land to grow soybeans, and the use of glyphosate is more restricted than in Mercosur countries, which makes soybean plantations uncompetitive. Thus, soy is imported from all four Mercosur countries. More than 90% of the planted soybeans are genetically modified, which gives producers an extraordinary advantage [9]. Soybean imports from Mercosur countries are essential to support the agri-food model in Europe, demonstrating the clear inconsistency in the EU's discourse on deforestation. Due to the abolition of export duties, the cost to export soy beans and soy meal will most likely reduce, and therefore become more competitive, leading to a probable increase in production.

In 2019, Brazil was the main supplier of soybeans to the European market, with 45% of market share. Brazil (46%), Argentina (43%) and Paraguay (4%) together account for 93% of all EU soya meal imports in 2019 [10]. Therefore, although European leaders like Emmanuel Macron may claim that they are against the agreement, in fact there is a strong dependency on soy imports from the Southern bloc and the agreement will even encourage soy production. The Netherlands, Spain, Germany and Italy are the primary purchasers of soybeans in the EU: they import more than 80% of the soybeans that enter the bloc. For soya meal, it is mainly Spain, the Netherlands, France and Poland, accounting for 55% of total imports to the EU [see 10]. Soybeans and soya meal are primarily used for animal feed, but also for the production of biodiesel. It should be noted that in Mercosur countries there is no clear and credible traceability process for soy production which could guarantee that exported soya does not come from deforestation – where it exists, the process depends on the private sector.

In the case of Argentina, there is no traceability system for exported soybean at all. Recently, a report by The Guardian showed that large British supermarkets were selling chicken and meat that had been fed soybeans from deforestation in Argentina [11]. Approximately 55% of the soybean meal in the UK comes from Argentina. Some Argentinean officials have confirmed that there is no traceability system for soybeans in deforested areas. Soy is mixed before being exported to different markets, which include the UK. The National Service for Agrifood Health and Quality (SENASA) in Argentina explained that there is no demand for traceability by soy buyers. They pointed out that: "If large grain merchants demanded it, in the same way that citrus buyers do, Argentina would have no other option. However, it is the buyer who always imposes traceability". UK retailers agree that there is a problem with the traceability of soy. The Tesco supermarket chain has a detailed plan which aims to eliminate soy from deforested regions from its supply chain by 2025. Marks & Spencer has also

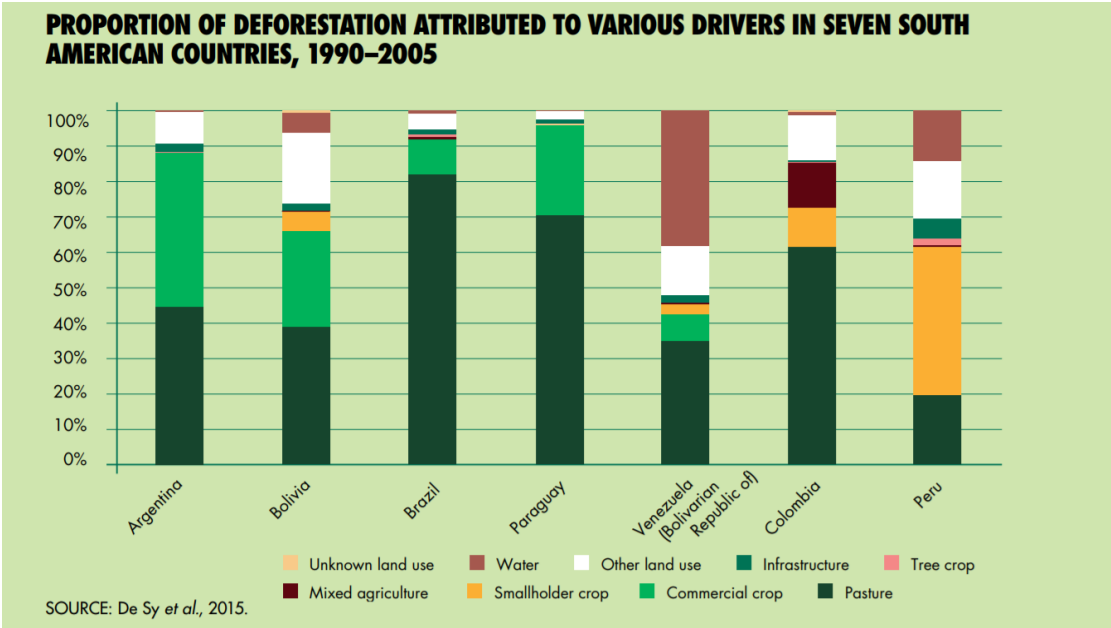


acknowledged that Argentinean soy is in the company's supply chain and is working towards the goal of zero deforestation by 2020. Meanwhile, nothing guarantees that the soy that the EU imports from Argentina do not come from deforested areas.

But it is not only soy which is causing massive deforestation. In the Brazilian Amazon, 63% of deforested land is occupied by cattle grazing (Abdenur, 2019). Illegal logging has advanced to worrying levels: in the Brazilian Amazon, the equivalent of one and a half football stadiums are destroyed every minute [12]. Since the 1980s, and even more so today, the expansion of the soybean frontier and the land used for cattle grazing from South to Central Brazil has continued to shift pastures north into the Amazon. Pastures there have increased by 500% between 1985 and 2017, from 7.2 to 36.4 million hectares, causing the deforestation of 28.5 million hectares [13].

Today, forests cover about 58% of the territory of Brazil, 38% of Paraguay, and 10% of Argentina. According to the LSE SIA (2019), Brazil, Paraguay, and Argentina are among the ten countries with the highest deforestation rates in recent years. According to estimates, the Province of Córdoba in Argentina, the heart of the soybean model, lost 95% of its native forest in the last 20 years, mostly due to the advance of the agricultural frontier [14]. About 14% of soybeans planted in Argentina are also located in the north of the country, where deforestation has swept areas of the Gran Chaco, a large biome that crosses the border to Paraguay.

**Graphic 1 - Proportion of deforestation attributed to various drivers in seven South American countries, 1990-2005.**



Source: *State of the World's Forests* (FAO, 2016)

The replacement of forests by livestock has a direct impact on the emission of gases into the atmosphere. The raising of cows and grasslands has tended to replace the jungle lands in

Brazil or the forests in Argentina and Paraguay. Another area of criticism is the issue of the emission of methane from the livestock sector in these countries. Greenhouse gas emissions in the EU (80% being CO<sub>2</sub>) correspond mainly to fuel burning and industrial activity [15]. On the other hand, in Mercosur, large amounts of methane emissions are associated with agricultural activities, waste management, and energy use, particularly in Uruguay (sixth in the ranking of methane emitting countries) and Paraguay (LSE, 2019).

In Paraguay and Brazil, the change in land use, from forests to land for sowing and grazing, is one of the most significant contributors to CO<sub>2</sub> emissions. According to the SIA undertaken by LSE (2019), about 55% of Brazil's CO<sub>2</sub> emissions are due to change in land use, with the figure reaching 70% in Paraguay. Brazilian emissions decreased between 2005 and 2012 (the year of the lowest level of deforestation) as a result of the change in the use of land (mainly due to a reduction in deforestation rate). However, it increased in the manufacturing and construction sectors. Moreover, even though deforestation in Brazil went from 19,000 square kilometres in 2005 to 4,571 in 2012, the pace alarmingly grew again in recent years, registering an average of 7,500 square kilometres of deforestation per year between 2016 and 2018 [16]. The fires caused an increase of 15% in deforestation between August 2018 and July 2019, according to the Deforestation Alert System, based on images captured by satellites, which recorded 5,042 square kilometres of deforestation in this period [17].

The transformation of wooded land into land for livestock or agriculture also has social impacts. The work of Hinojosa (2007), which presents an overall positive perspective on the agreement, argues that the impacts on the rural sector are mixed, due to the diversification that characterises the livelihood strategies of rural populations in Mercosur countries and how institutions condition the access to assets. This report says that the incentives towards land concentration generated by the agreement “could affect the most vulnerable groups if no palliative measures are taken to avoid dispossession of assets and unfair labour market practices” (Hinojosa, 2007: 4). However, no measures have been taken by Mercosur countries to mitigate the possible effects on vulnerable groups or the environment.

Thus, the Amazon fires cannot be seen separately from trade issues: indiscriminate logging and fires are the first steps in extending agricultural borders and thereby increasing the area dedicated to the export of commodities to, for example, EU countries. The EU-Mercosur trade agreement will deepen these devastating effects on the environment and nature.

#### **4.1.2 The general effects of the agreement on the environment**

The agreement between the two blocs will have profound environmental impacts. However, according to the University of Manchester's impact study (2007), these could be both positive and negative, including (a) a potential for improvement of environmental services; (b) a risk of increased water pollution, requiring stricter regulations; (c) a potential adverse effect on biodiversity, aggravated by the increased demand for biofuels in Europe, in particular from Brazil. Other “less significant” impacts are identified, in particular: potential deterioration of water resources and soil reserves, air pollution, the spread of plant diseases, and risks to animal welfare. It is clear that the environmental impacts are many, and yet what is not guaranteed are policies that can effectively mitigate these impacts.

Beyond the fires in the Amazon and the conversion of forested lands for grazing and agriculture, the effects of this trade agreement on the environment can be counted in several areas. Here we highlight two particularly important aspects: a) the increase in CO<sub>2</sub> emissions due to the increased maritime transport; b) the use of pesticides in Mercosur countries.

### Increase in CO<sub>2</sub> emissions as a result of trade

The agreement will reduce tariffs to zero for a large number of products. The EU will export, without barriers, sophisticated agri-food products, such as wines (which are currently subject to a 27% tariff), chocolates (20%), whiskeys and other distillates (20 to 35%), cheeses (28%), biscuits (16 to 18%) and even soda (20 to 35%). To this is added olive oil, fresh fruit, peaches, and canned tomatoes and frozen potatoes, all indicated in the text as crucial products for European export.

Some of these products exemplify the irrationality of international trade. Certain food products that are traded internationally are also produced a few kilometres away from consumers in the Mercosur or EU countries, such as tomatoes, potatoes and fresh fruits, but will now travel 10,000 kilometres in vessels from, for example, Rome to Montevideo.

The consequences of this trade can be observed in other agreements signed by the EU with Latin American countries. For example, Peru imports products such as frozen potatoes at zero tariffs from the EU. But the potato is not just any product: it is an ancient product in Peru, where it was first cultivated 8,000 years ago. Peru produces more than 4 million tonnes of potatoes itself a year, being the primary producer in Latin America. However, the Netherlands is now the primary source of frozen potatoes for Peru (Ghiotto, 2019).

This contradictory logic has been pointed out by environmental movements, which denounce the ecological footprint of products being internationally traded when they could simply be purchased at reasonable prices within walking distance of the consumer's home. For example, in 2007, Britain imported 15,000 tonnes of chocolate-dipped waffles, while it exported 14,000 tonnes of the same product [18], and in 2016 it imported 213,000 tonnes of milk, while that same year it exported another 545,000 tonnes of the product. FTAs protect and encourage this type of trade, where companies exploit regulatory and trade facilities, low taxes, cost of production, and environmental standards in other countries, with the sole objective of increasing profits.

Moreover, direct and indirect subsidies which support the extraction and use of fossil energy, of USD 5 trillion per year globally, allow the cost of marine transportation of goods to be sustained by taxpayers' money [19]. The International Monetary Fund estimated in 2015 that eliminating fossil fuel subsidies and then imposing taxes on their consumption could lead to a decrease in fossil fuel related carbon emissions of more than 20% worldwide [20]. The elimination of subsidies would also increase government revenues by USD 2.9 billion (3.6% of global gross domestic product).

These combined subsidies lead to an irrational level of international transportation. By 2050, carbon dioxide emissions from global maritime transport could represent 17% of total carbon dioxide emissions [21]. The EU has recently taken measures to reduce the impact of emissions on the maritime transport sector. It established sulfur oxide emission limits in EU

waters. To meet the limits, operators can, for example, use low sulfur fuel, install onboard filters or adopt alternative fuel technologies.

For its part, Mercosur is very late in measuring the impact of its economic activity on climate. In 2018, the Mercosur Ministers of Health supported a motion to advance in the measurement of carbon footprint and strategies to reduce it [22]. On October 1 2019, the First Meeting of Political and Social Dialogue on Climate Change of Mercosur took place, where parliamentarians and civil society met to build networks which would discuss the challenge of climate change [23].

According to the LSE-authored SIA (2019), Mercosur countries have a lower performance within the Environmental Performance Index (EPI). The EPI measures six aspects: water resources, fisheries, biodiversity, forests, climate, and energy. In 2016 Argentina was ranked 43rd, closely followed by Brazil at 46th, while Uruguay and Paraguay were at rank 65 and 82 respectively.

### Pesticides and pollution

The current situation concerning pesticides can best be described as circular. European corporations export large quantities of pesticides to Mercosur countries. These pesticides return in the form of food exported from Mercosur to the EU. This vicious circle will be deepened by the agreement.

According to a study by Brazilian researcher Larissa Mies Bombardi, Brazil and the USA are the countries that use the largest amounts of pesticides in the world. Brazil consumes about one million tonnes a year, and has become, according to the New York Times, a "paradise for pesticides" [24]. The country allows the use of 500 pesticides, 150 of which are prohibited in the EU. As seen in Graphic 3, the situation has worsened since Jair Bolsonaro took office in Brazil. Between January and July 2019 290 new agrochemicals were approved (tripling the number of pesticides approved in the same period the previous years). Another 530 pesticides are pending permission. Brazil is thus an oasis for the agrochemical industry, as the EU and even the USA have banned many of the chemicals due to their toxicity levels and detrimental impacts on the environment.

**Graphic 2 - Evolution of the approval of pesticides in Brazil, 2010-2018**



*Source: Luciana Ghiotto, Javier Echaide, 2019 (based on information provided by the Ministry of Agriculture, Brazil)*

Glyphosate is the best-selling pesticide, but its dangers are not discussed in Brazil. A study by the National Cancer Research Institute (INCA) estimates that each Brazilian ingests on average 5 litres of pesticides annually due to residues in food products [25]. In southern Brazil, the location of large agricultural areas, between 12 and 16 kg of pesticides are sprayed per hectare and year, while in Europe the equivalent figure is only 1 kg. Almost 70% of pesticides are used on genetically modified soy, corn, and sugar.

Many of these pesticides are extremely toxic. Sulfoxaflor and fipronil are used for several crops in Brazil, despite the fact that other countries have banned them because of their effect on the reproductive process of bees. Many neonicotinoids have been proven to kill bee populations. In fact, the EU Commission decided to ban the use of neonicotinoids in April 2018, after an increase in the mortality of beehives. Sulfoxaflor is one of the pesticides that caused bee colonies to collapse in Brazil. According to a study carried out by the Agência Pública and Repórter Brasil, five hundred million dead bees were found in four Brazilian states in the first quarter of 2019, an incredible number that puts the pollination of fruits and vegetables and native vegetation at risk [26].

The circle closes when we look at the companies that earn the most from the approval of pesticides. The German companies BASF and Bayer, the US-American company Dow-DuPont and Syngenta (of Swiss origin, but acquired by Chinese capital), are the main suppliers of pesticides in Brazil. As mentioned in the section on Rules of Origin, the agreement will make

it even easier and cheaper for European companies to produce and export pesticides and agro-chemicals to Mercosur countries. Also, after the union between Bayer and Monsanto, more than 50% of the genetically modified seeds sold in Brazil are from this company. It should be noted that on the Brazilian market it is not expensive to obtain permits to sell pesticides. In 2015 the cost of registration was about USD 1,000 per product, while in the USA, the same company would have to disburse about USD 630,000 to place its pesticide in stores [27]. Finally, it is important to note that five of the most-used pesticides in the region are considered carcinogenic by the World Health Organisation (WHO) [28].

To sum up, it has become clear that the agreement will not only contribute to higher greenhouse gas emissions through deforestation. The increased trade flows between the two blocs, due to the reduction of tariffs to zero for a large number of products, will also affect the climate. Instead of fostering more sustainable local and regional supply chains, this agreement deepens a bizarre trade system whereby food products which are already produced locally or in the region, are exported to other continents. These emissions are not accounted for in the EU emission reduction targets. International and EU efforts to reduce shipping emissions are currently grossly inadequate to reach global climate targets.

## 4.2 Labour Standards

The chapter on Trade and Sustainable Development does not only mention climate change and deforestation - it also includes a number of articles where the issue of Labour Standards is addressed. Article 4 on Multilateral Labour Agreements and Standards implies a mutual commitment to the labour rights conventions of the International Labour Organisation (ILO), as well as the agreement to not lower labour standards to attract foreign investment or promote trade. The EU argues that it is one of the most advanced agreements in this area (Sanahuja, 2019). Phil Hogan, then EU Commissioner of Agriculture, said in July 2019 that "trade should not happen at the expense of environmental or labour conditions: on the contrary, it should promote sustainable development" [29].

Paragraph 3 of the same Article states that the parties: "must respect, promote and effectively implement the main labour standards recognised in the Fundamental Conventions of the ILO," referring here to the Declaration on Fundamental Principles and Rights at Work of 1998. This Declaration incorporates the four fundamental rights, addressed in eight basic conventions: a) freedom of association; b) elimination of all forms of forced labour; c) elimination of child labour; 4) elimination of discrimination in employment.

It is interesting to note that the Article on Multilateral Labour Agreements and Standards incorporates the following: "Each Party will make continuous and sustained efforts to ratify the fundamental ILO Conventions of which it is not a party" (paragraph 4). The "importance of ratifying and implementing the 2014 Protocol to the Convention on Forced Labour" is also added (paragraph 5). The parties undertake to exchange information on their respective progress in the ratification of the fundamental conventions or protocols (paragraph 6) and to exchange information and cooperate on labour issues related to trade within the



framework of the ILO (paragraph 8). The article states that the parties will promote decent work conditions (paragraph 10).

The trade union confederations of both blocs, the Southern Cone Confederation of Trade Unions (CCSCS) and the European Trade Union Confederation (ETUC), in June 2019 stated their concern that in the Mercosur countries several ILO conventions have not been ratified [30]. In fact, according to the ILO, Brazil is among the countries that violate international labour standards, undermine collective bargaining and hinder the work of labour unions. The International Trade Unions Confederation (ITUC) has listed Brazil as one of the 10 worst countries for employees, due to violent repression against strikes and threats received by members of trade unions [31]. Brazil has not ratified Convention 87 on Freedom of Association and protection of the Right to Organise, and the ILO has observed the absence of compliance with Convention 98 on the Right to Collective Bargaining. For their part, the EU member states have ratified all the ILO core conventions since 2007.

The agreement could have a positive effect, given the commitment to advance in the ratification of the conventions. But the incorporation of the articles on Labour Standards is of little use: they cannot be executed, as will be explained in section 4.5 of this chapter. The LSE impact study (2019) recognises that there is limited evidence to show the effectiveness of labour provisions in trade agreements.

The European Commission's proposal for the TSD chapter remains favourable towards the consultation and cooperation mechanisms for dispute resolution. The EU relies on consultation and persuasion mechanisms for the enforceability of this part of its trade agreements, with the sole exception of the agreement with the Caribbean countries, where (at least in the clauses) economic sanctions are allowed (LSE, 2019). An analysis of the experience of the EU-Peru trade agreement can demonstrate the functioning of this non-enforceable mechanism in the Trade and Sustainable Development chapter. Just like in the EU-Mercosur agreement, the TSD chapter in the agreement with Peru constitutes a frame of reference for compliance with labour, social and environmental standards, and establishes obligations regarding labour and environmental rights. It also includes a mechanism for dialogue with civil society, although this is not binding. In 2017, at the annual meeting of the Sub Committee on Trade and Sustainable Development, Peruvian civil society (together with European organisations) raised a complaint based on the breach of labour and environmental standards by the Peruvian government (REDGE, 2017). Commissioner Cecilia Malmström's response at that time was blunt: Peru was urged to make sufficient progress on these matters, otherwise, she would consider the possibility of using “the mechanisms existing under the agreement, including the commercial execution procedure to address the identified problems” (Malmström in Fernández-Maldonado, 2018: 63). However, subsequent responses to the ongoing complaint reduced the seriousness of the EU's language, finally ending with an official EU response in April 2019 that avoids taking concrete steps in response to requests from Peruvian civil society (Ghiotto, 2019).

In the EU-Mercosur agreement, there is no certainty regarding how the dialogue with civil society will work, because the specific pillar on Political Dialogue has not been released publicly yet. However, as we will see in the following sections, if we judge based on the TSD chapter, civil society will most likely have few possibilities to take part in the decision-making process. As a matter of fact, some of the articles still contain sentences between



brackets, meaning that negotiations on these topics are not yet concluded. This is the case for the dispute settlement mechanism established in the TSD chapter and the role of civil society organisations in it.

In conclusion, the integration of articles on labour and environmental standards in EU agreements has proven to be ultimately unsuccessful. The clauses in the TSD chapter become irrelevant when compared to the other chapters in the trade agreement. Although the EU defends its agreements, arguing that they are progressive and protect human and environmental rights, in cases where attempts have been made to activate these clauses, the Commission's response has been very weak.

### 4.3 Technical and Scientific Information

The chapter on Trade and Sustainable Development also contains an article on Technical and Scientific Information (Article 10). This article includes a specific mention of the use of the “precautionary principle”. In the EU, the precautionary principle, as established in the Lisbon Treaty, allows the EU to take regulatory measures against a risk, even if it is a risk for which there is no scientific certainty (Fritz, 2018).

The “Agreement in Principle” published on July 1, 2019 claims that the agreement does not prevent the EU from retaining its environmental standards or using the precautionary principle (European Commission, 2019a). However, the text of the agreement does not contain such an explicit assertion, but instead refers to national levels of environmental protection, opening up many questions.

Throughout the negotiations, Mercosur countries opposed the incorporation of the precautionary principle, given that their agro-export model is based on massive amounts of GMOs and pesticide use. The four Mercosur countries were part of the dispute against the EU in the WTO on its moratorium on Genetically Modified Organisms, which the EU defended by appealing to the precautionary principle (which has been explained previously in the section on Dialogues (3.3). The EU lost this case (Hartmann and Fritz, 2018).

For his part, former Argentine Foreign Minister Jorge Faurie said that “environmental regulations would not be an obstacle for Argentine agriculture”, and the precautionary principle “can only be used on a scientific basis” and, therefore, cannot be used as a trade barrier [32]. This interpretation is not entirely wrong. This is due to the tension that exists in the definition of “scientific basis.” The Article on Technical and Scientific Information states in its first paragraph:

“1. When establishing or implementing measures aimed at protecting the environment or labour conditions that may affect trade or investment, each Party shall ensure that the scientific or technical evidence on which they are based is from recognised technical and scientific bodies and that the measures are based on relevant international standards, guides or recommendations, where they exist.” However, in the second and third paragraph, it reads as follows:

2. In cases when scientific evidence or information is insufficient or inconclusive, and there is a risk of serious environmental degradation or occupational health and safety

in its territory, a Party may adopt measures based on the precautionary principle. Such measures must be based on available pertinent information and must be subject to periodic review. (...)

3. When a measure adopted in accordance with the above paragraph has an impact on trade or investment, a Party may request to the Party adopting the measure to provide information indicating that scientific knowledge is insufficient or inconclusive in relation to the subject matter at stake and that the measure adopted is consistent with its own level of protection, and may require discussion of the matter in the TSD Sub-Committee.

Some elements of analysis that derive from these paragraphs include the following:

- a) The terminology used in this article is very lax. The final disposition of these clauses show the flexibility and vagueness of the precautionary principle. Moreover, it was only included in the chapter on Trade and Sustainable Development, that cannot be invoked for the Dispute Settlement chapter of the Agreement (on this, see section 4.5).
- b) When compared with the drafts of 2017, the EU's position to include "occupational health and safety" prevailed in the final version. However, the wording is limited in comparison to the EU's broader concept of the precautionary principle, which has been applied in more areas, such as health and consumer protection (Fritz, 2018).
- c) The concept of "serious environmental degradation" is not specified, and thus open to free interpretation. It is unclear what constitutes, or what does not, a "serious" risk of environmental degradation, which may open up to questions about the use of the precautionary principle.
- d) If the precautionary principle is applied, the measure will be discussed by the Sub-Committee on Trade and Sustainable Development, which will thus have extraordinary capabilities. The use of the precautionary principle will be defined on a case-by-case basis. However, the Sub-Committee lacks democratic transparency, and there is no guarantee that corporate capture of the officials will not occur.

## 4.4 Responsible management of supply chains

Corporate responsibility in global value chains is treated in Article 11 of the chapter on Trade and Sustainable Development. It is called "responsible management of supply chains."

The agreement focuses on responsible business conduct, and corporate social responsibility (CSR) practices based on internationally recognised guides. In pursuit of such objectives, the Article remarks that each bloc must support the dissemination and use of internationally signed instruments, mentioning in this regard:

- the ILO Tripartite Declaration of Principles on Multinational Enterprises and Public Policies,
- the UN Global Compact,

- the United Nations Guiding Principles on Business and Human Rights,
- the OECD Guide for Multinational Companies.

Each of the international instruments listed above represent soft law – they are not binding on states, but rather voluntary mechanisms. They can serve as sources of future norms on the matter, however they do not in themselves constitute instruments that could be used to oblige corporations to abide by the standards these instruments set.

The agreement clarifies that the parties will promote the voluntary adoption of CSR or other forms of responsible business practices based on the principles and guidelines mentioned above. Yet, neither this article on “responsible management of supply chains” nor any other chapter in the EU-Mercosur agreement establishes binding rules or standards for corporations within their supply chains.

## 4.5 Dispute settlement in the context of Trade and Sustainable Development

The TSD chapter incorporates a particular dispute resolution mechanism for the issues it covers. The general dispute resolution mechanism provided for in the overall agreement, especially applicable to trade issues, does not apply. Thus, the agreement reserves enforceable mechanisms (hard law) for trade issues, while environmental issues are relegated to a non-enforceable dispute resolution mechanism (soft law).

The chapter establishes a Sub-Committee on Trade and Sustainable Development, composed of delegates from each party. In turn, each party will designate a contact point from its administration to facilitate communication and coordination between the parties (Article 14). This Sub-committee is part of the institutional or bureaucratic body that the agreement will create.

Any dispute arising on issues related to sustainable development must first be resolved in a friendly manner by the parties to the dispute, through consultations which aim to reach a mutually satisfactory solution. If this negotiation mechanism is not successful, the parties will form a panel of three experts that will issue a report with non-binding recommendations to resolve the issue.

Each party will propose 15 individuals to make up an overall list of experts that will examine controversies that may arise. Another 15 are selected by mutual agreement, and cannot be nationals of either of the two blocs. Each party will then select a sub-list of five individuals under the same criteria. Of those 15 experts, three will be chosen (one by Mercosur, one by the EU, and another non-national from any bloc chosen by agreement) to form the Panel for each dispute (Article 17). The Panel will prepare a Preliminary Report within 90 days, and a Final Report 60 days later. The parties may submit written comments within 45 days of accessing the Preliminary Report, and the Panel may take these comments into account to modify its report for the final version. The Final Report must be published 15 days after it was signed by the experts.

The explanatory documents (the “Agreement in Principle”) of both the EU and Mercosur highlight the existence of civil society participation mechanisms in this dispute resolution process. On this issue, Commissioner Phil Hogan said on August 2, 2019 that: “the dispute resolution mechanism of the Trade and Sustainable Development chapter will be enforceable and will include a role for civil society, including representatives of employers and trade unions, at all stages using the experience of international organisations such as the International Labour Organisation”[33]. However, when reviewing the text, in particular Article 17 of the TSD chapter, it becomes obvious that the “participation” is merely symbolic, since it is only the final report which will be shared with civil society, presumably with a “civil society domestic advisory group.” Yet this provision has not been confirmed by negotiators, since the reference remains in square brackets. Supposedly the “civil society domestic advisory group” could submit observations. However, no deadlines are stipulated for this, and there is no clarity as to how those observations would be considered on a report that has already been issued and published.

It is clear that, in light of this agreement, the participation of civil society is a mere formality. There is no guarantee that civil society organisations will have transparent access to information or that they will be able to participate in the processes as for example “amicus curiae” (or “friends of the court”).

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## 5. SERVICES

Following the most recent trade agreements signed by the EU (such as CETA), the EU-Mercosur agreement exceeds the rules in force within the WTO on various issues. It is a "WTO-plus" framework. The Services chapter includes a list of commitments for all types of services already provided in the General Agreement on Trade in Services (GATS) in the WTO, in each of its modalities: cross-border supply of services (mode 1), consumption abroad (mode 2), commercial presence (mode 3) and presence of natural persons (mode 4). However, the agreement goes further. It also addresses immigration, providing rules on the movement of foreign professionals temporarily assigned to the territory of the other party for the provision of services, as well as licensing procedures for specific services. Additionally, there are specific articles establishing rules for postal services, telecommunications and financial services. The chapter also includes an article on electronic commerce (e-commerce). This issue has been discussed in the WTO, but is not yet the subject of binding rules. The services chapter does not apply to transportation or airport services, nor does it apply for subsidies, loans, guarantees, insurance, or the social security system.

The chapter on Trade in Services confirms the commitments established in the GATS. Article 1 of the chapter maintains that the parties will retain their right to regulate on this matter and may establish new public policies in the services sector. As in the GATS, the chapter on Trade in Services states that it is not applicable for services provided by governmental authority, meaning that the provided services are carried out without the competition of any private provider or investor in the same sector. However, there is already private competition in a wide range of public services in the EU and especially in Mercosur.

Beginning in the 1990s, and following the policies recommended by international financial institutions (such as the International Monetary Fund and the World Bank), a process of privatisation of many public services was initiated in Mercosur. This opening up allowed many European companies to have access to new business in areas that had previously been occupied by states. Services, including the provision of drinking water, sanitation, telecommunications, electricity, gas, port and postal services, among others, were privatised, often in favour of European corporations. In Argentina, European corporations, mainly from Spain and France, monopolised the services sector. In the Brazilian, Uruguayan, and Paraguayan services the state is still strongly involved.

The negotiation for the services chapter followed positive lists, that is, the sectors to be included were specified in the agreement. These lists have not been published yet. According to the Uruguayan Foreign Ministry, "Nothing in the Agreement affects the right to regulate of the Parties nor limits the ability of States to provide public services such as health or education." They also stated that: "The Agreement includes specific sectoral annexes on financial services, telecommunications and electronic commerce, which were negotiated by the competent authorities and did not require any regulatory modification to Uruguay" [1]. Until these lists are published, this information cannot be confirmed.

The Services chapter does not include any section with explicit reference to investment protection, nor does it include the investor-state disputes settlement (ISDS) mechanism. The

regulation and protection of investments will continue to be covered by the Bilateral Investment Treaties (BITs) signed by EU member countries bilaterally with Mercosur member countries. Except for Brazil, all Mercosur countries have a significant number of investment protection treaties with European countries in place, especially Argentina.

Although there is no investment chapter, the "Agreement in principle" document explains that the agreement covers the protection of investments through the establishment of services with a commercial presence. This is known as "mode 3" (or "establishment") of the classification of services of the WTO GATS (European Commission, 2019a). The agreement also contains provisions for the movement of professionals for business purposes, also known as the business visitor movement in other FTAs, and refers to the "mode 4" of the WTO GATS. This would allow European transnational corporations to place managers or specialists in the subsidiary headquarters of their companies in Mercosur countries (and vice versa).

The chapter also covers "mode 1" of the GATS (cross-border services), as defined by Article 3 of the chapter in Trade on Services on "market access". This article states that a party may not limit the number of suppliers, transactions, or the value thereof, or the participation of foreign capital, in the supply of services covered by the agreement's chapter. The state cannot force the creation of business unions even temporarily or establish the number of national workers employed in the companies.

The clauses in this chapter prohibit governments from establishing performance requirements for foreign companies with the aim of ensuring desired levels of local employment. This includes banning policies which could limit the participation of foreign capital in the purchase of a local company (Article 3(d)) or set a quota of national labour (Article 3(f)). The prohibition applies to any government level (Article 2(a) (b)), be it central, regional, or local. Thus, while private corporations can set favourable conditions for their ventures, the state's ability to promote public employment policies is restricted, for example.

Article 4 of the chapter on Trade in Services contains the national treatment clause, typical of FTAs. This clause prohibits government measures aimed at favouring "national purchase"; they are considered unfair towards foreign companies as they change the conditions of competition in favour of local companies (Article 4.3). This article even prohibits the possibility of granting compensation to less competitive companies or sectors (Article 4.4).

## 5.1 Mobility of Business People

Section 2 of the chapter on Services relates to the temporary presence of persons of the nationality of another state, signatory to the agreement. This is known as "mode 4" of the WTO GATS classification of trade in services: the free mobility of so-called "business visitors."

This section covers key personnel, trained graduates, commercial service vendors, contracted service providers, and independent professionals, but does not apply to normal workers or natural persons seeking access to the labour market of a country that is part of the agreement. In this sense, the agreement reproduces the same conditions as the first-generation FTAs, such as the North American Free Trade Agreement (NAFTA). Thus, the agreement grants free movement to goods, capital, and services, but restricts the free movement of people. This agreement will not prevent states from continuing to require a visa, so it is an agreement for the integration of markets but not of people.

## 5.2 Licences and Regulatory Framework

The regulatory framework for the granting of special licences or certifications can be found in Section 3 of the Services chapter. Licences for investors or service providers and the criteria for granting certification will depend on other international agreements. Therefore, the current national policies regarding accreditation of professional service providers are maintained, following the laws in force in each of the parties (Article 11).

Article 14 determines four conditions for government measures that establish service licences. The measures must be (a) proportionate to a public policy objective; (b) clear and unambiguous; (c) objective; (d) made public in advance. These conditions must be explained.

First, there is no explanation or elaboration on concepts like "proportionate to a public policy objective." So it is understood that "proportion" will be defined and defended by the states themselves, having to explain their own public policy to the other party.

Second, the last point that requires the parties to make their requirements for the qualification of the licencing and its procedures public in advance, may be seen as problematic. It is reasonable that the procedures are transparent and made available to the public in advance. Yet, questions arise regarding the process of making measures public. This refers to the concept of Transparency which is understood as making all public regulations available in advance for the private sector, so it would really mean publicizing the states actions for private operators, not for general public.

Thus, Article 12 can be considered as part of the provisions on regulatory cooperation. It states that all government decisions and measures relevant for service providers and investors should be published immediately, except for confidential information. This understanding of "transparency" and its implications were discussed in chapter 3 on

Technical Barriers to Trade and Trade Facilitation. "Transparency" in this context refers mainly to the requirements of private stakeholders, in order for them to gain access to discussions of new regulations. This is considered a "good regulatory practice."

### 5.3 Financial Services

The section on Financial Services in the Services chapter contains a long list of services considered to be "financial services". This includes for example insurance of all kinds, consulting services, risk assistance, banking and loan services of all kinds, transfer of monetary services, cheques, bonds, swaps and pension fund management (Article 35).

The agreement includes provisions to guarantee the free flow and acquisition of derivative products. It was precisely these types of products that caused the financial crisis in 2008. The liberalisation of financial services means allowing the free flow of capital. In Argentina, the opening up of the financial sector to foreign capital during the 1990s led to a concentration and, above all, a sell-out of banks to foreign investors. Today, very few Argentinean banking entities remain.

The section on Financial Services protects the rights of the parties to take measures for the protection of investors, depositors, or to ensure the stability and integrity of their financial system. But these measures cannot be used to evade the commitments made in the agreement.

### 5.4 Capital Movement

Although not an integral part of the Services chapter, the chapter on Current Payments and Capital Accounts is intimately related to it, as can be seen in its first article. This article deals specifically with capital movements and financial accounts of the balance of payment, stating that:

"With regard to transactions on the capital and financial account of the balance of payments, from the entry into force of the Agreement, the Parties shall allow the free movement of capital relating to direct investments made in accordance with the laws of the host country and investments established in accordance with the provisions of Chapter [...] Trade in Services and Establishment, and the liquidation of these capitals and of any profit stemming therefrom."

The chapter establishes that states must grant the transfer of freely convertible currencies into current accounts between the parties and allow the free movement of foreign investments – provisions that also appear in all BITs. However, such free transfer must correspond with the current regulation of the states in terms of bankruptcies and insolvencies, protection of the rights of creditors, criminal offences (including money

laundering and terrorism), regulatory legislation of financial institutions, or compliance with legal proceedings (Article 3).

Although the issue of capital movement is included in the agreement, it has not been thoroughly developed. This is because in most cases the BITs between European and Mercosur countries protect the free movement of capital and foreign investment, and so they are complementary to this agreement.

Therefore, the existing BITs must be taken into account when analysing the effects of the free flow of capital and the opening up of the balance of payments, established in the agreement. Although the EU-Mercosur agreement does not include the ISDS mechanism, which allows foreign investors to sue states before international arbitration tribunals, the BITs do include it. Therefore we should have a quick look at the state of play.

The existing BITs between Mercosur countries and EU countries are seen in Table 11. Brazil and Ireland do not have a BIT in force. In Mercosur, Argentina is the country that has the largest number of BITs with EU member states (21).

**Table 10: BITs between EU and Mercosur states**

Countries with BITs	Austria	Belgium	Bulgaria	Croatia	Cyprus	Czech Republic	Denmark	Estonia	Finland	France	Germany	Greece	Hungary	Ireland	Italy	Latvia	Lithuania	Luxembourg	Malta	Netherlands	Poland	Portugal	Romania	Slovakia	Slovenia	Spain	Sweden	United Kingdom	Total
Argentina	1	1	1	1		1	1		1	1	1	1	1		1		1	1		1	1	1	1		1	1	1	1	21
Brazil																													0
Paraguay	1	1				1				1	1		1		1			1		1		1	1			1		1	13
Uruguay		1				1			1	1	1		1		1			1		1	1	1	1			1	1	1	15
<b>BITs in force</b>	<b>2</b>	<b>3</b>	<b>1</b>	<b>1</b>	<b>0</b>	<b>3</b>	<b>1</b>	<b>0</b>	<b>2</b>	<b>3</b>	<b>3</b>	<b>1</b>	<b>3</b>	<b>0</b>	<b>3</b>	<b>0</b>	<b>1</b>	<b>3</b>	<b>0</b>	<b>3</b>	<b>2</b>	<b>3</b>	<b>3</b>	<b>0</b>	<b>0</b>	<b>3</b>	<b>2</b>	<b>3</b>	<b>49</b>

Source: Luciana Ghiotto, Javier Echaide 2019 (based on information from UNCTAD Policy Hub)

Article 6 in the chapter on Capital Movement indicates that none of the provisions in the chapter should limit the right of the economic operators to favourable treatment, established in other bilateral or multilateral treaties. This is another reason why it is important to also examine the existing BITs.

However other provisions concerning capital movements also need to be taken into account. One can be found in Article 4 of the chapter. It establishes a transitory benefit only for the EU: the possibility of applying, for a maximum period of 6 months, a monetary safeguard measure against scenarios where a capital transfer can cause a threat to economic stability. The article makes explicit reference to the "serious difficulties for the operation of the economic and monetary union." Although it does not explicitly spell out that these safeguard measures only apply to the EU, the wording leaves no doubt. However, capital flight can put *any* economy at risk, not just a monetary union. This exception can be considered as a discriminatory measure against Mercosur economies - as if they could not suffer the damaging impacts of possible capital flight.

Article 5 of the chapter on Capital Movement addresses other safeguard measures, both for Mercosur and for EU countries that are not members of the monetary union, in the face of difficulties in their balance of payments or external financial problems. However, several restrictions not included in the previous article, are set up. These require that a measure: (a) is no less favourable for another country in a similar situation, (b) is consistent with the IMF's Bretton Woods Agreement, (c) avoids any damage to the economic and financial interests of a state party, (d) is temporary, proportional and strictly necessary.

In conclusion, the agreement leads to the liberalisation of the capital accounts of all member countries. This will have an impact on the financial systems of the most unstable countries, but at the same time it will facilitate financial accumulation by corporations and banks, and limit the state's capacity to exert greater control over capital movement.

## 5.5. Electronic Commerce

The Services chapter also includes provisions on electronic commerce (known as e-commerce). Both parties agree not to impose customs duties on electronic transmissions. Article 44 establishes that this shall not prevent a party from applying domestic taxes on electronic transmissions; states may establish internal taxes (such as consumption taxes) on, for example, commercial operations carried out online. However, they will not be able to levy external taxes (tariffs or any other kind) on the same operations. This indicates a considerable benefit for the countries of the EU to the detriment of the future of Mercosur's digital industry (Vila Seoane, 2019), as it means that states will not have the space to regulate and tax the existing e-commerce corporations. Thus, these highly developed European companies will compete at the same level as the Mercosur ones, even if the latter are significantly less developed.

The articles of the sub-section on e-commerce in the Services chapter determine the total deregulation of transactions within the digital world. While in the world of the physical exchange of goods there is a tendency towards a progressive tariff reduction, in the "virtual world" of the internet there is a complete lack of tariffs, which primarily benefits the large companies that lobby worldwide to ensure the free e-commerce agenda. This multinational lobby is known as the "GAFA-A Group," following the initials of US companies Google, Amazon, Facebook, Apple, and the Chinese Alibaba. These companies provide internet services (all of them for free, with the exception of Apple).

In effect, what e-commerce hides is so-called "big data," that is, the commercialisation of the data generated by the use of virtual platforms: from personal data to preferences, tastes, and searches. Each click made online by a user generates a significant amount of data that is processed, stored, and sold to profile market segments of potential consumers. All this is based on the behaviour of each user and without their consent.

## *Background information on E-commerce*

E-commerce is a feature of almost every trade agreement nowadays. In 1998 WTO member states agreed not to impose customs taxes on electronic transmissions. The aim of this moratorium was to encourage the development of internet companies, at a time when the potential ramifications of that industry were unknown. Since then, countries have renewed that commitment every two years, although with increasing dubiousness [2]. Two decades later, the situation is extremely different. Today we know that digital inequalities are considerable. A small number of extremely powerful internet companies are concentrated in an even smaller number of countries, which dominate the cross-border flow of data in an increasingly large number of industries. New data-based business models allow companies such as Uber, Netflix, Airbnb, Glovo etc. to operate globally in jurisdictions where they do not have a physical presence or a legal registration as corporations or SMEs. Although these companies do offer valued services, public policy instruments designed from a national perspective are increasingly not sufficient to regulate the economic, fiscal, political, and social impacts of these types of global companies.

According to Vila Seoane and Saguier (2019), the least developed countries are the most affected by the moratorium on the taxation of the free flow of data across borders, as they lose up to 10 billion US dollars in taxes, compared to USD 289 million for developed countries [3]. As regards Mercosur, the report estimates that Argentina, Brazil, Paraguay, and Uruguay lose 186, 109, 260, and 6 million US dollars, respectively. These figures explain the criticisms of the liberalisation agenda in the context of electronic commerce raised by numerous civil society organisations, which have denounced the current proposals, arguing that they will fundamentally benefit only a small number of countries and their transnational companies, to the detriment of less developed countries [4].

It is forecast that e-commerce in Europe will be worth 621 billion euros by the end of 2019. This figure means an increase of 13.6% compared to 2018, when e-commerce was worth 547 billion euros [5]. There are over 800,000 online stores in Europe. Over 175,000 of these are in Germany, the number one country in Europe, which [6] also accounts for a fifth of all recorded online stores in Europe. Second is the UK, with 108,000 online stores, followed by the Netherlands with over 82,000 online stores.

On the contrary, in Latin America, a poll showed that only 26% of the population purchases online and 47% would not feel comfortable if their children took online classes [7]. There is a strong sense of mistrust towards technology in the region. Thus, revenues in the electronic commerce sector in Mercosur countries are only 39 billion euros, compared to 420 billion euros in the EU [8].



### *Concluding reflections on the sub-section on E-commerce*

As mentioned before, Article 44 of the Services chapter prevents the parties from imposing customs duties on cross-border data flow. On the other hand, internal taxes are allowed. This means that consumers can be taxed but transnational companies cannot. So states end up taxing their own citizens for accessing these electronic services, but they cannot tax the companies who make profit from them.

If Article 44 is applied, member states would also be relinquishing their bargaining power at the multilateral level, just at a time when other states are demanding a rethink on the moratorium on taxation of electronic transmissions between borders, in line with development objectives. This would make it difficult for states which are disadvantaged in the context of digital trade to preserve the space to implement sovereign digital public policies [9].

Article 45 of the Services chapter states that - except for financial and telecommunications services - the parties shall endeavour not to require prior authorisation solely because the services are provided electronically, nor to adopt or maintain any other requirement that has an equivalent effect. The text states that it should not prevent a state from adopting legitimate public policies following its right to regulate - but no longer in commercial or licencing matters, given that the treaty expressly prohibits such regulation.

Article 50 of the Services chapter establishes that the states shall maintain cooperation and dialogue on issues of regulation of electronic commerce based on mutually agreed terms and conditions, including, for example, the legal responsibilities of the intermediary providers of transmission or storage services or consumer protection in the e-commerce framework. Here the agreement does not establish obligations for the parties, but recognises that they must cooperate, making it a behavioural obligation, but without guaranteeing any concrete result.

## 5.6 Notes

[1] Uval, Natalia, La Diaria, 6 July 2019, Op. Cit.

[2] Business Standard (2019), "India, SA ask WTO to review moratorium on e-commerce customs duties". 4 June 2019, In: [https://www.business-standard.com/article/pti-stories/india-south-africa-asks-wto-to-revisit-moratorium-on-customs-duties-on-e-commerce-trade-119060401401\\_1.html](https://www.business-standard.com/article/pti-stories/india-south-africa-asks-wto-to-revisit-moratorium-on-customs-duties-on-e-commerce-trade-119060401401_1.html)

[3] Vila Seoane, M. & Saguier, M., 2019. "Ciberpolítica, digitalización y relaciones internacionales: un enfoque desde la literatura crítica de economía política internacional". In: [https://www.academia.edu/38508903/Ciberpol%C3%ADtica\\_digitalizaci%C3%B3n\\_y\\_relaciones\\_internacionales\\_un\\_enfoque\\_desde\\_la\\_literatura\\_cr%C3%ADtica\\_de\\_econom%C3%ADa\\_pol%C3%A9tica\\_internacional.\\_Cyberpolitics\\_digitalization\\_and\\_international\\_relations\\_a\\_critical\\_political\\_economy\\_approach](https://www.academia.edu/38508903/Ciberpol%C3%ADtica_digitalizaci%C3%B3n_y_relaciones_internacionales_un_enfoque_desde_la_literatura_cr%C3%ADtica_de_econom%C3%ADa_pol%C3%A9tica_internacional._Cyberpolitics_digitalization_and_international_relations_a_critical_political_economy_approach)

[4] Our world is not for sale (2019) "Carta de la sociedad civil contra el establecimiento de normas sobre el comercio electrónico en la Organización Mundial del Comercio (OMC)". 1 April 2019, In: [http://www.ourworldisnotforsale.net/2019/Digital\\_trade\\_2019-04-01-es.pdf](http://www.ourworldisnotforsale.net/2019/Digital_trade_2019-04-01-es.pdf)

[5] Ecommerce News Europe (2019), "Ecommerce in Europe: €621 billion in 2019". 11 June 2019, In: <https://ecommercenews.eu/ecommerce-in-europe-e621-billion-in-2019/>

[6] Ecommerce News Europe, "'Over 800,000 online stores in Europe'". 6 October 2019, In: <https://ecommercenews.eu/800000-online-stores-europe/>

[7] De Azevedo, Belisario (2018), "Impulsando el comercio electrónico en el Cono Sur". BID, 1 November 2018, In: <http://conexionintal.iadb.org/2018/11/01/impulsando-el-comercio-electronico-en-el-cono-sur/>

[8] Hagan, Gareth, "EU-MERCOSUR FTA: New Opportunities and challenges for companies and governments". Oco Exporting, In: <https://www.ocoexporting.com/eu-mercosur-fta-new-opportunities-and-challenges-for-companies-and-governments/> (Consulted 10 October 2019).

[9] ALAI (2017), "Internet ciudadana o monopolios". Oct-Nov 2017, In: [https://www.alainet.org/sites/default/files/alem528-9\\_digital.pdf](https://www.alainet.org/sites/default/files/alem528-9_digital.pdf)

## 6. PUBLIC PROCUREMENT

The agreement will open up the government procurement market for goods, construction services, and infrastructure at the federal level for European and Mercosur companies. Through this provision, Brazilian companies, for example, will gain equivalent access to the European procurement market – a novelty for that country.

The opening up of public procurement can expose national markets to a new level of competition, in which domestic Mercosur and European bidders will compete on equal terms. The agreement liberalises public procurement at all levels, that is: federal, provincial and municipal, and even opens up autonomous agencies such as state universities.

### 6.1 Analysis of the Public Procurement Chapter

According to press reports, Uruguayan public companies were excluded from the public procurement chapter. The Uruguayan Foreign Ministry has stated that the country expressly exempted the activities of the National Fuel, Alcohol, and Portland Administration (ANCAP), while "the remaining monopolies were safeguarded in the Services chapter" [1]. But this information cannot be confirmed from the available chapter on Public Procurement.

Article 2 of the chapter on Public Procurement defines the areas of liberalisation for public procurement, which include trade in goods and services, including construction services. The agreement does not apply to the sale and lease of land, buildings, or property rights in the context of state property. It also does not cover deposit services, tax purchases made by a financial authority, guarantees, loans, benefits or tax incentives, as well as management of public debt, government bonds, employment contracts, international development assistance or issues related to the provisioning of troops.

Issues related to national security, defence and military weapons are exempted, provided that such exemptions are not applied in a manner that is arbitrary or discriminatory. Activities related to goods and services for disabled persons, philanthropic institutions, or work in prison, and those which protect morals, human health, animals and plants, the environment, or intellectual property (Article 5) are also exempted.

The general principles of national treatment, the most favoured nation clause, and non-discrimination are applicable in this chapter (Article 6). The original position held by Mercosur, that this article would not apply to Paraguay – a clause contained in the 2017 and 2018 drafts – was eliminated, so it will now apply to all countries in both blocs (although it still remains to be seen if the Uruguayan authorities' statement will be confirmed by documentation eventually).

Article 8 states that governments must act transparently and impartially, avoid conflicts of interest and prevent corrupt practices. It also establishes that the parties may establish

sanctions against corrupt practices following domestic legislation, something of relevance in the context of corruption scandals like Lava Jato, Siemens, or the Panama Papers [2].

One of the most critical issues is the obligation to make public all government measures related to public procurement (Articles 12 to 26). The agreement establishes a notification procedure for the bidding process, even though both blocs have official government notification bulletins for the advertisement of their public acts. The aim was to standardise the procedures for the 32 different states that are the participants in the bi-regional agreement.

The agreement allows the use of "multi-use lists" for public purchases, that is: suppliers that can apply for different types of tenders. So the procuring entity can use that list more than once. Understanding the restrictions and the high degree of concentration that occurs with public procurement, this type of clause will allow companies to compete in various sectors. It implies that a single provider can compete and licence for multiple provider lists, and such lists must remain open for new revenue. This benefits large companies with the ability to compete in a variety of areas and markets, and thus help concentrate public tenders in the hands of a few.

The multi-use lists will be published annually and will be valid for three years. If the state decides to exclude a provider from the list, it must justify this exclusion in writing and at the request of the provider. The technical specifications of the tenders may not constitute a technical, discriminatory barrier or limit competition.

The agreement also mentions CSR, yet it does not make adhering to environmental and labour best practices, or anti-corruption actions, mandatory for corporations that bid for public contracts. In this context, and although Brazil has not yet signed the multilateral Public Procurement Agreement in the WTO, it is noteworthy that countries such as Brazil or Argentina assume a commitment through regional treaties in this area [3].

The corruption scandals of recent years related to the investigations of Operação Lava Jato (Operation "self-money laundering") or the Odebrecht case revealed the participation of large Brazilian and Argentine construction companies in corruption agreements. However, the German company Siemens has also been involved in an important corruption scandal in Argentina as will be explained later. Thus, simply naming CSR as a non-mandatory way to combat corruption (or address other pressing issues such as environmental protection) is problematic, as it generates self-referential non-binding practices. It does not reinforce control mechanisms to prosecute and punish cases of corruption, but instead replaces them with voluntary participation mechanisms within the framework of entirely optional good business conduct.

## 6.2 What does the opening up of public procurement imply?

The main concern in terms of public procurement goes beyond the wording of the chapter, and rather lies in the factual situation. European companies are much more experienced at international competition than Mercosur companies. Furthermore, due to issues of size and scale, within Mercosur, it will be mainly Brazilian companies that could have some degree of impact competing for the European market, leaving companies from Argentina, Uruguay, and Paraguay to be mostly relegated.

In this context, it should be noted that the EU practically wrote the Public Procurement chapter. The draft dated November 9, 2017, was written in a double-column system and proposed two colours to differentiate the negotiating positions of the blocs. In that draft, practically all the paragraphs corresponded to the European proposal. When comparing these drafts with the text published on July 12, 2019, at least twelve Mercosur negotiating positions and four negotiating positions of the EU were eliminated.

Following the logic of the chapter on Public Procurement, states are suppliers of goods and services. Thus, their markets must be open to, and competitive for, any private company from either of the two blocs. This thinking undermines the philosophy that states can be engines of local development, which can support small and medium-sized suppliers of goods and services in the public interest.

The provisions of this chapter have been presented as creating "new opportunities on both sides of the Atlantic." European companies will have the capacity to win tenders in Mercosur countries under the same conditions as companies from that region (and vice versa), as the principle of National Treatment will be applied. This means that states cannot discriminate against corporations based on their nationality - they cannot prefer national or regional suppliers. But, especially for the less developed Mercosur countries which have very few internationally active companies that could participate in such tenders, this chapter limits the possibility of using public procurement as an engine for development (Larisoitia and Bianco, 2018). And yet this is in fact one of the instruments still allowed by the WTO within the Agreement on Government Procurement, which no Mercosur country is signatory to (Español, 2018).

European companies have already gained contracts in Mercosur countries. The German company Siemens benefited from an Argentinean state contract for the manufacture of identity cards in 1996. This contract ended in 2001 with a corruption scandal [4], including raids at the company's headquarters [5]. It was not until 2008 that the company acknowledged the corruption, and a former director of the company was arrested [6]. With the provisions in the agreement, Siemens may benefit again from new contracts for providing services to Mercosur countries. Also, BASF, another German company, or the French Saint-Gobain, may participate in big infrastructure and construction projects, competing as equals with Argentine or Brazilian companies.

EU negotiators were willing to concede beef quotas in exchange for European companies having preferential access to services and public procurement. This opening up would

facilitate more than 60,000 European companies to potentially enter the Mercosur economies. The impact of this, especially on small and medium-sized national companies, is likely to be high, as it will be difficult for them to compete with more advanced companies from the other side of the Atlantic [7].

The provisions in the Public Procurement chapter put an end to the possibility of the national or provincial states developing specific public policies that foster and benefit local economies. This could prevent the generation of public or even private employment based on contracts with the state. As with the lowering of tariffs for industrial products, the agreement's provisions concerning Public Procurement as they stand will likely lead to a weakening of local and regional value chains, while increasing the dependence on transnational corporations for public provision, such as the construction of roads. Beyond this concern, the chapter also does not provide any mention of preferential treatment for companies with high social and ecological standards, thus making no effort to incentivise responsible corporate practice.

### **6.3 Other examples of how the agreement could impact on public procurement**

The opening up of the public procurement sector will open new markets for the big competitors of both blocs. The general effect will likely be the concentration of benefits for big companies that are already well-established. The chapter on Public Procurement standardises the bidding process to make it less burdensome for corporations, so for those private operators that are already familiar with the dynamics of applying for international tenders, it will be easier to access new markets with fewer restrictions. As we argued in the chapter 3 on Technical Barriers to Trade, standardisation is not necessarily good news for the public sector, as it implies the removal of the state's capacity to regulate and leads to the liberalisation of different economic sectors where the state has traditionally been actively present.

#### **6.3.1 Airports**

Companies from both sides of the Atlantic may participate in the construction of roads, railway lines, and ports. They are also allowed to award contracts for the provision of equipment to states under the same conditions as local companies in areas such as medicines, vehicles, and tractors. This opening up is to occur in all entities, both at the central level (national ministries, agencies, and universities) and sub-national (provinces and municipalities). It must be carried out comprehensively over a limited period of only two years from the entry into force of the agreement.

From then on, EU and Mercosur companies will be able to participate in tenders for the construction of highways, airports, bridges, railway lines, and the public sector in general,



under the same conditions as those for national companies. The Argentine Corporación América, the largest operator of airports around the world, for example, may expand even further into the European market. Corporación América participates in at least three economic sectors [8]: airports [9], agribusiness [10] and services [11]. The company manages several airports in Argentina, Uruguay, Ecuador, Brazil, Italy, Armenia and Peru [12]. Its principal associate is Corporación América, an offshore company with the same name, which is based in Panama and appears in the Panama Papers [13].

Other companies from Mercosur countries, such as the Argentine construction company Techint, the Brazilian, scandal-ridden construction company Odebrecht and Brazil's Petrol Company Petrobras are economically large enough to compete in the public procurement market of the EU, especially when it comes to energy and construction sectors. Until now, corporations from Latin America generally did business *inside* Latin America. The agreement guarantees the opening up of the EU public procurement process for big Brazilian corporations.

### 6.3.2 Medicines

According to the impact studies carried out by the GEP Foundation in Argentina (analysed in the Intellectual Property section), the prices of public purchases of medicines in Mercosur countries might increase with the agreement. This increase in prices would occur regardless of the Intellectual Property Rights chapter provisions, as states buy medicines for public health policies, such as for HIV and hepatitis programmes. By doing this, states guarantee access to treatment for the population in a situation of vulnerability that, without these public purchases, would be excluded economically from having such a treatment. To cite an example, in Argentina, the public health system provides coverage to 6 out of 10 people on HIV treatment, including almost 60,000 people. These purchases are understood as public procurement, as states buy these medicines in the market, and the sellers and prices will depend on the general conditions for such purchases.

Another example from Argentina concerns general public health programmes, which are sustained through public purchases. In 2018, the Ministry of Health bought drugs from transnational companies (54%), to the detriment of purchases made from local producers (40%). The majority of these purchases from transnational companies were medicines that do not have a current valid patent and were realised without tender. "If bidding processes were open instead of prioritising direct purchases, there would be the possibility of accessing generic medicines of national production. Then prices would be significantly reduced, and we would be investing in Argentine labour sources," said Lorena Di Giano, Executive Director of GEP Foundation [14].

In the Argentine case, 74% of the direct purchases were from transnational companies, including for medicines that do not have a current patent, such as Atazanavir, Darunavir, Dolutegravir, and Raltegravir. These medicines could, however, actually be prepared in Argentina instead of being bought from foreign companies [15].

### 6.3.3 Public universities

As mentioned previously, the provisions in the Public Procurement chapter will specifically affect Mercosur countries, as they have fewer companies to bid internationally in public tenders. But it is also very local and small-scale tenders that will be affected, for example in public universities. In fact, the potential "market" in this case is quite important. In Argentina there are currently 56 public universities [16], in Uruguay there are 15 public universities [17], in Brazil 143 [18] while Paraguay has six public universities [19]. Thus, in Mercosur alone, there is a "market" of 220 high-level educational institutions which will open up for European companies if the agreement enters into force.

Those negatively affected will include cafés operating in public universities which are often concessions to small and medium-sized enterprises (SMEs) or cooperatives, and sometimes even run by students' associations themselves as a way to raise funds for student activities. With the entry into force of the agreement, these concessions will have to compete with European transnational companies, such as Segafredo, a well-known Italian company that is already operating in airports and shopping malls worldwide. The inability of small local businesses to compete with corporations will no doubt result in the loss of market share by SMEs and thus endanger local creation of jobs and value. The same will apply to bookstores currently owned by mutual societies or unions of universities that will have to compete with companies the size of Thomson Reuters, the British publications corporation.

## 6.4 Notes

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## 7. INTELLECTUAL PROPERTY

The chapter on Intellectual Property Rights (IPR) was presented by the European Commission as a great achievement, because "for the first time the EU and Mercosur will have a structured bilateral framework with clear legal commitments and opportunities to discuss issues relating to IPR in detail" (European Commission, 2019a). This chapter includes all the main IPR issues, including medicines, patents, copyright, trademarks, industrial designs, and plant varieties.

However, we highlight three problematic topics that will be discussed in this chapter:

- 1) Patents on Medicine
- 2) Treatment of Plant Varieties
- 3) Geographical Indication (GI)

It is important to note that two versions of this chapter were released in the past months. When the trade pillar chapters were published on July 12, 2019, a first version of the IPR chapter was also released but it was very short, and many critical topics were not included. Later, in September 2019, another version was released, which seems to be complete regarding the missing topics. However, it must be noted that there is no clarity on whether this is the final version.

### 7.1 Patents on Medicine

It is essential to observe that the present version of the IPR chapter does not include the extension of patents. Although this extension was included in the previous draft version of 2017, the present document released in September 2019 has not included it. The exclusion of this topic can be understood, first, as a victory of NGOs and public researchers campaigning on the issue, who had published several documents and reports explaining how the previous European proposal for this chapter would have had a negative impact on the cost of medicines, increasing the prices in the Mercosur countries. Second, it should not be understood as a final victory, as the legal scrubbing period is still a negotiation period. As previously noted, there have already been two releases of this chapter in July and September 2019, so we should pay close attention to possible changes if there is another release.

If the clauses on patents on medicine were to be included as the EU had wanted in the 2017 version, then this chapter would increase the prices of medicines for consumers. Intellectual property establishes a sort of "monopoly of production" on medicines. If a local company wants to produce the same medicine, it has to pay royalties to do so. That royalty expenses are added to the costs of production, so the prices rise.

The European Public Health Alliance has stated that "the danger is that additional IP protection (such as the extension of patent protection terms through supplementary protection certificates and extended data exclusivity) can significantly impact the affordability of medicines and sustainability of health systems" [1]. Another impact assessment found that the adoption of the measures proposed by the EU could lead to

additional expenditure of almost two billion Brazilian real (or USD 640 million) [2]. According to estimates, allowing the extension of patents would increase the cost of public purchases of medicines by up to 30% just for people with HIV and Hepatitis C [3]. The *Grupo Efecto Positivo* Foundation (GEP) of Argentina argues that this would in turn extend monopolies that prevent new competing companies from entering the market, which could help reduce the costs of these medicines.

The EU is home to a number of important pharmaceutical corporations: Sanofi (France) - subsidiary of Elf- and Bayer (Germany) are among the most important ones [4]. Bayer owns the intellectual property rights on Aspirin, Redoxon, and Alka Seltzer, and has bought other companies from the agricultural sector such as Monsanto (maker of glyphosate and several GMOs). Sanofi produces and purchases medicines for thrombosis, diabetes, cardiovascular diseases, disorders of the central nervous system, oncology products, internal medicine, and even vaccines. On the other hand, Mercosur companies have taken a clear defensive position [5], as local pharmaceutical companies usually need public procurement contracts and regard the further opening up of the market to EU corporations as a threat in both areas: intellectual property rights and public procurement.

Until now, to avoid the reproduction or imitation of pharmaceutical products, companies must register their patent in each country where they intend to sell their product. For decades the objective of pharmaceutical lobbies - among others - has been to establish an international registry that reduces the costs involved in this national level registration of patents. This would expand the monopoly on the production of medicines and eliminate the possibility of producing them generically through the support of such production by public health policy.

### *The Patent Cooperation Treaty*

In the chapter on IPR, sub-section 5 on "Patents" incorporates an international agreement, which is the Patent Cooperation Treaty (PCT). The article states: "The Parties shall make the best efforts to adhere to the Patent Cooperation Treaty." This treaty helps companies to reduce patentability costs, as it allows them to avoid the obligation to have a national register in every country where their drug is marketed. This is thus a way to create a virtual "global registry" *de facto*.

As a result, some civil society organisations in Mercosur countries have expressed their concern on this issue [6]. Lorena Di Giano, Director of Foundation GEP, explained in a public hearing in the Argentine Congress that: "The inclusion of the PCT was presented as a development strategy for SMEs. However, if Argentina joins the PCT, what we are going to see is an explosion of foreign patents, not greater development for SMEs. Furthermore, since we are not going to have the capacity to analyse the flow of new patent proposals, external evaluation parameters might be approved. Therefore, the national patentability guidelines are going to be at risk" [see 6].

The PCT was indeed presented as a development strategy for SMEs, as their patentability costs would be reduced internationally. However, the consequence may in fact be different: in order to enforce their patent, a company must make a legal claim in the corresponding jurisdiction where an imitator is illegally using its patent. This implies having the economic



capacity to face judicial processes worldwide, something that very few SMEs in Mercosur have. On the other hand, transnational companies such as large European pharmaceutical corporations can file legal claims in any jurisdiction in the world, since they have the economic ballast and strength to do so.

The PCT currently has 153 contracting states. All EU member states are party to the treaty, while in the Mercosur, only Brazil is a member. However, the European Commission complains that "in Brazil, the interference of health authorities in the granting of patents in the pharmaceutical sector remains problematic," and that countries such as Argentina, "apply unduly restrictive patentability criteria, undermining innovation and research and preventing investment in these economies" [7]. Argentina has historically sustained strict patentability criteria that would have to be modified if it joined the PCT, as the timelines granted by the World Intellectual Property Organisation (WIPO) are much shorter than the ones in place in Argentina currently.

In Brazil, the signing of the PCT has implied an increase in the number of patent applications, says a report issued by the European Commission in 2018 [8]. In order to cope with this, the Brazilian IP office (INPI) has continued to recruit patent and trademark examiners to address the considerable registration backlog. However, in the patent area, no concrete reduction in the backlog has been witnessed so far. In 2017 the National Sanitary Regulatory Agency (ANVISA) and INPI agreed to speed up the examination of medicinal patent applications and to change the role ANVISA plays in the process, which has been a critical concern for EU right holders for several years. European stakeholders have complained about the scrutiny by ANVISA of pharmaceutical patent applications before they have been examined by INPI, "although steps have been taken to supposedly realign the procedures with international standards." "It remains to be seen how the new role of ANVISA will influence the examination of patent applications," says the report.

## 7.2 Plant varieties

The granting of patents would also severely affect issues related to seeds. Sub-Section 6 is on Plant Varieties. It has only one article, at least in the September 2019 version. The article recognises that each party shall protect the rights to varieties of plants following the International Convention on the Protection of New Plant Varieties (UPOV). In the agreement, Article X.41 states as follows:

"Each Party shall protect plant varieties rights, in accordance with the International Convention for the Protection of New Varieties of Plants adopted in Paris on December 2, 1961, as revised in Geneva on November 10, 1972, and October 23, 1978 (1978 UPOV ACT) or on March 19, 1991 (1991 UPOV ACT), and shall cooperate to promote the Protection of Plant Varieties."

The article creates a direct obligation ("shall protect") under UPOV in general terms. However, it also includes all UPOV standards: those of 1978 *and* of 1991. The difference is essential because none of the Mercosur countries are a member of UPOV'91. As a matter of fact, there are even EU states that are not yet members of UPOV'91, such as Italy and

Portugal. Other FTAs, such as the Trans Pacific Partnership do require adherence to UPOV'91 when signing the agreement.

UPOV standards constitute a seed protection model that emerged in Europe in 1961. The last reform was made in 1991. However, Mercosur countries continue to adhere to the 1978 review, which allows the seed to be conserved for producer's use or to develop a variety (that is, the producer can keep part of the harvested seed for reuse or research on it).

The article's wording allows for the application of both UPOV versions. Most EU countries are members of UPOV'91, and therefore they want to force the obligatory adoption of UPOV'91 through this agreement. Yet, it remains unclear what it would mean for the EU countries that are only members of UPOV'78, in case the wording in this section changed during legal scrubbing, making the adherence to UPOV'91 mandatory (although this seems unlikely). The draft version available in 2017 showed a dispute between the blocs regarding the final disposition of these clauses. Mercosur argued that the final wording should not be mandatory, so that there would be no obligation for parties to adopt UPOV'91. Thus it seems that both blocs found a satisfactory compromise drafting close to Mercosur's position.

### 7.3 Geographical Indications (GI)

Geographical Indications (GI) are used for products that have a specific geographical origin and whose qualities, reputation and characteristics are mainly due to their place of origin. A geographical indication right enables producers, holding the right to use the indication, to prevent a third party from using it, if its product does not conform to the applicable standards.

The EU-Mercosur agreement has given the EU the most exceptional protection for its GIs [9]. The EU put 360 GIs on its list, while Mercosur listed 220. By comparison, in the EU-Mexico agreement, the Latin American country recognised 340 EU GIs, while Japan granted recognition to 200 named products, and there are 158 EU denominations protected by CETA, the agreement with Canada.

The EU list includes 63 products from France, 59 from Spain, and 57 from Italy, the countries that protect the greatest amount of GIs, as seen in Table 11. Some of these products will be protected in a deferred manner upon the entry into force of the entire agreement. For some products, grace periods of 5, 7, and 10 years are established. The Appendix to Annex II explains that the "Roquefort" GI may be used for a maximum of 7 years from the entry into force of the agreement, provided that at the time of entry into force of the agreement that GI was used continuously in Brazil and Uruguay. During that period, the use of the term "Roquefort" must be accompanied by a legible and visible indication of the geographical rule governing the product in question. Other product names face the same provision, such as "Chablis", "Cognac", "Champagne", "Mortadella di Bologna", "Gorgonzola", "Prosciutto di Parma", "Bordeaux", "Marsala" and "Oporto".

**Table 11: Geographical Indications presented by the EU and Mercosur in the draft of 2017 and the July 2019 text**

	<i>EU GI</i>	<i>Mercosur GI</i>	<i>Wine GI for the EU</i>	<i>Wine GI for Mercosur</i>	<i>GI of Argentina</i>	<i>GI of Spain</i>	<i>GI of France</i>	<i>GI of Italy</i>
<b>Drafts 2017</b>	348	236	145	no data	no data	no data	no data	no data
<b>July 2019 Text</b>	360	220	145	158	104	59	63	57

Source: Luciana Ghiotto, Javier Echaide, 2019

On the other hand, mozzarella cheese was left out of the agreement, both the quotas of 30,000 tonnes and the GI list. Ambassador Valeria Csukasi, representative of Uruguay in the negotiations, said: "Mozzarella is not protected, it is a generic. Nobody can question that mozzarella is a type of cheese. What is protected is the name mozzarella di bufala, written in Italian (...). We exclude the mozzarella cheese from exports of the EU to Mercosur. Mozzarella from the EU will not enter Brazil with tariff preference" [10].

Mercosur included a large number of products, but the GIs for wines dominate. The majority are from Argentina, with 96 wines on the list. There are also other products from the same country such as "Yerba Mate Argentina", "Patagonian Lamb", "Salame de Tandil", "Alcauciles Platenses". The "Cachaça" of Brazil was included, in addition to Brazilian coffee, honey, and rice. Also, some products of Paraguay such as "Paraguayan Hammock", the traditional "Chipá Barrero" and spirits as "Caña Paraguaya" are on the list. From Uruguay, the only product names included are wines.

On this subject, Mercosur maintained an offensive strategy against a strong EU position throughout the whole negotiation. In fact, until 2019, it was one of the issues that blocked the negotiation process. Within Mercosur, the country that can be harmed most by an extensive list of EU protected GIs is Argentina, as it is a country with a long tradition in the manufacture of cheese and wine. The Mercosur strategy in the negotiation was to appeal to the "Generic Terms" included in the WTO TRIPS agreement (Article 23). In December 2017, the Minister of Agribusiness of the Province of Buenos Aires, Leonardo Sarquis, said that: "The EU must recognise that Argentina has incorporated traditional cheese names through European immigration as part of the cultural tradition, so they have become Generic Names and have lost the character of Geographical Indications" [11].

The problem with cheese names is that the EU list includes cheeses that are produced in Argentina; some of them are even exported. Argentina has more than 700 companies that produce some of the cheeses included in the GI list. They employ 60,000 people [12] directly and indirectly. Also, the Argentine cheese industry consumes 50% of the processed milk in the local dairy market. Therefore, it is likely that the inclusion of these GIs will have an impact on the entire milk chain, forcing the reformulation of existing brands and commercial

development. This would have significant impact on the local market, forcing new habits on local consumers (and internationally).

There are some exceptions included, for products that were subject to dispute between the blocs. Two types of products are incorporated: 1) with "specific level of protection"; 2) with full GI protection, although with some exceptions.

*Products with a specific level of protection:* This exception establishes certain levels of permit for the use of the following GIs: "Genievre", "Manchego Cheese", "Grappamiel", "Steinhäger", "Parmigiano Reggiano", "Fontina", "Gruyere", "Grana" and "Gorgonzola". As long as:

- these GIs were used before the entry into force of the agreement; in some cases, it is established that they should have been used five years before;
- there is no use of graphic references, names, banners or photographs that refer to the GI in the commercialisation process;
- the size of the GI typeface on the label should be reduced to be smaller than the brand name of the product;
- it differs from the brand in a way that does not give rise to ambiguities about the origin of the product.

*Products with protected GI according to Annex II:* This is the list of products that can no longer be used as Generic Names in the two blocs.

An article by *IEG Vu AgriFood* provides some details about the magnitude of these agreements on GIs [13]. It argues that the agreement: "provides for further expansion of the EU GI model", as Mercosur promised to respect the denominations of 360 European agri-food products. This represents about 10% of the total GI universe that the community bloc protects - the complete EU GI scheme covers 3,500 food and beverage products, with almost 2,000 of that total being wines.

## 7.4 Copyrights and Trademarks

In the IPR chapter there is also a section on “Copyrights and Trademarks”.

### Copyrights

Copyrights protect the creative work of, for example, writers, musicians and artists from plagiarism throughout their lives, as well as a period of several decades after their death. The aim is to recognise the creative labour of the author, in addition to securing for them the possible economic returns. The period of extension of the protection can vary between 50 and 70 years *post mortem*. For example, while Argentina maintains protection for the author's lifetime plus 70 years *post mortem*, Uruguay does so for the duration of the author's life plus 50 years. All EU countries, as well as Mercosur countries, are part of the Berne Convention for the Protection of Literary and Artistic Works (known simply as the Berne Convention or CBERPOLA), which set a 50-year post mortem protection floor. This is the minimum floor adopted by the EU-Mercosur Agreement. However, it also contemplates maintaining domestic laws for 70 years when they are currently established (Article X.15.3).

Looking at global trends in copyright, the tendency is to lower the duration of the protection, not to raise it. Yet, the agreement does not follow this trend, but adopts a position to maintain the *status quo* in terms of copyright: it does not reduce protection, but confirms the provisions already existing in the states, even if these terms are longer.

All countries establish exceptions to copyright for circumstances in which intellectual property does not violate other practices of formative nature, such as scientific purposes. The agreement provides for exceptions in Article 18, indicating that each party will provide exceptions and limitations only in exceptional cases that do not interfere with the normal exploitation of the work and that do not unreasonably prejudice the legitimate interests of the holders of the rights. The agreement does not establish clear exceptions to copyright, leaving it to the regulation of each state to create possible disparities.

### Trademarks

On trademarks, Article X.21 indicates that each party shall comply with the Nice Agreement Concerning the International Classification of Goods and Services for Registration of Marks (also known as the "Nice Agreement"), which establishes a classification of products and services for the registration of trademarks and service marks (the Nice Classification) [14].

Neither Brazil nor Paraguay are members of the Nice Agreement (hence, half of the Mercosur countries), nor are Cyprus or Malta on the EU side. The Protocol Relating to the Madrid Agreement on International Registration of Marks of 1989 is also mentioned. However, in this case, the agreement between the EU and Mercosur requires making the best efforts to comply with this instrument.

## 7.5 Concluding Remarks

In conclusion, the IPR chapter as it stands was resolved favourably for Mercosur, as it does not include the extension of patents, which would have had a potentially devastating effect on prices of medication. But, the PCT is mentioned, and parties to this agreement are asked to make efforts to adhere to its provisions, creating fear of an explosion of foreign patents registered in the region, to the detriment of the development of SMEs. Also – although until the final text is published there can be no certainty – it appears that the agreement does not include any obligation to become a member of UPOV'91, which would have brought about a de facto privatisation of seeds and plant varieties. Finally, no changes to the national copyright schemes will be necessary.



## 7.6 Notes

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[12] La Nación (2017), “La guerra del queso: Europa quiere que la Argentina le cambie los nombres al parmesano, al gouda y al fontina”. Agrositio, 3 December 2017, In:

<https://www.agrositio.com.ar/noticia/191121-la-guerra-del-queso-europa-quiere-que-la-argentina-le-cambie-los-nombres-al-parmesano-al-gouda-y-al-fontina> (Consulted 8 December 2019).

[13] Bichos de campo (2019), “Denominaciones de Origen: El Mercosur acordó respetar el 10% de las indicaciones vigentes en Europa”. 13 July 2019, In: <https://bichosdecampo.com/denominaciones-de-origen-el-mercosur-acordo-respetar-el-10-de-las-indicaciones-vigentes-en-europa/>

[14] To see the complete list of member countries of the Nice Agreement, see: WIPO, “Tratados administrados por la OMPI – Partes Contratantes – Convenio de la OMPI (Total Partes Contratantes: 192)”. In: [https://www.wipo.int/treaties/es/ShowResults.jsp?lang=en&treaty\\_id=12](https://www.wipo.int/treaties/es/ShowResults.jsp?lang=en&treaty_id=12) (Consulted 1 December 2019).

## 8. OTHER RELEVANT ISSUES

The agreement between the two blocs includes several shorter chapters that do not modify the trade relationship. Nevertheless, they contain interesting information and thus this chapter analyses them briefly. These chapters are:

1. Small and medium enterprises
2. State Companies
3. Dispute Resolution

We will also present a draft outline of what the agreement's internal administration could look like, based on the information provided on the administrative institutions (sub-committees, special committees, or coordination instances) that appear in the chapters. As a matter of fact, the chapter on General Provisions of the agreement should give information on these matters, but it has not yet been published.

### 8.1 Small and medium enterprises (SMEs)

The chapter on SMEs is only four pages long. It establishes several points concerning the access of small and medium-sized enterprises to information. Especially for SMEs, reducing non-tariff barriers to trade is essential, as they usually constitute a significant administrative burden for smaller companies.

Thus, in Article 2, the parties agree to establish accessible web pages providing all the information that may be necessary for SMEs to benefit from the agreement. That would include information on regulations, procedures, measures, and any other information that would be of help. Governments should also set up an electronic database that will include all information on trade, such as tariffs and customs criteria in general.

There is a specific obligation on Mercosur countries to create web pages and databases which contain as much information as possible within three years of the agreement entering into force to ensure better market access for European SMEs.

The chapter also sets up a Coordination Group on SMEs that shall establish a work plan to carry out the tasks described. It will meet once a year and report on its activities to the Association Committee.

Finally, the chapter cannot be invoked to use the State to State dispute settlement mechanism of the agreement. Thus, as in the chapter on Trade and Sustainable Development, its provisions are not effectively enforceable. This is another sign of where the priorities of the agreement lie.

As a matter of fact, the SME chapter is a declarative chapter, mainly concerned with the facilitation of access to information. It does not indicate specific objectives or ways to mitigate the overall impacts of the agreement on SMEs, especially in some productive sectors such as metal-mechanic or car parts (in Mercosur), which will most likely be negatively affected if the agreement comes into force.

Also, a part of the chapter is missing. The former Argentine Minister of Production, Dante Sica, promised to the SMEs in the Argentine Chamber of Medium Enterprises (Confederación Argentina de la Mediana Empresa, CAME) that a part of this chapter would establish special funding for Mercosur SMEs in order to support them to be able to enter the EU market [1]. According to Sica, this would come in the form of a compensation fund, based on preferential European credit lines. However, nothing like this appears in the published chapter.

Finally the chapter on SMEs does not contain any elaboration on the global impact of trade liberalisation on SMEs, nor is any reference made to asymmetries between European SMEs and the ones from the Mercosur bloc. In Argentina, a SMEs organization (Red Inclusiva para la Expansión Laboral, RIEL) said the agreement "will favour more concentrated agricultural sectors and hurt small manufacturing SMEs" [2]. Also, another SMEs organization (Industriales Pymes Argentinos, IPA) warned that for the SMEs in the industrial sector, the agreement "will deepen the crisis in the industry, especially in sensitive sectors such as textiles, footwear, metallurgical and metalworking" [3].

## 8.2 State Companies

The chapter on State Enterprises is also brief (only four pages). It covers any company, of a public or private nature (Article 1.c), which has special privileges or is controlled or owned by a state party to the agreement. Thus, not only public and state-owned companies are included, but also those in which the state owns 51% or more of the company's shares, regardless of its nature (public or private).

Cases of this type include oil and hydrocarbon exploitation companies (Petropar in Paraguay; ANCAP in Uruguay; YPF in Argentina [4]; and Petrobras in Brazil). It also covers the flag airlines (for example Paraguay Airlines, or Aerolíneas Argentinas), as well as television channels or public banks (such as Banco Nación, Banco Provincia de Buenos Aires in Argentina, and Banco do Brasil; Banco de la República Oriental del Uruguay).

The content of this article is important, because it obliges state companies to apply "free market" logic to their business activities. In order to better understand what consequences this might have, we use the example of public national airlines to illustrate: The states conclude bilateral treaties to guarantee flights on regular routes, schedules, and frequency. But they also carry out irregular flights, covering demand beyond regular flights. These flights are not profitable in economic terms, but provide remote areas with transportation as a public service.

However a footnote to Article 4 establishes an exception for public banks that could still continue to provide credit lines to support affordable access to housing, export, and import, or credit for SMEs and agricultural producers with differentiated interest rates.

Applying free market business logic to state companies also means that these companies could face bankruptcy processes if their business activities do not have immediate profitable economic outcomes. This might lead to a further monopolisation of the market, as private companies that are active in the same sector could take over market shares of services formerly provided by state enterprises.

## **8.3 Dispute settlement: mediation, arbitration, and codes of conduct**

All trade agreements include some titles or chapters on how to resolve differences between the parties of the respective treaty. The EU-Mercosur agreement includes a chapter on "Dispute Settlement". This chapter also contains two annexes; the first Annex develops the rules of procedure for arbitration, which is one of the mechanisms contemplated; and the second Annex establishes a code of conduct for the arbitration panel members who will implement this agreement.

### **8.3.1 Good faith consultations**

The chapter on Dispute Settlement applies in general terms to the entire agreement, except for the chapters that include specific dispute settlement mechanisms, such as Trade and Sustainable Development or the chapter on SMEs.

The disputes covered by the chapter on Dispute Settlement relate to the interpretation of clauses established in the text of the treaty. In case of a discrepancy in the interpretation of an article, any of the parties may submit a written complaint to initiate good faith consultations. These consultations will be conducted by mutual agreement and in good faith, in order to reach a mutual understanding that satisfies both parties and resolves the dispute.

The consultation process must be initiated in writing and a copy of this document must be sent to the Trade Committee (Article 4). After sending the written consultation from one state to the other, a direct hearing must be held in the territory of the "consulted" party not later than 15 days after the date of the consultation being initiated. Good faith consultations cannot be extended for more than 30 days from the date the procedure begins, and are the first step in resolving a dispute within the agreement. The aim of this stage is to find a solution that is negotiated directly by the parties and thus is mutually beneficial for both.

If the friendly consultations do not occur or if they fail, either party can then initiate an arbitration panel.

### **8.3.2 Mediation**

For issues related to any adverse measures that could affect free trade between the member states of the agreement, either party may initiate a mediation process, which is somewhat different from the arbitration panels of Article 6. This mediation process can only be initiated if there is mutual consent by the parties to the dispute.

The agreement establishes that mediation is a mechanism by which both parties agree to appoint a mediator who will be a third party, without any interest in the subject of the dispute. The mediator has total freedom to propose a solution to the problem so that the parties to the dispute reach a mutual understanding. The mediator's decision is final, and a proposal by the parties on how that decision is implemented must be worked out by them. The mutually agreed decision must be taken within 60 days of the appointment of the mediator.

Consequently, there are two parallel dispute resolution mechanisms within the agreement. One is applied to interpret the clauses, the other one serves to "appeal" or attempt to reverse any measure that could affect the liberalisation of goods, services, or capital (Article [X] of Annex III). This mechanism creates a situation where a foreign mediator could, at the request of another state, recommend the dismantling of a sovereign trade restriction policy, even if it is in line with WTO parameters.

We understand that this mechanism allows an external review of the commercial policies of a sovereign state. This is important, as, for example, measures that do not violate WTO rules could be adopted by a state. But if another state, party to this agreement, believes that the measure violates a provision in the EU-Mercosur agreement, they could still initiate a complaint. Thus the inclusion of the mediation mechanism is a way to institutionalise political pressure as a legal tool to prevent policies that could limit trade liberalisation.

Mediation does not prevent a state from also filing a trade claim before an Arbitration Panel, or the WTO, if a dispute was not resolved to the satisfaction of the state who complained. The Arbitration Panel constitutes a "harder" mechanism to resolve a dispute, whether it be regarding matters of legal interpretation of the agreement or issues to do with economic effects resulting from a public measure taken by any member country of the agreement.

### 8.3.3 Arbitration panels

The arbitration can only begin if the good faith consultations of Article 4 have failed or if they have not occurred, i.e. if it has been impossible to reach a resolution of the dispute. The interested party must state the reasons why the Arbitration Panel is required, indicating the measure that the other party is allegedly infringing (Article 6).

Thus begins the arbitration between both parties, which will be carried out by a panel of three arbitrators, created within ten days of the initial request for arbitration. The request must be submitted simultaneously to the counterparty and the Trade Committee for their information. The panel must always consist of at least one arbitrator who is not a national of either of the litigating states. The composition of the panel must, in principle, be by mutual agreement. If this is impossible then each party may appoint an arbitrator from the list of arbitrators. In case there is no list, the arbitrator is appointed by the Trade Committee (Article 8).

The list of arbitrators will consist of 32 individuals willing to form the arbitration panels required under the agreement. That list will be made up of 12 individuals proposed by the EU, another 12 proposed by Mercosur, and 8 individuals appointed by common accord, who may not be nationals of any of the parties to the agreement. The latter will act as presidents of the arbitration panel (Article 7). These arbitrators must also comply with the Code of Conduct that is annexed to the treaty, and must provide the guarantees of impartiality outlined in Article 7.

According to Article 9 of this chapter, the hearings must be open to the public, unless the parties decide otherwise. The latter is most likely to occur, given the general experience with arbitration panels, which are often very reluctant to enable public participation, and taking into account the lack of transparency during the process of concluding this agreement.



Article 11 establishes the applicable law in cases of arbitration panels. It indicates that the panel shall follow the rules according to the custom of public international law - provided they do not contain special dispute resolution mechanisms within this agreement. The panels may even take into account relevant interpretations established in the rules of the WTO Dispute Settlement Body, if the dispute relates to an identical obligation established under a WTO agreement.

After its confirmation, the panel has 90 days to deliver an interim report on the dispute, which may be extended to 120 days by the president of the panel. In case of an emergency, the panel might make efforts to deliver the interim report between 45 to 60 days.

It is possible to withdraw the claim and also to reach a mutually agreed solution. It is also possible, within ten days of notification of the arbitration award, to submit a request for clarification from the arbitration panel, again providing a copy to the Commerce Committee. There are no deadlines in the text of the treaty concerning the compliance with arbitration awards. The deadlines that arise from each process shall be fixed by the arbitration panels in each case. Nonetheless, the agreement provides that the defending party may take any necessary measures to comply with the award in a "reasonable period of time" (Article 15), which may not be longer than 30 days after the issuance of the arbitration award.

The chapter on Dispute Settlement provides a way to force compliance with arbitration awards under penalty of retaliation from one state to another, thus providing most of the agreement with "teeth", except for the provisions on protection of the climate, forests, labour standards and SMEs. Existing benefits could be taken away in order to force compliance with an award. Already today, different cooperation programmes established by the EU benefit countries of the Global South, including those of Mercosur. Yet, these kinds of beneficial programmes do not exist the other way around. Thus, one wonders what benefits for EU countries could Paraguay suspend or cancel in the event of a breach of the award?

This leads to the conclusion that, although Article 18 of the agreement seeks to provide an effective mechanism for compliance with awards, in fact, this mechanism will basically be unidirectional. Therefore, this provision will exacerbate the already-mentioned asymmetries between the two economic blocs.

### **8.3.4 Code of conduct for arbitrators**

A novelty regarding the EU Mercosur agreement (in comparison with other FTAs) is that it incorporates a Code of Conduct for arbitrators in its Annex II of the Dispute Settlement chapter. Civil society movements around the world have been continuously demanding such a code, in the absence of transparency and recurring conflicts of interest seen in the arbitration forums.

The Code of Conduct applies to both arbitrators and mediators, acting in the context of dispute resolution processes within the agreement. The responsibilities to be fulfilled include avoiding improper behaviour, as well as ensuring impartiality and independence and avoiding situations of conflict of interest, whether directly or indirectly. Any candidate for an arbitration panel, who appears on the list of possible arbitrators, must reveal any interest, relationship, or matter that could affect their independence or impartiality in the procedure.

Any situation that could enable potential violations of these obligations must be communicated to the Trade Committee and the parties.

According to the Code of Conduct of the Agreement, an arbitrator may not delegate the responsibility of the case to another person and should only take into account the issues raised within the arbitration process (paragraph 6). The arbitrator should not be influenced by self-interest, external pressure, political considerations, public opinion, loyalty to any of the parties, or fear of criticism. An arbitrator must not take instructions from any organisation or government, or be affiliated with a government, including a governmental organisation. The arbitrator shall also not accept any benefit, directly or indirectly, that interferes with or appears to interfere in any way with the proper performance of their functions or take advantage of the position to promote any personal interest.

## **8.4 Administration of the agreement: Association Committee and special committees**

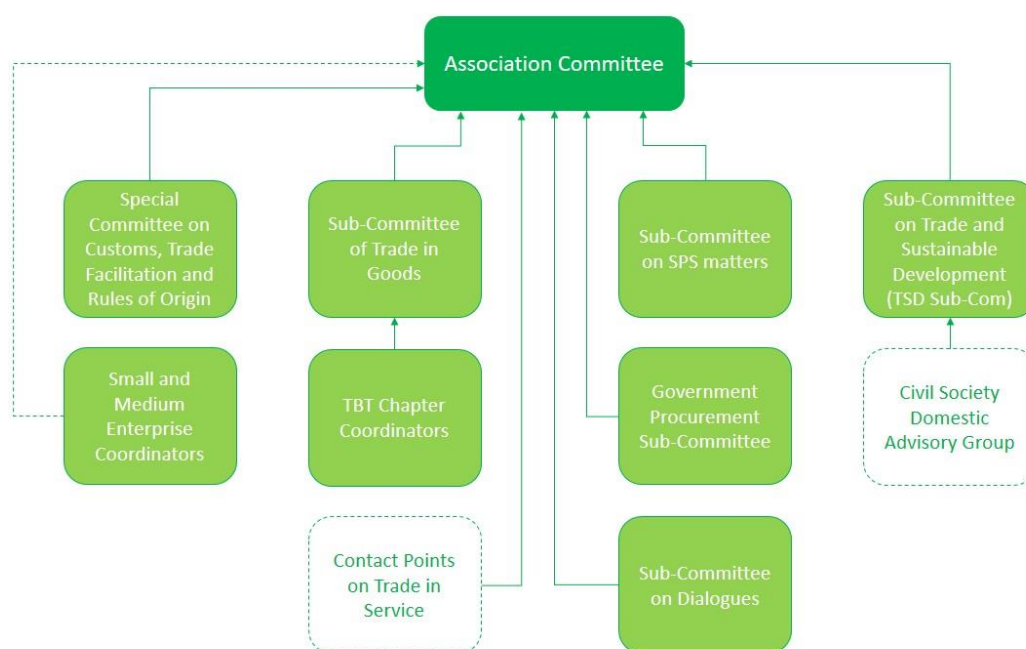
A chapter on General Provisions of the agreement has not yet been released. However, different sections of the agreement mention the creation of a general committee that will be at the top of the institutional organization chart for the whole of the agreement. This committee should not be understood to be a technical one – on the contrary, it is highly political. It will follow up on all particular discussions from every chapter, and take final decisions. Although no information has been released yet on this Committee and its capacities, we can reconstruct the way the agreement will work once it enters into force by revisiting the specific provisions of several of the released chapters.

Figure 3 shows a potential organisational chart for the agreement and its chapters. At the top of the pyramid, we find the Association Committee (AC). All sub-committees and coordinating groups report to the AC. The Association Committee is made up of the countries that are members of the agreement. It is the main body for monitoring and coordinating compliance with the agreement. Underneath it are at least eight thematic sub-committees, which will submit reports to the Association Committee. Together these represent a potential institutional architecture for the operation of the agreement. The different sub-committees mentioned throughout the text of the agreement are:

- Sub-Committee on Trade in Goods
- Special Committee on Customs, Trade Facilitation, and Rules of Origin
- TBT chapter Coordinators
- Small and Medium Enterprise Coordinators
- Sub-Committee on SPS matters
- Sub-Committee on Trade and Sustainable Development (TSD Sub-Committee)
- Government Procurement Sub-Committee
- Sub-Committee on Dialogues

Also, the Civil Society Domestic Advisory Group does not inform the Association Committee but the TSD Sub-Committee, in the same way that the TBT chapter Coordinators inform the Sub-Committee on Trade in Goods.

**Figure 3 - Relationship between the Association Committee and sub-committees**



Source: Luciana Ghiotto, Javier Echaide, 2019

Several conclusions can be drawn from the fact that the chapter on General Provisions has not been published yet.

1. There are still several points regarding the general administration of the agreement that have not been agreed upon between the two blocs. This chapter, even if it seems to be only for legal purposes, will include information on the ratification process of the agreement and its entering into force. It also establishes the conditions for withdrawal from the agreement.
2. The capacities, role and power of the Association Committee are not merely technical, but highly political. As mentioned in the chapter on Dialogues, the role of some of these sub-committees is crucial, as they have many political prerogatives that can set the course for the way the agreement works once it enters into force. Thus the final composition of these sub-committees is of great importance, as there are no guarantees against corporate capture. Also, there are no provisions for the democratic accountability process of these committees once they commence work. Some key issues remain obscure, such as the relationship of these committees with national or regional parliaments.

3. There is no clarity yet on the role of civil society within the agreement. As explained in the TSD chapter, the sections which refer to civil society are still between brackets, meaning that there is still no consensus on how this participation will work. This is concerning, as it shows that the role of civil society will most likely be reduced, seeing them play a very limited role in the decision-making process and the administration of the agreement.

## 8.5 Notes

[1] Torres, Nazarena (2019), “Las pymes apuntan a optimizar los beneficios del acuerdo Mercosur-UE”. El Territorio, 8 July 2019, In: <https://www.eltterritorio.com.ar/las-pymes-apuntan-a-optimizar-los-beneficios-del-acuerdo-mercosurue-35457-et>

[2] La Unión (2019), “Las pymes lanzaron nuevas críticas al acuerdo del Mercosur con la Unión Europea”. 21 July 2019, In: <https://launion.com.ar/las-pymes-lanzaron-nuevas-criticas-al-acuerdo-del-mercosur-con-la-union-europea/>

[3] Gammacurta, Guillermo (2019), “Acuerdo Mercosur-UE: pymes industriales reclaman atacar la competitividad sistémica”. *Ámbito Financiero*, 30 June 2019, In: <https://www.ambito.com/acuerdo-mercosur-ue-pymes-industriales-reclaman-atacar-la-competitividad-sistemica-n5039969>

[4] In the case of Fiscal Oilfields (YPF) of Argentina, it is a public limited company, that is, a company of private nature. It was founded in 1922 as a state company, but was privatised in 1992 during the presidency of Carlos Menem. In 1999 it was bought by Spanish Repsol, giving birth to Repsol YPF. In 2012, President Cristina Fernández de Kirchner ordered the expropriation of 51% of the shares of the company that were still in the hands of Repsol. They were passed on to the state, as well as the control of the company. It is a good example of a company which is officially private but is state-controlled, that would be included in this chapter of the Agreement.

## 9. CONCLUSION

### 1. The agreement was negotiated for 20 years in secret and without democratic control

The agreement between Mercosur and the EU is a new example of how governments negotiate trade agreements behind citizens' backs with hardly any democratic control or scrutiny.

Before the publication of the texts on July 12, 2019, the last drafts were leaked in 2017 by Greenpeace. Civil society from both blocs was kept at a distance. The most representative trade union organisations, such as the Southern Cone Confederation of Trade Unions (CCSCS) and the European Trade Union Confederation (ETUC), were part of some negotiation rounds. However, they publicly denounced the fact that their voice was never heard, while the corporate lobby could even close some problematic points of specific chapters themselves. This happened with Rules of Origin for the textile sector, where business chambers of both blocs agreed to unlock the negotiations. There were no such consultations with SMEs, in spite of the fact that they are the ones that will lose the most with liberalisation in the textile or car parts sector, especially in Argentina and Brazil.

At a time when climate change is worrying a vast proportion of the population, academic analysis on this issue was not taken into consideration. The lack of impact studies to examine the expected effects of the agreement, not only on climate change, was symptomatic, especially in the Mercosur bloc. The SIA carried out by the LSE for the European Commission was published three months *after* the closing of the negotiations, in October 2019, and did not even take into account the documents published in July 2019. This means that the impact study in no way guided the negotiators during the process, but also, that while the agreement is already being prepared for ratification, no updated official information on its actual impacts is available – neither in the EU, nor in Mercosur.

This shows a rather blind faith in trade liberalisation without regard to its environmental or social effects.

Furthermore, as of December 2019, the two other pillars of the association agreement, those concerning Political Dialogue and Cooperation have not yet been published, and in fact it remains unclear if negotiations have really ended already. At the same time, the chapters from the trade pillar are also incomplete and important provisions such as the one on the functioning of the agreement are still unavailable to the public. Thus, parts of this agreement remain in the shadows, unmasking former Trade Commissioner Cecilia Malström's “transparency initiative” as hot air.

## 2. The agreement will deepen trade asymmetries between the blocs

Mercosur and the EU have undeniable economic asymmetries. Once it enters into force, this agreement will maintain and deepen the existing asymmetries. The sectors that will benefit in both blocs are the ones that are already the most competitive – in the EU, the industrial and capital-exporting sector, in Mercosur, agribusiness.

The deepening of the primary-extractive model can already be observed as a consequence of trade agreements signed by the EU with Latin American countries. The promised economic diversification that was to come with these agreements never happened. Indeed on the contrary, the extraction of natural resources and the dependence on the export of primary resources (raw materials and agricultural products) was deepened. As has been the case with Peru and Colombia, whose agreement with the EU has been in place for more than 5 years by now, Mercosur could suffer from further deindustrialisation and the exacerbation of negative environmental and social consequences that derive from the deepening of a productive model based on monocultures and the exploitation of minerals.

These kind of trade agreements do not only favour export diversification, but also boost the concentration of capital in a few hands (often foreign ones) in the export sector. After the entry into force of the Chile-EU trade agreement in 2005, exports increased by 23%, driven by copper, but national industries only saw a 2% export growth in that period (Ahumada, 2019). In short, all these cases show that trade agreements signed by the EU with South American countries have deepened their tendency to specialise in the production of raw materials and the exploitation of natural resources – sacrificing large parts of forests and diverse ecosystems – essential to create a healthy environment and mitigate climate change. At the same time, industrial imports from the EU have increased, deepening economic inequality between the regions.

In the Mercosur countries, the agreement will have a direct impact on some productive sectors that today generate an important amount of employment; especially in the car parts, machinery, chemicals, textiles, and footwear sectors. All of these sectors will see import tariffs substantially reduced. In addition, the new Rules of Origin adopted in sectors such as textiles imply a different recognition of origin from those used in Mercosur. This change may likely lead to triangulation from third countries such as India or China, and ultimately benefit large European textile brands such as Zara or H&M, while putting employment in Brazil and Argentina at risk.

The agreement between Mercosur and the EU will also bring about the dismantling of regional value chains, painstakingly created over three decades of Mercosur as a grouping. A significant part of the Brazilian purchase of Argentine industrial and consumer products will be replaced with the purchase of European products. For Argentina, this will be disastrous, since Brazil accounts for 16% of Argentina's total exports (in 2018), constituting the main destination of the country's exports. Moreover, it is especially worrying for the car parts industry. If the agreement enters into force, we will see labour conflict and social protest increase in the productive belts of the northern zone of Greater Buenos Aires in Argentina and the industrial zone of Sao Paulo in Brazil.

Moreover, the agreement will have a substantial impact on small agricultural producers on both sides of the Atlantic. While economic power will be concentrated in the hands of a few



large-scale exporters of agricultural products, small farms will face the detrimental consequences of further agricultural liberalisation. In the EU, sugar and ethanol producers as well as the poultry and the pork sectors will likely be affected, as they will have to deal with even more intense competition with Brazil, one of the most important producers and exporters of these products in the world.

### **3. The agreement will lead to the homogenisation of standards between the two blocs, putting environmental and consumer standards at risk**

The homogenisation of standards and regulations is one of the main objectives of trade agreements, as it helps bring about the reduction of trade associated costs for operators. This is known as trade facilitation, leading to the reduction of all regulatory "burdens" that economic sectors face. Yet, this "facilitation", which in effect leads to the minimisation of regulations and controls, might put human or environmental health at risk. The SIA of the University of Manchester from 2009 estimated that half of the financial benefits that EU companies could gain with the agreement would derive from measures related to the reduction of technical barriers to trade.

Nevertheless, these "technical barriers to trade" include sensitive issues such as the application of Sanitary and Phytosanitary Measures, the criteria for approval of Genetically Modified Organisms (GMOs), animal welfare criteria and pest-free areas, among other issues.

Mercosur countries already have low standards in these areas, as their productive model, the "agricultural biotechnology model", is based on the use of genetically modified seeds, and pesticides. Thus it is likely that the four Mercosur countries will put intense pressure on the EU to make its standards more flexible, and not apply the precautionary principle to the asynchronous approval of GMOs - all in pursuit of free trade. European consumers will pay the final price.

The agreement will expand import quotas for food and agricultural products from Mercosur, which are produced with GMOs and high levels of pesticides. The relevant chapters establish provisions for the EU standards to be respected, but at the same time, the agreement lowers import controls. It also allows for self-certification by exporters under the control of state agencies. Yet, this control mechanism has already been shown to be easily corruptible, as was seen with the recent meat scandals in Brazil. Thus, the agreement will allow for more meat to be imported to the EU, while import controls will be lowered. As a matter of fact, import controls at the EU borders are already utterly insufficient, as a 2017 report of the European Food Safety Authority explained. Thus, it will become even more difficult to guarantee consumer protection in EU if the agreement enters into force.

The agreement will also harm the population of Mercosur countries. The increase in the export of agricultural products to the EU will lead to a deepening of the agribusiness model. Genetically modified seeds and the extensive use of fertilisers and pesticides, which have a detrimental impact on the health of local populations and the environment, will thus expand. The fertilisers and pesticides used in Mercosur are manufactured by European mega-corporations, such as BASF and Bayer-Monsanto, among others. They push for the use of

toxic chemicals in the production of, for example, soybeans in Mercosur countries, which are subsequently exported to the EU for animal feed.

The risk of the flexibilisation of standards is aggravated by the fact that the precautionary principle is only included in the non-enforceable chapter on Trade and Sustainable Development, but not in the essential chapters that deal with these questions, for example the SPS and Dialogues chapters. The EU gave in to the strong position of the Mercosur in this case. A strong and enforceable precautionary principle is crucial, not only for European consumers. Active support of the precautionary principle from the EU would also help regional organisations that denounce the massive use of pesticides in Brazil, Argentina and Paraguay. Yet, the agreement does not deliver on that front.

#### **4. The agreement guarantees more business for big business**

As we have seen in the Public Procurement, Services, and Intellectual Property Rights chapters, European corporations are economically stronger and better positioned than their Mercosur counterparts. The agreement will deepen the existing asymmetry.

A clear example of this is public procurement. All levels at which public procurement occurs, including in autonomous entities like public universities, will be opened up to international bidding. Although this provision impacts both sides of the Atlantic, it is especially harmful to SMEs in Mercosur countries, since they are left to compete with big European corporations. The EU recognised this fact in the "Agreement in principle", stating that: "it will make it easier for European companies to bid for and win government contracts."

The same is the case with the chapters on Services and Intellectual Property Rights, where EU companies maintain large monopolies, and are set to win further with this agreement. It includes principles such as national treatment and market access, without limiting either the number of suppliers, nor establishing the need for transfer of technology. Also, the agreement includes performance requirements that prohibit the promotion of "buy local" or "buy national" schemes, or even giving compensation to companies that are struggling to compete with international corporations. The free flow of data, relevant for technological companies, is guaranteed, and no customs duties may be imposed on e-commerce transactions. This will enable an even higher concentration of wealth and guarantees more business for big business.

It must be remembered that most of the investments between the EU and Mercosur countries are protected by Bilateral Investment Treaties, although the agreement itself does not include the investor-State dispute settlement mechanism.

In short, the agreement opens up new markets, especially for EU companies, while impeding the use of public policies to regulate investments, services, e-commerce, or capital movement. Such measures will particularly affect Mercosur countries and lead to the further destruction of local and regional value chains, while increasing the dependence on transnational corporations. These companies will, meanwhile, not be obliged to make binding commitments to comply with human rights or environmental norms, as the agreement does not provide for enforceable accountability mechanisms for corporations,

but relies on optional and self-referential CSR measures, which the corporations themselves can define.

## **5. The agreement will increase CO2 emissions and the risk of further deforestation**

The agreement will lead to an increase in the emission of greenhouse gases and expand deforestation. Estimates in this regard vary from less than 1% (LSE 2019) to more than 30% (Grain 2019) increase of CO2 emissions (and other greenhouse gases are not even taken into account in these figures). This comes at a time when significant efforts are finally being made to reduce emissions in order to combat climate change, and when the EU recently presented its Green Deal to reach carbon neutrality by 2050.

The increase in emissions will come from several sources. One is the expansion of the agricultural model in the Mercosur countries. This sector will expand intensively and extensively, using more technology (including more pesticides and fertilisers) and also expanding towards territories not yet used for agricultural production. In fact, 25-30% of emissions yearly can be attributed to changes in land use. Forest such as the Amazon and the Gran Chaco will be (and already are) sacrificed, indigenous populations and small farmers driven out of their territories and goals concerning climate change mitigation will be undermined and ignored.

As a matter of fact, the EU already imports large amounts of soybeans and meat which come from deforested land. The EU's stated intention to protect the Amazon and the condemnation of the fires there in the summer of 2019, while simultaneously negotiating a trade agreement that increases the purchase of goods coming from affected areas, shows the glaring inconsistencies of the bloc's trade policy.

The expansion of bilateral trade promoted by the agreement will also lead to further emissions, as the circulation of vessels carrying merchandise from one bloc to the other will increase. Strikingly, nothing in this agreement even contemplates the possibility of using legally enforceable obligations to mitigate the impact of trade on the climate.

## **6. The agreement does not provide for enforceable mechanisms to implement the provisions of the Trade and Sustainable Development Chapter**

The agreement does not contribute to the efforts to ensure the implementation of the Paris agreement or any other provision mentioned in the Trade and Sustainable Development chapter, for example those on combating illegal logging or implementing strong labour standards.

The clauses in the TSD chapter are soft law, and cannot be effectively enforced. There are no penalties foreseen in cases where states do not respect the provisions in the chapter, for example in adhering to the Paris Agreement. Moreover, the language used in the chapter weakens its provisions, giving less importance to protecting the climate, while granting ample room for the states to avoid fulfilling specific commitments.

The defence of the Amazon and the forests in South America is not simply a legal problem, and climate change cannot be mitigated by inserting a reference to the Paris agreement into the TSD chapter – even if it were enforceable. The whole agreement, as it stands, will have a significantly negative impact on the environment and the climate, as described in the previous point. Thus, issues related to protecting sustainable development, forests, and climate change need much more than voluntary cooperation mechanisms in trade agreements to ensure that real and credible action is taken.

## **7. The agreement will undermine animal welfare**

The agreement does not guarantee animal welfare in any way. On the contrary, the expansion of the export quota for Mercosur will deepen intensive cattle-raising through the extensive use of feedlots, which lower costs for producers. The agreement does not establish quality standards for meat arriving to the EU under the new tariff scheme. Only the limited Hilton Quota guarantees the import of high-quality meat. However, it is most likely that Mercosur producers will export feedlot bovine meat to the EU instead of pastured meat, as more and more farms have changed to feedlots.

In short, the agreement will incentivise the intensification of livestock breeding in feedlots, where cows are overcrowded, and their diet is not adequate. Animal discomfort also brings discomfort to those who consume beef and other meat. Changing the animals' diet has led to a number of diseases, such as Hemolytic Uremic Syndrome, which is already a big problem in countries like Argentina.

## **8. The agreement establishes an institutional bureaucracy with extraordinary prerogatives**

The agreement creates a bureaucracy whose role is obscure. There are no guarantees that corporate groups will be prevented from capturing the sub-committees created by several chapters. Some of these sub-committees have powers that go beyond the agreement. It is up to the working groups to determine the representatives of the blocs who make up the membership of the sub-committees - they can be representatives of the states, but also stakeholders from the private sector. There is also no guarantee that there will be any democratic accountability of these groups.

While civil society was promised "an explicit role in the implementation of the Agreement," the text as it stands gives little space to its participation. Civil society might participate in domestic advisory groups, but only on disputes related to sustainable development, submitting comments. Civil society will not have any power of control, and even less power to influence decisions made on the possible problems that arise when implementing the agreement. Thus, it seems that the administrative institutions set up were rather created for the political and economic elites to watch over their interests.

## **9. Some problematic points are still being negotiated, even though the agreement is undergoing the legal scrubbing process**

The legal scrubbing process has proven to be a highly political process and it is not unlikely that significant changes will still be made. The same happened with the CETA revision process: about 20% of the text changed during the technical review in February 2016.

An important chapter – the one on General Provisions – as well as several schedules and annexes have not yet been published. The chapter on General Provisions will include crucial information on the ratification process for the agreement and its entering into force. It also defines the functioning of the Association Committee, which is the body that oversees the application of the entire agreement, and to which all the Sub-Committees report. Without precise knowledge as to how that Committee is composed, and what relationship it will have with the legislative powers of the Mercosur countries and the European Parliament, there is nothing to guarantee that mechanisms of democratic control and scrutiny will be included.

Furthermore, in some chapters, key points still remain in square brackets, with the addition of "Notes to Negotiators," which indicates that the negotiation is not closed on these matters. So, in some chapters, the final wording will likely move the balance in favour of one bloc or the other.

## **10. Nothing prevents the incorporation of new issues, such as Investment, once the agreement enters into force**

In recent years, the EU has pushed for the "modernisation" of its association agreements with Chile and Mexico, promoting the inclusion of an Investment chapter which includes foreign investment protection clauses. Although the agreement with Mercosur does not currently have an Investment chapter, there is no guarantee that the EU will not try to include one in the future.

The 2015 European Commission strategy, entitled *Trade For All*, expresses the desire to renegotiate "old" agreements that excluded investments, as they were signed before the 2009 Lisbon Treaty.

The EU unilaterally promoted these renegotiations. A study commissioned by the European Parliament shows that business sectors in both Mexico and the EU did not have a great interest in renegotiating the agreement. The EU presents these renegotiations as "modernisations." But as a matter of fact, they led to the inclusion of a specific chapter on investment protection containing the ISDS mechanism, now reinvented as the Investment Courts System (ICS). The ICS mechanism is an ad hoc proposal by the EU that addresses some of the numerous criticisms of the ISDS mechanism, such as by revising the criteria for the selection of arbitrators, among other elements (Olivet and Pérez Rocha, 2016). Nevertheless, it does not propose structural changes to the profoundly unjust system of investment protection - for example it is still only investors that can start an ICS proceeding.

In the case of Mercosur countries, such modernisation would have direct impacts on how foreign investments in the bloc are protected, mainly because the four Mercosur countries have different investment protection schemes. While Argentina has 49 BITs in force,

Uruguay and Paraguay 31 and 24 respectively, Brazil currently has no BIT that allows for ISDS. Therefore, a future modernisation of the agreement, as previously undertaken with Mexico and Chile, would have a direct impact on Brazil. For this country, it would imply the inclusion of full protection of European investments in its territory.

In conclusion, once the agreement enters into force, the set of clauses presented in the EU-Mercosur agreement could be extended through future negotiations.

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