

The Mercosur-EU Agreement and its main problems to Brazil

1. Introduction

In late June last year, negotiations towards an agreement between the Mercosur and the European Union were finalized after more than 20 years of ongoing efforts. They had started in 1999, based on the Mercosur-European Union Cooperation Agreement, settled in December 1995. This recent agreement provides three pillars: political dialog, free-trade and cooperation. From the beginning, the entire process focused on the free trade chapter, which was, all along, responsible for negotiations ups and downs since the structure of the other chapters had soon been organized. This trade liberalization chapter was therefore the first to be concluded, last year still. Despite being clearly outlined, the other two were finalized in the first half of 2020.

Negotiations were basically concluded in a scenario where major ongoing trade negotiations, such as the TTIP (Transatlantic Trade and Investment Partnership, negotiations between the European Union and the United States), the TPP (TransPacific Partnership, involving several countries on the Pacific Coast and led by the United States) and the TiSA (Trade in Services Agreement, involving various partners such as US, EU and others), attempted to broadly open the services market among the member countries, had been stalled, for many reasons, particularly the Trump Administration's unwillingness to proceed with multilateral arrangements, and within an atmosphere of popular resistance to free trade that only serves transnational financier corporations. Suffice to see that, if resistance waned on the part of Latin American countries, particularly those within the Mercosur, a major hub resisting throughout the first decade in this new century, resistance grew in this second decade amongst the European block, where the post-2008 crisis period and imposed fiscal limitations (where big transnational corporations escaped adjustment policies by means of evasion mechanisms, particularly by resorting to the so-called tax havens) in the first place, and increasing environmental concerns in the second, further augmented overall resistance to trade agreements.

As initially pointed out, the bi-regional association agreement between Mercosur and European Union has three basic chapters: political dialog, free trade and cooperation. Negotiations start subsequent to the so-called Madrid Agreement (formally, the Framework Agreement on Interregional Cooperation) in 1995, concomitantly with and in the same geopolitical scene in which negotiations towards the FTAA (the Free Trade Agreement of the Americas, launched as proposed by the US during the December 1994

1st Summit of the Americas in Madrid) are started and just when the WTO starts to operate (January 1995).

As such, an initial point of concern is the fact that the European Union conclude negotiations where the chapter on political dialog is based on defending democracy and democratic institutionalism just when Mercosur's most outstanding country, Brazil, is under a governmental administration whose source and legitimacy are challenged by the violation of principles that are basic to that very democratic institutionalism. On the other hand, Mercosur had, since the beginning, negotiated with a European Union that included the United Kingdom, and negotiations were concluded when the European Union no longer included that which was one of its major markets.

The core of the agreement, meaning trade liberalization, still ought to be factored in. The fundamental bargain is quasi colonial: a narrow EU market opening to Mercosur's agricultural produce in exchange for broad industrial product market concessions, in addition to services and intellectual property (including public procurement on the side), by the Mercosur countries. From the point of view of a national development strategy and policies, this means that Mercosur member countries are left with the task of providing commodities, agricultural produce, ore and energy products, while European Union member countries will provide higher value-added products and services. Environmentally speaking, but also socially and economically, Mercosur member countries' role involves a major impact that includes faster environmental destruction and limited social and economic improvement possibilities, since those primary production sectors are not fairly inclusive while they are highly productive and capital intensive, in addition to being particular income and wealth concentrators, a quality that amasses powerful rural political influence.

So we basically have to evaluate if returning to a "colonial pact", with its huge social and environmental effects, is really a desirable future development strategy for the country. Or if we should otherwise look for an alternative strategy to enable increasing income and employment, featuring broad redistribution and solid environmentally preserving elements that will include the preservation of democracy, which will be brought to discussion by a strategy of income and power concentration. This is the discussion backdrop of an agreement that is not only trade related, where the free trade pillar often counters the defense of democracy and the environment.

2. The political pre-conditions to close the negotiations

Defined by the framework agreement celebrated in 1995, negotiations between Mercosur and European Union dawdled until 2002, with conversations that gradually defined generic landmarks such as realm and objectives in each relevant area. Two arrangements coming out of this initial phase appear to be important: tariff liberalization covering 90% of traded goods, in this area, and the boundaries for an investment agreement mirroring that of the World Trade Organization (known as TRIMs, or Trade-Related Investment Measures). This second point is important since the other bilateral and regional investment agreements changed substantially ever since and moved closer towards providing collaterals to investors, whether they are large investment funds (portfolios and bonds) or big transnational corporations with their investment flows and some direct foreign investment. In principle, the base thus defined for the investment chapter in the Mercosur-European Union negotiations did not delve deep in a theme that is always sensitive, particularly for developing countries. This was the justification some Mercosur negotiators used not to break negotiations, which were often “frozen” but never broken. Even during those “frozen” moments, there were signs that they had not been broken and could therefore be resumed at any moment.

Particularly when negotiations towards creating the FTAA (Free Trade Agreement of the Americas) were coming to a halt, as of late 2003, and when they definitely stopped in the first four months of 2004, there were attempts to boost Mercosur-European Union negotiations, since, back then, criticism that local governments had not been looking for trade agreements because of “ideologic definitions” was all too common. Many were the attempts to push agreements with the EU, which were eventually hindered by the European unwillingness to make concessions in agriculture and the Mercosur member country resistance in the area of manufactured goods and intellectual property (where European demand was strong, particularly around “denomination of origin”, a sensitive theme for them). Still, in an attempt to close the deal, Brazil came up in 2004 and offered the Europeans some government procurement related concessions (there was a promising robust investment program in place on the part of Brazilian state owned Petrobras, which eventually did grow, and that offer could represent easy access to tenders in this area). The attempt did not lead to the agreement and negotiations were then “frozen”, but the offer opened up a precedent and, as a theme, government procurement was included in those discussions.

In the subsequent period, those “frozen” negotiations fell into considerable oblivion. Increasing Mercosur agricultural produce trade with China, whose demands grew spectacularly during that period, relieved agribusiness pressure for an agreement with the European Union. Two of the main products looking for space in European Union

markets, beef and soybeans were highly demanded by China, and expanding business reduced that pressure to virtually nothing. On the other hand, the Lula Administration focused trade negotiations at the time on the possibility of concluding the Doha Round at the WTO. From their perspective, once it were finalized, that round of negotiations would resolve, in its agriculture chapter and in discussions about subsidies, part of the agenda that was hindering discussions with the US (the FTAA), as it was hindering negotiations with the European Union. With those failed dealings in July 2008, that route of negotiations was discontinued. However, at that moment, the acute international financial crisis shifted the focus away from trade negotiations, with developed countries turning to protectionist policies geared to defending their own markets. On the other hand, other negotiation possibilities loomed on the Brazilian horizon (G-20 and BRICS), which estranged priority talks with the Europeans.

Talks were resumed after the VI European Union – Latin America and Caribbean Summit held in Madrid in 2010, particularly encouraged by a speech made the then Brazilian President Lula sustaining that attempts to reach the agreement should continue. Negotiations are gradually resumed in the course of the first few years and, while Mercosur negotiators constantly demanded “exchanges” (when each side states what it is actually willing to offer in terms of trade opening), regulatory frameworks were effectively advancing in some areas, including services, government procurement and intellectual property among others. This process extends until 2016, when negotiations pick up and the first exchange of offers is made. Remarkably, the political scenario where it happens included the liberal administration of Mauricio Macri inaugurated soon after the 2015 elections in Argentina and the liberal administration of Michel Temer that had impeached President Dilma Rousseff in a process of institutional disruption in the course of 2015/16. This exchange of offers proved insufficient and conversations towards increasing that proceed against various points of resistance, and the December 2017 deadline to announce finalized negotiations during the WTO Ministerial Summit of Buenos Aires falls.

European Union negotiators continue to push for more concessions, just as they negotiate internally with their stakeholders. An example is that of the German auto-industry in Brazil, which resisted the agreement for quite a long time. Curiously enough, the resilience of transnational European companies in Brazil was crucial to stop the trade agreement.

In a meeting between the parties held in the Paraguayan national capital of Asunción during the last week of February 2018, differences prevailed. Despite the official

discourses pointing at a political guideline to close the agreement, differences stood in the way of many important points. From the European Union's side, tariff reduction demands on the automotive sector prevailed (the provisioned timeline to adapt to reduced tariffs: European companies with Mercosur investments demanding member countries extend timelines to reduce tariffs in order to ensure their investments), to establish more rules on origin, more access to public procurement and to maritime transport/services as well as milk imports. From the Mercosur's side, stricter intellectual property rules is still a problem, and the demand for greater European supply to beef and ethanol markets remains. At the same time, because the difficulties are known, the ministers responsible for negotiations in Mercosur member countries decided after the meeting (perhaps anticipating the difficulties to advance talks with the EU) to go for a faster Mercosur-Canada deal and start negotiating a free trade agreement with Japan as well as enhancing talks with South Korea.

The Temer administration weakness also loomed as an obstacle to greater concessions from Brazil, the greatest economy within the Mercosur. Particularly after May 2017, the government seemed more concerned with avoiding debacle than with advancing any measure that could hurt its base in Congress. Trade agreements always impart losses to some sectors, so the once active Brazil government, in 2016, moved on to a passive position ever since. In Argentina, Macri administration's approval of unpopular measures, such as the social security reform in late 2017, also weakened the country's negotiation stance.

Therefore, trade negotiations between the two blocks were politically attained only in 2019, with the new economically liberal government, but while the Bolsonaro administration was being inaugurated. Still in Argentina, negotiations with the European Union were drawing to a close with the Macri administration's significant liberal content in preparation for the Argentinean elections. This strong liberal bias in the economy enabled concessions that eventually helped secure a strategy of "pulling strings" with European negotiators in agreement with Mercosur negotiators who were willing to give in towards the end of the process. For the Bolsonaro administration, the agreement appeared as political trump that would allow them to differentiate from the previous administrations because of their capacity to take and implement positions.

3. Some of the main points in the agreement

Some of the free trade related points made in the agreement will be analyzed below as the main pillar built between the two sides.

Evidently, these discussions are not meant to be exhaustive, since that would require profound insights, which is not the objective of this paper. Important points in that agreement will be listed and problematized, including some that are still waiting for approval. This is meant as grounds for future action based on reasonable assessment of the dangers so far.

A. Agriculture

From the start, agriculture has been a major source of problems in the negotiations process. Changes to common agricultural policy in the European Union during the negotiations process, reconfiguring most of their related subsidies, some of which were disputed at the WTO, facilitated talks, but not quite. The process featured the voracity of Mercosur member countries that increased agricultural produce exports to Europe and the resistance some European countries put up against these demands in their attempt to secure particular protection to meat (beef, pork and poultry). On the other hand, the European competitive capacity, partly enhanced by incentives in areas such as wine and powder milk, can affect some of the Mercosur productive chains, such as milk and grapes, both of which are largely produced by family farming.

In agriculture, during the last mile of negotiations, Mercosur's main agribusiness demand was to increase the meat quotas, particularly those of special meats. Brazilian agribusiness further demanded increased ethanol sales to the EU. That would imply imposing losses to the European side that are not politically welcomed by their meat production (and the entire complex involved in this production, on the side) within the block. Led by France, many countries' agricultural sectors, particularly from southern Europe (Spain, Italy and Greece), including Ireland and Eastern European countries led by Poland, resisted. Low price ethanol input could, in its turn, interfere in automotive fleet electrification policies and cause impacts beyond agriculture that could extend to energy reconversion policies around and within the European Union.

For the more complex products (accessed through quotas), a Brazilian governmental summary follows in an Itamaraty¹ condensed version:

¹ MRE, Acordo de Associação Mercosul-União Europeia, Resumo Informativo Elaborado pelo Governo Brasileiro, p.4, Brasília, July 2019.

Product	Treatment
Beef	99 thousand tons carcass weight, 55% cooled and 45% frozen, with a 7.5% intraquota and 6-stage increasing volume. Hilton quota (10 thousand tons): intraquota will surpass 20% at 0% upon agreement commencement.
Poultry	180 thousand tons carcass weight, intraquota zero, 50% boned and 50% deboned with 6-stage increasing volume.
Pork	25 thousand tons, intraquota of 83 euros/ton and 6-stage increasing volume.
Sugar	180 thousand tons (WTO quota), intraquota zero upon agreement commencement. Specific quota for Paraguay: 10 thousand tons with intraquota zero.
Ethanol	450 thousand tons of industrial ethanol, intraquota zero upon agreement commencement. 200 thousand tons of ethanol for other purposes (including fuel), intraquota with 1/3 of the European applied tariff (6.4 or 3.4 euros/hectoliter), 6-stage increasing volume.
Rice	60 thousand tons, intraquota zero upon agreement commencement, 6-stage increasing volume.
Honey	45 thousand tons, intraquota zero upon commencement, 6-stage increasing volume.
Sweetcorn	1 million tons, intraquota zero upon agreement commencement, 6-stage increasing volume.

The main liberalization advantage to Brazil will be in fruit as well as fish and seafood, but also in some processed products, such as tobacco and coffee (roasted and soluble). To the EU, there was access to some processed agricultural produce, such as cheese, powder milk and wine, where Mercosur's import quotas were increased²:

Product	Treatment
Cheese	30 thousand tons with increasing volume and decreasing intraquota in 10 years (excluding mozzarella).
Powder milk	10 thousand tons with increasing volume and decreasing intraquota in 10 years.
Infant formula	5 thousand tons with increasing volume and decreasing intraquota in 10 years.
Wine	Tariff liberalization in 8 years (up to 5-liter bottles and champagne). Excluding bulk wine, wort and grape juice.
Sparkling wine	Price above USD 8 FOB/liter free from lien upon agreement commencement. Tariff liberalization after 12 years.
Garlic	15 thousand tons with increasing volume and decreasing intraquota in 7 years.
Chocolate and cocoa intermediaries	Chocolate, white chocolate and chocolate milk: increasing quota from 12,581 thousand tons to 34,160 thousand tons in 10 or 15 years, with intraquota preference of zero in 10 or 15 years. During the transition period, the extraquota tariff is 18%-20%. Free market after 15 years. Butter, paste and powder: lien removed in 15 years, at the exception of non-fat paste (10 years).

Remarkably, for powder milk, liberalization for the European Union does not affect only local producers in Brazil, but the very process of regional integration within the Mercosur, since that is one of the important Uruguayan exports. Curiously enough, in February 2019, few months before closing negotiations with the EU, already under the Bolsonaro administration, the Brazilian government had succumbed to agricultural sector pressures and dramatically raised custom tariffs on powder milk imports, concerned with European and New Zealand also dramatic increased imports.

² MRE, idem.

B. Trading goods

Goods trade relationship between EU and Mercosur has always been extremely asymmetric. Mercosur specializes in selling semi-manufactured goods to Europe, such as soybean meal (basically, animal feed), pulp, iron pellets (concentrated ore), primary oil byproducts and some processed meat. The only remarkable exception are aircraft, on account of the Brazilian Embraer role in this market. Interaction is, actually, remarkable there because Embraer is a great importer of aircraft parts (in a concentrated market, European Airbus exports to Brazil have to be taken into account). On the other hand, in addition to being a significant importer of end manufactured goods from the European Union, Mercosur also imports a great deal of components for local assemblage of end products. An important factor to be considered in this equation is that part of the local productive interaction of major corporate chains involving European suppliers takes place because those corporate chains are the hegemony of European transnational companies (such as in the automotive and medication sectors). It is an even more complicated situation when it comes to the chemical industry, because productive chains in this sector imply that Europeans produce low value-added energy-intensive chemical commodities of great environmental impacts in the Mercosur (Brazil and Argentina) while their fine chemistry high value added imports of less environmental impacts come from the EU. Evidently, tariff reductions will further reinforce those already structural trends. Part of the productive inequality between the two blocks is thus explained, and one should be reminded that the Mercosur investor role in transnational companies of European origin has always been big.

Given the great disparity between industrial sectors in each block, the European Union is vastly benefitted by tariff reductions in this area, reductions that will impose further limits to sector policies in the Mercosur in order to protect incipient industries, since tariff reduction timelines are short and, once established, they never recede. This is a core point in the agreement: manufactured goods supply to the Mercosur market in exchange for primary goods supply to the European Union. In times of market reductions worldwide, it might be to the advantage of European exporters who are desperately looking for markets. In exchange for quickly coming to terms around the agreement, Mercosur negotiators ended up by giving in a bit too fast and, in exchange for few concessions, they eventually accepted the EU strategy of "tightening the rope".

C. Automotive chain

The automotive production chain was a most problematic sector for an adjustment to the negotiations. In fact, there is an intricate scheme of things in this productive chain that

makes Brazil and Argentina concentrate a good portion of their trade around this sector. It has been such that an important part of what we know as Mercosur was preceded by arrangements in the automotive sector, where there is solid concentration of European transnational companies. Just as there is an agreement between Brazil and Argentina, there is an agreement between Brazil and Mexico, as well as connections with Asian countries (Japan, South Korea and China), with the USA and with South Africa. This sector is therefore complex as it is. By reducing tariffs between two partners (Mercosur and EU), they are practically interfering in the entire sector and its input chain (autoparts). When the end products area is also opened, the entire corporate investment schedule is actually affected.

This is why this was a most complex sector to adjust during the last mile of negotiations, since the various companies within the Mercosur region were affected by the possibility of having the agreement at different moments of their investment schedules. So, extended timelines in this sector are somehow intended to try and strike a balance among the various business interests of hegemonic companies in the European automotive production chain. Remarkably, there is no hegemonic Brazilian or Argentinean company in the sector, but only local subsidiaries to transnational companies. Because of that, timelines negotiated for tariff reductions in this sector were extended to reach 60% auto parts trade liberalization in 10 years, and 15 years for the remainder. This process shall reset production, with greater volumes of auto part imports for assembling purposes, which is to the long term advantage of European suppliers and to increase the expertise of Mercosur located European assembling companies that produce low value-added end products while they import high value added end products from their headquarters.

Further consideration should be given to the impacts of this greater integration with European producers upon the process of a Brazil-Argentina regional integration (consequently, upon the Mercosur). These impacts are likely to affect the Argentinean production of auto parts (geared to serve assembling companies located in Brazil) and the production and sales of automobiles manufactured in Brazil (and sold to Argentina). It was not by chance that this sector, taken as the entire productive chain, resisted the agreement, and so did expert automotive chain workers and trade unions that represent a most organized sector in both countries.

If it moves on and the time comes to implement it, the agreement is likely to redefine the entire worldwide production chain in this sector, which is already affected by various international associations (some of which involve companies from different countries,

such as France and Japan, with their Renault-Nissan, or Italy and US, with their Fiat-Chrysler), pushing for important technological changes (greater onboard information technology) and for sector resizing, which will include discussions on the effects of prioritizing collective over individual transportation and not only on energy consumption but also on urban traffic and land occupation.

Initially, in addition to service providers (vehicle designers, software developers and others), the European automotive sector of end products and auto parts may be highly benefitted by the agreement, but, evidently, that is going to depend on this redesign for the coming years, which seems to be profound. Losses on the Mercosur side (production, income and jobs) are potentially much bigger than occasional gains signaled by the agreement.

D. Services

The services chapter is broad and advances fast over the WTO agreement, with significant liberalization and more numerous service provision modes.

Financial and postal services, telecommunications and e-trade are treated for the ensemble of countries. In addition to that, each Mercosur member country presented their national list of access to service markets.

The general frameworks in their turn, though the WTO General Agreement on Trade in Services (GATS) structure is to be maintained, as it basically ensure national states' right to regulate their services sector to enable public policies and liberalization by using "positive lists", meaning each country lists what they will offer for liberalization rather than the sectors they are willing to protect, letting go of the others (the "negative lists" system) because they are truly advancing with the liberalizing process, can be characterized as GATS Plus (more liberal than the original GATS).

Concerning modes of service provision, in the more sensitive area (the so-called Mode 4, movement of people to provide services, whose discussion ends up polarized because it borders a conceptual discussion on migration), the agreement designs categories of technicians and corporate management personnel who can temporarily render services in the territory of another block.

Though Brazil keeps more strategic sectors for development and public policies out of their offer, such as defense, health and mining/oil extraction, consolidating the country's list of offers in the current legislation on representative sectors, such as telecommunications, financial services, construction, engineering, architecture, advertising, distribution services, retail, consultancy, cabotage (sensitive sector,

because the circulation of European ships around here affects our local cabotage, which loses space to international services that, in their turn, use their long range navigation to do cabotage on their way back, thus involving security issues on our coastal waters) and IT services, among others, consolidating the situation of local regulatory frameworks within an international agreement, at a moment in time when, for more than 25 years of internal liberalization and privatizations, and particularly for the aggressive liberal view since 2016 (Temer and Bolsonaro administrations), the Brazilian regulatory situation is comprehensive deregulation in practice. As this situation is consolidated in the agreement, Brazil will be bound in a very difficult situation if it ever wishes to resort back to more regulatory positions.

In the sectors covered under the agreement, some comments ought to be made. In the e-trade arena, a leading theme in WTO's international discussions, given the possibilities that are open with such liberalization, which will certainly be further consolidated by the current pandemic, Mercosur and European Union indicate they recognize e-trade increases trade opportunities within various economic activities and agree to promote the development of e-trade between both regions. This generic guidance opens huge space for European e-trade providers. Article 44 of the agreement in the services area further provides for custom tariffs on electronic transmissions that, "Neither Party shall impose custom duties on electronic transmissions between a person of one Party and a person of the other Party", letting previously go of a regulatory possibility by means of tariffs that is being negotiated in broader terms and therefore limiting the scope of public policies in the area. In this sense, the agreement previously embraces party positions towards discussions in the realm of the WTO and clearly benefits Europeans. Furthermore, it opens up huge space by replicating itself to the United States (Google, Amazon, Facebook, Apple) and China (Alibaba), which command worldwide e-trade.

When it comes to postal services, though the agreement admits to differentiating simple mail services (letters, of public utility) from courier / express mail services (where there is competition already between specific relevant companies and the traditional postal service), it keeps traditional postal service possibilities from using internal cross subsidies and therefore directly interferes in the public mail service's managerial capacity by means of article 20. This may give way to legal claims of cross subsidies and may also force public postal service companies to open up cost schedules that contain all of their relevant information, thus favoring their express service competitors.

Concerning telecommunications, where powerful European companies are already operating in Brazil (Telefónica from Spain, TIM), a commitment was made to maintain

competitive regulatory frameworks and avoid anticompetition practices among operators, with autonomous and independent regulatory authorities. This point disregards all international bibliography on regulatory agencies being “captured” by sector hegemonic companies. In addition to that, opening in this sector excludes broadcasting companies (radio and others).

The discussion on financial services was also enhanced as capital movements were included. Despite the caveat on the regulatory power of national agencies (such as the central banks), the text seeks to reinforce transparency and “legal security” aspects (to be understood as less capacity to be disputed in their operations) to EU investors operating in the Mercosur. In addition to that, a chapter on current payments and capital accounts was included, liberalizing the capital movements sector, which is to be read in combination with enhanced “legal security” in the financial services chapter.

In the proposed Mercosur-EU agreement that was unveiled, some points may be observed as they might cause some concern around the level of collaterals involved. One such point is related with defending bank client’s secrecy of information: Article 36: “Nothing in this Agreement is to be interpreted as a requirement that one Party disclose information related to individual client’s businesses and accounts or any confidential or proprietary information in the hands of public entities”, which may eventually protect potential suspects of tax evasion or financial activities who might be afraid of being held accountable for suspected fraud, involving national financial regulators.

Article 35, 2.B.12, item ii: “(ii) “Financial services provider” means anyone on an individual or corporate capacity who wishes to provide or render financial services, but the term “financial services provider” does not include a public entity”, this point eventually excludes public financial companies, depending on the legal interpretation, that can be found in the member countries. Two of the largest Brazilian banks are state owned companies and there are many other public financial companies at different levels which are limited by the way this is written.

Remarkably, the term “financial services” include the various types of insurance services, many of which are offered by public companies.

Finally, another interesting point in the Mercosur-EU agreement on services is Article 38, which subtly reverses the logic of a “positive list” for services and introduces a “negative list” scheme in the financial services area, referring that every “new financial service is previously open to financial companies operating within the framework of the agreement in member countries. Since there is no way to know now what those “new financial

services” will be, national regulators are rather limited when it comes to regulate those new services that, again, are now open and protected by the agreement. That is to say that, by means of a carefully written article, one can get around the positive list system and start liberalizing future services in this area now, without any discussion.

E. Intellectual Property

The two central items in negotiations around intellectual property contained in the agreement concern indication of origin and patents.

When it comes to the so-called “indication of origin”, the European view is rather restricted, as it attempts to characterize their regional production. On the other hand, should those rules be taken to their ultimate consequences, Mercosur countries would be penalized with processes of having to recognize rules on origin that would not recognize the fact that those countries received immigrants from Europe who brought not only themselves but also production techniques they used in their places of origin, particularly for food (wine, cheese, sausage meats and others). In the final agreement, Mercosur recognized 355 geographic European indications, a tough demand by the Europeans, but timelines to re-adapt production within the Mercosur were preserved, and so were some national denominations of origin within the Mercosur (in the Brazilian case, in beverages, the *cachaça* in addition to wine and sparkling wines in the area whose denomination is “Vale dos Vinhedos”, including the “Canastra” cheese).

Concerning patents, the European Union view was to try as much as they could to ensure patents to their pharmaceutical companies (as the biggest example) in relation to a Mercosur—particularly Brazil—view that places the focus on public policies related with health issues and on the possibility to ensure their continuous use medication distribution programs (such as those for high blood pressure, diabetes and AIDS) by means of distribution of generic medication. But the final text does not contemplate extending patents and it operates within the WTO framework agreement on intellectual property (known as TRIPS agreement). However, according to the Itamaraty summary, “Mercosur member countries matched commitments provided in the text with a decision to modernize their legislation on the basis of international standards”.³ So, what governments in that region understand as modernizing their legislation has to be clarified, as it could mean an even more restrictive recognition of patents in the sense of increasing commitments made within the framework of the TRIPS agreement.

F. Governmental Procurement

³ MRE, *ibidem*, p.12.

This is another sensitive area. In the first decade of this new century, Mercosur member countries with large budgets, such as Brazil and Argentina, did try to push industrialization with national procurement policies. The oil sector was clearly an example, expanding their procurement policy to enhance the regional metal-mechanical industry. Intent on those possibilities, halfway through that decade, near the end of the negotiations being dealt with after 2004, the European Union started to present preferential demands in public policy disputes with Mercosur member countries, particularly Brazil. And back then, Brazilian negotiators ventured some offers in this area, provided the EU increased their agricultural bid.

Consistent with liberal views of the Brazilian governments that concluded the negotiations, the agreement provides for increased competition in public tenders and the so-called “more efficient use of public resources”.⁴ That means the underlying assumptions do not prioritize use of public procurement as a public policy instrument to leverage development, but rather the supposition that competition fosters reduced expenditures and overall greater efficiency—disregarding the fact that this competition is held among unequal parts where the European partners will be at an advantage and that a powerful development induction tool will be waived by various sectors that could otherwise have their development leveraged by public procurement. Even more severely, there are provisions for “broad consultation to states and municipalities in order to include federative entities that will total 65% of the GDP”⁵, thus affecting the subnational levels’ capacity to develop public policies geared for local development in their areas beyond the federal level.

G. Trade and Sustainable Development

The most important point in this chapter of negotiations is perhaps the fact that it is not subject to sanctions by the agreement’s dispute resolution mechanism. This is an important point to raise because, at least from the viewpoint of the current Brazilian government, the chapter’s general guidance totally counter related public policies adopted in the country.

The chapter raises three key points that overtly conflict with the current Brazilian government’s guidelines. The first one is adherence to the ILO (International Labor Organization) fundamental principles and the workplace health and safety guidelines. Brazilian government representatives who operated to close the agreement worked and still work hard against ensuring any worker rights, be those rights expressed in

⁴ MRE, *ibidem*, p. 7.

⁵ MRE, *ibidem*, p. 8.

legislation, regulation or labor contracts. They work to remove labor rights and to hit trade union organizations. So, concerning the ILO principles, which move in the opposite direction, they may be considered as not sharing this general guidance.

The second one regards the 2030 Agenda's Sustainable Development Goals and climate change concerns (including the Paris Agreement, protecting biodiversity and the sustainable management of forests and fishing practices). Last year, the Brazilian government showed not only total disregard for these issues but also worked internally against the international protocols that involve this preservation, and took diplomatic stance against any international consideration for the events occurring here and looked at any position held here about climate issues and sustainable development as intrusion on internal Brazilian matters and attempt to violate the Brazilian sovereignty.

One last but not least important point is related with a forum for civil society participation, when we all know the conflicting relations of the current Brazilian government with both the national and the international civil society.

Including this chapter in the bulk of the trade agreement is thus understood as merely symbolic, a generic political statement to satisfy European negotiators who might be concerned with somehow responding to the political concerns of their societies, but not being subjected to questioning with specific consequences in any dispute resolution agency within the realm of this agreement.

H. Other Themes

These central themes are, in addition to others, a hard trade liberalization core of the agreement. The others include three that should, however briefly, be mentioned here: state owned companies, technical barriers to trade and dispute resolution.

i. State owned companies

The agreement operates ambiguously towards state owned companies. On the one hand, it recognizes that state owned companies have their own peculiar nature and may therefore, in their efforts to achieve the public policy and public service provision objectives for which they were created, operate beyond mere trade objectives. On the other, the chapter on state owned companies emphasizes who must operate on the basis of trade negotiations.

Furthermore, considering the entire agreement, if this definition for company operation basis (merely commercial or not) is not clear enough in the state owned company chapter, in other areas of the agreement's trade pillar things are even less clear, since

views on “defending competition” challenge the participation of public companies in areas that operate in dispute with international private companies, in this case, European companies.

Remarkably, only large federal state owned companies are considered in the agreement, in addition to excluding companies in some sectors that include defense, for instance.

ii. Trade Facilitation

Compliant with intentions expressly voiced in the 9th WTO Ministerial Conference held in Bali in 2013, the first one handled by Brazilian diplomat Roberto Azevedo as WTO Director General, a chapter was consolidated in the agreement to facilitate trade, in an attempt to expedite and reduce import and export costs that would enable smoother processes by reducing bureaucracy and increasing transparency for the relevant players.

In that sense, there is still a commitment to review and improve regulations and goods clearance practices on a continuous base and through consultations with corporate sectors, and to use electronic customs clearance processes to the best of their capacity, which the WTO had already indicated as a potential to reduce transaction costs between countries (in this case, between signatories to the agreement).

Specific commitments are also made for perishable goods, where customs delays may incur preservation costs and even product losses. Temporary admission of goods is also provisioned as a possibility.

Remarkably, on the occasion of those discussions within the WTO, custom worker representative institutions challenged those facilities as an element reducing custom excises and harming control over the operations.

iii. Dispute Resolution

The agreement provides a dispute resolution mechanism, including the possibility to resort to the WTO dispute resolution ones.

However, as mentioned before, some points are not subject to debate within the dispute resolution agency, whatever it is, such as labor and environmental issues related with sustainable development.

With frameworks negotiated in the late 1990's, the agreement does not provide investor-State dispute mechanisms, concerning the theme of investments.

4. The process to approval, or not

With negotiations on the trade pillar finalized in June last year, the agreement at hand and negotiations around the pillars of political dialog and cooperation ended about a month ago. That only means that the negotiations process has come to an end but not that the agreement is in effect. The negotiated agreement still needs to be ratified by the parties before it becomes effective.

After the end of negotiations around the free trade pillar (however simpler, the two others are much more recent), a technical and legal review was implemented, and the agreement was translated (to Portuguese and Spanish for the Mercosur and to another 20 languages for the European Union) to be discussed at the national level for approval.

During this process, some national parliaments (Austria and The Netherlands, in addition to the regional parliament of Wallonia, in the Belgian case) and national governments (such as France, to mention but the most expressive one) moved against the agreement for various reasons. Germany, this far, has been a great defender of the agreement at the level of the European Union.

Given the technical and legal reviews, as well as the translations, the agreement must be subjected to discussion by national governments and, within the European Union, trade pillar discussions will be held by the European Council. The other two pillars must be approved by each country's national parliaments (the European authority has a mandate to discuss and implement trade agreements, and this is why trade pillar discussions are restricted to the EU, in Brussels). The European parliament must also express their position. And the Mercosur must conduct a discussion to secure each national government's decision.

Once it is approved in Brussels and in the Mercosur countries, there are still doubts concerning total effectiveness after it is signed by the four Mercosur full member states or partial effectiveness for each signatory within the Mercosur. This doubt was raised under pressure by the Brazilian government, as it fears discussions might extend, in the case of Argentina, and therefore wished it to become effective in each approving country. If it happened, it would be indeed very odd, and it would reflect more of the political scenario than the regional institutionality, since the negotiations were joined by the four Mercosur countries and refer to an agreement between the Mercosur and the European Union, and, from the viewpoint of markets and the negotiated liberalization, there are huge differences between the whole and the parts.

5. Conclusions

After extensive negotiations, that lasted approximately a quarter of a century, the agreement negotiated between the Mercosur and the European Union is now approaching conclusion. Now is the time to learn whether the object of all those negotiations is going to hold.

The essential part of negotiation contents reaffirm the standpoint of resuming a colonial productive structure on the part of Mercosur countries, where on this side of the Atlantic countries specialize in supplying primary products to Europe, basically agricultural commodities as well as mining and energy products, and in buying manufactured goods from their European partners, and open up their services area, and make huge concessions in other areas – as negotiated in the current agreement, the public procurement sector must be emphasized, as it will be restricted in its capacity to operate as a public policy instrument for development.

As previously said, from both the environmental and the social as well as the economic point of view, the role left to Mercosur countries after this bargain has a huge impact in that it will accelerate environmental destruction and limit the possibilities for social and economic improvement, because these primary production sectors are all but inclusive (they are income and wealth concentrating sectors and, as a consequence, they help concentrate political power in the region's countryside) and enforce concentration of the capital that is needed to push the production process.

So, from the point of view of Brazil and the Mercosur, what needs to be evaluated is whether a return to a “colonial pact”, with its huge social and environmental effects, is what we really want for the country and for the region as a development strategy for the future.

Or whether what we are looking for is an alternative strategy that will enable increased income and jobs, including wealth distribution and great concern with preserving the environment and democracy, which may be disputed in face of an income and power concentration strategy.

This is the backdrop of discussing an agreement that is not merely another trade agreement that, in behalf of trade liberalization, has its free trade pillar in confrontation with defending democracy and the environment, and the possibility to look for new pathways for the future generations.

To a government that challenges democracy among other things, such as the current Brazilian government, expeditious closure of the agreement supposedly gives a trump in their relations with European partners by making it clear to the societies in Brazil, in the Mercosur and in Europe that, in face of trade interests, not only democracy but also social and labor rights as well as defending the environment lose priority in their discussions because of particularly very large transnational corporate interests, and their search for profits. Despite the pandemic and the renewed concerns about the future of mankind, we continue in a world where business is prioritized, by far.