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ABSTRACT

This thesis examines the process of integration and cooperation between the European Union (EU) and the Southern Common Market (Mercosur), with a focus on the negotiation and implications of the Association Agreement (AA) signed on 28 June 2019. The study begins by exploring the historical context of the EU, from post-World War II reconstruction and the creation of the European Coal and Steel Community (ECSC) until the establishment of the EU. Likewise, the research understands the European colonial legacy in Latin America, as well as independence movements and attempts at regional integration that preceded the creation of Mercosur.

Following the individualised study of both blocs, a comparative analysis is conducted to assess the integration processes, institutional formats, legal systems, decision-making processes and monetary integration of the EU and Mercosur. This analysis sheds light on the similarities and differences between the two regional blocs. Thereafter, the thesis delves into the negotiation process of the AA, examining its history and early developments. Four distinct stages were identified in the evolution of the AA negotiations until the announcement of the agreement in principle in 2019. The status and progress towards a comprehensive agreement are also discussed.

Further concentrating on the AA, the thesis analyses its pillar structure, i.e., the political dialogue, cooperation, and trade pillars. It then explores key aspects of the AA, such as regional integration, trade in goods, rules of origin, customs and trade facilitation, sustainable development measures, services and establishment provisions, technical barriers, sanitary/phytosanitary standards, and public procurement policies.

Finally, the thesis explores the EU-Mercosur AA's social, economic, and environmental impacts and examines the challenges and opportunities for stakeholders.

Keywords: European Union, Mercosur, Association Agreement, Integration, Negotiation, Socioeconomic and environmental impacts.

ABSTRAKT

Diese Arbeit untersucht den Prozess der Integration und Zusammenarbeit zwischen der Europäischen Union (EU) und dem Gemeinsamen Markt des Südens (Mercosur), wobei der Schwerpunkt auf den Verhandlungen und Auswirkungen des am 28. Juni 2019 unterzeichneten Assoziierungsabkommens liegt. Die Studie beginnt mit einer Untersuchung des historischen Kontextes der EU, vom Wiederaufbau nach dem Zweiten Weltkrieg und der Gründung der Europäischen Gemeinschaft für Kohle und Stahl (EGKS) bis zur Gründung der EU. Ebenso werden das europäische koloniale Erbe in Lateinamerika sowie die Unabhängigkeitsbewegungen und die Versuche der regionalen Integration, die der Gründung des Mercosur vorausgingen, untersucht.

Im Anschluss an die individuelle Untersuchung der beiden Blöcke wird eine vergleichende Analyse durchgeführt, um die Integrationsprozesse, die institutionellen Formate, die Rechtssysteme, die Entscheidungsprozesse und die monetäre Integration der EU und des Mercosur zu bewerten. Diese Analyse beleuchtet die Gemeinsamkeiten und Unterschiede zwischen den beiden regionalen Blöcken. Danach befasst sich die Arbeit mit dem Verhandlungsprozess des Assoziierungsabkommens (AA) und untersucht dessen Geschichte und frühe Entwicklungen. In der Entwicklung der AA-Verhandlungen bis zur Ankündigung des Grundsatzabkommens im Jahr 2019 werden vier verschiedene Phasen unterschieden. Der Status und die Fortschritte auf dem Weg zu einem umfassenden Abkommen werden ebenfalls erörtert.

Die These konzentriert sich weiter auf das AA und analysiert dessen Säulenstruktur, d.h. die Säulen politischer Dialog, Zusammenarbeit und Handel. Anschließend werden Schlüsselaspekte der AA wie regionale Integration, Warenhandel, Ursprungsregeln, Zoll und Handelserleichterungen, Maßnahmen zur nachhaltigen Entwicklung, Dienstleistungen und Niederlassungsbestimmungen, technische Hemmnisse, gesundheitspolizeiliche und pflanzenschutzrechtliche Maßnahmen sowie das öffentliche Auftragswesen untersucht. Schließlich untersucht die Arbeit die sozialen, wirtschaftlichen und ökologischen Auswirkungen des Assoziierungsabkommens zwischen der EU und dem Mercosur sowie die Herausforderungen und Chancen für die Beteiligten.

Schlüsselwörter: Europäische Union, Mercosur, Assoziierungsabkommen, Integration, Verhandlung, sozioökonomische und ökologische Auswirkungen.

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List of Abbreviations

AA	Association Agreement
ALADI	Latin American Integration Association
ALALC	Latin American Free Trade Association
AMR	Against Antimicrobial Resistance
ARGM	High Representative of Mercosur
BNC	Bi-regional Negotiations Committee
CAP	Common Agricultural Policy
CBS	Statistics Netherlands / Centraal Bureau voor de Statistiek
CCM	Mercosur Trade Commission
CELAC	Community of Latin American and Caribbean States
CET	Common External Tariff
CFSP	Common Foreign and Security Policy
CGE	Computable General Equilibrium Analysis
CJEU	Court of Justice of the EU
CMC	Council of the Common Market
CO ₂	Carbon dioxide
CUT	Central Única dos Trabalhadores
DS	Dispute Settlement
EC	European Commission
ECA	European Court of Auditors
ECB	European Central Bank
ECLAC	Economic Commission for Latin America and the Caribbean
ECR	European Conservatives and Reformists
ECSB	European Council for Small Business and Entrepreneurship
ECSC	European Coal and Steel Community
EEC	European Economic Community
EFA	European Free Alliance
EFTA	European Free Trade Association
EP	European Parliament
EPC	European Political Cooperation

EPP	European People's Party
ESCF	Economic-Social Consultative Forum
ESD	Environmental Safeguards Agreement
EU	European Union
EUMETA	EU-Mercosur Trade Agreement
EURATOM	European Atomic Energy Community
FDI	Foreign Direct Investment
FLAR	Latin American Reserve Fund
FOCEM	Structural Convergence of Mercosur
FTA	Free Trade Agreement
FTAA	Free Trade Area of the Americas
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
GCA	Global Center on Adaptation
GDP	Gross Domestic Product
GHG	Greenhouse gases
GIs	Geographical Indications
GMC	Common Market Group
GMO	Genetically Modified Organisms
GPA	Government Procurement Agreement
IBRD	International Bank for Reconstruction and Development
ID	Identity and Democracy
IEC	International Electrotechnical Commission
ILO	International Labour Organisation
IP	Intellectual Property
ISM	Social Institute of Mercosur
ISO	International Organization for Standardization
ITU	International Telecommunication Union
JPC	Joint Parliamentary Commission
LAC	Latin America and the Caribbean
LAFTA	Latin American Free Trade Association
LAIA	Latin American Integration Association
LSE	London School of Economics and Political Science

MAS	Mercosur Administrative Secretariat
MEA	Multilateral Environmental Agreements
MEPs	Members of the European Parliament
MERCOSUR	Southern Common Market
NAFTA	North American Free Trade Agreement
NGO	Non-Governmental Organisation
NO _x	Nitrogen Oxides
OIE	World Organisation for Animal Health
OLAF	European Anti-Fraud Office
PANByCC	National Action Plan for Forests and Climate Change
PARLASUR	Parliament of Mercosur
QMV	Qualified majority voting
REX	Register of Exporters System
RIVM	Public Health and the Environment
S&D	Group of Socialists and Democrats
SACU	Southern African Customs Union
SAM	Administrative Secretariat of Mercosur
SIA	Sustainability Impact Assessment
SM	Mercosur Secretariat
SMEs	Small and Medium-sized Enterprises
SML	System of Payments in Local Currencies
SO ₂	Sulfur dioxide
SPS	sanitary and phytosanitary
TBT	Technical Barriers to Trade
TEC	Treaty establishing the European Community
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the EU
The Left	Stalwart Left - GUE/NGL
TM80	Treaty of Montevideo
TPP	Transpacific Partnership
TPR	Permanent Review Tribunal or The Permanent Court of Review
TSD	Trade and Sustainable Development
UE27-LAC	European Union - Latin America and the Caribbean

UK	United Kingdom
UNDP	United Nations Development Programme
UPS	Social Participation Support Unit
US	United States
US\$	United States dollar
WIFO	Austrian Institute for Economic Research
WIIW	Vienna Institute for International Economic Studies
WTO	World Trade Organization

Introduction

The interregional relations between Mercosur and the EU have been marked since the 1990s by an intercontinental cooperation project seeking to deepen cooperation and integration between geographically distinct regions. Among others, the project evolved over more than two decades, aiming at establishing a comprehensive strategic partnership encompassing not only trade but also areas such as investment, political cooperation, sectoral dialogue, and sustainable development, strengthening the political, social, and economic ties between the regions and promoting stability, joint growth, and sustainable development.

The AA signed in 2019 between the EU and Mercosur, known as EUMETA, emerges as a historical milestone and a turning point in trade relations between these two important regions. EUMETA promises to become an economic integration and cooperation of great potential, as together, EU and Mercosur hold 25% of the world's GDP and encompass a population of 780 million people. With such magnitude, the agreement arouses interest and raises fundamental questions about its effectiveness, repercussions, and conformity with today's social, economic, and environmental concerns.

Given the breadth and magnitude inherent in the AA forged between the EU and Mercosur, this academic research seeks to understand its potential implications upon social, economic, and environmental domains after the agreement's implementation. However, prior to delving into an in-depth exploration of the agreement's consequences and the multifaceted issues at hand, it is imperative further to develop a comprehensive understanding of the key players. Therefore, an effort is required to better understand these actors through their intricate integration processes, institutional foundations, governing bodies, and decision-making mechanisms. With this comprehensive picture, a comparative analysis is done to understand and assess whether asymmetries extend into the negotiation process that has persevered for over two decades.

Therefore, the thesis is divided into five chapters. The first one is dedicated to the EU. A historical overview offers a panoramic view of the EU integration process, its founding Treaties, structure, and supranational institutions. Mercosur becomes the exclusive focus of study in the second chapter. Thus, the historical context of Mercosur's integration process, starting with the first attempts at integration in Latin America, is presented. Then its structure, governing bodies, and decision-making process.

The study demonstrates the significant differences between the two blocs in the third chapter. A comparative study between the two blocs explores their similarities and differences in integration processes, institutional formats, legal systems, and decision-making. Likewise, the EU monetary integration is seen, and Mercosur is also compared.

Such differences will carry weight when negotiating a project as large as the AA between Mercosur and the EU. In this context, the fourth chapter deals with the negotiation process that lasted more than 20 years. To this end, it begins with the historical background and the first stages of the negotiation process. It then analyses the first term signed by both blocs, the 1995 Interregional Framework Cooperation Agreement, and the subsequent era until 1999. Finally, the EUMETA negotiation is divided into four distinct phases. The first phase goes from 1999 to 2004. The second, considered one of mutual disinterest, is marked from 2004 to 2010. The resumption of negotiations starts in the third phase, from 2010 to 2016. And finally, the fourth stage, marked by the exchange of proposals, was from 2016 until the signing of the AA in 2019.

Lastly, the study presents its fifth chapter, which focuses on a significant milestone in EU-Mercosur trade relations: the Agreement in Principle. This chapter outlines the structure of the agreement, which encompasses political dialogue, cooperation, and trade. A thorough analysis of the Agreement in Principle follows, examining its essential aspects. Furthermore, the study presents a range of perspectives on the EU-Mercosur AA's social, economic, and environmental impacts. By presenting differing opinions, the study provides a comprehensive overview of the various viewpoints surrounding the agreement's implications.

The methodology used in this study adopts a comprehensive approach, drawing on a systematic review of relevant legal literature and an analysis of official documents and various academic sources. Searches of the official websites of the relevant institutions and a close examination of the reports of the negotiating committees also served as sources for this thesis. To develop a nuanced understanding of the Agreement in Principle, emphasis was placed on the use of studies provided by the respective institutions, with particular attention to the study released by the European Commission prepared by the prestigious London School of Economics. This seminal work served as a basis for the presentation of the analysis of the prospects of the AA. In addition, the studies commissioned by Austria, the Netherlands and Ireland and those presented by the Bank of Spain and other non-governmental organisations were used in this research, allowing for a deeper understanding of their projections regarding the expected

impacts. This methodological approach, based on carefully selected sources, conferred greater solidity and grounding to the conclusions of this study.

1. European Union

The EU is a leading political, monetary, and economic union that brings together 27 European countries. It was created through a series of binding agreements to foster unity, collaboration, and integration among European nations. Its primary goal is to promote peace and economic stability in Europe.¹

The EU founders envisioned a future where the member states would boost interdependence and peace through sharing sovereignty in specific matters. In other words, the EU operates on the principle of supranationalism, where the member states share sovereignty in specific areas, including coal and steel production, trade, and nuclear energy.² Therefore, it is governed by its own set of institutions formed by the member states, such as the EP, the Council of the EU, the European Commission, and the European Court of Justice.³

The EU's single market enables the unrestricted flow of goods, capital, services, and people, enhancing the quality of life for individuals and diminishing poverty levels throughout Europe. It faces global challenges such as climate change, migration, and terrorism. It provides financial assistance to developing areas of the world to stimulate economic growth, advancing democracy and human rights⁴.

1.1 The Historical Context of the Union in Europe

The Great War, also known as the First World War (1914-1918), was widely regarded as one of the most devastating conflicts in history. Its far-reaching consequences transformed Europe and profoundly impacted the course of the 20th century. As a result, the First World War was strongly influenced by military alliances, namely the Triple Alliance (Germany, the Austro-Hungarian Empire and the Ottoman Empire) and the Triple Entente (France, Russia, Italy and England). These alliances played an important role in motivating the conflict. However, the direct cause of the War was the assassination of Archduke Franz Ferdinand, Austria-Hungary's

¹ Archick K, 'The European Union: Questions and Answers' (*Congressional Research Service*, 6 February 2023) <<https://crsreports.congress.gov/product/pdf/rs/rs20372>> accessed 2 March 2023

² Ibid

³ Eyo IA and Akpan EB, 'The European Union: An Analysis of Its Organs, Successes and Failures' (*Research and Scientific Innovation Society*, September 2021) <<https://www.rsisinternational.org/journals/ijriss/Digital-Library/volume-5-issue-9/103-114.pdf>> accessed 23 March 2023

⁴ European Parliament, *Fact Sheets on the European Union* (Office for Official Publications 2009)

rightful heir to the throne, in 1914. The battles during the First World War were characterised by extreme violence.

By the end of 1918, Germany found itself alone in battle and on the brink of collapse. In 1919, with the monarchy overthrown, it negotiated *laissez-faire*, the Treaty of Versailles, with Britain and France. The Treaty imposed heavy war reparations on Germany and severely limited its sovereignty. Reparations greatly drained the German economy, leading to hyperinflation and a severe political and economic crisis. This background later led to the founding of the Nazi Party.

The First World War greatly impacted Europe's geopolitics and the world, leading to significant territorial and political changes. In addition to Germany, the Austro-Hungarian Empire and the Ottoman Empire also faced severe consequences, creating new European states such as Austria, Hungary, Czechoslovakia, Yugoslavia, and Poland.

The Russian Revolution of 1917 was also a consequence of the First World War and led to Czarism's fall and the establishment of a communist government. This has brought independence to Finland, Estonia, Latvia, and Lithuania. There was a persistent and aggressive wave of nationalism in Western Europe, making European integration through voluntary agreements quite difficult. On the other hand, the United States became stronger after World War I and played a more important role in international politics.

The 1930s was a gloomy decade in Europe, marked by the economic crisis and the outbreak of War. In Germany, Spain, Italy, and other countries in Central and Eastern Europe, fascism appeared unstoppable. Hitler led the expansionism and militarism of Nazi Germany towards the end of the 1930s, and with the invasion of Poland, the Second World War began.

The Second World War involved dozens of countries and spread across Europe and other continents like Asia, Oceania, and Africa. Dozens of countries were involved and divided into two groups: Allies and Axis. The Allies consisted mainly of the United Kingdom (UK), France, the Soviet Union, and the United States. On the other side, Germany, Italy, and Japan were the main members of the Axis.⁵ This War was defined by high cruelty, such as the Holocaust and

⁵ Torbiörn KM, *Destination Europe: The Political and Economic Growth of a Continent* (Manchester University Press 2003)

the use of nuclear weapons, leaving a massive destruction trail among its participants. It formally ended in May 1945 when Germany surrendered.

1.1.1 Post-World War II Reconstruction and Cooperation

The conclusion of World War II marked a pivotal moment in European history, as the devastating consequences of the War and the horrific atrocities of the Holocaust underscored the urgent need for a new approach to ensure lasting peace and stability in Europe. In response to these events, European integration emerged as a viable solution to prevent future conflicts and foster economic cooperation among nations.⁶

The involvement of the United States government was indispensable in both the economic and military realms of the post-World War II arrangement in Western Europe. Equally significant was the reconciliation between France and Germany in establishing a strong and prestigious European community on the global stage⁷.

The worsening of poverty in Europe and the rise of anti-democratic and ultra-nationalist movements further emphasised the necessity of regional integration. Additionally, there was widespread apprehension regarding the expansionist ambitions of the former Soviet Union, particularly regarding the dissolution of Communist opposition parties in Poland and Hungary in the late 1940s.⁸ The chaotic circumstances experienced by Europeans due to two major conflicts occurring in rapid succession demanded a swift yet robust response to restore industrial and commercial activities across the continent.

1.2 Treaty of Paris

The aftermath of the devastating Second World War and the constant spectre of an East-West confrontation underscored the critical importance of Franco-German reconciliation. Recognising this urgency, Robert Schuman proclaimed on 9 May 1950 that Europe should be constructed through tangible accomplishments that would forge a de facto solidarity.⁹

Based on this guiding principle, France, Italy, Germany, and the Benelux countries came together and signed the Treaty of Paris in 1951, initiating the process of European integration.

⁶ Loth W and Hogg RF, *Building Europe: A History of European Unification* (De Gruyter Oldenbourg 2015)

⁷ Ibid

⁸ Ibid

⁹ Ibid 5

This Treaty established the European Coal and Steel Community (ECSC) as its central pillar. The choice of coal and steel as focal industries was deliberate, as they symbolised power and economic independence. By pooling the resources of France and Germany, the Treaty aimed to reap clear economic benefits and end historical rivalry and foster regional peace.¹⁰

The Treaty of Paris set forth various objectives, particularly modernising the coal and steel sectors. It sought to ensure the unhindered movement of goods and unrestricted access to production sources among member countries.¹¹ The Treaty also established mechanisms for continuous market monitoring to prevent any distortions that could give rise to production quotas and to enforce competition rules. The ECSC launched the European integration process and faithfully fulfilled its role until 13 July 2002, when it celebrated its 50th anniversary as stipulated in Article 97 of the Treaty of Paris.¹²

1.3 Treaty of Rome

In 1957, the member countries of the ECSC came together to sign the Treaty of Rome. This historic event established the European Economic Community (EEC) and the European Atomic Energy Community (Euratom).¹³ This Treaty holds immense significance in Europe's post-war history, primarily due to its ambitious goal of fostering a united, peaceful, and prosperous Europe, transcending past divisions and driving economic development in the region.¹⁴

The EEC aimed to stimulate economic cooperation among Western European countries to ensure stability and economic progress and to prevent future wars. Therefore, a common free-trade area was established between the six signatory countries (Belgium, Germany, France, Italy, Luxembourg, and the Netherlands), allowing goods and services to move freely.¹⁵ That was an important step in Europe's economic integration and promoting trade and economic growth.

¹⁰ Sokolska I, 'The First Treaties: Fact Sheets on the European Union: European Parliament' (*Fact Sheets on the European Union* | *European Parliament*, May 2022)

<<https://www.europarl.europa.eu/factsheets/en/sheet/1/the-first-treaties>> accessed 2 March 2023

¹¹ Bell TM, 'The Economics of the European Union' (*Penn State University Libraries*, Spring 2012)

<https://honors.libraries.psu.edu/files/final_submissions/1029> accessed 2 March 2023

¹² McCormick J, *Understanding the European Union: A Concise Introduction* (Palgrave Macmillan 2005)

¹³ Amato G and others, *The History of the European Union Constructing Utopia* (Hart 2020)

¹⁴ Raskulla S, 'European Constitution of Corporations : Legal Personhood, Legal Powers & Legal Governance of Corporate Entities in the European Union' (*Tampere University*, 10 June 2022)

<<https://trepo.tuni.fi/handle/10024/139718>> accessed 2 March 2023

¹⁵ *Ibid* 1

Furthermore, joint institutions, such as the European Commission and the European Council, have been established to ensure the Treaty's enforcement and make decisions for the Community's welfare. The EEC met the challenge of post-war American competition by reducing barriers within Europe and stimulating European companies to greater efficiency and scale. The early years of the EEC were a period of great European optimism, and European businesses would become larger and more competitive than ever before. In 1961, the British recognised the economic dynamism of the EEC by applying for membership.

EURATOM is one of the fundamental building blocks of European construction, as nuclear energy is an important energy source for many Eastern European countries.¹⁶ Its main function is to ensure the safe and peaceful development of nuclear energy in Europe based on cooperation between European countries in the research and development of nuclear technologies and their use for peaceful purposes.

Besides promoting research and ensuring technical knowledge dissemination, it also establishes uniform safety standards to protect the environment, the population and the health of workers in the sector. Another important function is to ensure safe use to prevent nuclear accidents.¹⁷

In summary, the importance of the EURATOM Treaty for Europe is invaluable, as cooperation and collaboration between European countries in the nuclear energy sector has been crucial for developing nuclear technology in the region.

1.3.1 Single European Act and the Internal Market

The member states signed the Treaty of Merger in 1965, unifying the executive bodies of the three European Communities (ECSC, EEC and Euratom) into one Council and Commission. This event represented an important step in the evolution of integration, allowing more efficient and centralised management of the common policies of these communities.¹⁸

¹⁶ 'Treaties and the European Parliament' (*European Parliament*) <<https://www.europarl.europa.eu/about-parliament/en/in-the-past/the-parliament-and-the-treaties>> accessed 2 March 2023

¹⁷ Ibid

¹⁸ Kelly SL, 'The European Union in the Asia-Pacific: Current Representations and the Potential Impact of the Eas' (*Core*, October 2009) <<https://core.ac.uk/download/pdf/35462635.pdf>> accessed 2 March 2023

The Merger Treaty represented a major milestone in European integration, which later led to the current European Union model. In addition, it enhances Europe's cohesive image on the international stage.

The Single European Act, adopted on 28 February 1986, marked a significant milestone in European integration. The Intergovernmental Conference, held under the Italian presidency starting on 9 September 1985, led to the Act's formulation and subsequent adoption in Brussels (Belgium) and The Hague (the Netherlands). This Act represented the first revision of the original treaties of Paris (1951) and Rome (1957), playing a crucial role in strengthening and deepening European integration.

By amending previous treaties, the Single European Act introduced several important changes. It established the European Communities and formalised European political cooperation.¹⁹ Additionally, it brought about the official recognition of the title "European Parliament" and expanded its legislative powers by introducing cooperation and consent procedures. Consequently, the EP gained a more prominent role in the legislative process through the "cooperation procedure."²⁰

Significantly, the Act empowered the EP to influence the Council of Ministers, the sole legislative body, by requiring unanimous votes to pass laws opposed by the EP. This fact allowed the EP to "veto" any law if it found support among the Council members, thereby enhancing its authority and garnering increased respect.

Furthermore, the Single European Act introduced a political dimension by formally establishing the European Council. This Council managed European Political Cooperation (EPC), which has since evolved into the Common Foreign and Security Policy (CFSP). The Act also conferred new powers upon the European Community, including formulating policies related to environmental protection, education, research, and technological development. In summary, the Single European Act of 1986 played a pivotal role in consolidating and intensifying European integration by amending previous treaties, strengthening the EP, establishing the European Council, and expanding the powers of the European Community in various policy areas.

¹⁹ Ibid 12

²⁰ Hix S, *The Political System of European Union* (Palgrave Macmillan 2005)

1.4 The Treaty of Maastricht and the Birth of the European Union

The Maastricht Treaty, signed in 1992, was a milestone for the EU, expanding its cooperation beyond the economic aspect. Its importance lies in the creation of the Monetary Union and the single currency, the Euro, which strengthened the economic integration of the member states. It also established three 'pillars' that helped structure how EU countries work together.

The first pillar covered the policies common to all EU countries, such as the economy and trade. The second pillar dealt with foreign policy and security matters so that EU countries could cooperate on global issues. The third pillar focused on justice and home affairs, such as immigration and fighting crime. This new structure allowed the EU to address different areas of interest in a more comprehensive and coordinated way, which helped to strengthen the EU's role in the world.

The EP legislative and supervisory powers were strengthened by introducing the co-decision procedure and extending the cooperation procedure. Under the new Treaty, the EP now has the right to invite the Commission to submit legislative proposals on matters that, in its view, require new community legislation.²¹ The Commission, as a whole, must be approved by the EP, which appoints the European Ombudsman.

The Treaty also focused on the responsibility for monetary policy, the economy, and the Monetary Union. According to the Maastricht Treaty, the second stage of the Monetary Union would be in 1994, and the final one in January 1999. Furthermore, it was agreed to create a European Central Bank (ECB), which, together with national central banks, formed the European System of Central Banks.²²

The Court of Justice of the European Community (now called the European Court of Justice) has gained the power to impose fines if an EU country fails to comply with the Court's judgments. That means the Court can impose financial penalties if a Member State does not obey court orders.

A major innovation introduced by the Maastricht Treaty was the creation of European citizenship. From this Treaty onwards, anyone citizen of one of the EU countries automatically becomes a citizen of the EU and has an additional nationality. This citizenship guarantees the

²¹ Consolidated version of the Treaty on European Union [1992] OJ C224/1

²² Ibid

right to move freely and live in any EU country. Furthermore, EU citizens also have the right to vote and stand as candidates in local elections²³ and in the EP, representing the city where they live, with the same rights as nationals of that country.²⁴

European citizenship also gives the right to consular and diplomatic protection from any EU country when the person is in a country outside the EU and their home country has no diplomatic representation there. In addition, the Maastricht Treaty gave citizens the right to petition the EP on matters they consider relevant.

1.4.1 The Treaties of Amsterdam, Nice and Lisbon

The Amsterdam Treaty, ratified in June 1997, brought about significant structural changes to the EU and introduced amendments to provisions found in previous treaties, most notably the Maastricht Treaty. This Treaty reinforced the prominence of human rights within the EU, incorporating the principles of the Schengen Agreement into the EU's legal framework. Additionally, it revoked the special exceptions previously granted to the UK in social policy. Moreover, the Treaty established an area of freedom, security, and justice, bolstering the EU's capacity to take concerted action in foreign policy matters, ultimately fostering a more robust and secure Europe.²⁵

Nevertheless, despite its significance, the Amsterdam Treaty faced limitations regarding institutional advancements. Consequently, the member states mutually recognised the necessity of conducting subsequent negotiations to address unresolved matters before any future enlargement. Aiming to preserve the ongoing European integration process, the Treaty also introduced the principle of enhanced cooperation, which empowered member states desiring closer collaboration through the institutions and mechanisms of the EU without undermining the overarching objectives of European unity.²⁶

The Amsterdam Treaty had profound and symbolic repercussions as it laid the foundations for the future integration of ten new Member States, symbolising a united Europe after the historic collapse of the Iron Curtain. In particular, it assimilated the Schengen Convention into EU law, promoting open borders between twelve Member States. In addition, the Treaty strengthened

²³ Charter of Fundamental Rights of the European Union | [2012] | OJ C326/391

²⁴ Marias E, 'The Right to Vote and Stand for Election to the European Parliament' (*University of Pittsburgh*, 1994) <http://aei.pitt.edu/6401/1/Scop94_2_3.pdf> accessed 21 June 2023

²⁵ Ibid 13

²⁶ Ibid 23

the Common Foreign and Security Policy by appointing a High Representative to lead the EU's foreign affairs. It extended the authority of Europol, the European police agency.

Meanwhile, the Treaty of Amsterdam substantially changed the EU's decision-making procedures. It extended the scope of qualified majority voting to cover selected foreign policy issues. It gave the European Commission a role in justice and home affairs previously held by the European Council. It introduced the concept of enhanced cooperation, allowing certain Member States to work more closely together on issues that go beyond the scope of the EU treaties without unanimity. At the same time, the Treaty underlined the principle of subsidiarity, emphasising that decisions should be taken at the most appropriate level, whether national, regional or European, thus reinforcing the responsibility of member states to deal with internal affairs.

The Amsterdam Treaty also introduced several institutional reforms, including strengthening the role of the EP in EU legislation and budgetary matters. It also gave greater powers to the Committee of the Regions, representing the EU's regions and cities. In essence, the Amsterdam Treaty was a significant milestone in the evolution of the EU. Despite its inherent limitations, it has helped to strengthen the Union and to prepare it for future challenges.²⁷

The Treaty of Nice, signed in February 2001, brought significant innovations to the EU. It aimed to reform the Treaty of European Union (TEU) and the Treaty establishing the European Community (TEC), especially concerning the EU's institutional structure and decision-making system.²⁸ In other words, the Treaty aimed to restore and increase the efficiency and legitimacy of EU institutions and prepare them for their subsequent major enlargement.²⁹

Preceding the Treaty of Nice, the Council of the EU employed a weighted voting mechanism whereby member states were allocated votes corresponding to their respective population sizes. However, the Treaty of Nice ushered in a transformative change by implementing a new system known as qualified majority voting (QMV). This system mandates that Council decisions must garner the support of a defined number of member states representing a specified proportion of the total EU population. While the intricate rules governing QMV are multifaceted and

²⁷ Ibid 18

²⁸ Treaty of Nice amending the Treaty on European Union | [2001] | OJ C/80.

²⁹ Ibid 10

contingent upon the type of decision at hand, the overarching objective is to ensure that Council decisions reflect the collective will of a broad cross-section of the EU's populace.³⁰

Overall, the changes to voting power in the Council introduced by the Treaty of Nice were aimed at making decision-making in the EU more efficient and democratic and to reflect better the interests and opinions of the EU's citizens.

The method for determining the composition of the European Commission has changed.³¹ The composition changed from two commissioners for larger countries (France, Germany, Italy, Spain, and the UK) and one commissioner for other countries to a maximum of 27. Each member country has the right to designate one commissioner through a rotation system on an equal basis. The designation of the President of the Commission and commissioners will now be a qualified majority in the Council. The Commission president will have increased powers over the college of commissioners, including the distribution or reorganisation of responsibilities among commissioners and the possibility of dismissing a commissioner with the approval of the college by a simple majority.³²

*The configuration of the European Parliament has been revised, and its powers have been extended; the number of seats has been expanded to 732 members in the EU with 27 member countries; the joint decision-making process (today called the ordinary legislative procedure) has been extended to almost all areas in which the Council decides by the qualified majority; the Parliament now has the right to take a matter to the Court of Justice of the EU, as does a member country or the Commission.*³³

The Court of Justice of the EU has been radically reformed, meeting in different formations, such as chambers of three to five judges, a grand chamber of 11 judges, or a plenary session with one judge per EU country. The General Court's powers have been extended to some categories of reference for preliminary rulings. The Council may establish subsidiary courts by unanimity to deal with special questions of law in the first instance.

In summary, the Treaty of Nice aimed to reform the Union's institutional structure to withstand the challenges of a new enlargement. With the Treaty of Nice, the Commission composition

³⁰ Ibid 18

³¹ Ibid 14

³² Ibid 14

³³ Ibid 1

was adjusted, the Parliament's legislative and supervisory powers were increased, and qualified-majority voting was extended to more areas within the Council.³⁴

The Treaty of Lisbon, signed in 2007 and implemented on 1 December 2009, sought to enhance the democratic nature, efficiency, and transparency of the EU as a supranational entity. A pivotal aspect of this Treaty was the renaming of the European Community to the Treaty on the Functioning of the EU (TFEU), with the term "Community" replaced by "Union" throughout the document, effectively establishing the Union as its legal successor.³⁵

One of the central elements of the Treaty of Lisbon revolves around the principles of democracy, articulated through democratic equality, representative democracy, and participatory democracy. These principles find expression in mechanisms such as citizens' initiatives, which enable citizens' active participation in the EU's decision-making processes. Although the Charter of Fundamental Rights is not explicitly incorporated into the Lisbon Treaty, it still holds legally binding status through Article 6(1) of the TEU. This provision grants the Charter the same legal standing as the Treaties themselves, ensuring its protection of fundamental rights within the EU legal framework.

The Lisbon Treaty has not brought any new exclusive competencies to the EU. Nevertheless, it substantially changed how the Union exercises its current powers and some new shared responsibilities. These changes were primarily aimed at strengthening the participation and protection of citizens while establishing a new institutional structure and improving decision-making processes with a view to greater efficiency and transparency. Thus, a high level of parliamentary control and democratic accountability was achieved, promoting more solid governance and accountability at the level of the Union.

Additionally, the Lisbon Treaty marked a crucial moment in clarifying the powers of the EU by defining three distinct types of competences. Firstly, exclusive competence exists, where only the Union has the authority to legislate, and the Member States are responsible for implementing those laws. Next, the shared competence, where Member States are free to legislate and adopt legally binding measures if the Union has not yet acted to do so. Finally,

³⁴ Ibid 28

³⁵ Pavy E, 'The Treaty of Lisbon: Fact Sheets on the European Union: European Parliament' (*European Parliament*, May 2022) <<https://www.europarl.europa.eu/factsheets/en/sheet/5/the-treaty-of-lisbon>> accessed 3 March 2023

there is supporting competence, in which the EU adopts measures to support or supplement the policies of the Member States.

Moreover, it has given the EU full legal personality, granting it the ability to sign international treaties within the areas of competence conferred upon it or to join international organisations. It is worth noting that Member States may only sign international agreements that align with EU law, ensuring cohesion and legal compatibility between the parties involved.

The Treaty of Lisbon marked a significant step forward by establishing, for the first time, a formal procedure for Member States wishing to withdraw from the EU, under constitutional provisions, in particular Article 50 of the Treaty on European Union. Moreover, this Treaty fully consolidated the inclusion of the remaining elements of the third pillar of freedom, security and justice, covering police and judicial cooperation in criminal matters, within the scope of the first pillar.³⁶ A direct consequence of this integration process was overcoming the old intergovernmental structure since the acts adopted in this sphere are now submitted to the ordinary legislative procedure, involving a qualified majority and co-decision. In this context, the legal instruments of the Community method, such as regulations, directives and decisions, are now widely used unless specific provisions state otherwise. This remarkable transformation has consolidated the harmonisation of approaches and procedures, further strengthening the cohesion and effectiveness of European policies.³⁷

A significant milestone was established by then, allowing the EP to assume the prerogative of proposing amendments to the treaties in parallel to the already established Council and Commission. These modifications were designed to optimise operational efficiency, strengthening the EU's position as a leading player in the foreign policy arena and enhancing the democratic dimension and transparency intrinsic to the European project.

In this regard, the Treaty of Lisbon established two new leadership figures - the President of the European Council and the High Representative of the Union for Foreign Affairs and Security Policy. Together, they play the primary role of the EU's principal diplomatic advocates.

³⁶ European Parliament, 'The Historical Development of European Integration' (*European Parliament*, June 2018)

<[https://www.europarl.europa.eu/RegData/etudes/PERI/2018/618969/IPOL_PERI\(2018\)618969_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/PERI/2018/618969/IPOL_PERI(2018)618969_EN.pdf)>
accessed 2 March 2023

³⁷ Ibid 35

In a single personality, the President of the European Council leads the meetings of the EU Heads of State and Government. As coordinator and spokesman, he aims to ensure policy continuity and achieve consensus among the participating nations. Meanwhile, the High Representative of the Union for Foreign Affairs and Security Policy is also the EU's senior diplomat. They simultaneously represent the Council of Ministers (and therefore speaks on behalf of the Member States in foreign policy matters) and holds the Vice-President of the European Commission function, responsible for handling most of the Commission's diplomatic role and external assistance programs.³⁸

Moreover, with the overarching goal of expediting the decision-making process within the EU, the Treaty introduced profound alterations to the voting system, transitioning from a unanimous consensus among member states in the Council of Ministers to a qualified majority voting mechanism. Notably, this pivotal amendment broadened the scope of qualified majority voting to encompass policy domains that were hitherto contingent upon unanimous agreement among member states. By extending the reach of this revised voting procedure, the Treaty sought to enhance the efficiency and effectiveness of EU governance, enabling more agile and streamlined decision-making processes at the supranational level.

This Treaty greatly increased the legislative power of the EP. That is because it increased its authority within the budgetary context of the EU. The "co-decision" procedure was extended to multiple policy domains, covering relevant areas such as agriculture and home affairs. In this sense, the EP has gained an equitable position, sharing a weight proportional to that of the Member States within the Council of Ministers, under the EU legislative sphere, except for some particularities permeating foreign policy and defence.

The Lisbon Treaty also brought a major innovation with the introduction of Article 50 of the Treaty on the European Union, which established the procedural provisions for a Member State's withdrawal from the EU. Thus, in the case of interest in withdrawal, the Member State must notify the European Council of its intentions by invoking this article. From there, the process of negotiations for withdrawal begins. That is exactly what happened with the so-called Brexit from 2016 to 2020.³⁹

³⁸ Ibid 1

³⁹ Ibid 1

1.5 The European Union Member Countries

The EU currently comprises a group of 27 European countries. However, its process of growth and development is an intricate path of integration that can be traced back to the landmark Treaty of Rome in 1957. In this matter, the Benelux countries (Belgium, the Netherlands and Luxembourg), Germany, France, and Italy, were the six founding countries of the European Economic Community (EEC)⁴⁰.

Over time, new members were gradually incorporated. In 1973, Denmark, Ireland and the UK inaugurated the first process of expansion of the Community⁴¹. Greece's accession in 1981 marked the tenth nation to join the EEC⁴², followed by Spain and Portugal in 1986⁴³. In 1992, a major milestone was reached with the transformation of the EEC into the EU through the conclusion of the Maastricht Treaty. In 1995, the number of members was increased to 15 with the accession of Austria, Finland and Sweden⁴⁴.

The EU has continued to expand. In 2004, ten new members joined the EEC: Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia, and Slovenia joined the ranks of the EU⁴⁵. In 2007, both Bulgaria and Romania became full members⁴⁶. Six years

⁴⁰ Treaty establishing the European Economic Community (EEC Treaty) [1957] OJ L1957E/TXT

⁴¹ Treaty of Accession of the Kingdom of Denmark, Ireland, the Kingdom of Norway, and the United Kingdom of Great Britain and Northern Ireland to the European Communities [1972] OJ L73/15

⁴² Treaty between the Kingdom of Belgium, the Kingdom of Denmark, the Federal Republic of Germany, the French Republic, Ireland, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the United Kingdom of Great Britain and Northern Ireland (Member States of the European Communities) and the Hellenic Republic concerning the accession of the Hellenic Republic to the European Economic Community and to the European Atomic Energy Community [1979] OJ L291/9-192

⁴³ Treaty between the Kingdom of Belgium, the Kingdom of Denmark, the Federal Republic of Germany, the Hellenic Republic, the French Republic, Ireland, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the United Kingdom of Great Britain and Northern Ireland (Member States of the European Communities) and the Kingdom of Spain and the Portuguese Republic concerning the accession of the Kingdom of Spain and the Portuguese Republic to the European Economic Community and to the European Atomic Energy Community [1985] OJ L302/9-497

⁴⁴ ACT concerning the conditions of accession of the Kingdom of Norway, the Republic of Austria, the Republic of Finland, and the Kingdom of Sweden and the adjustments to the Treaties on which the EU is founded [1994] OJ C241/9-404

⁴⁵ Treaty between the Kingdom of Belgium, the Kingdom of Denmark, the Federal Republic of Germany, the Hellenic Republic, the Kingdom of Spain, the French Republic, Ireland, the Italian Republic, the Grand Duchy of Luxembourg, the Kingdom of the Netherlands, the Republic of Austria, the Portuguese Republic, the Republic of Finland, the Kingdom of Sweden, the United Kingdom of Great Britain and Northern Ireland (Member States of the EU) and the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Poland, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia, and the Slovak Republic to the EU [2003] OJ L236/17-93

⁴⁶ Treaty between the Kingdom of Belgium, the Czech Republic, the Kingdom of Denmark, the Federal Republic of Germany, the Republic of Estonia, the Hellenic Republic, the Kingdom of Spain, the French

later, it was Croatia's turn to join the group⁴⁷. At that time, the EU consisted of 28 member states.

A historic moment with significant repercussions was the Brexit, which took place on 31 January 2020, when the UK officially ended its participation in the EU. This separation process was accompanied by a transition period until 31 December 2020. During this period, the UK and the EU engaged in negotiations to establish an exit agreement, culminating in the conclusion of a trade agreement on 24 December 2020. Since then, the EU has consisted of 27 member states.⁴⁸

The process of accession to the EU is outlined in Article 49 of the Treaty on European Union, which sets out the criteria for joining the EU, known as the Copenhagen Criteria. These criteria include respect for democracy, the rule of law, human rights, and the presence of stable, functioning democratic institutions, as well as a functioning market economy. The accession process involves four basic steps: application, candidate status, negotiations, and accession.

A candidate country must apply for EU membership, and the European Commission assesses the country on these criteria. If the country meets the criteria, the Commission recommends the candidate's status, and negotiations can begin.

The negotiation process involves 35 chapters of EU law, known as the *Acquis Communautaire*, which includes treaties, legislation, and international agreements. The candidate country must accept the *Acquis* but can negotiate with the Commission on adoption speed and possible opt-outs.

Republic, Ireland, the Italian Republic, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Grand Duchy of Luxembourg, the Republic of Hungary, the Republic of Malta, the Kingdom of the Netherlands, the Republic of Austria, the Republic of Poland, the Portuguese Republic, the Republic of Slovenia, the Slovak Republic, the Republic of Finland, the Kingdom of Sweden, the United Kingdom of Great Britain and Northern Ireland (Member States of the EU) and the Republic of Bulgaria and Romania, concerning the accession of the Republic of Bulgaria and Romania to EU [2005] OJ L 157

⁴⁷ Treaty between the Kingdom of Belgium, the Republic of Bulgaria, the Czech Republic, the Kingdom of Denmark, the Federal Republic of Germany, the Republic of Estonia, Ireland, the Hellenic Republic, the Kingdom of Spain, the French Republic, the Italian Republic, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Grand Duchy of Luxembourg, the Republic of Hungary, the Republic of Malta, the Kingdom of the Netherlands, the Republic of Austria, the Republic of Poland, the Portuguese Republic, Romania, the Republic of Slovenia, the Slovak Republic, the Republic of Finland, the Kingdom of Sweden, the United Kingdom of Great Britain and Northern Ireland (Member States of the EU) and the Republic of Croatia concerning the accession of the Republic of Croatia to the EU [2012] OJ L112/10-110

⁴⁸ Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the EU and the European Atomic Energy Community [2019] OJ C384I/1-177

The accession treaty, which is the outcome of the negotiation, must be approved by the EP, Council, and each member state. The length of accession negotiations can vary, with the average time being around five years.

The EU currently negotiates with seven countries: Albania, Moldova, the Republic of North Macedonia, Montenegro, Serbia, Turkey, and Ukraine. The Republic of North Macedonia was declared a candidate country in 2005. Montenegro got the candidate status granted in 2010. Serbia, 2012. Albania received candidate status in 2014. Moldova and Ukraine in 2022. Ukraine was declared a candidate country in 2022. Turkey was declared a candidate country in 1999, and negotiations started in 2005, but talks have been frozen since 2018 because of concerns about overrules of law and democratic backsliding.⁴⁹

Bosnia and Herzegovina, Kosovo, and Georgia are potential candidates for EU membership.

1.6 The European Union Institutions and Governance

The EU is governed by a complex network of institutional bodies working harmoniously to establish and implement critically important policies and legislation. The uniqueness of the EU structure lies in its institutional architecture and decision-making system, which is constantly evolving and improving. In essence, the EU comprises seven main institutions and more than thirty decentralised agencies that play a crucial role in the European landscape. In addition, it is worth noting that as far as the administration is concerned, there are another twenty agencies and organisations performing specific legal functions, together with four interinstitutional offices, which provide indispensable support to the EU institutions.⁵⁰

Each of these institutions has distinct and wide-ranging tasks, which vary from developing EU legislation and formulating policy to implementing such policy in specialised areas such as health, transport and the environment. Despite being geographically dispersed across the EU, these institutions work in a joint, collaborative and synergistic manner, with the primary objective of serving the EU's and its citizens' common interests.⁵¹

⁴⁹ 'The Process of EU Enlargement' (*European Union*) <<https://ec.europa.eu/eurostat/web/enlargement-countries/background>> accessed 21 June 2023

⁵⁰ 'Types of Institutions, Bodies and Agencies' (*European Union*) <https://european-union.europa.eu/institutions-law-budget/institutions-and-bodies/types-institutions-and-bodies_en> accessed 3 March 2023

⁵¹ Ibid 42

Among the seven institutions, four play a crucial role as decision-making bodies and are responsible for the governance and administration of the EU. The first of these is the European Council, which brings together the leaders of the member states, providing strategic political direction for the Union. The second institution is the European Commission, which is responsible for proposing and executing policies and safeguarding the treaties. Its third institution, the Council of the EU, is where representatives of the member states meet to take decisions and adopt legislation in close collaboration with the EP. This fourth institution is crucial in drafting laws and exercising democratic oversight.⁵²

Parliament and the other three institutions, such as the Court of Justice of the EU, the European Central Bank and the European Court of Auditors, have complementary roles and fulfil essential functions within the EU. First, the Court of Justice ensures EU law's proper application and interpretation, thus guaranteeing legal certainty. The European Central Bank is responsible for formulating and implementing the Eurozone's monetary policy. At the same time, the European Court of Auditors plays a crucial role in the financial supervision and external audit of the EU's activities.

1.6.1 European Council

The European Council represents the highest degree of political cooperation between the EU member states. Comprising the Heads of State and Governments of all EU countries, its President and the President of the European Commission, it plays a crucial role in setting the EU's political guidelines and priorities. The President of the European Council is elected by their peers for a term of 2.5 years, renewable once, and plays a role in representing the EU on the international stage.⁵³

While the European Council does not have the direct power to pass legislation, it exerts its influence by determining the EU's general direction and political agenda. In this sense, the European Council is responsible for setting policy guidelines without exercising legislative functions. Nevertheless, it can ask the European Commission to draw up proposals to address specific issues and pass them on to the Council of the EU alternatively.

In decisions taken by consensus, the European Council plays a key role in defining EU positions on complex or sensitive issues that cannot be resolved through lower levels of

⁵² Ibid 42

⁵³ Ibid 3

intergovernmental cooperation. In this way, the European Council guides other EU institutions and bodies in their work on specific issues. In addition, it is responsible for addressing and defining the EU's common foreign and security policy, considering the bloc's strategic interests and defence implications. In addition, the European Council is responsible for nominating candidates for high-level positions in the EU, such as the European Central Bank (ECB) and the European Commission.⁵⁴

1.6.2 European Commission

The European Commission has established itself as one of the most important institutions in the structure that makes up the European Union. Accumulating legislative, executive and, to some extent, judicial functions. It is around the European Commission that the Community system is organised. It is also the main interlocutor in the European Union. It is also the bloc's main interlocutor with national governments and interest groups and supervising the implementation of policies defined within the European Union.⁵⁵

It is headed by the President, elected by the European Council and composed of 27 commissioners, one from each member state appointed by their national governments and then approved by the EP. For instance, if a majority of legislators vote for a motion of no confidence, a new Commission needs to be nominated.⁵⁶

The commissioner's status is comparable to that of ministers in their national governments. Moreover, they are in charge of specific portfolios designated by the President, such as trade and competition. Yet, notwithstanding the individuality of their portfolios, the group shares decision-making power, and all relevant decisions of the European Commission are taken jointly.⁵⁷

The European Commission's powers are outlined in the Union Treaties. Most importantly, the Commission must promote the EU's general interest and ensure its member states implement its founding treaties and laws. Yet, it also shall implement the budget; exercise coordinating,

⁵⁴ Ibid 3

⁵⁵ de Pieri VSG and others, *O ABC Da Integração Europeia: Das Origens Aos Desafios Contemporâneos* (Editora IOLE 2021)

⁵⁶ DiMatteo LA, 'The European Union', *International Business Law and the legal environment: A transactional approach* (Third Edition, Routledge Taylor & Francis Group 2017)

⁵⁷ Kuijper PJ, van Ooik RH and Curtin DM, 'The Political Institutions', *The law of the European Union* (Wolters Kluwer 2018)

executive and management functions; negotiate international agreements and ensure the external representation of the Union - with the remarkable exception of foreign and security policy.⁵⁸ Finally, the Commission also has the competence to propose new EU laws, although, in practice, it also acts on the advice of the Council.⁵⁹

1.6.3 Council of the European Union

The Council of the EU, also known as 'the Council' or 'the Council of Ministers', assumes a paramount role as the main decision-making body within the EU. Comprising representatives from the governments of all 27 member states, typically ministers or ambassadors, it serves as a crucial forum for deliberation and policy formulation. Notably, the Council's presidency follows a rotational system, whereby a different member state assumes the presidency every six months, except for the Foreign Affairs Council.

The Council's importance lies especially in its ability to shape and steer the course of the EU. That is because it is responsible for setting wide-ranging policies and taking key decisions that have far-reaching implications for the Union. The Council represents the diverse interests and perspectives of each Member State, thus facilitating constructive dialogue and consensus building. Consequently, the rotating presidency fosters inclusiveness and allows different national perspectives to be considered, promoting a balanced and fair approach to decision-making.

As the EU's main legislative and executive body, the Council plays a key role in setting the Union's agenda and ensuring its efficient functioning. It exercises authority in several policy areas, including the economic, social and environmental fields. In addition, it works closely with the EP to adopt and enact legislation, reflecting the principles of democratic governance and accountability.

In short, the Council of the EU acts as a key decision-making body in the EU, involving representatives of the governments of the member states. Through its rotating presidency and

⁵⁸ Institute for European Politics, 'The Future of the EU: A Retrospective' (*Clingendael Institute*, 2009) <https://www.clingendael.org/sites/default/files/pdfs/20090400_cesp_pesters_eu_watch.pdf> accessed 28 June 2023

⁵⁹ Dubowski T, 'The European Commission', *Constitutional Law of the European Union* ('Temida 2', Wydawnictwo Stowarzyszenia Absolwentów Wydziału Prawa Uniwersytetu w Białymstoku 2011)

its inclusive nature, it encourages dialogue and consensus-building between member states, facilitating the formulation of overarching policies and decisions that shape the future of the EU. Its collaboration with the EP underlines the democratic and accountable governance of the EU, while its broad authority covers many policy areas, ensuring the achievement of the Union's objectives.⁶⁰

1.6.4 European Parliament

The EP stands as the singular institution that directly embodies and channels the collective will of EU citizens. It comprises 705 esteemed Members of the European Parliament (MEPs), elected through a direct democratic process held once every quinquennial period. The composition of this esteemed assembly adheres to the fundamental principle of proportionality, mirroring the population sizes of EU member states. Remarkably, Germany, as the most populous member state, enjoys the privilege of dispatching the largest contingent of MEPs (96), while countries of smaller demographic stature, such as Malta, Luxembourg, and Cyprus, contribute a modest complement of six representatives each.

Within the EP, these MEPs find themselves organised into seven distinctive political groups, each characterised by a unique ideological framework. Among these groups are the distinguished European People's Party (EPP), the influential Group of Socialists and Democrats (S&D), the progressive Renew Europe (Liberal), the environmentally conscious Greens/European Free Alliance (Greens/EFA), the discernibly sovereign Identity and Democracy (ID), the principled European Conservatives and Reformists (ECR), and the stalwart Left - GUE/NGL (The Left). It is through these groups that the diverse political landscape of the EP finds expression, working collectively to shape the trajectory of EU policies.

Under the scope of the EP's duties, there are several important powers and responsibilities. Firstly, the Parliament has the authority to create laws jointly with the Council of the EU, addressing issues of major importance. In addition, it plays a crucial role in controlling and approving the EU budget, exercising careful oversight to ensure that it is executed prudently. It also exerts its influence by adopting non-binding resolutions, providing a space to express its collective position on urgent matters. As evidence of its international relevance, the

⁶⁰ 'The Council of the European Union' (*Consilium*, 1 June 2022)
<<https://www.consilium.europa.eu/en/council-eu/>> accessed 3 March 2023

Parliament holds the power to approve treaties and agreements related to the accession of new member states to the EU. Committed to democratic values, the EP plays a key role in closely supervising the other EU institutions, holding them accountable and exercising careful control. Its impact is most significant during the election of the President of the European Commission when approving the Commission as a whole and, finally, when granting the discharge, confirming the proper execution of the EU budget.⁶¹

1.6.5 European Court of Justice

Regarding the interpretation of the law, the national courts of the EU countries have an obligation to ensure the correct application of EU law. However, the courts of different countries may interpret it differently and may request clarification from the CJEU.⁶² Infringement proceedings, brought against a national government for failing to comply with EU law, can result in a fine and are initiated by the European Commission or another EU country. In action for annulment, the Court may be asked to annul an act contrary to the Treaties, either by a government, an EU institution, or by citizens who may be directly affected by the Act.⁶³

In actions by omission, when EU institutions have an obligation to make targeted decisions under certain circumstances and do not do so, the EU governments, other EU institutions, individuals or companies have the right to take legal action in the Court of Justice of the EU. In other words, if EU institutions fail to fulfil their responsibilities and fail to act when necessary, the affected parties can seek redress through the judicial system.

Similarly, in actions for compensation, any person or company whose interests have been damaged due to the actions or inactions of the EU or its officials has the right to initiate proceedings against the EU in the Court of Justice. In short, these legal provisions allow different parties to seek redress in the Court of Justice of the EU in cases of omissions by the EU institutions or when the interests of individuals or companies are damaged by actions or lack of action by the EU or its staff.

⁶¹ *Building Parliament: 50 Years of European Parliament History: 1958-2008* (Publications Office 2009)

⁶² 'Court of Justice of the European Union' (*European Union*) <https://european-union.europa.eu/institutions-law-budget/institutions-and-bodies/institutions-and-bodies-profiles/court-justice-european-union-cjeu_en> accessed 3 March 2023

⁶³ *Ibid* 3

1.6.6 European Central Bank and Court of Auditors

The European Central Bank (ECB) was established in 1999 and is based in Frankfurt, Germany. As the EU's central bank, it manages the Union's monetary policy and introduces and controls the single currency, the Euro.

Its main objective is to maintain price stability in the EU and thus support economic growth and job creation. To achieve this, the main tool the ECB has is to set interest rates in the Eurozone. In short, it sets interest rates, controls the money supply and monitors the financial stability of the EU.⁶⁴

The European Court of Auditors (ECA) was founded in 1977 as an independent external audit organisation of the EU and is governed by a Council of 27 members, one from each EU member state. Its objective is to enhance the financial management of the EU by examining whether EU funds are raised and spent effectively. Notably, although the ECA serves as an independent monitor to enhance budget administration, it has no legal authority.

The ECA audits individuals and entities working on EU funds, including EU institutions, member nations, and recipients of EU aid. These audits issue official reports providing recommendations based on their assessments. When irregularities such as suspected fraud, corruption, or other illegal actions are detected, the ECA lodges a formal complaint with the European Anti-Fraud Office (OLAF).

In addition to its other duties, the ECA is responsible for submitting a general and yearly report to the EP and the EU Council. The Parliament must review the report before approving the Commission's budget handling.⁶⁵ Yet, to increase the EU's transparency toward its citizens, the ECA is tasked with assessing how the EU should manage its finances.

In conclusion about the institutions of the EU, it is worth repeating and recognising that all its governing institutions work together to achieve the EU goals. The EP represents EU citizens, the Council of the EU makes decisions and sets the political direction of the EU, the European Commission implements decisions and manages the day-to-day business of the EU, the

⁶⁴ Van Cleynenbreugel P, 'Advanced EU Law - Cases & Materials' (*Université de Liège*, 2018) <<https://orbi.uliege.be/bitstream/2268/213845/1/RecueilAdvEUL20172018.pdf>> accessed 21 June 2023

⁶⁵ Consolidated versions of the Treaty on European Union and the Treaty on the Functioning of the European Union [2008] OJC 115/01.

European Court of Justice ensures the consistent application of EU law, and the European Central Bank manages the monetary policy of the EU. These bodies work together to ensure that the EU works effectively and efficiently.

2. Mercosur: The Southern Common Market

On the 26th of March 1991, the four nations of Argentina, Brazil, Paraguay, and Uruguay signed the Treaty of Asuncion, founding Mercosur in South America.

As a brief overview, the official Mercosur website⁶⁶ points out that its founding members and Venezuela (which completed its accession process in mid-2012) cover approximately 72% of the territory (over 15 million km²) and 69.5% of South America's population (more than 295 million inhabitants). Moreover, according to World Bank data⁶⁷, it reflects 76.2% of South America's Gross Domestic Product (GDP), translated to almost US\$ 2 trillion in 2021. Still, the World Investment Report stated that 47.4% of all Foreign Direct Investment (FDI) that flowed to *Latina America (including South America, Central America, Mexico, and the Caribbean)* in 2016⁶⁸ were directed to Mercosur's member states.

Since Mercosur's creation, its main objective has been to foster a cohesive integration of member states based on a free internal market and common tariff with third parties. The concept is to create *a common space that generates business and investment opportunities through the competitive integration of national economies into the international market*⁶⁹.

Notably, the commercial alliance sought to stimulate regional economic growth through the free movement of goods, services, people, and capital, protecting and assuring the fundamental freedom right. Accordingly, Mercosur's fundamental freedoms are comparable with those under Article 3(c) of the old EC Treaty. Hence, a regional strengthening by guaranteeing fundamental freedoms leads to a greater international trading framework, attracting better investment opportunities.

With over thirty years of existence, Mercosur brings together trade agreements on the five continents, among which the EU is considered its largest foreign investor, with a stock of 330 billion euros in 2020.⁷⁰ All these figures have led the South American bloc to be considered

⁶⁶ 'Mercosur Official Website' (*MERCOSUR*, 8 December 2022) <<https://www.mercosur.int/en/>> accessed 7 February 2023

⁶⁷ 'Data for Brazil, Argentina, Uruguay, Paraguay' (*The World Bank*, 2021) <<https://data.worldbank.org/?locations=BR-AR-UY-PY>> accessed 13 February 2023

⁶⁸ 'World Investment Report 2016. Regional Investment Trends.' (*UNCTAD*, 7 June 2016) <https://unctad.org/system/files/official-document/wir2016ch2_en.pdf> accessed 13 January 2023

⁶⁹ *Ibid* 66

⁷⁰ 'EU-Mercosur Trade Agreement' (*European Commission*, 2022) <https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/mercosur/eu-mercosur-agreement_en> accessed 7 February 2023

the fifth-largest economy in the world⁷¹. Therefore, it is easy to understand why Mercosur is considered Latin America's most ambitious economic and political integration project. However, to better comprehend the political, economic, and socio-cultural context of its integration process, current issues and prospects, it is essential to understand the previous history of Latin America.

2.1 Colonial Legacy

Latin America is located in a geographical area of over 20 million square kilometres, extending from the deserts of northern Mexico to the icy lands of Tierra del Fuego in Chile and Argentina, including the Caribbean.

Spain colonised the vast majority of the current Latin American republics from the late 14th century - the only exceptions were Brazil, which Portugal colonised, and Haiti, by France.

The Portuguese and Spanish kingdoms' exploration and colonisation of Latin America led to territorial disputes from the late 15th century until 1750. The battle involved frontiers, colonial dominance, natural resources, and commerce. In 1750, due to these centennial disagreements, Portugal and Spain finally signed the Treaty of Madrid, which became a significant milestone in Latin American history.

The Treaty of Madrid defined the political and commercial relations between Portugal and Spain and finally established their borders. The agreement stated that the Amazon River would serve as a dividing line between Portuguese and Spanish possessions and designated to Portugal the region that today comprises the Brazilian territory. On the other hand, Spain was assigned authority over the greater part of what is known as Latin America. Consequently, Portuguese and Spanish colonial rule meant the imposition of their languages, culture and religion, "the essential characteristics of what was to become the social structure of Latin American countries".⁷²

During the final decades of the 18th century and the first half of the 19th century, the Spanish and Portuguese colonies achieved independence. The independence of Portuguese America came about peacefully in 1822 and was recognised by Portugal in 1825 without resistance.

⁷¹ Ibid 66

⁷² Furtado C, *Economic Development of Latin America Historical Background and Contemporary Problems* (Suzette Macedo tr, 2nd edn, Cambridge University Press 1977)

That resulted from events that began in 1808 when the Portuguese royal family moved to Brazil to escape the French troops. The arrival of the royal family resulted in changes that led to economic and commercial development, modernisation, the opening of ports to friendly nations, and the stimulation of education and trade. These were key moments and prevented a revolutionary fragmentation, turning Brazil into the biggest country in Latin America.

On the other hand, the independence of Spanish America resulted from the rise of the Enlightenment, the questioning of the colonial pact, and monarchic authoritarianism. The dissatisfaction of Indians, enslaved people, and mestizos with the terrible working conditions also contributed to this process. Other crucial factors for the independence of the Spanish colonies were France's invasion of Spain and the economic interests of England and the United States of America (US) in the region.

In 1826, the already independent Spanish America met in the Congress of Panama, intending to constitute an arrangement of unity. Brazil, the United States and Great Britain were invited as observers. At the end of the meeting, four treaties were signed, the most relevant of which - the Treaty of Union, League and Confederation - is invoked as a reference for Latin American integration initiatives. In effect, the political-economic integration project was impeded by US interests. As can be seen, the strong influence of Spain, Portugal and the US generated the need for a policy of regional strengthening in South America.

2.2 Early Attempts at Latin American Integration

The historical development of Latin America illustrates the necessity of later establishing a regional union. The first attempts at Latin American integration to promote unity and prosperity took place in the 19th century, with the Panama Conference in 1826, the Lima Conference in 1848, and the Buenos Aires Conference in 1852.

In the 20th century, following World War II, a diplomatic race began to reach regional agreements. The ultimate goal of this strategic campaign was to recover the economies damaged by the years of conflict. For instance, the Bretton Woods Conference, also known as the United Nations Monetary and Financial Conference, was a gathering of delegates from 44 nations from the 1st of July to the 22nd of July 1944, in Bretton Woods, New Hampshire, US. The aim was to establish a new set of rules for post-World War II with an international

monetary system. Hence, the conference's principal outcomes were the International Monetary Fund (IMF) and the International Bank for Reconstruction and Development (IBRD)⁷³.

In Latin America, regional agreements intensified after the Economic Commission for Latin America and the Caribbean (ECLAC) report.⁷⁴ Due to the acknowledgement of the region's structural problems and the importance of the State in promoting change, the report became known as the "Latin American Manifesto".⁷⁵ Consequently, one of the report's recommendations was to improve economic links in the region by forming free trade zones or the removal of customs obstacles in order to build local markets.

2.3 LAFTA: The Latin American Free Trade Association

The first substantial endeavour to build regional integration in Latin America was completed in 1960 with the signing of the Treaty of Montevideo. That agreement, negotiated by South American countries (excluding the Guyanas) and Mexico, aimed to establish the Latin American Free Trade Association (LAFTA, or ALALC Asociación Latinoamericana de Comercio Libre). The objective was to enhance the interdependence of Latin American nations by liberalising intraregional commerce and establishing a free trade zone within twelve years.⁷⁶

The treaty's main objectives included the practical solution to trade issues and the institution of a dynamic instrument capable of eliminating obstacles to economic development. Among them were the gradualness of the investment process, reciprocity in concessions and unlimited and unconditional treatment of the most favoured nation.

It is worth mentioning that protectionist logic dominated at that time. The industrialisation model based on import substitution was one of the fundamental factors contributing to the stagnation of the integration process. In addition, the 1973 "Oil Crisis" changed the global dynamics, and industrialised countries adopted more protectionist measures to deal with stagflation. The US, for instance, unilaterally cancelled the Bretton Woods agreement, and

⁷³'The Bretton Woods Conference, 1944' (*U.S. Department of State*) <<https://2001-2009.state.gov/r/pa/ho/time/wwii/98681.htm>> accessed 7 February 2023

⁷⁴ Caichiolo R, 'Mercosur: Limits of Regional Integration' (*Erasmus Law Review*, 2019) <<https://www.semanticscholar.org/paper/Mercosur%3A-Limits-of-Regional-Integration-Caichiolo/fa2d37737268d77a04bf11e2d8720cfe3da82b33>> accessed 7 February 2023

⁷⁵ Bielschowsky R, 'ECLAC Thinking, Selected Texts (1948-1998)' (*CEPAL - Naciones Unidas*, 1 December 2016) <<https://hdl.handle.net/11362/40881>> accessed 29 June 2023

⁷⁶ Malamud A, 'Theories of Regional Integration and the Origins of MERCOSUR', *The law of Mercosur* (Hart 2010)

Europe strengthened internal trade and the common agricultural policy. Under those circumstances, South American countries were negatively affected.

In general, with the programmed devaluation of the North American currency and the European protectionism, the Latin countries revealed difficulties in exporting their agricultural products, as they were also forced to devalue, even more, their fragile currencies in order to mitigate the effects of the policy of Washington and the old continent. To make matters worse, the once successful import substitution policy seemed unable to boost the growth of local industries and trade.

Due to the timid results achieved through LAFTA, the leaders of the Southern Cone awoke to the necessity of launching a new regional project.

2.4 ALADI: The Latin American Integration Association

In 1980, twenty years after the birth of LAFTA, a new project of integration emerged, the Latin American Integration Association (LAIA or ALADI - Asociación Latino-Americana de Integración). LAIA was created by the Treaty of Montevideo (TM80) and still is the largest Latin American integration group⁷⁷. The member countries are Argentina, Bolivia, Brazil, Chile, Colombia, Cuba, Ecuador, Mexico, Panama, Paraguay, Peru, Uruguay and Venezuela. That group alone covers more than 20 million square kilometres and has more than 510 million inhabitants⁷⁸. The Republic of Cuba was accepted as a member country at the Tenth Meeting of the Council of Ministers by Resolution 51(X), becoming a full member of LAIA in 1999.⁷⁹

Several guiding principles are followed by LAIA, including diversity in political and economic interests, gradual convergence of partial efforts toward the creation of a Latin American common market, adaptability, varying treatment based on member countries' levels of

⁷⁷ 'Aladi Países Miembros' (*ALADI*, 16 August 2021) <<https://www.aladi.org/sitioaladi/language/pt/paises-miembros/?lang=pt>> accessed 3 February 2023

⁷⁸ 'Indicadores Socioeconómicos - ALADI' (*Aladi - Asociación Latinoamericana de Integración*) <<http://www2.aladi.org/nsfaladi/sitioAladi.nsf/indicadorEcDatos.xsp?databaseName=CN=websrv/O=ALADI!!nsfaladi%5Cindicado.nsf&documentId=5E1D11AC940B285803257CB5005425D4&action=editDocument>> accessed 3 February 2023

⁷⁹ Salto LFRD, 'Analysis of Intergovernmental and Liberal Intergovernmental Approaches in Latin American Sub-Regional Integration' (*Academia.edu*, 1 August 2018) <https://www.academia.edu/86099859/Analysis_of_Intergovernmental_and_Liberal_Intergovernmental_approaches_in_Latin_American_sub_regional_integration> accessed 7 February 2023

development, and variety in the forms of concerted trade instruments.⁸⁰ Furthermore, its recent actions are strongly directed towards a green economy, low in carbon, responsible for the environment, and with the efficient use of natural resources; for this, it counts on the support of the *United Nations Development Programme* (UNDP).⁸¹

2.5 Brazil-Argentina Economic Cooperation

The democratisation process initiated in the 1980s in Argentina and Brazil created the opportunity for a rapprochement between the two countries. That has resulted in permanent collaboration on various issues, from those relating to the economy to more controversial ones, such as border water resources and atomic energy.⁸²

Between 1984 and 1989, Argentina and Brazil signed twenty-four bilateral protocols to enhance bilateral commerce through tariff concessions in sectors such as capital goods, wheat, and autos and measures to promote technological cooperation.⁸³ In 1985, Argentina, Brazil and Paraguay signed the Declaration of Foz de Iguacu, providing the foundation for future integration and establishing a high-level committee to facilitate the process.

A year later, in 1986, Argentina and Brazil signed the "Economic Integration and Cooperation Program" and the "Argentina-Brazil Friendship Agreement". Through these two instruments, a bold move towards integration was consolidated, ending decades of rivalry between the two countries. That gave rise to the Mercosur movement.⁸⁴

Subsequently, in 1988, both countries signed the Treaty on Integration, Cooperation and Development, which systematised and deepened the pre-existing bilateral trade agreements, establishing the objective of a common market in ten years to which other Latin American

⁸⁰ Guardatti GA, 'The Integration Law in Mercosur - Unizar.Es' (*ZAGUAN Repositorio Institucional de Documentos*, 2020) <https://zaguan.unizar.es/record/99120/files/texto_completo.pdf> accessed 7 February 2023

⁸¹ 'Aladi Medidas Medioambientales' (*ALADI*, 11 December 2020) <<https://www.aladi.org/sitioaladi/medidas-medioambientales/>> accessed 5 February 2023

⁸² Malamud A, 'The International Dimensions of Democratization: The Case of Argentina' (*IPRI Instituto Português de Relações Internacionais*, 1 December 2004) <<https://ipri.unl.pt/index.php/en/publications-wp/en-working-papers/archive-wp/136-13>> accessed 7 February 2023

⁸³ Molteni GR, De Leon G and Giudice L, '20 Years On: The Achievements And Pending Challenges of Mercosur' (*Integration & Trade Journal: Volume 15 : No. 33 : July-December, 2011*, 1 December 2011) <<https://publications.iadb.org/en/integration-trade-journal-volume-15-no-33-july-december-2011>> accessed 7 February 2023

⁸⁴ *Ibid* 76

countries could adhere. At the end of 1990, this agreement was registered at LAIA.⁸⁵ In the same year, delegates from both countries met with authorities in Uruguay and Paraguay, who confirmed their interest in joining the integration process. As a result, an agreement between the four countries to construct a common market was codified in the Treaty of Asunción, ultimately forming the Southern Common Market.⁸⁶

2.6 From the Rio Group to the creation of CELAC

The Rio Group was established in 1986 during the Peace and Solidarity Summit held in Rio de Janeiro, Brazil, which marked a pivotal moment for the nations of Latin America and the Caribbean. That cooperative venture aimed to foster stronger ties, encourage cooperation, facilitate political dialogue and address common challenges faced by the parties. The Rio Group has played a crucial role in promoting regional integration, stability and peace.⁸⁷

The leaders of member countries, including Argentina, Brazil, Mexico, and Venezuela, have met in regular meetings and summits to discuss issues of mutual interest. These discussions have covered a wide range of topics, such as economic development, poverty reduction, environmental preservation, human rights and regional security. By amplifying the region's voice in international forums, the Rio Group sought to safeguard the interests of Latin American and Caribbean countries vis-à-vis world powers.

However, in the mid-2000s, a desire for deeper regional integration and a stronger Latin American and Caribbean identity began to emerge. That led to the gradual transformation of the Rio Group into the Community of Latin American and Caribbean States (CELAC). Formally established in 2011, during the III Summit of the Rio Group and the Latin American and Caribbean Summit on Integration and Development in Caracas, Venezuela, CELAC represented a significant milestone for the region.⁸⁸

Unlike its predecessor, CELAC united all thirty-three Latin American and Caribbean countries in a single entity, deliberately excluding the participation of the United States and Canada. That

⁸⁵ Luciano BT and Campos A, 'Supranationalism As A Taboo: Analysing The 30 Years Of Mercosur's Institutional Development' (*Vista do supranationalism as a taboo*, January 2021) <<https://revistas.marilia.unesp.br/index.php/bjir/article/view/12551/8201>> accessed 7 February 2023

⁸⁶ Ibid 76

⁸⁷ Segovia D, 'Latin America and the Caribbean: Between the OAS and Celac' (2013) 0 *European Review of Latin American and Caribbean Studies* | *Revista Europea de Estudios Latinoamericanos y del Caribe* 97

⁸⁸ Ibid 87

deliberate exclusion signified a distinct departure from the traditional approach of pan-Americanism and affirmed a commitment to Latin Americanism while seeking to strengthen regional identity and autonomy.⁸⁹

CELAC's objectives are quite broad and encompass several facets of regional integration. Its objectives include strengthening political, economic, social and cultural cooperation among member countries, promoting sustainable development, defending human rights, combating poverty and inequality and seeking a more equitable and peaceful international order.

The organisation has successfully convened regular summits that have served as platforms for member countries to address pressing regional issues and forge cooperation strategies. In addition, CELAC has actively sought to establish dialogues and partnerships with various international actors, recognising the importance of global engagement. Collaborative initiatives have been established with entities such as the EU, China, Russia, South Korea, Turkey, Japan and the Gulf Cooperation Council, with the aim of strengthening the region's presence and influence on the world stage while promoting cooperation and joint development.⁹⁰

It is important to recognise that CELAC faces challenges in its decision-making processes, as consensus among member countries forms the basis for deliberations. That approach can sometimes make it difficult to make quick and cohesive decisions. Nevertheless, CELAC has achieved significant positions during its summits, such as calling for an end to the economic blockade of Cuba and supporting Argentina's claim over the Malvinas Islands.

In summary, the Rio Group laid the foundations for cooperation between Latin American and Caribbean countries, and its evolution into CELAC represented a natural progression towards deeper regional integration and the cultivation of a stronger Latin American and Caribbean identity. Both initiatives aim to promote development, peace and cooperation among those countries. Likewise, CELAC takes a broader approach to regional integration and engagement with international actors.

⁸⁹ Ibid 87

⁹⁰ Ibid 87

2.7 Treaty of Asunción and the Birth of Mercosur

As was previously demonstrated, Mercosur's origins are rooted in a historical environment in which South American states sought economic integration. Thus, it was against this background that on the 26th of March 1991, Argentina, Brazil, Uruguay and Paraguay signed the Treaty of Asunción establishing Mercosur, which came into force on the 31st of December 1994.⁹¹

The treaty was established to increase regional integration, economic cooperation, and the competitiveness of the signatory countries in international markets. Accordingly, the treaty outlined Mercosur's founding principles, including the establishment of a free trade area, the elimination of restrictions on citizens working in any of the member nations, the promotion of educational initiatives aimed at fostering cultural cohesion, and the introduction of a common currency.⁹²

Additionally, to accomplish its goals, a temporary structure consists of two major components: the Council of the Common Market (CMC) and the Common Market Group (GMC). The CMC, as the highest body and integrated by the Ministers of Foreign Affairs and Economy of the States Parties, was responsible for the political conduction and decision-making to ensure the achievement of the goals and deadlines established for the definitive constitution of the Common Market. On the other hand, the GMC became the executive body of the Common Market and was coordinated by the Ministries of Foreign Affairs of the member states.⁹³

From the beginning of the negotiations, it was clear that it would be difficult to establish an entire common market within four years, so the project was gradually implemented. In this sense, the Asunción Treaty programmed an initial 47% reduction in tariffs and subsequent biannual decreases until the achievement of free trade in December 1994. However, the most complex task was the negotiation of the common external tariff, which was nevertheless concluded on time.

⁹¹ Tratado de Assunção Para a Constituição de Um Mercado Comum (*MERCOSUR*, 30 October 1991) <<https://www.mercosur.int/documento/tratado-de-assuncao-para-a-constituicao-de-um-mercado-comum/>> accessed 29 June 2023

⁹² Ibid 74

⁹³ Ibid 76

During the first stage, from 1991 to 1994, intergovernmental institutions conducted negotiations, and consensus adopted decisions. On the 17th of December 1994, an Additional Protocol to the Treaty of Asunción, the Ouro Preto Protocol, was signed, defining Mercosur's institutional structure.

2.7.1 The Brasilia Protocol

Several other treaties and protocols followed the Treaty of Asunción, and the first of them was the Brasilia Protocol, signed in 1991, just after the formation of Mercosur⁹⁴. It was focused on the conflict resolution system, establishing an arbitration court to handle intra-organizational conflicts.

The Brasília Protocol outlines a diplomatic process designed to resolve disputes between states peacefully and efficiently. The Protocol establishes procedures that must be followed during a controversy, beginning with direct negotiations between the parties involved. If a solution is not reached within fifteen days, the GMC intervenes as a mediator. At this stage, experts may be called to provide opinions and support the proposed solution. Should the parties fail to accept the GMC's recommendations, the arbitral procedure is initiated upon prior communication by the interested State.

The Brasilia Protocol also included a mechanism by which private parties could access the dispute resolution process. Nevertheless, this did not mean direct access to private parties. In effect, they would first have to go through the national section of the GMC in their own countries to file a complaint. The national section would make the necessary efforts to resolve the dispute, with the option of referring the matter to the GMC if no agreement could be reached. Then, the GMC would offer an expert assessment of the situation and confirm the legal basis of the complaint. Other member states could challenge member states issuing the controversial measures and, subsequently, referred before the arbitration court.

Ultimately, the Brasilia Protocol was essential once it brought rules concerning conflict resolution. However, its greatest weakness was the uncertainty surrounding the decisions of the dispute settlement procedures. That is because decisions still needed to be approved by a

⁹⁴ 'Protocolo de Brasilia Para La Solución de Controversias' (*SICE - Sistema de Informação de Comércio*, 17 December 1991) <http://www.sice.oas.org/trade/mrcsr/brasil/pbrasilText_s.asp> accessed 29 June 2023

majority of the tribunal's commission members, rendering the mechanism for choosing independent arbitrators ineffective.

2.7.2 The Ouro Preto Protocol

The Protocol of Ouro Preto was signed in 1994 and was defined as the organisation's legal foundation.⁹⁵ It gave to Mercosur's international legal personality and nominated the CMC to become Mercosur's representative body. With a legal personality under international law, Mercosur was able to negotiate and sign agreements, including headquarters agreements.⁹⁶

Besides that, the Protocol also established the Mercosur's institutions: (I) the CMC, which is responsible for the political management of the integration process and is composed of the ministers of foreign affairs and economics; (II) the GMC, which is an executive body responsible for implementing and supervising Mercosur's objectives; (III) the Mercosur's Trade Commission (CCM), which is a technical body responsible for administering common trade policy instruments; (IV) the Joint Parliamentary Commission (JPC), which is composed of members of both the lower and upper houses of parliament; (V) the Economic-Social Consultative Forum (ESCF) and (VI) the Mercosur Administrative Secretariat (MAS).⁹⁷

The Ouro Preto Protocol also emphasised the decision-making power assigned to the three highest intra-governmental bodies, the CMC, the GMC and the CCM. Likewise, in chapter V, article 41 placed a specific focus on the region's dispute settlement process and the legal structure, naming the sources of law as: (I) the Treaty of Asuncion, its protocols and the additional or supplementary instruments; (II) the agreements concluded within the framework of the Treaty of Asuncion and its protocols; (III) the Decisions of the Council of the Common Market, the Resolutions of the Common Market Group and the Directives of the Mercosur Trade Commission adopted since the entry into force of the Treaty of Asuncion.⁹⁸

In summary, while the Treaty of Asunción established the principles and objectives of Mercosur and the Protocol of Brasilia instituted a dispute settlement system, the Protocol of

⁹⁵ 'Protocolo de Ouro Preto' (MERCOSUR, 17 December 1994)

<<https://www.mercosur.int/documento/protocolo-ouro-preto-adicional-tratado-asuncion-estructura-institucional-mercotur/>> accessed 16 February 2023

⁹⁶ Ibid 76

⁹⁷ Ibid 76

⁹⁸ Ibid 95

Ouro Preto established Mercosur's international legal personality and defined its institutions. Through the Ouro Preto Protocol, Mercosur gained the legal capacity to sign agreements with other countries or international organisations, to defend its interests in international courts, and to acquire goods and contract services in its name.

2.7.3 The Olivos Protocol

The Olivos Protocol was signed in 2002 and focused on complementing the Brasilia Protocol (1991).⁹⁹ It improved the dispute settlement mechanism and legal security within Mercosur. Likewise, this Protocol introduced two notable innovations, the choice-of-forum rule and the creation of a Permanent Review Tribunal¹⁰⁰. The choice of forum rule allowed disputes to be referred to the World Trade Organization (WTO) dispute settlement system or another trading system. At the same time, the Permanent Review Tribunal became a permanent judicial body with the ability to revoke or modify decisions made by other tribunals. In essence, the Olivos Protocol had a significant impact as it strengthened the dispute settlement mechanisms and legal security within Mercosur.¹⁰¹

2.8 The Mercosur Membership and Expansion Efforts

Mercosur comprises two kinds of membership: the permanent and the associate member. Permanent members are compromised in all bloc's agreements, including the Common External Tariff (CET) and have the power to vote on political issues. Meanwhile, the Associate Member has a closer cooperation relationship and can participate in Mercosur bodies' meetings when dealing with common issues. However, the Associate Member has no right to vote.

Initially, Mercosur was founded by Brazil, Argentina, Uruguay, and Paraguay. Later, Venezuela and Bolivia expressed interest in also becoming permanent members. In 2006 Venezuela signed an admission agreement and formally joined Mercosur as a permanent

⁹⁹ 'Protocolo de Olivos Para La Solución de Controversias En El Mercosur' (*MERCOSUR*, 18 February 2001) <<https://www.mercosur.int/documento/protocolo-olivos-solucion-controversias-mercosur/>> accessed 29 June 2023

¹⁰⁰ Barral W, 'Southern Common Market (Mercosur): The Olivos Protocol: International Legal Materials' (*Cambridge Core*, 27 February 2017) <<https://www.cambridge.org/core/journals/international-legal-materials/article/southern-common-market-mercosur-the-olivos-protocol/7E61131E81447C8571846D77F3338AAF>> accessed 16 February 2023

¹⁰¹ Caichiolo R, *Judicial Institutionalization of Integration Processes; Intergovernmentalism and Politicization in Mercosur* (Simplíssimo Livros Ltda 2016)

member in 2021. Bolivia was accepted as a permanent member in 2015, and it is still being formalised.

On the other hand, there are the associated countries. They maintain close trade and political relations with Mercosur and have access to economic benefits, such as participation in trade agreements and cooperation programs, but do not have the right to vote in the bloc's political decisions. Associate members are Chile, Colombia, Ecuador, Peru, Suriname and Guyana.

To become an official member of Mercosur, the country must comply with the Asuncion Treaty's clauses, including the democratic clause. That clause establishes the member countries' commitment to democracy and the defence of human rights. If these commitments are violated, the member state is suspended from Mercosur until the situation is resolved. Consequently, this measure aims to maintain high standards of democracy and respect for human rights among member countries.

In 2012 Paraguay opened impeachment proceedings against President Fernando Lugo in less than 24 hours without guaranteeing the politician's right to defence. As a result, the country was suspended from the bloc until new elections were held, which occurred in 2012.

Venezuela, for its part, was suspended from Mercosur in December 2016 due to severe violations of democratic norms and the lack of freedom of expression and press in the country. It is worth saying that this suspension, which remains in place to this day, reflects the concern of member countries about the political and humanitarian situation. Such a measure translates as a clear message that economic integration between the countries of South America must be based on democratic values and respect for human rights.

2.9 The Mercosur Governance and Institutions

Mercosur has an institutional and governance structure based on the Treaty of Asunción and the Ouro Preto Protocol. These instruments establish the essential legal and institutional bases for the functioning of the bloc. The Ouro Preto Protocol, in particular, defines the central structural bodies that make up the Mercosur structure. These bodies are responsible for

directing and supervising the bloc's activities, promoting cooperation and strengthening ties between member states.¹⁰²

Among them, we highlight the Common Market Council (CMC), Mercosur's supreme decision-making body, responsible for defining the bloc's general policies and guidelines. The Common Market Group (GMC) is responsible for coordinating and supervising the activities of the economic and trade sectors. Furthermore, the CCM facilitates trade between member states and resolves trade disputes.

Besides that, there is the Mercosur Parliamentary Commission, which promotes dialogue between the parliamentarians of the Mercosur countries, reinforcing the bloc's democratic dimension. Moreover, the Administrative Secretariat (SAM) plays an important role in coordinating actions and organising the bloc's meetings and summits.

It is worth saying that Mercosur's governance is based on a system of shared responsibilities among its member states, which currently include Argentina, Brazil, Paraguay and Uruguay, with Bolivia as an associate member. The main governing body is the CMC, composed of each member country's foreign and economic ministers. The CMC sets Mercosur's general guidelines and strategic direction, taking decisions on various matters, including trade policies, integration initiatives and dispute settlement procedures.¹⁰³

To support the CMC is the GMC, composed of high-level representatives of the relevant ministries and agencies of each member state. The GMC is responsible for overseeing the implementation of CMC decisions, coordinating sectoral policies, and promoting cooperation in areas such as industry, agriculture and customs.

Another important institution within Mercosur is the CCM, which deals with trade-related issues, including negotiating and implementing trade agreements between member countries. The CCM is key in promoting a common external tariff, facilitating trade flows and settling trade disputes between member states.

In addition to these key institutions, Mercosur also has the Parliament of Mercosur (Parlasur), a consultative and legislative body representing the interests of the region's citizens. Parlasur

¹⁰² Ibid 76

¹⁰³ Ibid 76

aims to strengthen democratic governance in Mercosur by promoting dialogue and providing a platform for discussion and collaboration on various issues, including human rights, social development and environmental protection.

To support Mercosur's administrative functions, there is the Mercosur Administrative Secretariat, responsible for coordinating and facilitating the organisation's day-to-day operations. The Secretariat supports the implementation of decisions, keeps records and provides technical support to the various institutions and working groups.

Mercosur's governance and institutions play a crucial role in promoting cooperation, integration and development among its member countries. Through these structures, Mercosur seeks to strengthen economic ties, harmonise policies and address common challenges, contributing to the region's socio-economic progress and regional integration in South America.

2.9.1 Common Market Council

The CMC plays a significant role as the supreme decision-making body within Mercosur. It comprises the ministers of foreign affairs and economy (or their equivalents) of the Mercosur member states. Also, it exercises its authority by establishing guidelines and general policies that guide Mercosur's actions and objectives. It makes crucial decisions affecting economic, commercial, political, and social integration among member countries. Thus, the CMC plays a central role in defining the strategic course of the bloc and promoting greater convergence among member states.¹⁰⁴

One of the fundamental characteristics of the CMC is decision-making by consensus. That means that all member states must agree for a decision to be adopted. That mechanism ensures active participation and respect for the individual positions of each country, avoiding unilateral impositions and strengthening equality among the members of the bloc.

The meetings provide a forum for discussion and debate for ministers to discuss issues of strategic relevance are periodically held. During these meetings, issues such as harmonising economic policies, the coordination of trade agreements, Mercosur's external relations and negotiations with third countries are addressed. Through these dialogues, consensus is sought,

¹⁰⁴ Ibid 76

and the convergence of interests is promoted to advance regional integration. The president of each member nation is obligated to attend at least one of the biannual meetings that bring together the participating countries' foreign and economic ministers.

The CMC plays a crucial role in Mercosur's governance, strengthening integration and consolidating the bloc as a space for regional cooperation. Its performance as the highest decision-making body reflects the search for greater coordination and convergence among member states, promoting a collective and synergistic approach to face the challenges and seize the opportunities for economic and trade integration in the region.¹⁰⁵

In other words, as the highest internal body, CMC is tasked with carrying out the Asunción Treaty (1991) and the Ouro Preto Protocol's strategic goals and putting the bloc's important decisions into action. The Asunción Treaty (1991) gave these responsibilities to the CMC.

2.9.2 Common Market Group

Within Mercosur, the GMC is the executive body, second in command or higher in authoritative power. GMC has the executive authority to control the decisions taken by the CMC and its administration to ensure that the CMC operates effectively and within the integration process's parameters. It consists of four titular members, four alternate members from each nation, and delegates from each nation's central banks, foreign affairs, and economics. In addition, there are eleven specialist assemblies on various issues, eight working groups, eighteen subgroups focusing on crucial areas, and eleven ad hoc groups for unusual challenges.¹⁰⁶

The GMC comprises the Ministers of Foreign Affairs and the Ministers of Economy (or equivalent) of the Mercosur Party States: Argentina, Brazil, Paraguay, and Uruguay. That body plays a key role in the implementation and coordination promote and political integration policies and agreements between member countries.

One of the GMC's main attributions is to supervise the implementation of the Trade Liberalization Programme, stability, and the gradual reduction of customs tariffs between member countries. That initiative aims to create a favourable environment for regional trade,

¹⁰⁵ Camargo CA de P, *Lex Et Vinum Mercosul: Aspectos Constitutivos e o Custo Tributário Na Indústria e No Comércio Vinícola Dos Países Do Mercosul* (Editora Dialética 2022)

¹⁰⁶ 'Organigrama Mercosur Completo (Oficial).' (*MERCOSUR*, 8 September 2022)

facilitating the flow of goods and services between member states and fostering the competitiveness of companies within the bloc.

In addition, the GMC works on elaborating and negotiating trade agreements with other economic blocs and countries. Mercosur has already established agreements with the EU, the European Free Trade Association (EFTA), countries of the Southern African Common Market (SACU) and many others. These agreements aim to expand business opportunities and promote commercial exchanges with external partners, thus strengthening Mercosur's position in the international arena.

In addition to trade, the GMC is also concerned with issues related to the free movement of people, coordination of migration policies and cooperation in areas such as agriculture, industry, energy, transport and the environment. These initiatives aim to promote cooperation and regional integration, strengthening Mercosur's position as a relevant actor in the global context.

The GMC plays a strategic role in decision-making and defining Mercosur guidelines. It acts as a forum where the States Parties discuss and adopts measures to boost integration and promote regional economic and social development. Through its attributions, the GMC contributes to strengthening the union among member countries and consolidating Mercosur as a regional integration bloc.

In short, GMC is Mercosur's central body composed of the member states' Foreign Ministers and the Ministers of Economy (or equivalent). The GMC plays a key role in implementing and coordinating economic and political integration policies and agreements. It oversees the implementation of the Trade Liberalization Program, negotiates agreements with other blocs and countries, and promotes cooperation and integration in various areas. The GMC is essential to boost development and strengthen Mercosur's position in the international arena.

2.9.3 Mercosur Trade Commission

The Mercosur Trade Commission (CCM) plays a prominent role in this economic bloc. From a legal and political perspective, Mercosur's three bodies - the CMC, the GMC and the CCM - are considered equivalent, as they bring together representatives of the member states' governments. However, it is essential to note that the lower-level bodies, such as the GMC and

CCM, are not merely preparatory working groups for the higher-level institution, i.e. the CMC. They enjoy autonomy and independent decision-making powers.¹⁰⁷

The Mercosur Trade Commission, in particular, assumes sole responsibility for trade negotiations and related matters. Playing a vitally important role, this body is in charge of applying political and trade instruments within the bloc and negotiating with third countries. In addition, it is responsible for creating and supervising specialised bodies and commissions dedicated to specific trade functions.

Unlike the CMC, whose decisions are adopted, the GMC issues resolutions and the Trade Committee issues guidelines. It is relevant to highlight that these acts have the same legal nature. That distinction is of utmost importance and differs from the structure of the Council of the EU. In this case, all decision-making power is concentrated at the highest ministerial level, implying that all decisions agreed upon at lower levels must go through the Council, even without discussion or debate.

In the context of Mercosur, ministers have the prerogative to adopt legal acts without the need to submit them to the CMC. That prerogative gives more agility and flexibility to the bloc's decision-making process. The guidelines issued by the Trade Commission must be implemented by all Mercosur member countries, and technical bodies, such as the Technical Committees, play a crucial role in conducting technical negotiations and providing advice on trade policies.

Mercosur's structure is characterised by its flexibility and gradualist approach, allowing modifications, combinations and the creation or extinction of auxiliary bodies as needed. That institutional dynamic requires periodic reviews to ensure the resulting structure's consistency. However, it is essential to emphasise that the Trade Committee occupies a prominent position within the bloc, being responsible for day-to-day intra-regional trade issues and for the application and monitoring of common trade policy instruments.

In short, Mercosur's Trade Commission plays a central and vital role in fostering intra-regional trade and the bloc's external trade relations, granting it the authority to establish and adjust

¹⁰⁷ Bouzas R, Veiga PDM and Torrent R, 'In-Depth Analysis of Mercosur Integration - Sciences Po' (*SciencesPo*, November 2002) <<https://www.sciencespo.fr/opalc/sites/sciencespo.fr.opalc/files/in-depth%20analysis%20of%20mercotur%20integration.pdf>> accessed 21 June 2023

policies related to trade negotiations. This body exerts influence and guidance on all Mercosur member countries through its guidelines, strengthening economic development and trade cooperation in the region.

2.9.4 Parliament of Mercosur

The Parliament of Mercosur, also known as Parlasur, is the unicameral parliament representing Mercosur member states' population. It was created in 2005 to replace the former Joint Parliamentary Commission. Initially, it consisted of 18 legislators from each member state. Nonetheless, the criterion for proportionality to population density was established in 2009, with the following breakdown: Argentina had 43 parliamentarians, Brazil had 75, Paraguay had 18, Uruguay had 18, and Venezuela had 33. Upon full membership, Bolivia will be allotted 18 seats. Finally, the representatives are chosen by direct elections.¹⁰⁸

According to the rules established by PARLASUR, there must be ten yearly plenary meetings. Likewise, PARLASUR has ten permanent commissions for the legislative exercise in specific themes. It bases its decisions on majorities instead of consensus, which increases the organ's dynamics.

That consultative, autonomous, and independent body represents the ideological and political diversity of the State party's constituents and is designed to play a significant political role despite lacking decision-making authority.

Among its attributions is issuing opinions on norms sent by the CMC before their legislative approval in one or more States Parties. It also prepares preliminary drafts and draft standards for the CMC. Declarations on matters of public interest, such as the declaration made by the president of PARLASUR on the conflict between Russia and Ukraine stating that *"Mercosur must manifest itself forcefully, since our social and sister region, the EU, is suffering the most, we must join in the condemnations already expressed by its executive bodies and its Parliament."*¹⁰⁹

¹⁰⁸ Ibid 101

¹⁰⁹ 'Presidente Del Parlasur Participa Del CMC Y Advierte El Impacto Del Conflicto En Ucrania' (*PARLASUR - Página principal*, December 2022)
<<https://www.parlamentomercosur.org/innovaportal/v/21001/2/parlasur/presidente-del-parlasur-participa-del-cmc-y-advierte-el-impacto-del-conflicto-en-ucrania-en-la-region.html>> accessed 6 February 2023

Finally, it is also responsible for making recommendations to the Mercosur's decision-making bodies, issuing reports on specific issues and studies; and requesting advisory opinions from the Permanent Review Tribunal.

2.9.5 Economic and Social Consultative Forum

The Economic and Social Consultative Forum (ESCF) is a consultative body representing sectors of the economy and society of Mercosur member countries: Argentina, Brazil, Paraguay and Uruguay, which makes recommendations to the GMC. It was established in 1994 under the Ouro Preto Protocol and comprised an equal number of representatives from each country. ESCF is important in offering consultations and issuing recommendations to the Common Market Group, Mercosur's executive body. In addition, since its creation, the Internal Regulations of the ESCF, established in 1996, assigned to it consultative functions and also the specific responsibility to collaborate, monitor and analyse the social and economic impact of integration policies, including by proposing norms and policies related to economic and social integration.

The ESCF, since the creation of its Internal Regulations, has conducted plenary meetings addressing various issues, such as Mercosur's participation in the Doha Round, negotiations for a free trade agreement with the EU, and human rights and the environment. Its structure includes the Plenary as the highest body, responsible for issuing recommendations to consultations with the GMC and other Mercosur bodies. The National Sections, in turn, have the autonomy to organise themselves and select the economic and social sectors that comprise them.¹¹⁰ It is composed of 36 members, and its objective is to expand economic and social democracy in the region and ensure that the bloc's economic policies meet the needs and interests of all societies. The meetings occur every six months; however, extraordinary meetings are held when necessary.¹¹¹

In addition, ESCF establishes international institutional relations with Cefir, CES and the Follow-up Committee, taking advantage of the expertise of the European bloc to strengthen the integration process. It plays a key role in facilitating integration among Mercosur member states and in establishing multilateral agreements. However, its effectiveness is limited since it

¹¹⁰ Rocha LBA da and Ribeiro MCP, 'A Importância Do Foro Consultivo Econômico e Social Para o Acordo de Livre Comércio Entre Mercosul e União Europeia' (*IUS GENTIUM*, 2017)

<<https://www.revistasuninter.com/iusgentium/index.php/iusgentium/article/view/339>> accessed 21 June 2023

¹¹¹ Ibid 101

operates only at the request of the Common Market Council (GMC), failing to exercise its original attributions fully. The consultative recommendations issued by ESCF are only one of the body's responsibilities, something that is evident in the negotiations between Mercosur and the EU.

In other words, ESCF allows representatives of society's sectors, including businesses, workers, farmers, non-Governmental organisations (NGOs)s and other groups, to participate in the Mercosur decision-making process actively.¹¹²

2.9.6 Mercosur Administrative Secretariat

The Treaty of Asunción established an Administrative Secretariat within Mercosur, which would have a prominent role as the second most important executive body after the GMC. Amongst its functions, the Secretariat would be responsible for keeping all documentation of the regional association and facilitating the communications and activities necessary to develop the bloc's negotiations. That assignment was intended to avoid problems of lack of communication which could hinder the progress of the integration process.

In 2002, Mercosur began a process of reform and rationalisation to consolidate the bloc's institutions. In this context, the Secretariat received special attention by creating a technical department proposed by the Uruguayan Foreign Ministry. That technical section was created to strengthen the integration process by providing advice and technical support. The specialists assigned to the technical sector prepared reports on topics of interest to strengthen Mercosur, made periodic assessments and evaluations of the bloc's progress, and identified important issues and proposed actions to boost the integration process.

To ensure the system's effectiveness, the selection and hiring of specialists began to be conducted objectively. An Integrated Selection Committee, composed of representatives of each Member State and the Director of the Secretariat, was responsible for organising the selection process, using curricular analysis and aptitude tests as criteria. That transparent and impartial approach aimed to ensure the experts' technical competence and generate internal and external confidence in Mercosur.

¹¹² Ibid 101

The Secretariat comprises a director and three sectors: Technical Advisory, Administration and Support, and Documentation and Guidelines. The technical sector provides advice and technical support on international law and economics issues. These experts draft reports, prepare working documents, compile relevant information, and actively participate in Mercosur's activities. Although concerns have arisen over the public availability of these reports, transparency is considered essential to the integration process and to consolidate Mercosur's institutionalisation.¹¹³

2.9.7 Dispute Settlement Mechanisms

The dispute settlement system relies on the **Ad Hoc Tribunals and the Permanent Review Tribunal (TPR)**, detailed in the Brasilia Treaty and the Olivos Treaty, complementary. The TPR is the judicial institution responsible for ensuring the correct interpretation, application and enforcement of the Treaty of Asunción, the Ouro Preto Protocol, among other protocols and agreements, decisions of the CMC, resolutions of the GMC and directives of the CCM.¹¹⁴

In addition, the TPR has the power to issue Advisory Opinions to be requested by the High Courts of Justice of the member countries and to take decisions related to Exceptional Emergency Measures.

In short, decisions are taken through three bodies: the CMC, Mercosur's highest organ; the GMC, which oversees the bloc's day-to-day operations; and the CCM, responsible for administering common trade policy instruments. These bodies receive assistance from more than 300 negotiation forums in the most diverse fields, comprising representatives from each member nation and advocating initiatives for consideration by the decision-making bodies (highly dependent on the governmental officials). There are permanent bodies, including the Mercosur High Representative (ARGM), the Mercosur Structural Convergence Fund (FOCEM), the Institute for Public Policy on Human Rights (IPPDH), the Mercosur Social Institute (ISM), Parlasur, the SM, the TPR and the Social Participation Support Unit (UPS).¹¹⁵

Even though there is no evidence of a crossover effect from low to high politics, Mercosur has developed gradually to strengthen ties between member states and broaden the scope of

¹¹³ Ibid 76

¹¹⁴ Schneider SS, 'Access to Justice in Multilevel Trade Regulation : Brazil, Mercosur and the WTO' (*Cadmus Home*, 1 January 1970) <<https://cadmus.eui.eu/handle/1814/33883>> accessed 7 February 2023

¹¹⁵ Ibid 79

economic discussions. The institutions mentioned above are key examples which oversee social areas, human rights, legal papers, and other support units in various commerce-related sectors.

3. A Comparison between European Union and Mercosur

Following the immersion in both continents, first by navigating independently through economic giants such as the EU and Mercosur, a strategic pause becomes essential for a comparative analysis between these two blocs. This in-depth examination allows for the establishment of parallels, highlighting their notable similarities and distinctive features. Through this analysis, it is possible to better understand the peculiarities of the integration processes, the institutional structures, the functioning of their bodies, and the level of cohesion achieved between the participating countries. This comparative knowledge base provides a solid ground for understanding the complex negotiation process that spanned almost three decades, generating controversies that still echo today.

The European Union, as demonstrated in the first chapter, has shown a remarkable evolution over almost seven decades. Significant stages of growth have marked its integration process based on treaties that have shaped its trajectory. Rome, Maastricht, Amsterdam, and Lisbon treaties have played crucial roles in driving European integration forward. Over the decades, the Union has strengthened ties between its nations, promoting cooperation in pursuit of shared prosperity and empowerment.¹¹⁶ Today, with 27 European countries united under its mantle, the euro floats as a common currency, and a single market flourishes, allowing the free movement of goods, services, capital, and people among its members.

On the other hand, although Mercosur is an important emerging market, it is still in its early stages and has not yet achieved full membership as a customs union. Although they are about to be eliminated, import and export duties persist within their borders. Unlike the EU, as seen in the previous chapter, Mercosur does not have supranational institutions.¹¹⁷ Likewise, Mercosur lacks a single currency and a common foreign trade policy. Furthermore, due to substantial disparities in economic, political and social development among its members, the level of regional integration is less cohesive and binding than that of the EU.¹¹⁸

In this regard, one of the key distinctions between the EU and Mercosur lies in their approach to regional integration. Specifically, it pertains to the nature of the membership agreements

¹¹⁶ Vataman DD, 'History of the European Union' (*SSRN Social Science Research Network*, 20 March 2011) <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1787850> accessed 23 June 2023

¹¹⁷ Nolte D and Ribeiro Neto CC, 'Mercosur and the EU: The False Mirror' (*Lua Nova: Revista de Cultura e Política*, 28 June 2021) <<https://www.scielo.br/j/ln/a/9Msq5gFqccKCBxWL9zDFDps/>> accessed 22 June 2023

¹¹⁸ Ibid 107

adopted by each bloc. The EU opted for a triadic structure involving a supra-party authority, whereas Mercosur opted for a dyadic structure, wherein the member states retained the final decision-making power. Mercosur's decision was not driven by a desire to emulate the EU's success but rather by a deliberate choice to circumvent the challenges and conflicts associated with more intricate governance arrangements.¹¹⁹

Zooming in on the regional integration process, parallels can be drawn between these two blocs, highlighting the need for regional cooperation, which arose from ancestral rivalries that threatened stability. In this context, the EU shines as a response to the historical disputes between France and Germany, while Mercosur is consolidated as a compromise pact between Brazil and Argentina.¹²⁰

In addition to economic and security factors, Malamud highlights the importance of political factors in Mercosur's formation, emphasising the role of "interpresidentialism" and executive leaders in creating this bloc with a supranational and intergovernmental governance approach.¹²¹ Moreover, European Union influenced Mercosur's integration model, especially through its support for epistemic communities that shaped government circles in Brazil and Argentina.¹²²

It is also worth noting that internal structural asymmetries mark the regional integration process in Mercosur. Its hierarchical model places Brazil as the dominant power, unlike the EU, whose structure is horizontal, thanks to the sharing of decision-making power among several institutions. Therefore, the asymmetry in Mercosur represents an obstacle to creating a supranational authority and weakens the institutional cohesion of the regional integration process¹²³. On the other hand, political homogeneity among EU member states facilitates the integration process. Moreover, the homogeneity of national economic and political institutions

¹¹⁹ Malamud A, 'Mercosur and the European Union: Comparative Regionalism and Interregionalism' (*Oxford Research Encyclopedia of Politics*, 1 January 2021) <https://www.academia.edu/42128622/Mercosur_and_the_European_Union_Comparative_Regionalism_and_Interregionalism> accessed 22 June 2023

¹²⁰ Ibid 119

¹²¹ Ibid 119

¹²² Botto M, 'The Role of Epistemic Communities in the "Makability" of MERCOSUR' apud P. De Lombaerde, F. Mattheis, and C. Vanfraechem, 'MERCOSUR Compared', in *The Law of Mercosur* (Hart Publishing Ltd, 2010).

¹²³ Mukhametdinow M, 'Regional Cohesion, Mercosur and the EU: Variation among the Factors of Regional Cohesion' (2007) apud P. De Lombaerde, F. Mattheis, and C. Vanfraechem, 'MERCOSUR Compared', in *The Law of Mercosur* (Hart Publishing Ltd, 2010).

is crucial for the success of the regional integration process.¹²⁴ Political disunity and divergence in the values and norms of Mercosur member states, including the accession of Venezuela, further widen the differences and hinder regional integration.¹²⁵

3.1 Comparative Analysis of the Integration Process

Regional integration is a complex process that seeks to promote cooperation and interdependence among countries in each geographical region. In this context, both Mercosur and the EU are examples of economic blocs that aim at integration among their members. In this text, we will carry out a comparative analysis of the integration process of Mercosur and the EU, addressing its origins, objectives, stages, and challenges faced along the way¹²⁶.

The Mercosur integration process officially began in 1991, with the signing of the Treaty of Asunción by the founding countries: Argentina, Brazil, Paraguay, and Uruguay. The initial objective was to create a customs union, promoting trade liberalisation and the free movement of goods, services, and production factors among member countries. Subsequently, Mercosur expanded with the accession of other associated countries, such as Chile and Bolivia.¹²⁷

The initial stage of the Mercosur integration process was forming a customs union. Member countries agreed to establish a common external tariff, reduce trade barriers and adopt coordinated trade policies. This step was fundamental to boosting intra-regional trade and increasing the competitiveness of the bloc's industries.

During the integration process, Mercosur has faced significant challenges. Some of the obstacles faced were political divergences, economic asymmetries, tariff issues, and difficulties in harmonising internal policies. In addition, economic crises and political instabilities in some member countries have affected the bloc's dynamics.

However, Mercosur has also achieved important achievements. There was a significant increase in intra-regional trade, driven by tariff reductions and the elimination of non-tariff barriers. In addition, cooperation mechanisms have been established in areas such as

¹²⁴ Feng Y, Genna GM, 'Regional Integration and Domestic Institutional Homogeneity: a Comparative Analysis of Regional Integration in the Americas, Pacific Asia and Western Europe' (2003) 2 *Review of International Political Economy* 278.

¹²⁵ *Ibid* 119

¹²⁶ Franca Filho M T, Lixinski L, Olmos Giupponi MB (eds), *The Law of Mercosur* (Hart Publishing 2010)

¹²⁷ *Ibid* 76

agriculture, energy, transport and culture. Mercosur has also sought to negotiate trade agreements with other blocks, such as the EU, intending to expand trade and investment opportunities.¹²⁸

It is worth noting that Mercosur has had significant impacts on member countries. Economic integration has promoted export growth, stimulated productive diversification and fostered technology transfer among countries. In addition, regional integration has strengthened political cooperation, contributing to democratic stability in the region.

However, there are still challenges to be faced. The economic asymmetry between member countries and the need to improve domestic policy coordination are important issues to be addressed.¹²⁹ Furthermore, Mercosur's quest for greater political and social integration remains challenging. In the future, Mercosur faces promising prospects. Negotiating a free trade agreement with the EU may further boost regional trade and investment. Moreover, cooperation in infrastructure, innovation and sustainable development can strengthen regional competitiveness and development.¹³⁰

In short, the Mercosur integration process is an important example of regional cooperation in South America. Despite the challenges, the bloc has significantly promoted trade, political cooperation and economic development. Mercosur plays a key role in regional integration and has the potential to consolidate itself as a strong and influential bloc in the international arena.

The European Union, in turn, had its origins after World War II, with the creation of the European Coal and Steel Community in 1951 by France, Germany, Italy, Belgium, Luxembourg and the Netherlands. Over the years, the EU has expanded and consolidated itself as a political and economic union comprising 27 member states. Its main objectives are promoting peace, stability and prosperity in Europe, as well as creating a single market, free movement of people and the single currency, the euro.¹³¹

¹²⁸ Ibid 107

¹²⁹ de Lombaerde P, Mattheis F and Vanfraechem C, 'MERCOSUR Compared', *The law of Mercosur* (Hart Publishing Ltd 2010)

¹³⁰ Oliveira TM de P, 'União Europeia e Mercosul: Um Estudo Comparado Numa Perspectiva Político-Jurídica Da Integração Regional' (*Repositório Científico do Instituto Politécnico do Porto*, October 2018) <https://recipp.ipp.pt/bitstream/10400.22/13057/1/T%C3%BAlio_Oliveira_MAA_2018.pdf> accessed 22 June 2023

¹³¹ Ibid

The European Union's integration process has been one of modern history's most remarkable experiments in regional cooperation. The creation of the EU was motivated by the search for peace, stability and prosperity in Europe after the devastating consequences of the Second World War. Over the decades, the EU has evolved from an economic community into a political and economic union with a complex institutional structure.¹³²

The creation of the EU has its roots in the European Coal and Steel Community (ECSC), established in 1951. The ECSC was the first attempt to unite European countries in a strategic economic sector to promote peace and cooperation. From there, it evolved into the European Economic Community (EEC) and later the EU, with the signing of the Maastricht Treaty in 1992.¹³³

The EU integration process occurred through treaties and institutions establishing specific goals and milestones.¹³⁴ The EU has undergone a gradual integration process, starting with the creation of the European Coal and Steel Community in 1951. The Treaty of Rome in 1957 created the EEC to establish a common market and promote the free movement of people, goods, services and capital. The Single European Act of 1986 strengthened economic cooperation and laid the foundations for the single market. The Maastricht Treaty in 1992 gave birth to the EU, established the economic and monetary Union, and introduced EU citizenship, and the Lisbon Treaty in 2007 consolidated the EU's institutions and competences. Over the years, different treaties and institutions have been established to promote economic and political integration among member countries.

EU integration has brought several benefits to its member states. The single market has enabled free trade and business expansion, stimulating economic growth and job creation. The free movement of people has promoted mobility and cultural diversity and facilitated educational exchange and research cooperation. The EU has also played a key role in promoting peace and stability in Europe, facilitating conflict resolution, and promoting diplomacy.¹³⁵

¹³² Ibid 130

¹³³ Begg I, 'The European Union and Regional Economic Integration: Creating Collective Public Goods – Past, Present and Future' (*Think Tank | European Parliament*, March 2021)
<[https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI\(2021\)689369](https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI(2021)689369)> accessed 23 June 2023

¹³⁴ Ibid 36

¹³⁵ Atatüre S, 'The Historical Roots of European Union: Integration, Characteristics, and Responsibilities for the 21st Century' (<https://www.researchgate.net>, November 2008)
<https://www.researchgate.net/publication/279715835_The_historical_roots_of_European_Union_Integration_characteristics_and_responsibilities_for_the_21st_century> accessed 8 February 2023

However, the EU integration process also faced significant challenges. The economic crisis 2008, for instance, exposed the weaknesses of the financial system and triggered tensions between member countries. Likewise, the subsequent migration crisis brought issues of security and solidarity between member states to the fore. In addition, Brexit, the UK's exit from the EU, aimed to take back control of their borders, and laws, protecting their economy.¹³⁶ That posed an unprecedented challenge and shook the bloc's cohesion and vision for the future.

The EU integration process is a complex and fascinating story of regional cooperation. Despite the challenges, the EU has achieved a high level of political, economic and social integration. European integration has been a driving force for peace, stability and prosperity in Europe and remains an inspiring example for other regions. However, the EU faces ongoing challenges towards further integration and must adapt to new global realities and demands to ensure a prosperous and sustainable future.¹³⁷

Mercosur and the EU have undergone different stages and challenges along their integration processes. In the case of Mercosur, economic integration began with the signing of the Treaty of Asunción in 1991. In this initial phase, member countries agreed to establish a customs union, reducing customs tariffs and establishing a common external tariff for non-member countries.¹³⁸ However, Mercosur faced challenges in effectively implementing the customs union due to differences in trade policies and the structural problems of some member countries. Nevertheless, the diversity of interests among member countries and the political and economic instability of some have hindered the effective implementation of integration policies.¹³⁹

On the other hand, the EU faces challenges related to its expansion and managing diversity among member countries. The economic crisis of 2008 and the subsequent migration crisis have brought tensions between member countries to the fore and raised questions about the solidarity and cohesion of the bloc. In addition, the UK's exit from the EU in 2020 (Brexit) was a significant event that shook European integration and brought uncertainty about the bloc's future.¹⁴⁰

¹³⁶ Ibid 3

¹³⁷ Ibid 133

¹³⁸ Ibid 83

¹³⁹ Ibid 74

¹⁴⁰ Ibid 3

Indeed, the EU and Mercosur integration process is largely asymmetric.¹⁴¹ However, both Mercosur and the EU continue to seek to deepen their integration and address the challenges that arise.

3.2 Comparative Analysis of Institutional Formats

A comparative analysis of the institutional format reveals significant differences caused by the diverse regional integration schemes. One of the most obvious differences is the distinction between supranational and intergovernmental structures. While the EU has a supranational structure, Mercosur is an intergovernmental association without executive authority, where all institutions are intergovernmental.

The supranational structure of the EU is based on the gradual transfer of sovereignty from the member states to the EU sphere. That means that decisions taken in the EU institutions take precedence over the member states' national laws, ensuring uniform application of EU policies and rules throughout the territory of the Union. This supranational structure seeks to achieve objectives such as economic integration, the free movement of people, goods, services and capital, and promoting human rights and cooperation in areas such as security and the environment.¹⁴²

Among the main EU supranational institutions is the EP¹⁴³. It consists of members directly elected by EU citizens and has legislative powers, along with the Council of the EU. They debate and votes on proposed legislation and exercise democratic control over EU policies. Besides that, the European Commission. The Commission is formed by commissioners from each member state, are appointed by national governments, and are responsible for promoting the common interest of the EU. It plays an executive role, proposing legislation, implementing policies and overseeing the application of EU rules.¹⁴⁴

¹⁴¹ Martínez MM, 'Análise Comparada Da Integração No Mercosul e Na União Européia' (*EU-LAC Foundation*, 2005)

<<https://intranet.eulacfoundation.org/en/system/files/Análise%20comparada%20da%20integração%20no%20Mercosul%20e%20na%20União%20Européia.pdf>> accessed 16 February 2023

¹⁴² Ibid 101

¹⁴³ Vazquez M, 'The Parliamentary Dimension of Regional Integration. A Comparison of the European Union and Mercosur' (*Academia.edu*, 29 September 2021)

<https://www.academia.edu/54080298/The_Parliamentary_Dimension_of_Regional_Integration_A_Comparison_of_the_European_Union_and_MERCOSUR> accessed 22 June 2023

¹⁴⁴ Ibid

Nevertheless, the Court of Justice of the EU is the judicial body of the EU and is responsible for ensuring the correct interpretation and application of EU laws in all member states. Furthermore, besides these main institutions, the EU has other supranational bodies and agencies, such as the European Central Bank, responsible for monetary policy in the eurozone, and the European External Action Service, which coordinates EU foreign policy.

On the other hand, Mercosur adopts an intergovernmental structure, which means that all institutions are formed by representatives of the member states' governments. This structure aims to promote regional cooperation and integration without transferring sovereignty to a central authority. Therefore, unlike the EU, Mercosur does not have supranational authority with executive, legislative or judicial powers. The member states take their decisions consensually, and each country retains its sovereignty and autonomy in making national decisions.¹⁴⁵

In fact, Mercosur has three main decision-making bodies. The first is the CMC, composed of the member states' foreign and economic ministers responsible for making political and strategic decisions to guide Mercosur's integration process. The decisions of the CMC are taken by consensus among member states, meaning each country has veto power.¹⁴⁶ In addition, the GMC is responsible for coordinating activities related to Mercosur's operation. Moreover, CCM monitors trade between member countries and ensures compliance with the trade rules agreed upon in Mercosur.¹⁴⁷

This intergovernmental structure of Mercosur has its advantages and challenges. On the one hand, it allows member countries to maintain their independence and autonomy in decision-making. On the other hand, the absence of a central authority with supranational powers may slow the decision-making process and the implementation of common policies. In short, the intergovernmental structure adopted by Mercosur seeks to promote regional cooperation and integration by consensus among member countries, and each country maintains its sovereignty in making national decisions.¹⁴⁸

The distinction between institutional structures reflects different approaches to regional integration, which has implications for the functioning and effectiveness of both blocs. While

¹⁴⁵ Ibid 124

¹⁴⁶ Ibid 107

¹⁴⁷ Ibid 143

¹⁴⁸ Ibid 130

the EU has a more centralised system capable of implementing policies more quickly, Mercosur is based on voluntary cooperation between Member States, which can hinder the implementation of agreements and the deepening of integration. Moreover, this fact also reflects a difference in terms of maturity and level of regional integration.¹⁴⁹

The division between executive and legislative power is blurred in the EU, with the European Commission sharing its power with the Council of Ministers, the main element of EU legislative power. By contrast, in an intergovernmental structure like Mercosur's, the members of the decision-making bodies are composed of members of the national executive powers.¹⁵⁰

Regarding political and institutional construction and the relationship between the executive and legislative powers, the EU faces tensions between supranational and intergovernmental issues, while Mercosur must deal with a combination of presidential diplomacy and intergovernmental institutional and legal architecture.¹⁵¹

Another important difference is that the representation of the popular will takes place in the EU through the EP, as discussed in section 1.5.4. In contrast, in Mercosur, Parlasur is bound by the will of the parliaments of the member states.¹⁵² Another remark is that their decisions are taken by consensus and that there are ad hoc committees instead of permanent ones¹⁵³.

In a nutshell, the distinction between the EU's supranational and Mercosur's intergovernmental structures reflects different approaches to regional integration, with the EU seeking a greater transfer of sovereignty and decision-making power to central bodies. At the same time, Mercosur values cooperation between sovereign states. These differences have an enormous impact on each bloc's governance dynamics and pace of integration.¹⁵⁴

3.3 Comparative Analysis of Decision-Making Process

The EU has a complex decision-making system once the decisions are taken through the ordinary legislative process, and EU bodies have competences executed independently of the

¹⁴⁹ Malamud, A., and De Sousa, L. 'Regional Parliaments in Europe and Latin America: Between Empowerment' in Closing Or Widening the Gap?: Legitimacy and Democracy in Regional Integration Organizations (2007) 85.

¹⁵⁰ Ibid

¹⁵¹ Ibid 143

¹⁵² Lixinski L and Correa F de A, 'The Legal Future of MERCOSUR', *The law of Mercosur* (Hart 2010)

¹⁵³ Ibid

¹⁵⁴ Ibid 101

Member States. Depending on the subject matter, these competences have immediate applicability without the need for incorporation into domestic legal systems.¹⁵⁵

One of the main decision-making bodies in the EU is the Council of the EU, composed of representatives from each member state. EU legislation is adopted by the EP, directly elected by European citizens, highlighting its democratic aspect, and the Council, composed of all EU governments. Before proposing new initiatives, the Commission assesses their likely economic, social, and environmental consequences through impact assessments.¹⁵⁶

Another decision-making in the EU also involves the European Commission, which is the EU's executive body and has the power to propose legislation. The Commission comprises commissioners appointed by each member state, ensuring compliance with the treaties and implementing EU policies. Regarding international agreements involving trade issues, the Commission is responsible for agreeing compatible with EU trade policy. In addition, the Commission seeks to consult stakeholders, including non-governmental organisations, local bodies, civil society and business sector representatives, and expert groups, to obtain information on technical issues and ensure stakeholders' needs are met.¹⁵⁷

In addition, the EP also plays an important role in decision-making, co-legislating with the Council in several areas and exercising democratic control over the Commission.¹⁵⁸

In contrast, Mercosur adopts an intergovernmental structure, where member states take decisions on a consensual basis. The main decision-making body in Mercosur is the Common Market Council, composed of the ministers of foreign affairs and economics of each member country. The Council is responsible for establishing Mercosur's general policies and guidelines, and its decisions are taken by consensus among member states.¹⁵⁹

In Mercosur's decision-making process, member states have an equal voice and must reach a consensus to approve any measure. This consensual approach aims to ensure all members' equal participation and promote cooperation and regional integration. However, this approach

¹⁵⁵ Araújo A, *Oportunidades E Desafios Do Acordo Inter-Regional de Livre-Comércio Mercosul - União Europeia: Uma Análise Do Processo Negociador Em Tempos de Reconfiguração de Poder* (Dialética Editora 2020)

¹⁵⁶ Ibid 101

¹⁵⁷ Ibid 101

¹⁵⁸ Ibid 155

¹⁵⁹ Ibid 141

can also make the decision-making process slower and more complex, as unanimous agreement must be obtained from all member countries.¹⁶⁰

Another important difference is the presence of executive authority in the EU, represented by the European Commission, which actively proposes and implements policies. In Mercosur, there is no equivalent executive authority with similar powers, and the implementation of the decisions of the CMC depends on the voluntary action of member states.¹⁶¹

These differences in the decision-making process between the EU and Mercosur have implications for the efficiency, agility and implementation capacity of the policies and measures adopted by each bloc. While the EU has a more centralised structure and a more efficient decision-making process, Mercosur emphasises the equality of voices among member states, seeking consensus as the basis for its decisions.

3.4 Comparative Analysis of the Legal System

A comparative analysis of the legal systems of the EU and Mercosur reveals a notable disparity, especially regarding the effectiveness of applying the rules. As mentioned above, the EU legal system stands out for its supranational structure, comprising a broad set of rules and regulations of direct and immediate application in all member states. The EU has harmonised legislation in several areas, such as trade, the environment, competition, and human rights, which is binding on all Member States. In addition, the EU has an efficient judicial system, represented by the Court of Justice of the EU (CJEU), which is responsible for interpreting and applying EU law.¹⁶²

On the other hand, Mercosur operates through an intergovernmental model, in which rules and regulations are established by consensus through agreements and treaties signed by the member states. In the end, all norms must necessarily go through an internal legislative process in each country in order to be implemented, resulting in a process characterised by slowness and ineffectiveness. The lack of a central authority with supranational powers limits Mercosur's ability to enforce compliance and implementation of rules by member states.

¹⁶⁰ Ibid 79

¹⁶¹ Ibid 119

¹⁶² Ibid 101

Furthermore, the Mercosur legal system lacks a strong judicial institution with broad jurisdiction to settle disputes and interpret Mercosur's regulations and provisions. Likewise, establishing an EU-style judicial court is impossible, considering its intergovernmental nature and lack of political interest.¹⁶³

This disparity in the practical application of the rules is reflected in several aspects. While in the EU, the CJEU's judicial decisions are binding on all member states and directly impact national legislation, in Mercosur, judicial decisions do not have the same authority and are not binding on member states. That generates a lack of uniformity in interpreting and applying the bloc's norms.¹⁶⁴

Beyond that, the EU has control mechanisms and sanctions to ensure that member states comply with the rules. If a member state fails to comply with the established obligations, financial sanctions can be applied and even the suspension of certain rights within the Union. In Mercosur, by contrast, enforcement and sanction measures are less frequent and less effective, which can lead to a higher degree of non-compliance by member states. In short, Mercosur and the EU have distinct degrees of maturity regarding their legal system.

3.5 Comparative Analysis of Monetary Integration

The comparison of monetary integration is equally relevant concerning the EU and Mercosur relations. While the EU has established a comprehensive monetary union with the introduction of the euro, Mercosur is still seeking to advance discussions on this topic internally. The differences between the two blocs in this respect are therefore striking.

The Monetary Union was implemented gradually and consolidated in the EU with the euro banknotes and coins launched in 2002. In fact, 19 of the 27 EU member countries have adopted the euro as their official currency, forming the so-called "eurozone". This Monetary Union implies adopting a single monetary policy, defined by the European Central Bank (ECB), which seeks to maintain price stability and promote economic growth. The EU monetary union represents a deep and advanced integration with significant implications for trade, investment and financial flows between member countries.¹⁶⁵

¹⁶³ Ibid 101

¹⁶⁴ Ibid 101

¹⁶⁵ Ibid 36

However, the adoption of the euro has also brought significant challenges. The disparities in competitiveness and the level of debt of each country manifested themselves in economic crises such as the sovereign debt crisis that affected countries such as Greece¹⁶⁶. Despite the difficulties, the EU monetary union remains one of the world's largest and most successful economic integration projects. The euro is currently the second most widely used international reserve currency behind the US dollar and plays an important role in global trade and international financial stability.

On the other hand, Mercosur's monetary integration has been a complex and challenging process debated since the bloc's creation in 1991. As in the EU, the goal of monetary integration would be to establish a unified financial system and a common currency among member countries, to reduce exchange rate volatility, increase economic stability and improve the region's competitiveness¹⁶⁷.

In 2004, the bloc launched the System of Payments in Local Currencies (SML), which allows businesses to transact in local currencies, reducing dependence on the US dollar. In 2014, Mercosur also established a Liquidity Reserve Fund (FLAR) to provide financial resources to deal with crises.¹⁶⁸

There have been some proposals to create a common currency in Mercosur, such as the 'South American Real', but so far, they have not been implemented due to several political, economic and legal challenges. Some obstacles include the lack of economic convergence between countries, political instability in some members, the need for structural reforms in some countries and the need for harmonisation of monetary policies. Therefore, before projecting monetary integration in Mercosur is to overcome the economic difficulties and disparities in the Mercosur countries.¹⁶⁹

Despite the challenges, monetary integration remains a priority for Mercosur, and member countries continue to work to strengthen financial and economic cooperation in the region.

¹⁶⁶ Ibid 133

¹⁶⁷ Ibid 129

¹⁶⁸ Inter-American Development Bank Integration and Trade Sector, 'Mercosur Report N° 13 ' (*Sciences po*, May 2009)

<https://www.sciencespo.fr/opalc/sites/sciencespo.fr.opalc/files/i_mercosur_report_13%5B1%5D.pdf> accessed 23 June 2023

¹⁶⁹ Kronberger R, 'A Cost-Benefit Analysis of a Monetary Union for MERCOSUR with Particular Emphasis on the Optimum Currency Area Theory?' (*The University Library of Ludwig-Maximilians-Universität München*, 2001) <<https://econwpa.ub.uni-muenchen.de/econ-wp/mac/papers/0407/0407010.pdf>> accessed 23 June 2023

Monetary integration can be an important step towards deepening economic integration and improving the welfare of citizens in Mercosur member countries.¹⁷⁰

Recently, with the change in Brazil's Labour-led government, the debate on the issue of monetary integration has re-emerged with a slightly different focus. The proposal would be to create a common currency, the Sur, for Mercosur. Unlike the EU, which adopted the euro as its single currency, the idea would be a common currency that facilitates trade relations between member countries while each country maintains its currency. The proposal has been discussed before, and experts have diverging opinions about its possible impacts. However, creating a common trade currency could facilitate economic transactions, reduce operating costs, and boost the regional economy. On the other hand, the economic instability of some member states, such as Argentina, could be a major obstacle.¹⁷¹

In sum, the comparison between Mercosur and the EU reveals significant differences in origins, objectives, stages and challenges. While Mercosur seeks to consolidate its customs union and extend its economic integration, the EU has already achieved more advanced integration by creating a single market and economic and monetary Union. However, both blocs face internal and external challenges that require continuous efforts to strengthen integration and promote cooperation among their members. The comparative analysis of these integration processes allows us to understand the different dynamics and perspectives of each bloc and identify and understand an AA's negotiation process and its contexts.

¹⁷⁰ Ibid 133

¹⁷¹ 'Fifth Meeting of the European Union - Mercosur Biregional Negotiations Committee, Montevideo, 2-6 July 2001' (*EU-LAC Foundation*, 6 July 2001) <<https://intranet.eulacfoundation.org/en/content/fifth-meeting-european-union-mercotur-biregional-negotiations-committee-montevideo-2-6-july>> accessed 15 June 2023

4. The Negotiation Process of the Association Agreement

4.1 The Historical Background of The Negotiations Process

Mercosur and the EU, although at completely different stages, have some similarities in terms of their identities. That happens due to the historical influence of Western Europe on Latin America's Southern Cone, as demonstrated in the previous chapters. Likewise, the negotiations between Mercosur and the EU have been shaped by a historical context that dates to the establishment of these two organisations. Consequently, it is important to consider the preceding events to better understand the context in which these negotiations were conducted.

In the 1980s, Europe was the scene of landmark events that strongly influenced the EEC, the predecessor of the EU. Among these events, the entry of Portugal and Spain into the EEC on the 12th of June 1985 was an extremely relevant milestone for consolidating a unified and integrated Europe, with profound impacts on the European Community.

In fact, all Community enlargements have brought new international scenarios to the Community.¹⁷² The accession of Portugal and Spain strengthened the presence and importance of Latin America in the European Community's priorities.¹⁷³ That increased attention and commitment was expressed in the treaty of accession of both countries, which affirmed the Community's "willingness to broaden and strengthen its economic and cooperation relations" with the countries of Latin America.¹⁷⁴

In the 1990s, the world experienced major historical transformations, of which it is noteworthy to highlight the effects generated by the fall of the Berlin Wall at the end of 1989, the dissolution of the Soviet Union, and the rise of capitalism as the dominant order, among many others. The signing of the Maastricht Treaty in 1992¹⁷⁵ was also a milestone in the 90s since it promoted the evolution of the European Community into the current European Union. Notably, this treaty represented a crucial episode in the EU's consolidation as a singular

¹⁷² 'América Latina y Europa Occidental En El Umbral Del Siglo XXI' (*Nações Unidas*, 1 October 1989) <<https://repositorio.cepal.org/handle/11362/29591?show=full>> accessed 12 June 2023

¹⁷³ Santos CPH dos, *Uma Avaliação Crítica Do Processo de Integração Do Mercosul: À Luz Dos Seus Antecedentes, Instrumentos E Relações Externas, Em Especial Com a União Europeia* (Universidade de Santiago de Compostela, Serviço de Publicações e Intercambio Científico 2007) <<https://minerva.usc.es/xmlui/handle/10347/2268>>

¹⁷⁴ Leite IC, 'Trajectórias: Portugal, União Europeia e América Latina' (*Repositorio Institucional Universidade Fernando Pessoa*, Spring 2010) <<http://hdl.handle.net/10284/3138>> accessed 12 June 2023

¹⁷⁵ Ibid 21

international actor, continuously playing a relevant role while consolidating its position of global influence.

Following the new world order, Latin America also underwent major transformations and was shaped by significant impulses towards regional integration in the 1990s. A noteworthy illustration of this trend was the establishment of Mercosur, created in 1991 through the signature of the Treaty of Asunción. Mercosur represented an ambitious initiative for economic and political integration between Brazil, Argentina, Uruguay, and Paraguay, following EEC's successful example, aiming to promote the free movement of goods, services and people, in addition to establishing a customs union and coordinating macroeconomic policies. Mercosur's emergence reflected the aspiration of Latin American countries to strengthen their economic and political ties, boosting regional development and increasing their relevance on the international stage.

During that same decade, the United States was moving towards creating a Free Trade Area of the Americas (FTAA), inspired by the North American Free Trade Agreement (NAFTA) model. These advances generated a reactive response in the EU towards Latin America. Meanwhile, as the EU consolidated its position as an international actor with a more established political nature, accumulating decades of evolution and deepening of integration, Mercosur emerged as an initial regional integration project with similar objectives to promote trade, cooperation and solidarity among its members.

In essence, the EU was at a more advanced stage in regional integration and cooperation, had consolidated institutions, such as the EP and the European Commission, had achieved a customs union and implemented coordinated macroeconomic policies. In contrast, Mercosur still faced primary challenges regarding policy harmonisation and the development of effective regional governance institutions. This difference in institutional maturity and policy coordination contributed enormously to a disparity and strength between the two blocs, highlighting the greater solidity and maturity of the EU compared to Mercosur¹⁷⁶.

¹⁷⁶ de Lombaerde P, Pietrangeli G and Adiwasio E, 'On the Joint Assessment of Andean Integration in EU-CAN Relations' (*United Nations University - Institute on Comparative Regional Integration Studies*, 2006) <<https://cris.unu.edu/sites/cris.unu.edu/files/O-2006-7.pdf>> accessed 15 June 2023

4.2 Initial Steps for the Negotiation Development

The negotiation process between Mercosur and the current European Union is widely recognised as the longest in history. Compared with the negotiation process between the EU-Mercosur Trade Agreement (EUMETA), it is important to note that other complex inter-regional trade agreements have taken a considerably shorter time to be successfully signed. A notable example is the Transpacific Partnership (TPP), an agreement that involved twelve countries from Asia, Oceania, North America, and South America. Over almost a decade, the TPP negotiations faced several challenges but overcame them and reached a conclusion.¹⁷⁷

On the other hand, the EUMETA negotiations faced several impasses and setbacks over time. Differences in the interests and policies of each bloc, as well as concerns regarding sensitive issues such as agriculture and environmental protection, have contributed to the complexity of the process. In addition, factors such as political changes and the need for consensus among Mercosur member countries also influenced the length of the negotiations.

Importantly, these barriers and stagnating periods in the EUMETA negotiations have highlighted the complexity and sensitivity of the regional integration process between the EU and Mercosur. Although mutual interest in strengthening economic and trade relations has always been present, the search for balance and consensus on a wide range of issues has required (and still requires) considerable time and effort from both parties.

While the TPP overcame challenges and concluded its negotiations in a relatively shorter timeframe, the EUMETA negotiation process proved much more prolonged and complex due to the peculiarities and diversities in the blocks involved. Nonetheless, those challenges do not invalidate the importance and potential of this Agreement but only emphasise the need for persistence, flexibility, and commitment to achieve a beneficial result for all sides.

The first official records of the negotiations date back to 1995, when, on the 12th of June of that year, the European Commission received authorisation from the Council to begin negotiations with Mercosur.¹⁷⁸ However, the EU and Mercosur member countries were already

¹⁷⁷ Ghiotto L and Echaide J, 'Analysis of the Agreement between the European Union and the Mercosur' (*db.zs*, 2019) <<http://www.db.zs-intern.de/uploads/1579162016-2020StudyMercosurGreens.pdf>> accessed 13 June 2023

¹⁷⁸ 'Bilateral Framework Agreements for Cooperation with the Mercosur Countries' (*EUR-Lex*, 6 March 2020) <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM%3Ar14014>> accessed 13 June 2023

cooperating more closely and developing trade relations independently before the start of negotiations in 1995. At that time, most South American countries had already established independent cooperation agreements with the Community. These agreements were significant milestones in strengthening these relations, laying solid foundations for rapprochement and the development of future negotiations.

Argentina was a pioneer by signing an independent cooperation agreement with the EC in April 1990¹⁷⁹. In the same year, Brazil and Argentina signed a trade pact registered with LAIA¹⁸⁰, and Paraguay and Uruguay confirmed their interest in being part of the regional integration process, later resulting in the birth of Mercosur.

The Agreement between Argentina and the EC aimed to foster bilateral cooperation between the parties and reflected the EC's intention to create favourable conditions for the harmonious development of commercial and economic cooperation based on equality, non-discrimination, mutual advantage and reciprocity. Both parties recognised the need to boost and deepen trade and economic relations, creating an enabling environment for developing equitable trade relations and sustainably promoting trade and economic cooperation. Considering the historical context in which such an agreement occurred, it is understood that Argentina's pioneering approach favoured the future engagement of the other Mercosur member countries with the EU.

The progressive rapprochement has continued with Uruguay. In November 1991, when Mercosur had already been formally established by the Treaty of Asunción, Uruguay celebrated the cooperation agreement with the EC. The preamble to this cooperation agreement expresses their mutual interest in intensifying and diversifying trade and encouraging investment flows at a time when Uruguay was engaged in regional integration with Argentina, Brazil and Paraguay.¹⁸¹

In February 1992, it was Paraguay's turn to sign a cooperation agreement with the EEC. That happened within a historical context in which Paraguay was regaining its democracy and faced

¹⁷⁹ 'Framework Agreement for Trade and Economic Cooperation between the European Economic Community and the Argentine Republic' (*EUR-Lex*, 26 October 1990) <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A21990A1026%2801%29>> accessed 13 June 2023

¹⁸⁰ *Ibid* 85

¹⁸¹ 'Framework Agreement for Cooperation between the European Economic Community and the Eastern Republic of Uruguay' (*EUR-Lex*, 8 April 1992) <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A21992A0408%2801%29>> accessed 13 June 2023

several social and economic problems. On the other hand, the EC, formed at that time by 12 countries, cohesive and in the process of becoming the EU¹⁸², expressed its intention to help Paraguay face the mentioned crisis, as well as to support the Mercosur regional integration process, of which Paraguay was and is part of. Thus, mutual interest was expressed in establishing contractual relations, intensifying and diversifying trade and encouraging the flow of investments.¹⁸³

In 1995, Brazil also signed an independent cooperation agreement with the EU, further consolidating the relationship between the two parties. This step was particularly significant as it coincided with the Council's authorisation to begin negotiations with Mercosur when the South American bloc deepened its regional integration process.¹⁸⁴

As in the other agreements, the term signed between Brazil and the EU was established based on a series of considerations and objectives shared by the parties involved. One example is the mutual interest in expanding and diversifying trade and intensifying cooperation trade, economic issues, science and technology, and financial issues.

Even more, in the case of Brazil, the Agreement stressed the importance of greater environmental protection, coupled with the need for sustainable economic and social development, issues that have continued to be a matter of debate for almost 40 years now. In addition, both parties were convinced of the importance of the General Agreement on Tariffs and Trade (GATT) rules and principles for opening international trade. They, therefore, reaffirmed their commitments under that Agreement, including respect for Intellectual Property (IP) rights and freedom of investment. Likewise, another important aspect highlighted in this earlier Agreement was the need to promote social rights, especially the rights of the most disadvantaged sectors, which would translate into equitable and inclusive development.

¹⁸² 'Five Things You Need to Know about the Maastricht Treaty' (*European Central Bank*, 15 February 2017) <https://www.ecb.europa.eu/ecb/educational/explainers/tell-me-more/html/25_years_maastricht.en.html> accessed 26 June 2023

¹⁸³ 'Framework Agreement for Cooperation between the European Economic Community and the Republic of Paraguay' (*EUR-Lex*, 30 October 1992) <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A21992A1030%2801%29>> accessed 13 June 2023

¹⁸⁴ 'Framework Agreement for Cooperation between the European Economic Community and the Federative Republic of Brazil' (*EUR-Lex*, 1 November 1995) <<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A21995A1101%2801%29>> accessed 13 June 2023

In a nutshell, the gradual rapprochement of the EU to the Mercosur member countries took place in a planned and progressive manner, establishing a solid basis for subsequent negotiations between the two regional bodies. The previous cooperation agreements between the EU and each of Mercosur's member states reflected a mutual interest in promoting economic and political cooperation and supporting the Mercosur regional integration process.

The terms of cooperation signed by the EC with each Mercosur member country explicitly expressed the intention to establish comprehensive cooperation with each country and support the integration process of the new regional entity, Mercosur.

In this regard, it is worth emphasising that Mercosur's regional integration formally began in 1991, and, at that time, the new economic group lacked the international legal personality to enter trade pacts with third parties. Only in 1994, through the signing of the Ouro Preto Treaty, was Mercosur acquired legal and juridical representation powers for its member countries.

4.3 The 1995 Interregional Framework Cooperation Agreement

The development of the relationship between Mercosur and the EU can be perceived through the negotiations and cooperation agreements signed throughout the years. Initially, on the 29th of May 1992, they signed the first Interinstitutional Cooperation Agreement between Mercosur and the European Community. This Agreement marked the beginning of an embryonic partnership, establishing a channel for institutionalised dialogue and technical cooperation and preparing the ground for future agreements.¹⁸⁵

In October 1994, the Commission approved a communication to the Council and Parliament strengthening the EU's policy towards Mercosur and proposing the establishment of an interregional association. As an intermediate stage, the Commission proposed a framework agreement on economic and trade cooperation with Mercosur.¹⁸⁶

In December of the same year (1994), the Council of the EU, the European Commission and the member countries of Mercosur signed a Solemn Joint Declaration, expressing great interest in a strategy that sought an interregional association with a political and economic nature¹⁸⁷.

¹⁸⁵ Ibid 173

¹⁸⁶ 'Enhancing the EU's Policy on Mercosur' (*EUR-Lex*, 26 July 2005) <<https://eur-lex.europa.eu/EN/legal-content/summary/enhancing-the-eu-s-policy-on-mercosur.html>> accessed 13 June 2023

¹⁸⁷ Commission of the European Communities, 'Communication From Die Commission To The Council And The European Parliament - The European Union And Latin America: The Present Situation and Prospects for

Subsequently, negotiations for the framework agreement began. On the 4th of April 1995, there was a "Recommendation for a Council Decision authorising the Commission to negotiate an interregional framework agreement for commercial and economic cooperation with Mercosur".

On the 23rd of October 1995 in Brussels, the EC Council proposed the conclusion of an agreement between the parties concerned. This proposal for a Decision was approved by the Council on behalf of the Community¹⁸⁸. The Interregional Framework Cooperation Agreement was signed on the 15th of December 1995 and entered into force on the 1st of July 1999¹⁸⁹. It provided for a political dialogue between the two blocs with a view to the future establishment of an interregional free trade association of an economic and political nature.

In a nutshell, the 1995 Framework Agreement highlighted the need for interregional cooperation between the EU and Mercosur to strengthen the political, economic and cultural ties between these regions. Based on shared considerations and principles, both parties recognised the importance of working together to promote sustainable development, ensure peace and stability, and strengthen international trade. This interregional partnership was intended to offer significant opportunities for mutual growth and lasting benefits to its members.

Among the guiding principles of this cooperation pact, democratic values and human rights are highlighted as essential components. Furthermore, the cooperation sectors covered trade, customs, statistics, IP, and economic cooperation, emphasising industrial cooperation, energy, science and technology, telecommunications, the environment, and investment promotion. Additionally, the Agreement provided a framework to strengthen integration and inter-institutional cooperation in cultural and information activities and the fight against drug trafficking.

Also noteworthy is the future evolution clause, as provided in Article 23 of the Framework Agreement, allowing the Agreement to be updated and adapted according to needs and changes over time. Furthermore, over more than 25 years, this evolution has taken place so that the terms of negotiations are still on the table. Therefore, despite the resisting obstacles, both blocs

Closer Partnership 1996-2000 ' (*Archive of European Integration*, 23 October 1995)

<<http://aei.pitt.edu/2827/1/2827.pdf>> accessed 26 June 2023

¹⁸⁸ Ibid

¹⁸⁹ 'Interregional Framework Cooperation Agreement between the the European and Mercosur' (*EUR-Lex*, 15 December 1995) <<https://eur-lex.europa.eu/EN/legal-content/summary/interregional-framework-cooperation-agreement-between-the-european-community-and-mercotur.html>> accessed 13 June 2023

are interested in reaching an agreement regulating their economic, commercial and political exchanges.¹⁹⁰

Therefore, the Agreement between the EU and Mercosur represented the initial beginning of the mutual commitment to consolidate an interregional association, establish a solid base for economic and political cooperation, promote development and competitiveness, and open dialogue paths on mutual interest and global scale. Likewise, "this agreement was of fundamental importance for the deflagration of a future free trade negotiation process" since it envisaged a framework of gradual liberalisation, also seeking greater rapprochement and cooperation in the agricultural and industrial areas, which is still sensitive for both blocs.¹⁹¹

4.4 Post-Interregional Framework Cooperation Agreement Era (1996-1999)

The period from 1996 to 1999, between the signing of the Interregional Cooperation Agreement between the EU and Mercosur and its entry into force, was marked by prior negotiations to analyse the commercial and regulatory relationship between both parties.¹⁹² The first meeting of the EU-Mercosur Joint Commission would then be held in June 1996 to prepare the bilateral trade negotiations, establish a cooperation program with a view to the creation of Free Trade Areas in 2005 and create a consultation mechanism to coordinate positions in certain international forums.¹⁹³ These negotiations resulted in elaborating a document called "photograph", which presented the commercial relations between the blocks and was concluded in April 1998 in Brussels¹⁹⁴.

Thereafter, the European Commission prepared a study using various research sources, including "photography", to prepare a draft with negotiation guidelines. During this period, international events relevant to international relations were scheduled to take place, such as the

¹⁹⁰ Sanahuja J and Bonilla A, 'The European Union, Latin America and the Caribbean: Cartography of the Association Agreements: EU-Lac Foundation' (*Fundación Carolina*, 2022)
<<https://eulacfoundation.org/en/european-union-latin-america-and-caribbean-cartography-association-agreements-0>> accessed 27 June 2023

¹⁹¹ Castro BCM, 'Centro Universitário de Brasília - Uniceub: Home' (*UniCEUB*, 2020)
<<https://repositorio.uniceub.br/jspui/bitstream/prefix/14968/1/Bruno%20Castro%2021707455%20%282%29.pdf>> accessed 13 June 2023

¹⁹² Ibid 187

¹⁹³ Ibid 173

¹⁹⁴ Klom A, 'Association Negotiations between the Mercosur and the European Union : Rivalling Western Hemisphere Integration or Supporting Southern Cone Integration?' (*Research Gate*, 2000)
<https://www.researchgate.net/publication/228424756_Association_negotiations_between_the_Mercosur_and_the_European_Union_Rivalling_Western_Hemisphere_integration_or_supporting_Southern_Cone_integration> accessed 13 June 2023

1998 FTAA summit, the March 1999 European Union meeting to discuss reform of the Common Agricultural Policy (CAP), a WTO round in Seattle, and the first Latin America-European Union summit in Rio de Janeiro in 1999. The latter, in turn, could help advance the free trade agreement between the EU and Mercosur. These international events created a delicate and tense situation in the negotiations.¹⁹⁵

Once the Commission had approved the negotiating directives based on the study, some groups and governments lodged objections regarding points in the agricultural and industrial sectors. Meanwhile, in September 1998, the EU's Council of Ministers discussed the Commission's proposal. However, Mercosur politicians were lobbying because of their reliance on agricultural agribusiness sector interest groups. By then, it was clear that agriculture would be one of the main stumbling points in the negotiation process¹⁹⁶. In 1998, it was already clear that the sensitive issue for the Europeans would be agriculture, while for Mercosur, it would be services and high technology.¹⁹⁷ Mercosur began to adopt a wary position regarding the negotiations in the face of these facts.¹⁹⁸

Indeed, 1999 was equally coloured by a series of forthcoming international events that aroused expectations and concerns regarding the trade negotiations between the two economic blocks. Some advocated a multilateral rather than regional trade negotiation approach, while others took a more favourable view of avoiding free trade discussions due to domestic electoral pressures. There were concerns about rejecting the European Commission's proposals and how this would affect relations with Mercosur. The possibility of postponing the negotiations until after the WTO talks were over was also considered.¹⁹⁹

¹⁹⁵ Ibid 191

¹⁹⁶ Tenewicki M. 'Elementos para el análisis de las oportunidades y retos que implica la vinculación con el Mercado Común del Sur (MERCOSUR)', Documentos SELA, 1997 apud Carneiro PH dos S, 'Uma Avaliação Crítica Do Processo de Integração Do Mercosul, à Luz Dos Seus Antecedentes, Instrumentos e Relações Externas, Em Especial Com a União Européia' (*Universidade de Santiago de Compostela*, 2006) <https://minerva.usc.es/xmlui/bitstream/handle/10347/2268/9788497508247_content.pdf?sequence=1> accessed 29 June 2023

¹⁹⁷ Vacchino J, 'Escenarios y desafíos de la integración latinoamericana', Documentos SELA, Discursos y Ponencias, 1998 apud Carneiro PH dos S, 'Uma Avaliação Crítica Do Processo de Integração Do Mercosul, à Luz Dos Seus Antecedentes, Instrumentos e Relações Externas, Em Especial Com a União Européia' (*Universidade de Santiago de Compostela*, 2006) <https://minerva.usc.es/xmlui/bitstream/handle/10347/2268/9788497508247_content.pdf?sequence=1> accessed 29 June 2023

¹⁹⁸ Ibid 196

¹⁹⁹ Klom A, 'Mercosur and Brazil: A European Perspective' (*JSTOR*, March 2003) <<https://www.jstor.org/stable/3095825>> accessed 28 June 2023

Against this backdrop, questions arose about how to conduct the negotiations without compromising everything built up until then. While diplomatic activities intensified, the Latin American and European Union leaders faced considerable pressure to make crucial decisions. Mercosur maintained its vision of establishing free trade and promoting progressive and reciprocal liberalisation between the economic blocs, covering the trade area of goods and services. However, this idea was surrounded by concerns over the process and tariff imbalances, besides the recurring agricultural issues. Despite the disagreements and polemics, the structure established at the Brussels meeting was maintained, and in the following year (2000), the committees of the bilateral negotiation rounds started working.²⁰⁰

4.5 Evolution of the Negotiations: Four Distinct Stages

As discussed previously, the negotiation process between the EU and Mercosur is highly complex, spread over more than 20 years. Consequently, to analyse the theme in more depth, it is divided into four stages of negotiations²⁰¹. The first stage is focused on the negotiation cycle that began in 1999 and lasted until the suspension of negotiations in 2004. During this period, the initial foundations of the negotiations were established, and general principles and trade objectives were discussed.

The second stage covered the period of mutual disengagement, which lasted from 2004 to 2010. During this time, the negotiations faced obstacles, and the parties demonstrated less engagement, resulting in a slow process.

The third stage began in 2010 with the relaunch of negotiations and extended until the exchange of offers in 2016. At that moment, there was a renewed effort to advance the negotiations, and key issues were discussed, culminating in the exchange of concrete proposals between the parties.

Finally, the fourth and final stage is concentrated on the period between 2016 and 2019, highlighting the new crisis scenario of globalisation. Throughout this time, the complexity of

²⁰⁰ Ibid 191

²⁰¹ Sanahuja J and Rodríguez J, 'Veinte Años de Negociaciones Unión Europea-Mercosur: Del Interregionalismo a La Crisis de La Globalización' (*SELA - Sistema Económico Latinoamericano y del Caribe*, 2019) <https://www.sela.org/media/3219606/veinte-anos-de-negociaciones-union_europea-mercosur.pdf> accessed 15 June 2023

the negotiations increased, and it was necessary to consider the global context and additional factors to make the Agreement viable.

4.5.1 The First Stage: From 1999 to 2004

The first phase of the negotiations, which lasted from 1999 to 2004, was crucial in establishing the foundations of the negotiation process. During this period, 15 rounds of negotiations were held in the Bi-regional Negotiations Committee (BNC), in which the general principles and objectives were discussed and defined.²⁰²

The first round of negotiations took place in April 2000 in Buenos Aires, Argentina.²⁰³

During this meeting, the general principles and objectives for the negotiation process were established, as well as the relevance of the participation of new actors from civil society in this process. The commitment of both parties to gradual and reciprocal trade liberalisation, covering all sectors, following World Trade Organisation (WTO) rules was also reaffirmed.

The first discussion addressed political issues, such as conflict prevention, the defence of human rights, democracy, and sustainable development. Social and economic aspects were also considered, among other relevant sectors. As a methodology, three sub-groups were created to work on economic, social, cultural, technical and financial cooperation.²⁰⁴ Moreover, each sub-group was responsible for discussing subjects related to it. For example, the economic sub-group worked on the industry, macroeconomics, transport, energy, and environment. The social and cultural dealt with social cooperation, social dialogue, education, drugs, organised crime, and cultural issues. The technical and financial sub-group discussed the modernisation of public administration, inter-institutional cooperation, and regional integration. The latter had as its objective the liberalisation of trade in goods and services, respecting WTO rules and protecting IP rights.²⁰⁵

²⁰² Ibid

²⁰³ 'First Meeting of the EU-Mercosur Biregional Negotiations Committee, Buenos Aires, 6-7 April 2000' (*EU-LAC Foundation*, 7 April 2000) <<https://intranet.eulacfoundation.org/en/content/first-meeting-eu-mercotur-biregional-negotiations-committee-buenos-aires-6-7-april-2000>> accessed 15 June 2023

²⁰⁴ Ellis M, 'Negotiations between the EU and Mercosur: Motivations behind the Relaunch in 2010' (*Univerzita Karlova*, 23 September 2019) <<https://dspace.cuni.cz/bitstream/handle/20.500.11956/112505/120349786.pdf?sequence=1>> accessed 27 June 2023

²⁰⁵ Ibid 201

The second round occurred in Brussels from the 13 to the 16th of June 2000 and was marked by sharing information among negotiators, discussions on specific aspects of the Agreement, identification of obstacles related to non-tariff issues and preparation for the next round. It was also defined that a subgroup would be convened at each round to discuss specific issues of the Agreement²⁰⁶.

The third round of negotiations was conducted in Brasilia in November 2000.²⁰⁷ The cooperation aimed to adapt the administrative systems of the European and South American blocks to the context of the Agreement, involving regular exchanges of information, knowledge transfer, preliminary studies and joint projects with commensurate funding, training and organisational assistance. It is worth saying that cooperation between the institutions was fundamentally important in solidifying Mercosur's regional integration. As for trade issues, both blocs showed determination to pursue activities in all sectors. The three technical groups dealt with different items such as tariffs, non-tariff measures and trade statistics, industrial issues, agriculture, services, capital movement, investment, IP rights, government procurement, competition and dispute settlement.

Andy Klom points out one major difference between the European and South American negotiators. The formers were all highly specialised in the areas of discussion in which they were engaged. In contrast, those representing Mercosur were high-ranking officials and politicians. At that time, Brazil chaired Mercosur and made great efforts to maintain a high level of discussion, advancing in a positive sphere of negotiation. Although the round generated productive discussions, the key element for success was the psychological issue, as stated by an Itamaraty official, pointing out that 80% of the negotiations are based on psychology, while 15% are substance and 5% luck²⁰⁸.

²⁰⁶ 'Second Meeting of the European Union - Mercosur Biregional Negotiations Committee, Brussels, 13-16 June 2000' (*EU-LAC Foundation*, 16 June 2000) <<https://intranet.eulacfoundation.org/en/content/second-meeting-european-union-mercosur-biregional-negotiations-committee-brussels-13-16-june>> accessed 15 June 2023

²⁰⁷ 'Third Meeting of the EU-Mercosur Biregional Negotiations Committee, Brasilia, 7-10 November 2000' (*EU-LAC Foundation*, 10 November 2000) <<https://intranet.eulacfoundation.org/en/content/third-meeting-eu-mercosur-biregional-negotiations-committee-brasilia-7-10-november-2000>> accessed 15 June 2023

²⁰⁸ Ibid 194

The fourth round of negotiations took place in Brussels in March 2001.²⁰⁹ During the negotiations, progress was made on several issues, such as competition policy, IP law, public procurement and dispute settlement. Also, several areas of divergence and mutual interests were identified. It is worth noting that at that time, some tensions were growing within Mercosur due to economic instability in Argentina.

The ironbound happened in Montevideo in July 2001.²¹⁰ This round was considered fairly positive. The European Union presented a unilateral proposal on several aspects of the Agreement, covering 90% of agricultural trade issues and 100% of the industrial sector, leaving the rest of the agricultural area to be discussed later. The EU's unilateral gesture reaffirmed its support for Mercosur as it went through delicate internal moments.

Other sectors, such as custom cooperation, competitive cooperation and statistics, and scientific and technological cooperation, were also addressed. Some proposals were made, including instant and full tariff liberalisation for certain products, the gradual elimination of tariffs over several years for different food categories, and the phasing out tariffs at specific times and stages for industrial products. The public procurement sector was also the subject of discussion, and the Social and Cultural Cooperation Subgroup presented proposals in cooperation to combat drugs and organised crime.

Mercosur's counterproposal was presented in **the sixth round**²¹¹, which took place in October 2001. It covered only about one-third of the issues involved and was considered to fall short of the standards set by the WTO.

In 2002, both Mercosur and EU member states were facing internal crises, which indirectly impacted the negotiations on the ambitions and objectives of both blocs. At the time, Argentina, facing a serious economic crisis, received Uruguay's support for its proposal to establish a free trade area within Mercosur, allowing bilateral negotiations with other countries. This initiative

²⁰⁹ 'Fourth Meeting of the EU-Mercosur Biregional Negotiations Committee, Brussels, 19-22 March 2001' (*EU-LAC Foundation*, 22 March 2001) <<https://intranet.eulacfoundation.org/en/content/fourth-meeting-eu-mercossur-biregional-negotiations-committee-brussels-19-22-march-2001>> accessed 15 June 2023

²¹⁰ 'Fifth Meeting of the European Union - Mercosur Biregional Negotiations Committee, Montevideo, 2-6 July 2001' (*EU-LAC Foundation*, 6 July 2001) <<https://intranet.eulacfoundation.org/en/content/fifth-meeting-european-union-mercossur-biregional-negotiations-committee-montevideo-2-6-july>> accessed 15 June 2023

²¹¹ 'Sixth Meeting of the European Union - Mercosur Biregional Negotiations Committee, Brussels, 29-31 October 2001' (*EU-LAC Foundation*, 31 October 2001) <<https://intranet.eulacfoundation.org/en/content/sixth-meeting-european-union-mercossur-biregional-negotiations-committee-brussels-29-31>> accessed 15 June 2023

was driven by the fact that Uruguay was also seeking immediate solutions to its internal crisis. This situation affected the free trade agreement negotiations between Mercosur and the EU.

The seventh round of negotiations²¹² was held in Buenos Aires in April and was described as more technically limited. The main focus of the discussions was on the Madrid Summit to be held in May. Regarding political dialogue, the discussion focused on implementing "good governance" and the constancy and content of the Heads of State meetings. In cooperative negotiations in the Economic Cooperation chapter, advances were achieved, including agriculture, services, fisheries, environment, consumer protection, tourism, public procurement, e-commerce, data protection and IP.

During this period, the Mercosur member states signed the Olivos Protocol, establishing a Permanent Court for Dispute Resolution in Asunción, Paraguay, which was previously discussed in chapter 2.7.3. Concerning cooperation on negotiations, significant advances were made regarding Economic Cooperation, including agriculture, services, fisheries, environment, consumer protection, tourism, public purchases, e-commerce, data protection and IP.

At the Madrid Summit, held on the 17th of May 2002²¹³, the parties reaffirmed their political commitment to continue negotiating the free trade agreement. Notable advances were made in the political chapter of the Agreement, where the parties strengthened their commitment to political dialogue in several aspects, such as the promotion and protection of human rights, democracy and the rule of law, sustainable development, conflict prevention issues, such as fighting terrorism, drug trafficking and organised crime.²¹⁴ In addition, regular meetings were established to implement cooperation of mutual interest.

The eighth round of negotiations²¹⁵ took place in Brasilia in November 2002 and focused on the methodological issues for discussing tariffs, customs procedures, rules of origin, standards,

²¹² 'Seventh Meeting of the EU-Mercosur Bi-Regional Negotiations Committee, Buenos Aires, 8-11 April 2002' (*EU-LAC Foundation*, April 2002) <<https://intranet.eulacfoundation.org/en/content/seventh-meeting-eu-mercosur-bi-regional-negotiations-committee-buenos-aires-8-11-april-2002>> accessed 15 June 2023

²¹³ 'European Union – Latin America and Caribbean Summit Madrid, 17 May 2002' (*European Parliament*, 17 May 2002) <https://www.europarl.europa.eu/cmsdata/124270/ii_17_5_2002_madrid_en-2.pdf> accessed 15 June 2023

²¹⁴ European Commission: Latin America Regional Strategy Paper 2002-2006 (R SP)' (*Archive of European Integration*, 2002) <https://aei.pitt.edu/38372/1/LA_strategy_2002-2006.pdf> accessed 26 June 2023

²¹⁵ 'Eighth Meeting of the European Union-Mercosur Bi-Regional Negotiations Committee, Brasilia, 11-14 November 2002' (*EU-LAC Foundation*, November 2002) <<https://intranet.eulacfoundation.org/en/content/eighth-meeting-european-union-mercosur-bi-regional-negotiations-committee-brasilia-11-14>> accessed 15 June 2023

technical regulations, services, IP rights, competition and dispute settlement. The possibility of including the 'business facilitation' project was also considered, with a debate on its balanced and integrated implementation.

The ninth round of negotiations²¹⁶ occurred in March 2003 in Brussels and presented advances on those methodological issues and modalities in investment and government procurement. Business Facilitation" was once again discussed. However, Mercosur was disappointed with the timid proposal made by the European bloc regarding the reduction of tariffs on several products of the southern cone bloc interest.²¹⁷

The tenth round²¹⁸ happened in June 2003 in Asunción, Paraguay. This round addressed investment, IP rights, dispute evaluation and government procurement issues. On this last matter, no progress was possible as Mercosur had no proposal to be submitted. Similarly, the discussion on agricultural products was postponed as this was included in the Doha Round agenda.

The eleventh round²¹⁹ took place in Brussels in December 2003. On its agenda were political dialogue, development cooperation and trade issues. This round did not make much progress but kept the negotiations running.

In March 2004, **the twelfth round**²²⁰ was hosted in Buenos Aires, Argentina. The agreement aspects and the deepening of ties between the blocs through an interregional association were discussed. However, no progress was registered.

²¹⁶ 'Ninth Meeting of the European Union - Mercosur Bi-Regional Negotiations Committee, Brussels, 17-21 March 2003' (*EU-LAC Foundation*, March 2003) <<https://intranet.eulacfoundation.org/en/content/ninth-meeting-european-union-mercosur-bi-regional-negotiations-committee-brussels-17-21>> accessed 15 June 2023

²¹⁷ de Oliveira AC, 'Mercosul e União Europeia: Um Estudo Da Evolução Das Negociações Agrícolas' (*EU-LAC Foundation*, 2010) <https://intranet.eulacfoundation.org/en/system/files/mercosul_e.pdf> accessed 15 June 2023

²¹⁸ 'Tenth Meeting of the European Union - Mercosur Bi-Regional Negotiations Committee, Asunción, 23-27 June 2003' (*EU-LAC Foundation*, June 2003) <<https://intranet.eulacfoundation.org/en/content/tenth-meeting-european-union-mercosur-bi-regional-negotiations-committee-asunci%C3%B3n-23-27-june>> accessed 15 June 2023

²¹⁹ 'Eleventh Meeting of the European Union - Mercosur Bi-Regional Negotiations Committee, Brussels, 2-5 December 2003' (*EU-LAC Foundation*, December 2003) <<https://intranet.eulacfoundation.org/en/content/eleventh-meeting-european-union-mercosur-bi-regional-negotiations-committee-brussels-2-5>> accessed 15 June 2023

²²⁰ 'Twelfth Meeting of the European Union - Mercosur Bi-Regional Negotiations Committee, Buenos Aires, 8-12 March 2004' (*EU-LAC Foundation*, March 2004) <<https://intranet.eulacfoundation.org/en/content/twelfth-meeting-european-union-mercosur-bi-regional-negotiations-committee-buenos-aires-8-12>> accessed 15 June 2023

The thirteenth round²²¹ was held in May 2004 in Brussels. This round was important for discussing concrete proposals on services, investment, government procurement and goods, including agriculture. The main objective was to make significant progress in this round to prioritise the Guadalajara summit in October 2004. Mercosur emphasised the necessity of knowing in detail the EU's offers related to processed agricultural products and the agricultural sector in general. They also stressed the importance of having special and differential treatment. Other rounds were scheduled for June and July to conclude negotiations by October 2004.

In June 2004, **the fourteenth round of negotiations**²²² was held in Buenos Aires. The parties intended to conclude negotiations that same year and Mercosur pledged to work on and improve sensitivities in areas such as investment and services, provided that the EU also made progress in its proposals. The round was marked by technical work searching for practical and possible solutions.

The fifteenth round²²³ took place in Brussels in July 2004. On that occasion, the European bloc refused to improve its proposal regarding agricultural products, so Mercosur decided to suspend the coordinators' meetings with the EU. In October 2004, during a ministerial meeting in Lisbon, Mercosur and EU negotiators reiterated the priority of negotiating the AA. However, all other meetings throughout 2004 were deemed unsuccessful.

The first phase of the EU-Mercosur negotiations may not have achieved immediate success, but it was a pivotal period in establishing the foundations and defining the principles and objectives of the negotiations. Although it faced challenges, it paved the way for the subsequent stages, where more complex and challenging issues would be addressed. It demonstrated the strengths and weaknesses of both parties, as well as revealed the mutual commitment to building a solid and mutually beneficial future trade partnership. Furthermore, it showed that the negotiation process would require a joint effort to overcome the obstacles and reach satisfactory agreements.

4.5.2 The Second Stage: From 2004 to 2010

²²¹ 'Thirteenth Meeting of the European Union - Mercosur Bi-Regional Negotiations Committee, 3-4 May 2004' (*EU-LAC Foundation*, May 2004) <<https://intranet.eulacfoundation.org/en/content/thirteenth-meeting-european-union-mercotur-bi-regional-negotiations-committee-3-4-may-2004>> accessed 15 June 2023

²²² Ibid 217

²²³ Ibid 217

The second round of negotiations between the EU and Mercosur, which took place between 2004 and 2010, was marked by mutual disinterest between the two sides²²⁴. During this time, negotiations were limited to political dialogue and development cooperation. That happened because of the strong disagreement on ideological grounds and the lack of willingness to make significant concessions concerning the initial offers.²²⁵

This phase faced strong opposition from countries such as France, Poland, Ireland, Hungary, Luxembourg, Austria and Finland, raising concerns about competition and internal economic impacts. More precisely, the French agricultural elite sought union with other countries to block the negotiations, fearing damage to the agricultural sector. Such opposition was aligned with the EU's Common Agricultural Policy, which sought tariff reductions rather than a policy of full product liberalisation.

Meanwhile, the EU shifted priorities towards Latin America, emphasising reaching agreements with Latin American countries in the Pacific axis, which had a more liberal and open approach to trade. This change of direction was reflected in the negotiations between the EU and Mercosur.

On the other hand, Mercosur highlighted this period by the ascension of progressive governments within the region, which adopted a regionalist approach and an agenda focused on political and social issues.²²⁶ Some authors have called this orientation "post-liberal"²²⁷ or "post-hegemonic"²²⁸ in contrast to the previous emphasis on trade integration.

In 2007, driven by the then President of the European Commission, José Manuel Barroso, the EU and Brazil established a bilateral "strategic partnership". This partnership resulted from the increased international activism in President Lula's foreign policy and was misinterpreted as a

²²⁴ Ibid 201

²²⁵ Ibid 201

²²⁶ Estrades C, 'Is Mercosur External Agenda Pro-Poor? An Assessment of the EU-MERCOSUR Free Trade Agreement on Uruguayan Poverty Applying MIRAGE' (*CEPAL*, February 2012)
<https://www.cepal.org/sites/default/files/events/files/documento_carmen_estrades_ifpri.pdf> accessed 15 June 2023

²²⁷ Ibid 201

²²⁸ Riggiozzi P and Tussie D, 'The Rise of Post-Hegemonic Regionalism' (*Researchgate*, 2012)
<https://www.researchgate.net/publication/282444747_The_Rise_of_Post-Hegemonic_Regionalism> accessed 15 June 2023

shift towards European bilateralism.²²⁹ However, this did not jeopardise the framework for trade negotiations between the EU and Mercosur.

In addition to the EU and Mercosur negotiations' particular issues, the global context also played a significant role. The failure of the Doha Round, the 2008 international financial crisis, the economic growth in Asia, especially China, and the enlargement of the EU with the accession of new members in Central and Eastern Europe, which had agricultural sectors that were somewhat less competitive, contributed to a decline in mutual interest between the EU and Latin America.²³⁰

The multilateral paralysis had impacted the negotiations between the EU and Mercosur, preventing them from addressing the EU's protectionism issue. Meanwhile, progressive governments in Latin America adopted neo-developmental policies and redefined post-liberal integration strategies, emphasising issues beyond trade. The political changes in both regions led to redefinitions and blurring of interregional integration projects. The period from 2004 to 2010 was stagnant. However, negotiations were relaunched on the 4th of May 2010 by the European Commission.²³¹

4.5.3 The Third Stage: From 2010 to 2016

After approximately six years of stagnation, the third phase begins with the resumption of negotiations between the EU and Mercosur.²³² This new stage lasts from 2010 to 2016. An important milestone in this context was the EU-Latin America Summit held in Madrid in May 2010, when the decision to resume trade negotiations aimed to establish a free trade area between both blocks.²³³ Such a decision was motivated by the assessment by the EU, which identified Mercosur as a highly protectionist market with high import tariffs, especially for products of EU interest. Therefore, both parties decided to resume the bilateral rounds of trade negotiations.

²²⁹ Ibid 201

²³⁰ Mata Diz J, 'The Mercosur and European Union Relationship: An Analysis on the Incorporation of the Association Agreement in Mercosur' (*UCL Discovery - UCL Discovery*, 2022)
<<https://discovery.ucl.ac.uk/id/eprint/10155144/>> accessed 15 June 2023

²³¹ 'European Commission Proposes Relaunch of Trade Negotiations with Mercosur Countries' (*SICE - Sistema de Informação de Comércio*, 4 May 2010)
<http://www.sice.oas.org/TPD/MER_EU/negotiations/EU_relaunch_052010_e.pdf> accessed 15 June 2023

²³² Ibid 204

²³³ Ibid 230

The first round of negotiations (XVII BNC)²³⁴ took place in Buenos Aires in June 2010. The two sides expressed satisfaction with reopening the trade talks and agreed to continue working beyond the results achieved between 2000 and 2004. The structure of the new negotiations was similar, with one group dedicated to political dialogue and another to cooperation. Trade issues were divided into 11 working groups covering topics such as market access for goods, rules of origin, technical barriers to trade, sanitary and phytosanitary measures, IP rights/geographical indications/wines, dispute settlement, trade defence, competition policy, customs (trade facilitation and related issues), services/investment and government procurement.

Mercosur proposed clarifying its offers on market access for goods, which would not be limited to tariffs alone. The EU planned to present a new liberalisation offer. During this first round, both sides exchanged information.

In the trade defence group, discussions focused on the analysis of safeguard instruments. Mercosur maintained its position that advancing bilateral safeguards under Article XIX of the GATT could boost the market access group on goods. Disagreeing with this view, the EU noted that the progress made on market access for goods was insufficient to adopt this approach.

Regarding sanitary and phytosanitary measures, Mercosur presented a new proposal to update the existing June 2004 version, including new legislation on plant and animal health issues. The EU pointed out that expectations from the 2004 integration had not been met and that Mercosur's proposal did not present additional commitments to the WTO.

The customs group sought to move forward on the task unfinished in 2004 (XII BNC), with the main objective of finalising the text for resuming negotiations. In the end, the customs group sought to move forward on the task unfinished in 2004 (XII BNC), with the main goal of finalising the text for resuming negotiations.

In summary, the first round of negotiations consisted of identifying the outstanding issues in each working draft, considering the progress made during the first period (2000-2004), restarting negotiations and accelerating the rhythm to reach the Agreement finally.

²³⁴ ‘XVII CNB Conclusiones - Sice.Oas.Org’ (*CISE Sistema de Informação de Comércio Exterior*, June 2010) <http://www.sice.oas.org/TPD/MER_EU/negotiations/BuenosAires2010_e.pdf> accessed 15 June 2023

The second round of negotiations (XVIII BNC)²³⁵ was hosted in October 2010 in Brussels. During this meeting, the parties refined the general discussion on the improved versions of the offers made previously. The countries were mostly focused on the debate around the trade pillar of the future AA between the two regions.

During this round, meetings of various working groups took place, addressing the different aspects of the Agreement. Topics such as market access, rules of origin, technical barriers to trade, sanitary and phytosanitary measures, IP, dispute settlement, trade defence, competition policy, government procurement and trade facilitation were discussed.

The working groups held debates and reviewed the text of the proposals, identifying convergences and divergences between the parties. Progress was made on defining tariff rates, simplifying tariff liberalisation proposals, formulating criteria for determining origin status, as well as discussions on technical standards and regulations, among other relevant issues.

Both parties expressed satisfaction with the progress made during this round of negotiations and agreed to maintain a steady work pace, aiming to reach a balanced and ambitious agreement in the trade pillar of the AA between the EU and Mercosur.

The third round of negotiations (XIX BNC)²³⁶ happened in December 2010 in Brasilia, Brazil. Once again, efforts were directed to address the general normative parts of each chapter. Meetings of twelve working groups took place, and progress was recorded on the regulatory aspects concerning services and investment, technical barriers to trade and market access, rules of origin, and dispute settlement, among others. However, no significant progress was made in straightforwardly resolving the contentious issues, and it was recognised that additional work was still needed to address several core areas.

²³⁵ ‘XVIII BNC Boletín Diario de Informaciones Ministerio de Relaciones Exteriores de La Republica Del Paraguay’ (*SICE - Sistema de Informacao de Comercio Exterior*, October 2010) <http://www.sice.oas.org/TPD/MER_EU/MER_EU_e.asp> accessed 15 June 2023

²³⁶ ‘XIX BNC Bi-Regional Negotiations Committee’ (*SICE - Sistema de Informacao de Comercio Exterior*, December 2010) <http://www.sice.oas.org/TPD/MER_EU/negotiations/Brasilia2010_e.pdf> accessed 15 June 2023

The fourth round of negotiations (XX BNC)²³⁷ started in Brussels in March 2011. During the fourth round, the parties reaffirmed their commitment to seek a comprehensive, balanced and ambitious agreement. The eleven working groups met, and progress was made in the normative areas of the negotiations, covering rules of origin, government procurement, services and investment, competition and dispute settlement, among others. However, it was recognised that intensive work was still needed in all areas of the negotiations.

The fifth round of negotiations (XXI BNC)²³⁸ between Mercosur and the EU, known as the XXI BNC, took place in May 2011 in Asunción, Paraguay. During the XXI BNC, the chief negotiators from both sides reiterated their commitment to advance in the negotiations to reach a comprehensive, balanced and ambitious AA. The negotiations covered the political, cooperation and commercial pillars of the Agreement.

Concerning the political and cooperation pillars, revisions were made to the regulatory texts and views were exchanged on several issues. Significant progress was made in the negotiation of these texts.

Eleven working groups of the trade pillar held meetings during the XXI BNC and achieved considerable progress in drafting the regulatory texts of the Bi-Regional Agreement. At the XXII BNC, both parties will assess the progress in all working groups, setting priorities for the relevant outstanding issues to reach the regulatory framework of the Agreement. In addition, it was agreed to continue internal work to deliver improved market access offers.

The sixth (XXII BNC) and seventh (XXIII BNC) were not found on the official websites to be reported here. Then, following, **the eighth round of negotiations (XXIV BNC)**²³⁹ between the EU and Mercosur took place in March 2012 in Brussels. During the XXIV BNC, delegations from both blocs held working meetings, and the chief negotiators reaffirmed their

²³⁷ ‘XX BCN Mercosur Statement of the EU and Mercosur after the 4th Round of Negotiations’ (*SICE - Sistema de Informacao de Comercio Exterior*, March 2011) <http://www.sice.oas.org/TPD/MER_EU/negotiations/4thround_neg_e.pdf> accessed 15 June 2023

²³⁸ ‘XXI BCN Round of Negotiations EU and Mercosur’ (*SICE - Sistema de Informacao de Comercio exterior*, May 2011) <http://www.sice.oas.org/TPD/MER_EU/negotiations/5thround_neg_e.pdf> accessed 15 June 2023

²³⁹ ‘XXIV BNC Statement of the EU and Mercosur after the 8th Round of Negotiations On ...’ (*SICE - Sistema de Informacao de Comercio Exterior*, March 2012) <http://www.sice.oas.org/TPD/MER_EU/negotiations/Statement_8_round_e.pdf> accessed 16 June 2023

commitment to advance in the negotiations to reach a comprehensive, balanced and ambitious AA. The negotiations covered the political, cooperation and trade pillars of the Agreement.

Regarding the political and cooperation pillars, progress was recorded in several areas, and there was a fruitful exchange of views, contributing to a better understanding of each party's positions.

Concerning the trade pillar, the working groups continued to meet, clarifying positions and presenting new proposals. Progress was made in several working groups, especially on issues related to services, establishment, the dispute settlement mechanism, government procurement and rules of origin. The lead negotiators discussed key issues relating to trade in goods, trade defence and sustainable development, with both sides clarifying their positions and expectations.

Altogether there were nine rounds in the period from 2010 to the end of 2012. However, despite continued efforts by both sides, progress towards a definitive agreement between Mercosur and the EU still fell short, and the main issues were not resolved. There were no bi-regional negotiation sessions between the EU and Mercosur in 2013.²⁴⁰

On the 26th of January 2013, a ministerial meeting was held in Santiago, Chile. This ministerial meeting aimed to strengthen relations and boost negotiations to reach a comprehensive and beneficial agreement for both parties. During the meeting, ministers stressed the importance of the two regions' economic, commercial and cultural relations, considering their combined population of over 780 million people, a joint GDP of USD 20.8 trillion and bi-regional trade of approximately USD 130 billion annually.

The ministers reviewed the progress of the nine technical meetings of the Agreement's trade pillar since the negotiation process relaunch. They acknowledged the progress made in the negotiations while recognising the need for further work to ensure the balance of the future Agreement. They stressed the importance of a constructive atmosphere to ensure progress in the next stage of the negotiations. Furthermore, it was decided that both regions would begin internal preparatory work on the substance and conditions for the exchange of offers, which

²⁴⁰ Vaillant M and Vaillant P, 'European Union–Mercosur Negotiations: A Return to Uncertainties' (*Taylor & Francis Online*, 2014) <<https://www.tandfonline.com/doi/abs/10.1080/10978526.2014.931793>> accessed 15 June 2023

should take place by the last quarter of 2013, to the commitment of the Heads of State expressed at the Mercosur-European Union Summit in 2010.

In 2014, several predictions were made about the viability of the interregional Agreement and its positive conclusion. However, given the several difficulties identified throughout the negotiations, it was evident that progress towards a final term was still far away. One of the main obstacles was the issue of protectionism on the part of Brazil and the EU, especially in the agricultural sector. In addition, there were still obstacles generated by the internal crisis that Argentina was facing.

The Brussels summit that year was also held, but without much progress. Although 2014 began with positive forecasts about the finalisation of the Agreement, several question marks and uncertainties spread.

In June 2015, another ministerial meeting between Mercosur and the EU was held in Brussels, Belgium. During the meeting, ministers stressed the importance of deepening and expanding the relationship between the two blocks and had an open and frank exchange of views on the negotiations for an ambitious, comprehensive, and balanced AA. Ministers exchanged general information on each side's market access offers. Thus, they agreed that, provided the conditions for a successful exchange are met, the aim would be to exchange market access offers by the last quarter of 2015.

Significant challenges and advances were made during the third phase of negotiations, which lasted from 2010 to 2016. Progress was made in the negotiations' political, cooperation and trade pillars. Issues such as market access, rules of origin, trade defence and cooperation in strategic areas registered remarkable progress. However, despite the efforts deployed, the third phase of negotiations also faced considerable obstacles.

Persistent divergence on sensitive issues was one of the biggest barriers to concluding a final agreement. The tension surrounding issues such as agricultural trade liberalisation, subsidies and non-tariff barriers required in-depth analysis and complex negotiations. Moreover, the complexity of the negotiations and the countries' perspectives required constant work to reconcile interests and find balanced solutions.

In short, this phase represented a period of intense search for convergence and overcoming differences, facing considerable challenges while achieving significant advances. On this basis, the parties involved are ready to move on to the next stage and continue working towards a comprehensive and balanced agreement between the EU and Mercosur.

4.5.4 The Fourth Stage: From 2016 to the Signed Agreement In 2019

The European Union and Mercosur relaunched the negotiation process in May 2016, intensifying the rhythm of the negotiation rounds and meeting regularly.²⁴¹ This approach demonstrated the renewed commitment of both sides to move forward in the negotiations and actively seek an agreement beneficial to both blocs.²⁴² This meeting between the EU and Mercosur resulted in the exchange of offers on market access in goods, services, establishment and government procurement. That is the first exchange of offers since 2004 and represented a necessary step to move forward in the negotiation process. Therefore, both parties remained fully committed to this negotiation, a moment in which they devoted a sharper analysis of the received offers.

The XXVI BNC round of negotiations²⁴³ took place in Brussels in October 2016. During the round, several aspects related to different sectors were addressed, aiming to negotiate a broader trade agreement. The scope of the negotiations included not only trade in industrial and agricultural goods but also services, public procurement, IP rights and overcoming technical barriers.

A notable feature of these negotiations was that the EU made available the draft text for three chapters of the Agreement under discussion: IP rights, support for small and medium-sized enterprises and the regulation of state-owned enterprises. This openness on the part of the EU demonstrated the commitment to move forward in the negotiations and address issues relevant to both blocks.

²⁴¹ ‘Declaration Regarding the Negotiation between the European Union and Mercosur’ (*Sindicat European Trade Union*, 7 June 2016)

²⁴² ‘EU Trade Relations with Mercosur’ (*European Commission*) <https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/mercosur_en> accessed 16 June 2023

²⁴³ ‘XXVI BNC Report of Round 26’ (*CIRCABC*, October 2016) <<https://circabc.europa.eu/ui/group/09242a36-a438-40fd-a7af-fe32e36cbd0e/library/8aca42c4-fb01-47a9-a47d-e4de2ff6a23d/details>> accessed 16 June 2023

Furthermore, there was a specific focus on the chapter dealing with government procurement provisions during the 26th round. The procedures applicable to government procurement contracts were also discussed. The EU submitted proposals based on the revised provisions of the Government Procurement Agreement (GPA), adjusting them towards greater transparency, using e-procurement and procedural amendments.

The discussion on rules of origin focused on specific products and proof and verification of origin. They also discussed EU offers for chemicals, textiles, clothing, machinery and consumer electronics. Likewise, there were discussions in IP covering copyright, trademarks, patents, data protection and internet service providers. Furthermore, they addressed the direct protection of geographical indications, analysing the regulatory standards, level of protection, and treatment of generic names, among others.

The XXVII BNC negotiating round²⁴⁴ took place in March 2017 in Buenos Aires, Argentina. This round covered a wide range of working areas such as trade in goods, rules of origin, IP, competition, customs and trade facilitation, trade defence instruments, technical barriers to trade, trade and sustainable development, small and Small and Medium Sized Enterprises (SME), sanitary and phytosanitary measures, subsidies, dispute settlement, services and establishment, public procurement, and institutional matters.

During this round, significant progress was made in several areas. On trade in goods, the EU tabled textual proposals relating to agricultural products, energy, raw materials and state-owned enterprises and proposed the exchange of statistics on the use of preferences. The group agreed on certain articles, such as import and export licensing procedures, and removed reservations on parts of the proposals. However, significant differences remained in areas such as tariffs and domestic support.

Within the discussion on rules of origin, the parties reviewed a comprehensive list of specific rules for agricultural products, chemicals, textiles and apparel products. Some common positions were reached, but still outstanding issues, such as the self-declaration and verification approach.

²⁴⁴ ‘XXVII BCN Report of the 27th Negotiation Round on the Trade Part of the EU ’ (*SICE - Sistema de Informação de Comércio Exterior*, 10 April 2017)
<http://www.sice.oas.org/TPD/MER_EU/negotiations/BNC_27th_Rnd_Rpt_e.pdf> accessed 16 June 2023

In customs and trade facilitation, significant progress was made in drafting the chapter text, resulting in a provisional Agreement on several customs controls and procedures issues. Additionally, aspects of mutual administrative assistance and the anti-fraud clause were discussed.

Other areas such as technical barriers to trade, sanitary and phytosanitary measures, trade defence instruments, subsidies, dispute settlement, services and establishment, public procurement, IP, competition, trade and sustainable development, SMEs and institutional matters were also discussed, and progress was made in some of them.

Driven by a shared vision, both parties were determined to give this negotiation a definitive boost. The goal was to achieve a comprehensive, well-balanced, and mutually beneficial agreement that would not only spur growth and create employment opportunities but also strengthen the long-standing political and cooperative ties between the countries of Mercosur and the EU. That renewed commitment held the potential to unlock a new era of prosperity on both sides of the Atlantic, forging a stronger and more interconnected future for all involved.²⁴⁵ To sum up, the round was very productive, with progress achieved in several areas.

The XXVIII BNC round of negotiations²⁴⁶ on the trade part of the EU-Mercosur AA was held in Brussels in July 2017. The main focus of the discussions was elaborating consolidated texts, aiming to narrow the divergences on the most complex issues. Consequently, the round of negotiations resulted in significant advances. A consensus was reached in customs and trade facilitation, mutual administrative assistance, financial services, capital movements and payments. Moreover, important developments were registered in other areas, such as trade in goods, services and establishment, government procurement, geographical indications, trade and sustainable development, and dispute settlement.

The XXIX BNC round of negotiations²⁴⁷ occurred in Brasilia from 2 to the 6th of October 2017. The round was highly productive, registering significant progress in several key areas.

²⁴⁵ 'New Boost to Mercosur-EU Association Agreement' (*Ministerio de Relaciones Exteriores, Comercio Internacional y Culto Argentina*, 2017) <<https://www.cancilleria.gob.ar/en/news/newsletter/new-boost-mercosur-eu-association-agreement>> accessed 16 June 2023

²⁴⁶ 'XXVIII BNC Report from the 28th Round of the EU-Mercosur Negotiations' (*SICE - Sistema de Informação de Comércio Exterior*, July 2017) <http://www.sice.oas.org/TPD/MER_EU/negotiations/XXVIII_Rnd_EU_Rpt_e.pdf> accessed 16 June 2023

²⁴⁷ 'XXIX BNC Report from the 29th Round of Negotiations' (*SICE - Sistema de Informação de Comércio Exterior*, October 2017) <http://www.sice.oas.org/TPD/MER_EU/negotiations/29th_round_e.pdf> accessed 16 June 2023

In the Dispute Settlement (DS) group, for example, there was a great advancement on challenging issues, such as public hearings and cross-retaliation.

Significant progress was made on trade and sustainable development, with the Agreement on six additional articles addressing issues such as biodiversity, climate change, forests and responsible supply chain management. More than half of the substantive articles in the chapter have now been agreed. The EU has presented a proposal on institutional and dispute settlement provisions for the chapter, awaiting Mercosur's reaction.

Significant progress has been made in revising the text in the Public Procurement chapter. Progress was also registered in the discussions on national treatment and non-discrimination. The main pending provisions are related to the treatment of offsets in public procurement and Mercosur's proposal for the recognition of "special and differential treatment" in these negotiations.

The XXX BNC round of negotiations also took place in Brasilia, one month after the previous one, in November. During this round, the negotiating working groups addressed the following topics: Trade in Goods, Wines and Spirits, Rules of Origin, Anti-Fraud Clause, Technical Barriers to Trade, Sanitary and Phytosanitary Measures, State Enterprises, Dispute Settlement, Services and Establishment, Government Procurement, IP (including Geographical Indications), Trade and Sustainable Development, Small and Medium Enterprises, and Institutional Matters. Discussions focused on the main issues, and both sides took steps to pave the way for an exchange of market access offers.

The joint text concluded in October 2017 was revised by the EU and Mercosur regarding sanitary and phytosanitary measures. Several aspects of the chapter were agreed upon with further progress, which included the regionalisation of animal health. This round saw major progress on many of the most important provisions of the chapter.

Several sections of the draft text focused on discussions under the "Services and Establishment" chapter. These included general provisions, movement of single persons, mutual recognition agreements, domestic regulation, telecommunications, financial services, capital movements, postal services, e-commerce, and final provisions. Terms relating to domestic regulation, postal services and capital movement were concluded. However, the parties' positions regarding

maritime transport remained unchanged and important issues related to e-commerce, for example, were left unresolved.

Significant efforts were made in the chapter on public procurement, and a consensus was reached on crucial issues, including the general and security exceptions, the origin criteria for public procurement and the list of circumstances allowing for the extraordinary, restricted tendering procedure. The parties also discussed the recommendations on collaboration and denial of Mercosur benefits. However, other provisions related to market access remained open.

In addition, progress was also made on the SME section, with a consolidated text obtained after substantial negotiations. Discussions on Institutional Issues were also productive, with the progress made on issues related to the general structure of the trade part, preamble, general exceptions, and trade objectives. All these advances represented an important step towards the conclusion of the EU-Mercosur AA.

Still, in December 2017, Brussels hosted **the XXXI BNC round of negotiations**²⁴⁸. This round was an important milestone in the negotiation process, bringing together representatives from both blocs to discuss a wide range of trade-related issues. The EU delegation presented a revised market access offer on goods in parallel with Mercosur's revised offers on goods, services and government procurement.

During the round, working groups were formed to discuss specific topics covering areas such as trade in goods, wines and spirits, rules of origin, IP (including geographical indications), technical barriers to trade, sanitary and phytosanitary measures, the anti-fraud clause, trade defence instruments, state-owned enterprises, subsidies, dispute settlement, services and establishment, public procurement, trade and sustainable development, small and medium-sized enterprises (SMEs) and institutional matters²⁴⁹.

On trade in goods, constructive discussions were held, although progress was limited. The EU tabled a proposal on export duties, and the parties discussed their respective proposals on export

²⁴⁸ 'XXXI BNC Report from the 31st Round of Negotiations of the Trade Part of the Association Agreement between the European Union and Mercosur' (*SICE - Sistema de Informação de Comércio Exterior*, December 2017) <http://www.sice.oas.org/TPD/MER_EU/negotiations/31st_round_e.pdf> accessed 16 June 2023

²⁴⁹ Querci I, 'EU and Mercosur Vis a Vis the Trade Agreement. Remarks from the Institutional Perspective' [2017] OASIS 63

competition. There was also a thorough analysis of the revised market access offers, identifying the improvements needed to reach a final agreement.

In the wines and spirits sector, substantial progress was made on the text of the negotiations. However, some important issues, mainly related to traditional expressions and labelling, remained open.

Furthermore, there was progress in the discussions on rules of origin, mainly in the textile and chemical sector. Likewise, the agricultural and processed agricultural products sector revealed advances. However, machinery, footwear, iron and steel, glass and paper sectors still needed additional improvements. Mercosur's proposal on rules of origin for the automotive sector was still pending.

Other focus areas included anti-fraud clauses, technical barriers to trade, sanitary and phytosanitary measures, trade defence instruments and IP. In all these areas, considerable progress had been made, with agreements reached on several points. However, there were still outstanding issues to be resolved, such as protecting regulatory test data in patents and defining geographical indications.

In summary, the 31st round of negotiations on the trade part of the EU-Mercosur AA was a crucial step in the negotiation process. However, issues remained to be resolved to reach a comprehensive final agreement. Hence, given the commitment of the parties to move forward, five new negotiation rounds took place in the subsequent year of 2018, from the 32nd to the 36th, pointing to a path towards a balanced trade agreement term.

The earliest one was **the XXXII BNC round**²⁵⁰. That round took place in Asunción, Paraguay, from the 21st of February to the 2nd of March. The thirty-second round of negotiations also revealed significant progress on various issues. Both sides discussed both disciplinary texts and market access.

One of the main highlights of this round was the discussion on trade in goods. The parties worked to find common ground and resolved the few outstanding textual proposals. However,

²⁵⁰ 'XXXII BNC Report from the 32nd Round of Negotiations of the Trade Part of the Association Agreement between the European Union and Mercosur' (*SICE - Sistema de Informação de Comércio Exterior*, March 2018) <http://www.sice.oas.org/TPD/MER_EU/negotiations/32nd_round_e.pdf> accessed 16 June 2023

some important issues related to the EU proposal on state-owned enterprises remained open, such as consular transactions, domestic support, tariff treatment of imports from Paraguay, export duties and state trading enterprises repairing and remanufacturing goods and industrial development clause.

Significant progress was made on the wine and spirit sector draft text. The EU expressed concerns regarding Mercosur's import restrictions on the maximum size of wine bottles. Another important breakthrough occurred in the rules of origin. Parties made solid progress on the definition of origin and product-specific rules. Most of the text of the general provisions was agreed upon in this matter. However, divergences remained for fish products and the automotive sector.

Technical trade barriers were also discussed to resolve outstanding issues. Although some difficulties were encountered regarding regulatory cooperation and conformity assessment, the parties continued to exchange technical information, especially on EU proposals for specific provisions on motor vehicles.

Regarding sanitary and phytosanitary measures, considerable progress was made. The joint text resulting from previous discussions was revised, and the parties agreed on several additional elements, such as recognition of the EU as a single entity, regionalisation and procedure deadlines. Although the chapter was almost completed, some unfinished issues remained.

The parties also discussed issues related to cooperation on small and medium-sized enterprises, subsidies, and state-owned enterprises. Besides, other areas, such as services and establishment, government procurement, IP, subsidies, state-owned enterprises, and institutional matters, were also addressed during the round. There was progress in general principles of IP, rules of origin and product-specific rules.

The XXXIII BNC round²⁵¹ was held from 4 to the 8th of June in Montevideo, Uruguay. During this round, several areas were addressed, and significant progress continued. One of the central areas of discussion was trade in goods. The parties kept discussing pending textual

²⁵¹ 'XXXIII BNC Report from 33rd Round of Negotiations of the Trade Part of the Association Agreement between the European Union and Mercosur' (*SICE - Sistema de Informação de Comércio Exterior*, June 2018) <http://www.sice.oas.org/TPD/MER_EU/negotiations/33rd_round_e.pdf> accessed 16 June 2023

proposals, such as tariff treatment of imports from Paraguay, domestic support, export competition and agricultural cooperation. In this round, an agreement was reached on export competition and agricultural cooperation. However, issues such as domestic support and tariff treatment for Paraguay remain outstanding. Demonstrating a willingness to flex positions, Mercosur withdrew its proposal related to tariff caps.

In addition, efforts were made to improve market access generally by increasing the coverage of tariff-exempt products and phasing out tariffs. The parties also discussed the management of tariff rate quotas intending to facilitate trade and reduce barriers.

Wine and spirits were also highlighted in the discussions. Further progress was made in the text, especially in recognising winemaking practices. However, some concerns were expressed by the EU regarding restrictions imposed by Mercosur, such as the maximum size of wine bottles and sugar content labelling. These issues remained open.

Rules of origin were also addressed with good progress. Both text and product-specific rules were discussed, with chapters being closed and differences being reduced. However, there were still pending issues related to the origin of fisheries products, which required increased attention and progress in future rounds.

The parties discussed a few open issues in the corresponding chapter regarding technical trade barriers. Difficulties persisted on issues related to regulatory cooperation and conformity assessment.

In the chapter on sanitary and phytosanitary measures, as well as in the chapter on dialogues, there was agreement on several important issues. One of these was the dialogue on animal welfare, the rapid exchange of information between the parties and the recognition of the EU as a single entity. These advances bring the chapters closer to a conclusion, with only a few details remaining to be resolved.

The discussions on services and establishment focused on resolving the outstanding issues in the text. Of particular note was the closure of the telecommunications chapter, with a compromise reached for the remaining provisions on interconnection and roaming. In addition, it was agreed that the e-commerce chapter retains a general scope and will incorporate an

understanding of computer services. However, there was still an unresolved issue regarding customs tariffs (moratorium) and the EU's demand regarding maritime transport.

In the government procurement chapter, the parties continued to discuss the few unresolved issues, mainly related to market access issues and special and differential treatment. While some progress was made on some exemptions and reservations to the agreement, positions still needed to be converged on the counterparts and the extension of some reservations/exceptions.

Regarding IP, some sections of the chapter were revisited, discussing pending issues related to objectives, principles, biodiversity, technology transfer, copyright, enforcement and border measures. The EU proposed technical adjustments to the copyright section, awaiting Mercosur's position on these adjustments. In addition, technical issues related to the protection of Geographical Indications (GIs) still require further efforts to solve divergences between the parties.

Finally, both sides agreed on the text regarding the participation of small and medium-sized enterprises (SME) coordinators in working groups, but discussions were still ongoing regarding implementing a database to help SMEs take advantage of the agreement.

Overall, the 33rd round of negotiations addressed several important areas and made significant progress in several of them, confirming both sides' commitment and continued efforts towards improving trade relations and building a comprehensive and balanced agreement.

The XXXIV BNC round of negotiations²⁵², the third tour of 2018, took place in Brussels from 9 to the 17th of July 2018. During this round, several areas of interest were discussed, such as Trade in Goods, Wines and Distillates, Rules of Origin, Technical Barriers to Trade, Services and Establishment, Government Procurement, IP (including Geographical Indications) and Small and Medium Enterprises (SMEs) and Subsidies.

One of the highlights of this round of negotiations was the significant progress made in discussions on rules of origin, specifically with the progress made on the text of the Protocol and rules of origin for certain products and sectors. Some provisions related to fisheries issues

²⁵² 'XXXIV Exterior Report from the 34th Round of Negotiations of the Trade Part of the Association Agreement between the European Union and Mercosur' (*SICE - Sistema de Informação de Comércio*, July 2018) <http://www.sice.oas.org/TPD/MER_EU/negotiations/Round_34_e.pdf> accessed 16 June 2023

were approved, and some changes in the proof of origin and verification section, mainly in the chemical and machinery sectors.

Another area that showed progress was Services and Establishment. The parties held constructive discussions and achieved useful progress in adjusting the content and details of commitments in line with what was acceptable to both sides. However, there was no progress on market access for maritime services, which remained an open issue.

On IP, the parties revisited parts of the chapter and discussed the remaining issues related to civil enforcement of IP rights, copyright and general principles. Adjustments were made, and alternative texts were developed in these areas under the commitment to resume and advance the discussions. Besides this, Geographical Indications also received special attention, with considerable time and effort devoted to finding solutions to conflicting issues.

The round also addressed other areas such as trade in goods, technical barriers to trade, government procurement, SMEs, and subsidies. While some progress was made in these areas, open issues will still require further discussions and negotiations.

The 34th round of negotiations was notable for the progress made in rules of origin, services and establishment, and IP. Although there were still challenges to overcome, the reached progress demonstrated the continued commitment of both parties to pursuing a comprehensive agreement that would promote trade and cooperation between the regions.

The XXXV BNC round²⁵³ of negotiations was held in Montevideo, Uruguay, from 10-14 September. Even though the round aimed to advance discussions and find solutions to several core topics, its progress was considered negligible.

Regarding trade in goods, the parties engaged in a general discussion on unresolved tariffs on both agricultural and non-agricultural products without reaching a definitive agreement. Modalities for tariff elimination on motor vehicles and parts also remained in an exploratory stage.

²⁵³ ‘XXXV Report from the 35th Round of Negotiations of the Trade Part of the Association Agreement between the European Union and Mercosur’ (*SICE - Sistema de Informação de Comércio*, July 2018) <http://www.sice.oas.org/TPD/MER_EU/negotiations/Round_35_e.pdf> accessed 16 June 2023

Another important area of discussion was rules of origin, where some additional progress was made on fisheries-related issues. However, product-specific rules, especially in the machinery sector, remained a challenge.

In the IP chapter, parties revisited some sections, such as civil and administrative enforcement of IP rights and copyright. Possible solutions and technical adjustments were discussed, but further efforts would have to be made to reach a common ground. Additionally, issues such as maritime services and subsidies were also addressed without any significant advance.

Trade negotiations between the EU and Mercosur have been complex from the outset, as they involve players, interests and challenges. Consequently, searching for a balanced and mutually beneficial agreement requires time, commitment and flexibility by all parties involved. Thus, despite limited progress, the continuity of negotiations over the years and the incredible willingness of the parties to find solutions were considered encouraging signs leading to the next rounds of negotiations.

The XXXVI BNC round of negotiations²⁵⁴ was held in Brussels, Belgium, from 12 to the 20th of November 2018. Experts and chief negotiators met during this round to discuss trade-related issues between the two blocs. The negotiations covered several areas. Both disciplinary and market access aspects were addressed during the discussions.

Regarding trade in goods, proposals for eliminating tariffs were discussed, considering a temporarily differentiated treatment for Paraguay concerning some products. In addition, provisions related to consular fees, export taxes, import and export monopolies, and tariff rate quota administration were addressed. Another significant advance occurred in discussions on rules of origin, with progress made in sectors such as machinery and some agricultural products.

Several outstanding issues were discussed on IP, including general provisions and principles, copyright and civil enforcement of IP rights. Possible solutions and alternatives were explored

²⁵⁴ ‘XXXVI BNC Report from the 36th Round of Negotiations of the Trade Part of the Association Agreement between the European Union and Mercosur’ (*SICE - Sistema de Informação de Comércio*, November 2018) <<https://circabc.europa.eu/ui/group/09242a36-a438-40fd-a7af-fe32e36cbd0e/library/64477cd0-b901-43f3-ad3a-7697fe803bab/details>> accessed 16 June 2023

in these areas, with the understanding that more work is needed. Also agreed was the need for further discussions on services and establishment and market access for maritime services.

The protection of Geographical Indications was also addressed, with progress in the text relating to protecting these indications. There was a review of the conflicts identified in the Mercosur and EU lists, seeking adequate protection for Geographical Indications in both blocks.

In the area of trade and sustainable development, articles were agreed on an Expert Panel and Review, representing progress in the text of this chapter. Of note was the progress made on the Annex on Wines and Spirits, where the text was finalised. Issues related to winemaking practices, labelling and using standard EU terms were addressed.

On technical trade barriers, progress was made on technical issues related to definitions in conformity assessment. In addition, the Annex on Motor Vehicles was finalised, although work on technical appendices remained necessary.

Altogether, the 36th round of negotiations delivered significant progress in areas such as trade in goods, wines and spirits, rules of origin and technical trade barriers. However, it left pending challenges in areas such as IP, state-owned enterprises and subsidies for the next rounds of negotiations.

The XXXVII BNC round of negotiations²⁵⁵ took place from 10 to the 13th of December in Montevideo, Uruguay. Indeed, this was the last round hosted in 2018. During this round, several areas of mutual interest were addressed, such as trade in goods, wines and spirits, rules of origin, government procurement, IP, state-owned enterprises and subsidies. While there were discussions and efforts to move forward in these areas, progress was considered very modest.

²⁵⁵ ‘XXXVII BNC Report from the 37th Round of Negotiations of the Trade Part of the Association Agreement between the European Union and Mercosur’ (*SICE - Sistema de Informação de Comércio*, December 2018) <http://www.sice.oas.org/TPD/MER_EU/negotiations/Round_37_e.pdf> accessed 16 June 2023

On trade in goods, parties discussed the text's open-ended provisions, focusing on issues related to export taxes and import and export monopolies. Although outstanding issues were not resolved, the discussions allowed a better understanding of each party's positions.

The themes covered in the wine and spirit annexe included winemaking procedures, labelling issues and traditional EU terminology. It also sought to establish a comprehensive set of rules to facilitate trade in this sector. However, these matters remained on the agenda for the next round.

The same occurred about rules of origin, focusing on product-specific rules for sectors such as machinery and agricultural products. The parties provided additional technical explanations supporting their positions and explored options for overcoming the differences. While they achieved some progress in this area, challenges remained outstanding.

Government procurement was another issue discussed during the 37th round. The parties explored options to reach an Agreement on remaining market access issues within this sector. However, the necessary progress in this area had to be postponed.

Another point of focus was IP, including geographical indications. The parties revisited aspects of the IP chapter, discussing the unsolved questions relating to general provisions, copyright, and civil enforcement of IP rights, including border measures. Potential solutions were explored, for which the parties agreed to continue exploring to find common ground. Furthermore, issues related to the protection of EU and Mercosur geographical indications were addressed, with an effort to analyse the conflicts identified in the lists of geographical indications from both parties.

The chapter on state-owned enterprises was also discussed. The last joint text was analysed, but some outstanding issues still exist. The same occurred concerning the negotiations on subsidies.

In summary, the 37th round of negotiations made timid progress, leaving pending challenges for 2019.

The XXXVIII BNC round of negotiations²⁵⁶ was an important milestone in the negotiation process between these two blocs held from 11-15 March in Buenos Aires, Argentina. It covered key areas, including trade in goods, wines and spirits, rules of origin, government procurement, IP (including geographical indications), state-owned enterprises and subsidies. These topics represented crucial aspects for constructing the later agreement between the EU and Mercosur.

Market access in the automotive sector was one of the main discussion topics in this round. The parties discussed open-ended provisions of the text, such as export taxes and Mercosur's proposal for a clause on the infant industry. In addition, issues such as consular fees, state trading enterprises and regional integration were addressed. On these points, significant progress was made, resulting in an Agreement on the text.

Another prominent issue was the annexe on wines and spirits. To effectively facilitate trade, the parties worked on drafting a comprehensive set of rules. Discussions covered certification and labelling issues, including standard EU terms.

Rules of origin were also discussed. Specific rules for machinery, chemicals and agriculture products were discussed. While progress has been made in bridging differences between the parties' positions, there are still products for which rules of origin have not been fully resolved.

Discussions on government procurement focused on the timelines of each of the four Mercosur countries, exploring options for reaching an Agreement on outstanding market access issues.

Several outstanding parts of the chapter were reviewed in the IP field, including protecting biodiversity and traditional knowledge, copyright, civil and administrative enforcement, and border measures. While the parties agreed to analyse the outstanding issues further, more work still needs to be done in this area.

The discussion on state-owned enterprises reflected the difference of views between parties regarding the scope of entities covered, key definitions and fundamental rules. Despite progress, there are still outstanding issues that require more detailed resolution.

²⁵⁶ 'XXXVIII BNC Report from the 38th Round of Negotiations of the Trade Part of the Association Agreement between the European Union and Mercosur' (*SICE - Sistema de Informação de Comércio*, March 2019) <http://www.sice.oas.org/TPD/MER_EU/negotiations/Round_38_e.pdf> accessed 16 June 2023

On subsidies, while progress was made in the discussions, important divergences persisted, especially on the scope of subsidies covered. The parties agreed to continue working to try to overcome all differences and move towards an end to the negotiation.

On the 28th of June 2019, Mercosur and the EU concluded the free trade agreement after more than twenty years of negotiations. This Agreement was considered historic, involving 25% of the global economy and approximately 780 million people, representing a significant rapprochement between the blocs.²⁵⁷

At the informal EU27-LAC (Latin America and the Caribbean) Ministerial Meeting in Berlin on the 14th of December 2019, Mercosur and EU delegates engaged in constructive deliberations on the future course towards ratification and operationalisation of the EUMETA. They highlighted the paramount importance of implementing the Agreement to promote mutual economic growth, social progress and environmental sustainability in strict accordance with the principles of sustainable development. Furthermore, they reaffirmed their unwavering dedication to fulfilling the international commitments enshrined in the Agreement, including the landmark Paris Agreement on combating climate change.²⁵⁸

²⁵⁷ 'EU and Mercosur Reach Agreement on Trade' (*SICE - Sistema de Informação de Comércio*, 28 June 2019) <http://www.sice.oas.org/TPD/MER_EU/negotiations/Agt_Reached_e.pdf> accessed 16 June 2023

²⁵⁸ 'EU-MERCOSUR Statement on Sustainable Development at EU27-LAC' (*SICE - Sistema de Informação de Comércio*, 14 December 2020) <http://www.sice.oas.org/TPD/MER_EU/negotiations/EU_MER_Stmt_SusDev_EU27_LAC_Mtg_e.pdf> accessed 16 June 2023

5. EUMETA: A New Chapter in EU-Mercosur Trade Relations

On 28 June 2019, the EU and Mercosur announced the conclusion of an AA; the result of more than 20 years of negotiations, representing a new chapter in trade partnerships between the two blocs.

On the one hand, the EU stands out as one of the largest economies in the world. With a population of approximately 450 million people, the bloc represents a significant market, characterized by a high level of economic development, advanced infrastructure and a diversity of productive sectors. The European Union is known for its strong presence in international trade, being an important exporter of manufactured goods, services and agricultural products. In addition, the European bloc is recognised for its high standards of quality, technological innovation and competitiveness in various sectors.

On the other hand, Mercosur is a bloc composed of South American countries that present an enormous potential for economic growth. The bloc is formed by Brazil, Argentina, Uruguay and Paraguay, representing a population of over 260 million people and covering a vast territorial extension. Mercosur has a rich diversity of natural resources, including agricultural, mineral and energy commodities, which makes it an important player in the global market.

Although Mercosur has faced economic challenges throughout its history, such as exchange rate fluctuations and social inequalities, member countries have sought to promote economic development, regional integration and investment attraction. The bloc has implemented policies of trade opening and diversification of its productive base, aiming to fully exploit its market potential and strengthen its economies.

In this context, the EUMETA (European Union-Mercosur Trade Agreement) emerges as a strategic initiative to strengthen trade relations between the EU and Mercosur, representing a new chapter in trade partnerships between both blocks. It is an important milestone for the progress of international trade relations, sustainable economic growth, promoting prosperity for both regions. But it is not only that. EUMETA is also a milestone in promoting political dialogue, cultural exchange and cooperation in areas such as education, research and development.

The agreement signed on 28 June 2019 was considered historic as it involves 25% of the global economy and approximately 780 million people.²⁵⁹ Mercosur is the EU's main economic partner in Latin America, with a share of almost 40% of total trade; it also absorbs most of the European FDI in the region. The EU-Mercosur agreement is the jewel in the crown of the association agreements with the region. However, the ratification of the agreement has been questioned in Europe because of allegations of negative effects it could have in terms of further deforestation of the Amazon rainforest. However, this agreement, like the agreements with Chile and Mexico, contains a chapter on trade and sustainable development that goes far beyond previous association agreements. It includes provisions explicitly devoted to sustainable forestry, it imposes a commitment to promote trade in products from sustainably managed forests, cooperation on forest conservation and it stipulates the creation of a subcommittee for cooperation and the settlement of any disagreements. These are requirements that go beyond those set out in any other EU trade agreements.²⁶⁰

5.1 The Pillar Structure of the Association Agreement

To fully understand the difficulties related to the entry into force and effectiveness of the Agreement signed between the EU and Mercosur, it is essential to analyse the structural aspects on which it is based. The EU has adopted an innovative pillar structure covering the areas of trade, political dialogue and cooperation, differentiating it from traditional trade agreements. Besides the trade aspect, the agreement also encompasses political, diplomatic, social and environmental aspects, reflecting a broad vision of cooperation and dialogue between the EU and Mercosur.²⁶¹

5.1.1 The Political Dialogue Pillar

Political dialogue is the first essential pillar of the agreement between the EU and Mercosur. This pillar is built from the intersection between national and international issues, with the aim of strengthening strategic coordination between the regions involved. Political dialogue, as an integral part of this historic agreement, goes beyond purely commercial issues, covering themes

²⁵⁹ Ibid 191

²⁶⁰ Ayuso A, 'EU-MERCOSUR: An Opportunity Not to Be Missed' (*Internationale Politik Quarterly*, 24 March 2023) <<https://ip-quarterly.com/en/eu-mercotur-opportunity-not-be-missed>> accessed 03 June 2023

²⁶¹ Ibid 230

relevant to both parties and reinforcing common values, such as democracy, the rule of law, minority rights and working conditions.

Within this pillar, extremely important issues are addressed, such as the observance of the rule of law and the due legal process, which encompasses the fair and impartial resolution of conflicts. In addition, it seeks to guarantee peace and stability in the relations between the parties, creating a favourable environment for joint development. The defence of democratic processes and institutions is also highlighted in the political dialogue. Both regions commit to promoting and strengthening democracy as a political system, including the protection of civil and political rights, citizen participation and transparency in governmental decisions.

The enforcement of human rights is another crucial aspect, as it promotes the commitment of both regions to respect and protect people's fundamental rights, promoting equality, freedom, and human dignity. Likewise, as for ocean governance, which covers discussions and agreements related to the sustainable use of marine resources, the preservation of the marine environment and cooperation to address challenges such as pollution and the protection of marine life.

Finally, it is essential to address the fight against organised crime, which involves various forms of crime, such as cybercrime, money laundering, terrorism, arms trafficking, and drug trafficking. It is important to mention that a separate relationship has been established between the EU and the Andean States (Bolivia, Colombia, Ecuador, Peru, and Venezuela) to combat the use of chemical substances in the manufacture of illicit drugs.

The pillar of political dialogue is characterised by a comprehensive and cross-cutting approach, involving the intersection between national and international issues, aimed at consolidating strategic coordination between the EU and Mercosur. Since the signing of the Framework Agreement, these political issues have been recognised as an intrinsic part and essential element for the implementation of a bi-regional treaty, as evidenced by the joint declarations emanating from the summits held in the 1990s and 2000s.

Throughout the various rounds of negotiations, considerable progress has been made in the field of political dialogue. Issues such as the legal wording of the Preamble, the institutional structure of future agreements and the guiding principles were successfully addressed,

demonstrating the commitment of the parties to establish a solid basis for dialogue and cooperation.

Negotiations, both in the Mercosur context and in the relations between the EU and Latin America, have always addressed non-trade issues that are considered relevant to strengthen the relationship between the regions. Since the signing of the Framework Agreement, these political issues have been considered an essential and intrinsic part of the implementation of a bilateral treaty, especially in light of the joint declarations made at the summits held in the 1990s and 2000s.

In this sense, punctual progress was achieved, as in the third round of negotiations, which dealt with the legal wording of the Preamble and the institutional structure of future agreements. In the seventh round, both parties reached a resolution on the mentioned guiding principles and on the scope and nature of the agreement. After the tenth round, the negotiations were practically concluded and in 2018, the conclusion of this pillar was announced.

Difficulties related to competence arise when talking about mixed international agreements, which involve both commercial and non-commercial aspects. Because of this, the possibility arises of establishing rules that are more in the format of recommendations or guidelines, known as "soft law". This means that instead of including mandatory and binding clauses that address non-trade issues, parties can opt for flexible guidelines that aim to provide guidance but do not impose strict legal obligations.

Although these international soft law agreements may be considered "non-legal" in essence, they cannot be neglected in the legal context of the European Union. They have the potential to serve as an interpretative framework for legal agreements and even bind the Union through the development of customary law or unilateral declarations. Although they are commonly described as "political commitments" rather than legal commitments, this description can be misleading, as both soft and hard law instruments can have political importance. However, in international instruments, the EU usually emphasises their non-legally binding character, referring only to their "political nature"²⁶².

²⁶² Wessel RA, 'Normative Transformations in EU External Relations: The Phenomenon of "Soft" International Agreements' (2020) 44 West European Politics 72

Naturally, the clear inseparability of trade, political dialogue and cooperation must always be analysed when it comes to agreements of the magnitude of the agreement signed between Mercosur and the EU.

5.1.2 The Cooperation Pillar

The cooperation pillar of the agreement between the EU and Mercosur covers a wide range of areas of collaboration and exchange between the two regions. Its aim is to promote cooperation on issues of mutual interest, with a view to achieving shared objectives and strengthening bilateral relations.²⁶³

Cooperation is a mutual commitment to boost sustainable development and address common challenges in several areas, such as environmental protection, combating climate change, social development, promotion of gender equality, science, technology and innovation, education and culture, health, security and economic and social development. In addition, it also encompasses other specific areas of mutual interest, such as human rights, gender equality, protection of workers' rights, governance and indigenous rights.

Through this pillar, both parties undertake to collaborate and share knowledge, experiences and resources to achieve positive results in these areas. The cooperation seeks to promote balanced and sustainable development, in addition to strengthening the ties between the EU and Mercosur, with mutual benefits for both regions.

This cooperative approach reflects the recognition that global challenges require joint solutions and that collaboration between the EU and Mercosur can generate significant impacts in terms of socio-economic progress, quality of life and advances in issues relevant to both communities.

As in the case of the political dialogue pillar, the completion of the cooperation pillar was announced in 2018. However, the final draft did not include specific provisions on this topic. Understanding the importance of this pillar is essential to ensure that the agreement promotes economic growth in an inclusive and sustainable manner, taking into account the social and environmental dimensions.

²⁶³ Ibid 230

This once again underlines the paradigm shift in the agreements negotiated by the EU, with a strong tendency towards trade agreements, ignoring the other aspects that were previously considered essential for the EU (political dialogue and cooperation).

5.1.3 The Trade Pillar

This pillar, concerning the commercial aspects, is undoubtedly the backbone of the other two. The trade aspects pillar is the backbone of the other two, highlighting its fundamental importance in relation to the other two pillars. The trade pillar covers a number of areas and issues that are essential to promote trade between regions and facilitate economic exchanges.

Within this pillar, several issues are addressed, such as bilateral and global safeguards, which aim to protect the commercial interests of both parties and guarantee a fair and balanced trade environment, sustainable development and labour rights. Issues related to trade facilitation are also discussed, that is, measures that seek to simplify procedures and reduce bureaucratic barriers to promote a more efficient flow of goods and services between the two blocks.

Other topics covered include the protection of IP and geographical indications, which aim to safeguard property rights and the valorisation of specific products linked to certain geographical regions. Issues related to the services and non-services sectors are also addressed, focusing on the promotion of commercial opportunities in areas such as tourism, telecommunications, transportation, among others.

The importance of small and medium-sized enterprises is also addressed, recognizing their role as engines of the economy and seeking to create favourable conditions for their participation in trade between regions. The topic of subsidies is discussed, seeking to ensure transparency and fairness in the use of government incentives to trade. Technical barriers to trade are also addressed, including issues such as antimicrobial resistance, genetically modified organisms, health and safety, and sanitary and phytosanitary measures, with a view to protecting public health and ensuring the safety of traded products.

It is worth noting that one of the main focuses of discussion in this agreement has been on sustainable development and labour rights, with the aim of ensuring that trade is conducted in a socially just and environmentally responsible manner.

The current European Council for Small Business and Entrepreneurship (ECSB) is based on the premise that a trade agreement should not be at the expense of the environment and social responsibility and strives for predictability in international trade. From this perspective, the trade and environment provisions for the EU's potential partners include: coordination of transport of goods and hazardous substances, including cooperation in environmental emergency situations; providing data and expertise used in policy-making (e.g. preservation of aquatic ecosystems, agricultural biotechnology, biodiversity and water quality monitoring, deforestation rates, pollutant and greenhouse gas emissions, renewable energy projects) regulation of pesticide and fertiliser use; sustainable sourcing of commodities (e.g. fish and marine resources exploitation, mining raw materials, forestry - timber regulation, reducing illegal logging, soil erosion and tillage); and compliance with multilateral environmental agreements.

From a practical point of view, the agreement signed between the EU and Mercosur has a chapter called "Trade and Sustainable Development", where the main measures to be observed by the Parties are established. The chapter is composed of 18 articles that range from basic aspects, such as the recognition of the main international instruments that should guide the entire decision-making process related to the agreement, to the dispute settlement mechanisms that will be applied when dealing with the issue of sustainable development.

Article 2 represents the main axis of the chapter by establishing rights and obligations that must be observed by the Parties as to the level of protection and domestic regulation, consubstantiating a normative provision of mandatory compliance. The use of terms of mandatory rather than optional compliance results in the hard law nature of these provisions⁶².

There is no doubt that this is a clause whose content is mandatory. It is not, therefore, a gentleman's agreement clause since, on entry into force, it presupposes compliance with all the other chapters of the agreement. There are no empty words in an agreement of this magnitude and this chapter therefore currently represents one of the main challenges for the definitive implementation of the agreement and therefore for its effectiveness, taking into account the environmental problems that the region, particularly Brazil, has been experiencing in recent times.

In short, the trade pillar plays a key role in strengthening trade relations between the EU and Mercosur, covering a wide range of issues aimed at promoting economic growth, job creation

and mutual cooperation, while pursuing fair, balanced and sustainable trade between the regions.

It is important to mention that the AA signed in June 2019 essentially addresses the trade pillar, marking a significant advance after more than 20 years of negotiations. Negotiations regarding the political and cooperation pillars that span the same period, had their negotiations concluded later, in July 2020. However, despite the progress announced in these areas, the exact content of these two pillars has not yet been made available to the public. There remains, therefore, a secrecy regarding the details and specific clauses agreed upon in these pillars, raising questions and expectations about the terms and implications of these negotiations for both regions.²⁶⁴

5.2 The Agreement in Principle

The trade agreement signed between the EU and Mercosur known as the "Agreement in Principle", addresses a wide variety of trade issues and key thematic areas to strengthen bilateral relations and promote trade between the regions. However, it is essential to highlight that the signed Agreement is not yet a final and binding official document. As mentioned in the previous chapter that dealt with the negotiations, the agreement is still subject to technical and legal review (known as "legal clearance"). In fact, the Agreement is legally considered a treaty or international agreement still under negotiation between the EU and Mercosur. Although it is still a draft and has not reached the status of a final and binding official document, it is a formal manifestation of intentions and commitments between the parties involved.

In its terms, the EU-Mercosur Agreement covers a wide range of issues related to regional integration, trade in goods and services, facilitating market access, reducing tariffs and non-tariff barriers. In addition, it sets out issues on investment, rules of origin to determine the origin of products, IP and transparency in government procurement. Issues related to sustainable development are also addressed, including environmental issues and labour rights.

Among all the topics addressed in the agreement between the EU and Mercosur, we will emphasize regional integration, trade in goods, rules of origin, trade facilitation, sustainable

²⁶⁴ Caetano G, 'Analysis and Foresight of the European Union-Mercosur Association Agreement' (<https://www.fundacioncarolina.es>, April 2022) <https://www.fundacioncarolina.es/wp-content/uploads/2022/04/Especial_FC_EULAC_4_EN.pdf> accessed 13 February 2023

development, services systems and government procurement. Subsequently, a projection of its main social, economic and environmental impacts will be made.

5.2.1 Regional Integration

The inclusion of an article dedicated to Regional Integration in the Agreement draws attention due to the importance of this aspect. This article recognizes the differences in the respective regional integration processes and determines that the Parties shall promote conditions to facilitate the movement of goods and services within and between the two regions. While reaffirming that goods originating in Mercosur shall enjoy free movement within the territory of the EU, the article states that Mercosur members shall apply to goods originating in the EU customs treatment no less favourable than that applicable to products originating in their own members.

The agreement acknowledges the differences in the EU and Mercosur regional integration processes but underlines the need to promote conditions that facilitate the movement of goods and services. As regards the movement of goods, the agreement provides for reciprocal benefits. Goods originating in a Mercosur member state and released for free circulation in the EU will enjoy free circulation in the EU territory. Similarly, the Mercosur Member States are obliged to apply customs procedures no less favourable to EU goods imported into their territory than those applied to goods originating in Mercosur. This reciprocal treatment aims at strengthening trade flows and ensuring equal treatment of goods between the regions.

To further promote trade, the agreement extends the benefits of Mercosur's harmonisation of technical regulations, conformity assessment procedures and sanitary and phytosanitary (SPS) requirements to EU goods. It also recognises the importance of trade in services and aims to facilitate the free provision of services between the territories of the EU and Mercosur. EU Member States are encouraged to facilitate the provision of services to Mercosur companies on their territories, while Mercosur Member States are urged to do the same for EU companies. This commitment promotes the expansion of services sectors, encourages investment and increases business opportunities for companies in both regions.

5.2.2 Trade in Goods

One of the central chapters of this agreement is the Chapter on Trade in Goods, which establishes the guidelines and regulations related to the trade in goods. This topic aims at a broad liberalization of trade in goods between the regions, with the objective of reducing or eliminating tariffs and trade barriers. Within this context, Mercosur commits to fully liberalise 91% of its imports from the EU over a transitional period of up to ten years for most products. For some more sensitive products, a longer linear liberalisation is reserved, extending up to 15 years. For its part, the EU commits to liberalise 92% of its imports from Mercosur over a transitional period of up to ten years.

In the industrial goods sector, the EU commits to eliminate tariffs on 100% of industrial products over a transition period of up to ten years. Mercosur, for its part, will fully remove tariffs in priority sectors such as the automotive sector, automotive parts, machinery, chemicals and pharmaceuticals. Liberalisation will apply to more than 90% of EU exports in each of these sectors. Passenger cars will be fully liberalised by Mercosur over 15 years, with a seven-year grace period and a transitional quota. EU automotive parts and machinery will also be extensively liberalised.

In agriculture, tariffs will be phased out on 93% of tariff lines corresponding to 95% of the export value of EU agricultural products. The EU will liberalise 82% of agricultural imports from Mercosur, while the remaining imports will be subject to partial liberalisation commitments, including tariff rate quotas for more sensitive products and some products that will be totally excluded, such as special sugars²⁶⁵. Examples of agricultural products with market access established in the agreement include beef, poultry, pork and sugar. Each of these products will have specific volumes, phasing-in periods and, in some cases, tariffs within the quotas established.²⁶⁶

Chapter I addresses the issue of customs duties, establishing that the parties must reduce and/or eliminate these duties on originating goods, as long as they comply with the origin criteria established in the agreement. Furthermore, liberalisation schedules are defined, indicating the

²⁶⁵ Torres Jarrín M and Daza Aramayo LG, 'EU-Mercosur Interregionalism' (2023) 21 United Nations University Series on Regionalism

²⁶⁶ McCabe S and others, 'Assessment of the Social and Environmental Risks Posed by the EU-Mercosur Trade Agreement' (*Uplift People Powered Change*, 2019) <<https://www.uplift.ie/wp-content/uploads/2020/08/UPLIFT-TASC-Final-Mercosur-Report-4.pdf>> accessed 19 June 2023

deadlines for the reduction or elimination of such duties. Provisions related to goods reintroduced after repair are also addressed.

Chapter II deals with non-tariff measures, which are non-tariff regulations and restrictions affecting trade in goods. Section 1 sets out general provisions, covering issues such as import and export taxes and charges, licensing procedures, export tendering, export taxes, state trading enterprises, prohibition of quantitative restrictions, use of preferences and the establishment of a Sub-Committee on Trade in Goods.

In Chapter III, we find the common provisions applicable to the entire agreement. These provisions establish general exceptions that may be applied under certain circumstances, allowing flexibility in the agreement's implementation. These exceptions may cover issues such as national security, environmental protection and public health, among others.

The Chapter on Trade in Goods in the agreement between the EU and Mercosur plays a key role in promoting bilateral trade between these two regions. The provisions addressed aim to reduce trade barriers, stimulate cooperation and facilitate the flow of goods between the parties. Through the reduction or elimination of customs duties and the regulation of non-tariff measures, the agreement creates a more favourable environment for trade, benefiting economic sectors and promoting mutual development.

5.2.3 Rules of Origin

The Agreement between the EU and Mercosur also incorporates a series of commitments related to more modern rules of origin, similar to those practiced by European exporters in their preferential trade agreements. This aims to facilitate trade between the regions, establishing clear criteria to determine the origin of the products benefiting from the agreement. The origin regimes of these agreements are composed of rules that involve from conceptual issues, transportation conditions, customs cooperation and certification methods to control procedures and origin verification.

It is worth noting that the establishment of rules of origin is a fundamental part of any trade agreement, since its objective is to simplify and facilitate trade flows between the two regions, allowing exporters and importers to benefit from the tariff reductions foreseen in the agreement. In other words, the rules of origin have the objective of discriminating suppliers in

relation to imports from partners with whom special treatment has been agreed upon, preventing the so-called 'triangulation' of goods with third parties.

At the heart of the origin regimes is the origin criterion, which is the condition established between the parties for each traded good, based on the benefits of the agreement, to acquire the condition of "originating product". To determine the origin of goods under preferential trade agreements, two basic criteria are used. The first criterion is applied to wholly obtained or produced products, that is, those that do not incorporate inputs or materials originating in countries that are not part of the preferential agreement. This means that these goods originate exclusively in the countries participating in the agreement.

The second criterion is applied to products subject to substantial transformation. In this case, the goods undergo a significant transformation process, which involves the incorporation of materials originating and not originating in the countries that are members of the agreement. This substantial transformation is a determining factor for products to acquire the condition of "originating product" and be eligible to the benefits of the preferential trade agreement.

The chapter dedicated to rules of origin and related procedures is composed of three main sections: rules of origin, procedures of origin and miscellaneous issues. These sections set out clear and precise guidelines for determining the origin of products, ensuring that only those that meet the stipulated criteria can benefit from the agreed preferential tariffs. Section A deals with the rules of origin themselves, setting out specific requirements for the consideration of products as originating, including wholly obtained products, the rule of absorption and the principle of territoriality.

Within these rules, there are special considerations for fisheries products, where criteria such as flag, registration, ownership and manning of vessels are taken into account. These criteria apply to the Exclusive Economic Zones as well as to the continental shelf and the high seas. In addition, bilateral cumulation between the parties is allowed, which contributes to further facilitate trade. The agreement also maintains a traditional EU list identifying insufficient operations not conferring origin, ensuring that the rules are properly applied.

Section B deals with origin procedures and sets out guidelines for exporters regarding the documentation required to claim preferential tariff treatment. An origin declaration is required from the exporter, and in the EU, exporters must register in the Register of Exporters System

(REX system). With regard to inspection, the customs authorities of the importing country may request administrative cooperation to obtain information from the exporter. However, it is important to note that direct inspection visits by the customs authorities of the importing country to exporters are not allowed. This aims to ensure an efficient process and avoid unnecessary interruptions in trade operations.

Section C, on the other hand, addresses various issues and contains provisions relating to specific countries, such as Andorra and San Marino, as well as transitional provisions. These provisions are important to ensure a smooth implementation of the agreement and take into account the particularities of certain regions or sectors.

In short, the rules of origin set out in the EU-Mercosur agreement are crucial to facilitate trade between the two regions. They reflect the practices adopted in the most recent EU trade agreements, taking into account the main EU export sectors. With specific criteria for cars, auto parts, machinery, chemicals, textiles and clothing, these rules ensure that the products benefiting from the agreement actually originate in the agreed regions. Although there are some exceptions based on previous examples of EU trade agreements, these rules are essential to promote fair and balanced trade between the EU and Mercosur.

5.2.4 Customs and Trade Facilitation

One of the aspects highlighted in this agreement is trade facilitation. In fact, trade facilitation plays a crucial role in promoting international trade and strengthening economic relations between countries. In the case of the EU-Mercosur AA, the chapter on trade facilitation goes beyond the 2017 WTO agreement, demonstrating the commitment of the parties to promote a favourable and efficient trading environment. Improved customs governance and the adoption of high levels of transparency contribute to reducing red tape and burdens faced by businesses, thus facilitating the flow of goods between the regions.

The consultation of companies before adopting new rules is a fundamental aspect of this agreement, as it ensures that decisions are made taking into consideration the needs and perspectives of the actors involved in bilateral trade. Likewise, the inclusion of periodic review of existing rules makes it possible to adapt them according to market demands and dynamics.

The use of modern, automated procedures is another relevant point in this chapter. By adopting these practices, the EU and Mercosur aim to speed up the clearance of goods, reducing delays and costs associated with trade. Risk management and pre-arrival documentation are efficient strategies that contribute to speeding up customs processes.

In addition, mutual recognition of authorised economic operators' programmes strengthens cooperation between the parties, promoting greater efficiency and security in trade operations. This recognition, provided it is based on equivalent criteria and benefits, goes beyond the WTO trade facilitation agreement, underlining the mutual commitment between the EU and Mercosur to enhance trade relations.

Finally, maximum transparency and access to relevant information on customs legislation and procedures benefit not only business, but also stakeholders and the general public. Such transparency facilitates the understanding of trade rules and enables stakeholders to express their views and contribute to discussions prior to the adoption of new customs-related initiatives.

The trade facilitation chapter in the EU-Mercosur AA represents an important step forward in enhancing trade relations between the two regions. Going beyond the 2017 WTO agreement, this chapter seeks to promote efficiency, transparency and simplification of customs procedures with a view to facilitating bilateral trade. Improved customs governance, business consultation, the use of modern and automated procedures, mutual recognition of authorised economic operator programmes and maximum transparency are key elements that contribute to strengthening the trade partnership between the EU and Mercosur. Trade facilitation plays a key role in the development of international trade relations, boosting economic growth and benefiting both traders and consumers in both regions.²⁶⁷

5.2.5 Sustainable Development in The Mercosur-European Union Agreement

The agreement between Mercosur and the EU has aroused great expectations in relation to sustainable development, since one of its main objectives has always been the creation of an interregional association aimed at sustainable development.²⁶⁸ In this context, the Agreement

²⁶⁷ 'O Resumo Do Acordo Mercosul-União Europeia – Parte 1, 2 e 3' (*Emme Consult*, 15 July 2019) <<http://emmeconsult.com/noticias/veja-aqui-o-resumo-do-acordo-mercossul-uniao-europeia-parte-2/>> accessed 18 June 2023

²⁶⁸ *Ibid* 265

in Principle included a specific chapter on trade and sustainable development where commitments related to environmental protection, decent work and social corporate responsibility are established.

One of the main achievements of this agreement is the incorporation of the Paris Agreement commitments on climate change. This means that member countries must remain committed to the goals set out in the agreement, seeking to reduce greenhouse gas emissions and promote the transition to a low-carbon economy.

Furthermore, the agreement establishes labour standards and corporate social responsibility practices based on recognised international guides. This represents a significant advance, as it encourages companies to adopt policies and practices that guarantee respect for workers' rights and promote fair and safe working conditions.

An important aspect of the sustainable development chapter is the need for member countries to comply with International Labour Organisation (ILO) conventions. This includes ensuring freedom of association, combating forced and child labour, and eliminating discrimination in employment. These obligations aim to protect workers' rights and promote a decent work culture.

It is worth noting that the implementation of these commitments may be more challenging for Mercosur countries, as they may need to make more significant regulatory adjustments compared to European countries, which already have a regulatory status quo closer to what was negotiated in the agreement.

Another important point is the inclusion of a dispute settlement mechanism, which allows the resolution of disputes related to compliance with environmental and labour obligations. This mechanism provides a propitious environment for dialogue and the search for peaceful solutions, avoiding prolonged conflicts.

Despite the advances achieved in this agreement, it is important to recognize that there are still challenges to be overcome. It is necessary to guarantee transparency in the implementation of environmental and labour protection measures, in addition to promoting cooperation and exchange of information on voluntary sustainability assurance schemes.

Moreover, it is essential to ensure that measures adopted on the basis of the precautionary principle are duly based on scientific information and do not constitute arbitrary restrictions on trade. The correct application of this principle will allow the prevention of environmental damage and risks to health and safety, without compromising the economic viability of commercial activities.

In conclusion, the sustainable development chapter in the agreement between Mercosur and the EU represents a significant step towards a more sustainable and fairer economy. Through this agreement, member countries commit to implementing measures to protect the environment, ensure decent working conditions and promote corporate social responsibility. However, it is necessary to closely monitor the implementation of these measures and overcome the remaining challenges so that the benefits of sustainable development are effectively achieved.

5.2.6 Services and Establishment Provisions

The trade in services and establishment in the agreement between Mercosur and the EU are extremely relevant topics in the context of international trade relations. This chapter of the agreement seeks to facilitate the provision of services between the members of the blocks, promoting the free movement of companies and qualified professionals.²⁶⁹

One of the features of this chapter is its adherence to the commitments set out in the General Agreement on Trade in Services (GATS), which demonstrates the intention to align the agreement between Mercosur and the EU to international standards and principles related to trade in services.

A key aspect of this chapter is the right of establishment, which allows foreign companies to set up permanent businesses in the host country. This not only encourages foreign investment, but also promotes economic development and job creation.

In addition, the chapter addresses the movement of professionals for commercial purposes, which enables the mobility of qualified workers between member countries. This openness to

²⁶⁹ Maduro L, Veiga P da M and Rios SP, 'Acordo Mercosul-União Europeia: Impactos Normativos/Regulatórios No Mercosul' (*Publications*, 26 August 2020) <<https://publications.iadb.org/pt/acordo-mercosul-uniao-europeia-impactos-normativosregulatorios-no-mercosul>> accessed 18 June 2023

talent exchange is beneficial both for companies, which can count on highly qualified professionals, and for professionals, who have the opportunity to broaden their international experience.

However, it is important to note that the agreement does not address issues related to investment regulation or state-investor dispute settlement mechanisms. These matters remain governed by the Bilateral Investment Treaties signed individually between the EU and Mercosur countries.

In summary, the chapter on trade in services and establishment in the Mercosur-European Union agreement represents a significant advance in economic integration between the blocs. By promoting the liberalisation of trade in services and facilitating the mobility of professionals, the agreement creates an enabling environment for economic growth and sustainable development. However, it is essential that member countries closely monitor the implementation and enforcement of these provisions, ensuring that the benefits are fairly and equitably distributed among all parties involved.

5.2.7 Technical Barriers to Trade

Technical barriers to trade" refer to regulations, standards and technical requirements that may affect international trade. These barriers may include requirements related to safety, quality, public health, environment, consumer protection, among other aspects.

In the context of the agreement between Mercosur and the EU, technical barriers to trade are issues related to differences in technical regulations and standards adopted by each party. These differences can create barriers to trade, since products must comply with requirements on both sides. Therefore, "the EU and Mercosur have negotiated a forward-looking and progressive chapter" on this aspect, building on the obligations of the WTO Technical Barriers to Trade (TBT) Agreement.²⁷⁰ It is a comprehensive and forward-looking chapter related to TBT, following the obligations set by the World Trade Organisation (WTO) TBT Agreement. The aim is to ease the trading between the parties by eliminating unnecessary obstacles and creating

²⁷⁰ Ibid 267

conditions for further convergence of technical regulations and standards in the future. Such convergence will contribute to reducing adaptation costs for businesses. 271

In the field of technical regulations, the parties involved have agreed to go beyond the rules established by the WTO regarding the use of international standards as a reference for their own technical regulations.²⁷² That is, they seek to adopt international standards as the basis for their own regulations. In addition, they have agreed to conduct regular reviews with a view to increasing alignment with these international standards over time.

To facilitate regulatory convergence, a specific set of international standardisation organisations, such as International Organization for Standardization (ISO), International Electrotechnical Commission (IEC), International Telecommunication Union (ITU) and Codex Alimentarius, has been defined. This definition is in line with the EU's understanding of international standards, which requires the decision of the TBT (Technical Barriers to Trade) Committee as a necessary, but not sufficient, condition for recognising an international standard.

With regard to conformity assessment, the chapter establishes general principles, including the promotion of the use of international assessment systems, based on risk assessment. It also promotes the transparency of conformity assessment procedures, including the publication of those procedures and of the approved assessment bodies. In the case of conformity assessment carried out by public authorities, it has been agreed to establish fees commensurate with the service provided, and to make them public.²⁷³

The parties take different approaches in certain areas of conformity assessment, such as electrical safety, electromagnetic compatibility, energy efficiency and restriction of hazardous substances. The EU uses suppliers' declarations of conformity, while Mercosur has committed to accept the results of tests carried out by EU conformity assessment bodies, facilitating exports in the electrical and electronics sectors.²⁷⁴

²⁷¹ 'Chapter on Technical Barriers to Trade (TBT) Trade Part of the EU-Mercosur Association Agreement' (*SICE - Sistema de Informação de Comércio*, 28 June 2019) <http://www.sice.oas.org/TPD/MER_EU/Texts/Technical_Barriers_to_Trade_e.pdf> accessed 18 June 2023

²⁷² Ibid 265

²⁷³ Ibid 265

²⁷⁴ Ibid 265

On the transparency aspect, the parties agreed to follow the WTO+ disciplines regarding public consultations and notifications to the WTO TBT Committee. This allows for a comment period, written discussion, written response and enhanced reporting obligations, facilitating the identification of potential trade barriers.²⁷⁵

The parties also agreed on the general principles for the application of TBT disciplines to marking and labelling, with the aim of facilitating market access for economic operators while respecting health and safety requirements. Agreements included requiring relevant information on labelling, allowing additional labels in the importing country, accepting non-permanent labels and ensuring prompt and non-discriminatory decisions on applications for prior approval of labels.

Under TBT-plus, standards go beyond the regulations set by the WTO, two aspects are worth highlighting. Firstly transparency and dialogue, which means that the parties involved should make the decision-making processes and the implementation of these measures more accessible, clear and involve consultations and interactions with relevant stakeholders. And secondly good regulatory practices. This implies that efficient and evidence-based regulatory approaches should be adopted, which generate economic, social and environmental impacts.²⁷⁶

Furthermore, the EU-Mercosur agreement includes ambitious joint cooperation mechanisms aimed at facilitating trade in future initiatives. This means that the parties are committed to work together to develop and implement measures to promote more fluid and efficient trade between them.

5.2.8 Sanitary and Phytosanitary Measures

In the terms of the agreement, a chapter is reserved to deal with Sanitary and Phytosanitary Measures. According to the WTO (World Trade Organisation), the objective of these measures is to protect human and animal life from risks related to additives, contaminants, toxins or organisms that may cause food problems. It also aims to protect human life from diseases transmitted by animals and/or plants, as well as to protect animals and plants from pests or

²⁷⁵ Ibid 265

²⁷⁶ Ibid 177

diseases caused by micro-organisms. It also seeks to prevent or limit damage to countries caused by the entry, establishment and spread of pests.

The aim of this chapter is to improve and facilitate trade while keeping EU consumers safe. European consumers are demanding the quality and health of products entering the EU territory, and are reluctant to consume food containing agrochemical residues. The agreement aims to provide predictability, transparency and simplification of administrative procedures for European exporters and the competent authorities of the Member States.

In this context, Mercosur countries will be subject to strict control of sanitary and phytosanitary standards to protect EU consumers with regard to food safety, animal and plant health. Thus, the same rules will be applied by the EU when importing agricultural or fisheries products.

In the case of non-compliance with the rules of the SPS chapter, measures have been established to deal with such situations. Mercosur countries have agreed to these measures to avoid previous cases of violations of the standards. The SPS chapter incorporates a veto mechanism or 'red button' for cases of risk of violations of the standards, allowing for emergency measures under Article 14. This means that an EU Member State can apply phytosanitary measures to prevent products from a particular farm or production system from entering the EU. Article 10 of the SPS chapter also includes the concept of "regionalisation" and "compartmentalisation", allowing the blocking of specific regions without affecting the whole EU or Mercosur.²⁷⁷

In addition, the SPS Chapter establishes in its Article 7 that the exporting party shall only authorise exports from "approved establishments" with guarantees from the competent authority that these establishments meet the sanitary requirements of the importing party. The importing Party must have a public list of approved establishments. In addition, the Parties have agreed to simplify control and verification by reducing the frequency of import controls carried out by the importing Party.²⁷⁸

²⁷⁷ Hagemeyer J and others, 'Trade Aspects of the EU-Mercosur Association Agreement' (*European Parliament*, November 2021)

<[https://www.europarl.europa.eu/RegData/etudes/STUD/2021/653650/EXPO_STU\(2021\)653650_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/STUD/2021/653650/EXPO_STU(2021)653650_EN.pdf)>
accessed 18 June 2023

²⁷⁸ Ibid 177

The agreement includes bilateral and international cooperation in the key areas of animal welfare, biotechnology, food safety and the fight against antimicrobial resistance (AMR)²⁷⁹. One of the results will be an increased exchange of information, knowledge and experience which will strengthen research cooperation. The Parties will also cooperate in international fora to promote the development of international animal welfare standards by the World Organisation for Animal Health (OIE) and animal welfare best practices and their implementation. On issues related to the application of agricultural biotechnology, the Parties agreed to exchange information on policies, legislation, guidelines, best practices and projects of agricultural biotechnology products, as well as specific topics on biotechnology that may affect trade, including Cooperation on Genetically Modified Organisms (GMOs) testing.²⁸⁰

In summary, this chapter deals with sanitary and phytosanitary measures aimed at protecting human, animal and plant health, as well as facilitating trade between parties. It establishes rules, control procedures and emergency mechanisms to ensure food safety and compliance with sanitary and phytosanitary standards. However, there are debates regarding the risk-based approach to the detriment of the precautionary principle and the lack of democratic control over decisions taken under the SPS chapter.

5.2.9 Public Procurement Policies

In the chapter on Public Procurement, the doors are open to the market for goods, construction and infrastructure services, both at federal level for European and Mercosur companies. The principles of non-discrimination, national treatment and the most favoured nation clause are applied as a priority. Governments, for their part, must act in a transparent and impartial manner, avoiding conflicts of interest and any corrupt practices that could taint the integrity of public procurement. They will not hesitate to impose sanctions against those involved in acts of corruption, strictly following domestic legislation.

The European Union makes a point of including chapters on government procurement in its preferential agreements. In agreements with developed countries that participate in the WTO Government Procurement Agreement, the provisions of this plurilateral agreement are incorporated, especially those related to equal and non-discriminatory treatment to suppliers

²⁷⁹ Ibid 265

²⁸⁰ Ibid 177

originating from other signatory parties, regardless of whether or not they are established in the country making the public procurement.²⁸¹

In these preferential agreements, besides the rules negotiated in the Global Center on Adaptation (GCA) /WTO, some norms related to bidding procedures are added. These rules address issues such as qualification, conditions for participation of suppliers and publication of news, making a connection with the WTO agreement, providing specific details that may be related to the institutional characteristics of one or both partners involved.

In the case of the agreement between Mercosur and the EU, as well as in other agreements concluded between Europeans and developing countries, which are usually not signatories of the WTO agreement, the principles of national and non-discriminatory treatment are expressly mentioned. From these principles, the articles that refer to the various procedures and steps that make up the public procurement processes follow, from the valuation of contracts to the government decision related to these acquisitions.²⁸²

The rules established for each stage are aimed at ensuring the transparency of the process and the observance of the general principles of national treatment and non-discrimination in relation to foreign goods, services and suppliers. Furthermore, clauses are included to prohibit the use of offsets in government procurement by signatory countries.

In all preferential agreements signed by the EU, national lists of commitments are annexed, covering: the goods and services (including public works) covered; the entities (central, sub-central and other) whose purchases are covered; and the value thresholds above which public purchases of the listed goods, services and entities are subject to the provisions of the agreement. These lists provide a clear and specific basis for the application of the agreed provisions.

5.3 Perspectives on EUMETA's Social, Economic and Environmental Impacts

According to Eurostat, by way of trade partnership, the EU ranks second in relation to Mercosur, while Mercosur ranks eleventh in relation to the EU²⁸³. In 2018, for example, the

²⁸¹ Ibid 269

²⁸² Ibid 269

²⁸³ 'Mercosur-EU - International Trade in Goods Statistics' (*Eurostat*, 26 October 2022)
<https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Mercosur-EU_-

EU concentrated most of its exports to Mercosur in the machinery, transport equipment, chemicals and manufactured goods sectors. On the other hand, the food, live animals, raw materials, mineral fuels and lubricants sectors stood out in imports from Mercosur to the EU.²⁸⁴

Given the strong historical, cultural and economic ties between the two blocks, for the EU the AA means a chance to further strengthen these relations and expand its trade and investment activities in the region. For Mercosur, it has the potential to compensate for the relative loss of market access faced by the region, as its competitors enjoy more advantageous access to the European market through free trade agreements. Therefore, the agreement between the two generates benefits for both parties.

However, while the AA signed in 2019 represents a significant and promising milestone in trade relations between the two regions, both sides also express defensive concerns. The agrarian sector is a prime example. This has been very sensitive ground since the beginning of the negotiations that began in the 1990s. Here, for example, the spotlight of criticism and speculation is especially on dairy products, beverages, livestock/meat, processed agricultural products and the protection of EU geographical indications.

Another strong example of fragility is that of environmental protection. Many say that the academic analysis on impact studies on issues of such magnitude, such as climate change, has not been taken into account. The Sustainability Impact Assessment (SIA) conducted by London School of Economics and Political Science (LSE) for the European Commission, for example, was published in October 2019, three months after the negotiations closed. This means that the most recent impact study at the time did not serve the negotiators as a guide.

Given this context, an in-depth analysis to understand the possible outcomes of this agreement becomes necessary. This implies examining the main issues related to sustainable development, including environmental protection, social inclusion, the promotion of labour rights, economic justice and the mitigation of inequalities. In addition, the possible impacts on economic sectors such as agriculture, industry, services and investments, taking into account the specific

[_international_trade_in_goods_statistics&oldid=581432#In_2021.2C_EU_was_the_second_trading_partner_for_Mercosur.2C_after_China_and_ahead_of_the_United_States>](#) accessed 18 June 2023

²⁸⁴ ‘Sustainability Impact Assessment in Support of the Association Agreement Negotiations between the European Union and Mercosur’ (*London School of Economics and Political Science*, July 2020) <<https://www.lse.ac.uk/business/consulting/assets/documents/EUMercosurSIA-DraftFinalReport-July-2020.pdf>> accessed 27 June 2023

characteristics of each region and their respective trade policies. To this end, studies conducted by independent institutions will serve as the basis of this study.

5.3.1 Social impacts

The analysis of the social impacts resulting from a trade agreement, especially the AA between Mercosur and the EU, implies the study of areas related to the protection of human rights, including civil, political and social rights, as well as indigenous peoples. Furthermore, for the guarantee of labour rights, decent working conditions, equal opportunities and the elimination of child and forced labour are assessed. Income distribution and social inequality are also considered, aiming to avoid concentration of wealth and promote equitable sharing of economic benefits.

Therefore, the SIA study on the potential economic, social impact made by LSE and published by the European Commission, assessed the potential impacts on employment (including in the informal economy), decent work, working conditions, as well as distributional impacts (including income inequalities from poverty). The effects on the effective implementation of international core labour standards and International Labour Organisation core conventions were also analysed in the context of the AA between Mercosur and the EU.²⁸⁵

Firstly, the study presented a baseline with an overview of current socio-economic trends in the countries directly involved in the agreement, with a particular focus on employment and wages, poverty and income inequality (Gini index). Simultaneously, an analysis of adherence to and implementation of international labour standards by Mercosur and EU countries (with an emphasis on ILO core labour standards) and the decent work agenda, including social protection, social dialogue and health and safety at work.

According to the analysis carried out by LSE²⁸⁶, the socio-economic effects of the AA cannot be dissociated from the political context in which trade liberalisation takes place. Thus, considering the continuation of the current context, it is predicted that the EU-Mercosur AA would have significant aggregate positive welfare effects for the EU, Brazil and Argentina, but neutral welfare effects for Uruguay and Paraguay. Still, small wage gains for both unskilled and skilled workers in both the EU and Mercosur countries, with the exception of Brazil, where

²⁸⁵ Ibid

²⁸⁶ Ibid

wages tend to remain constant for both categories of workers. In both scenarios, wage gains are expected to be more significant for unskilled labour than for skilled labour. On this point, the study presents an exception for the EU case, where gains tend to be equivalent for skilled and unskilled categories.

The analysis by LSE also predicts for Mercosur a growth trend and the largest employment gains in the agribusiness sectors, especially in cereals, vegetables, fruit and nuts, cattle, other meat, other animal products and gas. The opposite effect was projected in the metal products, motor vehicles and transport equipment and machinery sectors. In the case of the EU, considering its labour market structure, the forecast impact on job creation proved to be much less significant, with variations of less than 1% forecast in both scenarios.

In this respect, the trading partners commit themselves to respect, promote and properly implement core labour standards as defined in the fundamental conventions of the International Labour Organisation (ILO) in the context of the EU-Mercosur AA. Furthermore, they committed to respect social standards and reaffirmed their right to supervise labour issues. In line with the 2008 Declaration on Social Justice for a Fair Globalization, the commitment also promotes decent work and values responsible supply chains and international cooperation to spread good practices.²⁸⁷

The current chapter on trade and sustainable development is based on free trade agreements previously signed by the EU, which means that the EU has previous experience in this aspect. On the other hand, although Mercosur is officially committed to the protection of international labour standards at both the national and regional levels, none of the trade agreements signed by the bloc to date have included a specific chapter on this aspect, as is the exact situation of the AA with the EU. In short, the EU-Mercosur AA has a positive social impact, especially for the Mercosur countries.

However, the study strongly emphasized that the positive impact of stricter labour standards enforcement in the Southern Cone areas will depend largely on political will and the application of adequate resources (internal and external). Among the recommendations presented in the study, the first one is that the countries involved should undertake efforts to eliminate poverty.

²⁸⁷ Ibid 284

To this end, the maintenance of specific programmes and the promotion of better income redistribution is essential.

Furthermore, aiming at strengthening labour and trade union rights, it was recommended that Mercosur countries, especially Brazil and Argentina, strengthen the enforcement of labour laws, especially the freedom of association and the right to collective bargaining, including the ratification of ILO Convention 87. It was also recommended to strengthen labour inspection programmes aimed at reducing forced labour, increasing formalisation and promoting better working conditions.²⁸⁸

In order to strengthen the inspection and implementation of labour laws, improve working conditions and protect workers' rights in the Mercosur region, the study recommends Strengthening labour inspection programmes. These programmes aim to protect workers' rights and ensure that they comply with established labour standards. Positive experiences from Brazil and Argentina in reducing forced labour and promoting labour formalisation were used as examples.

The EU should adopt EU-wide due diligence measures and promote responsible business conduct/company social responsibility to strengthen labour rights. This includes making European companies responsible for controlling responsible value chains, with a focus on eliminating child labour, forced labour and discrimination at work.²⁸⁹

In relation to child labour, the recommendations are directed both through the implementation of prevention programmes and through punitive and accountability measures. As examples, the study cited Paraguay's National Strategy for the Prevention of Forced Labour and Argentina's National Plan for the Prevention and Elimination of Child Labour.²⁹⁰ In this context, the study suggests that the EU should support programmes to combat child labour, in collaboration with the Mercosur government and local society groups. In addition, it is suggested that the EU adopt the promotion of corporate responsibility for companies to control responsible value chains, ensuring that there is no involvement with child labour or forced labour. In short, the proposal would be to apply a "zero tolerance" approach to child labour, as proposed by European Commission President Ursula von der Leyen.

²⁸⁸ Ibid 284

²⁸⁹ Ibid 284

²⁹⁰ Ibid 284

Gender equality was also the focus of recommendations encouraging increased participation of women in decision-making, with technical support from the WTO's new focal point for trade and gender, established after the Buenos Aires Declaration on Trade and Women's Economic Empowerment.

The study also recommends that Mercosur countries develop adjustment programmes for workers in the most affected industrial sectors, such as machinery. These programmes can include training, capacity building and apprenticeship opportunities so that workers can acquire the necessary skills to adapt to the new demands and find jobs in emerging sectors or in other sectors of the economy. This is intended to mitigate the negative impacts of changes on industrial sectors and promote a smoother transition for affected workers.

The last recommendations were related to dispute settlement, public accountability mechanisms and monitoring processes. On dispute settlement, Mercosur countries should adopt a more assertive approach to violations of freedom of association. Dispute resolution involves mediation, arbitration or even legal action depending on the case.

As for public accountability mechanisms, it is proposed that Mercosur countries adopt more open accountability mechanisms in order to contribute to the resolution of labour disputes. This means promoting transparency and the participation of civil society in the conflict resolution process. Public accountability mechanisms can include public consultations, hearings, reports and dissemination of relevant information, allowing interested parties to access information and become actively involved in the resolution of disputes.

The recommendation on monitoring processes emphasizes the importance of establishing effective processes for evaluations carried out after the implementation of policies and programmes. These processes are essential to ensure proper implementation of the chapter on trade and sustainable development, as well as to protect core labour standards.

Although the studies prepared by the LSE have presented promising data and recommendations to reinforce the viability and success of the AA with the generation of positive impacts in social areas, some studies move in the opposite direction. One of them is the opinion of the Irish civil association called Uplift.²⁹¹

²⁹¹ Ibid 266

According to the analysis conducted by Uplift, its key findings reveal risks that are considered high with regard to labour rights arising from the implementation of the AA. This is because the shortcomings of the agreed text are not compensated for by strong national institutions in the Southern Cone. According to the analysis, the weaknesses of labour market-related institutions and serious legislative shortcomings related to labour rights are significant.

One example mentioned was Argentina's failure to ratify the Employment Policy Convention, which has as its core objective the promotion of full and productive employment and decent work as a response to the crisis (ILO, 2019). This lack of ratification is not surprising, given the era ruled by the liberal government that chose to address the severe economic crisis through monetary and fiscal consolidation rather than adopting full employment policies.²⁹²

Likewise, Paraguay has not ratified the convention requiring a constant and tight labour inspection system in agriculture. Even more worrying is the fact that Brazil has not ratified the fundamental convention that guarantees freedom of association (also mentioned in the studies made by LSE). Moreover, equally worrying is the reform approved in 2017 that resulted in the elimination of a number of labour rights in Brazilian legislation, rights that had been in force for decades.

Among Mercosur members, Uruguay was the only country that ratified all core labour and governance conventions. This situation underscores the concern about the lack of commitment and adequate protection of labour rights, which greatly increases the social risks associated with the implementation of the AA.

A study published by Trade Differently also analyses the social impacts of the AA between Mercosur and the EU. In the chapter that talks about the consequences for the economy, employment opportunities and labour rights, the deindustrialisation effects of the aforementioned agreement are presented. According to them, the agreement that will result in the elimination of import duties, may result in the increase of economic inequality between the parties involved.²⁹³

²⁹² Ibid 266

²⁹³ Murawski S and others, 'The EU-Mercosur Free Trade Agreement: A Critical Analysis and an Alternative' (*Both ENDS*, January 2022) <https://www.bothends.org/uploaded_files/document/Publication_EU-Mercosur_Feb_2022_English.pdf> accessed 18 June 2023

Regarding employment, studies indicate that the agreement could result in the loss of 186,000 skilled jobs in the region, including jobs in the automotive industry in Uruguay, machinery in Brazil and Paraguay, and the chemical and pharmaceutical industries in Uruguay, Paraguay and Argentina. The small increase in unskilled jobs in the agricultural sector would not offset this loss and, in any case, would only benefit large agricultural companies.²⁹⁴

This study points out that the Trade and Sustainable Development (TSD) chapters of the agreement do not include strong and binding safeguards to ensure compliance with (international) labour rights. Labour unions are not assigned with a role in monitoring the core labour standards established by the agreement. Furthermore, the Labour Forum, a joint initiative of trade unions from EU and Mercosur countries, which could monitor the implementation of the labour aspects of the agreement, receives no recognition. This negates the crucial role played by EU and Mercosur trade unions as drivers of sustainable development.²⁹⁵

Also, according to the report, labour unions from the EU and Mercosur complain about the lack of transparency of the agreement since they were not consulted about it, as well as the lack of information sharing, despite repeated requests made by trade union leaders from both continents. According to the text, even more aggressive is the conclusion of Quintino Severo, deputy secretary for international relations at Brazil's Central Única dos Trabalhadores (CUT), who says that the EU-Mercosur agreement grants too many benefits and power to Brazilian agricultural companies at the expense of protecting the environment, indigenous peoples and rural workers. "We continue to deal with an agricultural model based on slavery," he says.²⁹⁶

However, the study goes beyond this criticism and presents a chapter entitled "An Alternative". Among others, the study suggests greater public and civil society participation, emphasizing the need for balance of influence and transparency. And it reaffirms that the concerns of workers and trade unions must be taken into account, aiming at the promotion of human rights, decent work, democratic principles and other relevant and necessary international standards in this context:

²⁹⁴ Ibid

²⁹⁵ Ibid

²⁹⁶ Ibid

5.3.2 Environmental impacts

As with the analysis presented above on social impacts, we will initially present the results of the SIA on potential economic, social and environmental impacts done by the LSE and published by the European Commission. These studies provide a solid basis for our understanding of environmental issues such as climate change; energy use; land use; forestry; air pollution; waste production; ecosystems and biodiversity; and trade in environmental goods and services.

However, in addition to LSE studies, other research also contributes to a better understanding of these issues by offering additional perspectives.

The EU takes a holistic approach to sustainability in trade policy-making and recognises the importance of integrating economic, social and environmental considerations to ensure sustainable development. In this context, the EU seeks to promote environmental sustainability by addressing issues such as climate change, biodiversity loss, deforestation and resource depletion. Trade agreements often include provisions encouraging the implementation and enforcement of environmental standards, promoting sustainable management of natural resources and combating illegal trade in wildlife.

The EU also encourages responsible business conduct, supports sustainable supply chains and promotes corporate social responsibility. For this reason, the EU consistently advocates the inclusion of chapters on sustainable development in trade agreements to address sustainability concerns.

Thus, it can be said that the EU has long demonstrated its commitment to environmental protection through the use of a wide range of trade policy instruments that incorporate sustainability objectives. In its "Trade for All" strategy, the EU has expressed its willingness to incorporate sustainable development considerations "in all relevant areas of FTAs", such as energy, raw materials or public procurement provisions (EC, 2015a).

As for Mercosur, its approach to trade and the environment has changed significantly since its creation. Although the preamble to the 1991 Treaty of Asunción stated that Mercosur members aim to achieve a common market, "in the conviction that this objective should be achieved through the optimal use of available resources, the preservation of natural resources and the

protection of the environment", environmental issues did not feature in any of the 24 articles of its founding treaty.

However, the 1992 Canela Declaration was an important milestone in this trajectory. From it, a working group was established to analyse the environmental policies of Mercosur member countries, which later evolved into Working Subgroup No. 6 on the environment in 1995. Since the mid-1990s, Mercosur countries have adopted a series of regional agreements related to the environment.

In 2001, Mercosur's Framework Agreement on the Environment reaffirmed the commitment of all Mercosur members to environmental protection. Although these regional initiatives are not binding, they reflect the growing importance attached to the relationship between trade and environment since Mercosur's creation.

Although previous Mercosur trade agreements have not explicitly addressed environmental issues, member countries recognise the relevance of environmental protection and sustainable development. As part of their international agenda, they have actively participated in multilateral agreements related to the environment, making commitments to meet the established objectives.

However, the EU-Mercosur AA represents an advance on these previous efforts by including a specific chapter on trade and sustainable development. This inclusion explicitly recognises the need to reconcile trade and environmental protection and sets out clear commitments to promote the implementation of environmental protection measures and pursue sustainable development in both regions.

The incorporation of this chapter in the agreement represents significant progress, allowing closer cooperation between the parties to promote environmental protection, biodiversity conservation, and the adoption of more sustainable business practices. However, it is important to highlight that the effective implementation of these commitments and the achievement of concrete results will require joint efforts, including the creation of monitoring and supervision mechanisms, as well as the adoption of incentives for companies and governments to adopt sustainable practices.

Analysis of the impact on Carbon dioxide (CO₂) and methane gas emissions

According to studies and analysis carried out by LSE on the impact of the EU-Mercosur AA, the impact on CO₂ emissions will be small in the long term. In the conservative scenario, CO₂ emissions in the EU are expected to increase by 0.03%. Argentina, on the other hand, shows the largest increase, at 0.51%. However, putting this increase in perspective, Argentina's contribution to global CO₂ emissions is low compared to that of the EU. A small decrease in CO₂ emissions is foreseen for Uruguay and Paraguay.

Regarding methane gas, scale and composition effects amplify the impact of AA in Mercosur countries, mainly due to the expansion of livestock production. In the case of nitrous oxide, these effects are also amplified, suggesting a reallocation to sectors such as agriculture. On the other hand, in the EU, composition effects are greater than scale effects, resulting in an overall decrease in projected emissions.

The conclusion of the analysis highlights that the small increase in global Greenhouse gases (GHG) emissions in Mercosur countries due to the AA is not expected to have a significant impact on Mercosur member states' compliance with their commitments under the Paris Agreement. In terms of CO₂ emission reduction commitments, Paraguay has committed to reduce emissions by 20% from projected 2030 levels, partially conditional on international support. Uruguay, in the reduction of emissions by 29% by 2025. Argentina, meanwhile, since the adoption of the Paris Agreement, has committed not to exceed 483Mt CO₂e by 2030, which is 25% above the levels presented in 2015. Finally, Brazil established an absolute reduction target of 37% below 2005 levels by 2025.

In fact, Mercosur countries, with the exception of Paraguay, have committed to reducing greenhouse gas emissions by adopting targets and policies related to forests. The European Union-Mercosur AA includes a commitment to the effective implementation of the Paris Agreement, which can strengthen these commitments and initiatives for the sustainable management of forests in the countries involved.

Forest conservation

Among the Mercosur countries, Brazil and Paraguay stand out for having abundant forest resources. In Brazil, about 58% of the territory is covered by forests, while in Paraguay this coverage reaches approximately 38%. These figures demonstrate the importance of forests as significant natural resources in these nations. During the period from 2010 to 2015, the

Mercosur region faced a significant process of forest area loss. Countries such as Argentina, Brazil and Paraguay recorded alarming rates of deforestation.

Several factors have contributed to this loss, and agricultural expansion is one of them. The need to make room for plantations and pastures has led to the suppression of forests. A great example is the Brazilian Cerrado has lost more than half of its original extension due to cattle breeding and the production of industrial crops.

Furthermore, urbanisation stands out, since the growth of urban areas implies the felling of forests to build infrastructures and expand cities. In addition to the above, illegal logging and the invasion of protected lands by clandestine logging companies have also contributed to forest destruction.

It is worth noting that timber production in Mercosur plays a significant role in the regional economy. Brazil is a major producer and consumer of wood, representing a substantial share of the country's GDP and exports. *In 2014, the Brazilian forestry sector accounted for 1.1% of GDP and 1.3% of total exports, including wood pulp.* Timber production in Brazil has increased slightly, mainly due to growth in wood pulp production. Most Brazilian timber exports come from planted forests, as international trade in logs from natural tropical forest has been progressively banned since 1980. Around ten percent of Brazil's timber exports go to the EU. While the production of wood products has increased significantly in Uruguay as a result of the expansion of wood pulp production, it has remained consistent in Argentina and Paraguay over time.²⁹⁷

Just by way of comparison regarding timber production, the LSE study points out that the EU produced around 800 million tonnes in 2018, compared to 200 million tonnes in Brazil.

Regarding forest resources in the EU, it is estimated that forests account for about 40% of the total land area with large variations in forest cover between Member States. Some countries have a significantly higher proportion of their land covered by forest compared to others. However, unlike the Mercosur countries, in the EU the forest area has increased progressively over time, reflecting joint efforts to conserve and sustainably manage natural resources.

²⁹⁷ Ibid 284

Brazil experienced a decline in deforestation between the years 2004 and 2012. *This result was largely attributed to the adoption of appropriate policy initiatives, voluntary agreements and market-based initiatives that aimed to reduce the demand for further deforestation, increasing the risks for those involved in this process.* However, from 2014 onwards, deforestation rates in Brazil began to increase due to the implementation of the New Forest Code.²⁹⁸

In terms of Mercosur, several internal forest protection policies have been adopted. Argentina, for example, adopted the Native Forest Law in 2007, and a Zero Deforestation Law was adopted in Paraguay in 2012. However, major differences in terms of environmental regulatory stringency can be perceived among Mercosur member countries.

It is important to highlight Brazil's situation regarding beef production and deforestation. Some stakeholders, such as the European beef industry and environmental and animal protection NGOs, have expressed specific concerns on the issue. Around 23% of Brazil's total surface area is made up of agricultural land, divided between low-productive grassland and pasture (75%) and cropland (25%). Historically, most of the deforested forest land in Brazil has been converted to cattle pastures, as agricultural production is mainly located away from forest areas. According to Global Forest, there is a great opportunity to expand beef production by intensifying production in these areas without inducing further deforestation. However, most deforested areas are used for low-efficiency cattle. Even with high beef prices and increased production in previous years, deforestation has increased. This suggests that policies and enforcement actions have been effective in reducing deforestation since 2004.

The effort to combat illegal deforestation, led by Burgess, has been effective in reducing forest loss, especially in areas closest to economic and market pressures. The beef moratorium in 2009 had some positive, albeit limited, effects. Slaughterhouses were encouraged to avoid buying from properties with deforestation, as shown by the study by Gibbs et al. (2016). Another study found that the moratorium prevented some deforestation on properties that registered at the start of the programme, but there was leakage in the supply chain.²⁹⁹ Other

²⁹⁸ Ibid 284

²⁹⁹ Alix-Garcia J and Gibbs HK, 'Forest Conservation Effects of Brazil's Zero Deforestation Cattle Agreements Undermined by Leakage' (2017) 47 *Global Environmental Change* 201

policies that contributed to slowing deforestation include the creation of indigenous reserves and the 2006 Forest Code.

According to LSE's analysis, there is great potential for expansion of the oilseed sector in Brazil, with a focus on soybean and sugarcane production. In general, Brazil has a great physical potential to increase soybean production by converting degraded pastures into cultivated areas. As for sugarcane, it occupies less than 9 million hectares in Brazil, mainly in São Paulo, representing only 4.4% of total agricultural land. It is estimated that there are more than 40 million hectares of pasture suitable for sugarcane production studies show that increased production of ethanol from sugarcane can occur without threatening forests under conservation and by meeting future demand for land for human and animal food.³⁰⁰

Overall, the evidence indicates that Brazil has scope to expand agriculture through intensification and increased productivity, applying advanced agricultural technologies that allow for expansion but without deforestation. However, the study concludes that this positive scenario depends on Brazil's commitment to fulfil the promises of the Paris Agreement related to the preservation of forests.

In Argentina, although deforestation rates have slowed in recent years, they are still high and the conversion of forests to agricultural land and pasture has contributed significantly to greenhouse gas emissions. However, the country has demonstrated commitment with the National Action Plan for Forests and Climate Change (PANByCC in its Spanish acronym).³⁰¹

Uruguay, in turn, has a low forest cover, with only 10% of its territory covered by natural forests. However, natural forest cover has increased in recent years. Most of the Uruguayan territory is composed of grasslands for extensive grazing, which indicates the possibility of expanding cattle production without increasing pressure on land use. Finally, in Paraguay, soybean production has been one of the main causes of deforestation. However, the study concludes that the expansion of the cattle sector will not necessarily put pressure on land resources if there is a strong commitment to sustainable forest management in the country.³⁰²

³⁰⁰ Ibid 284

³⁰¹ 'Environmental and Social Management Framework (ESMF). Annex to the Funding Proposal Argentina REDD-plus RBP for Results Period 2014-2016 within the Framework of the GCF Pilot Programme for REDD+ Results-Based Payments' (*Food and Agriculture Organization of the United Nations*, 1 October 2020)

<<https://www.fao.org/3/cb1395en/cb1395en.pdf>> accessed 26 June 2023

³⁰² Ibid 284

In general, the analysis is promising since there is the possibility of expanding agricultural and cattle raising activities without necessarily depending on deforestation. However, this will only be possible if the Mercosur countries intensify the necessary forest protection measures.

Water and the ecosystem

For the context of AA environmental impact analysis, water is considered as a key factor in agricultural production. Some sectors in particular, such as sugarcane, rice and nut production, are particularly demanding in terms of water requirements. The expansion of these sectors would consequently increase the pressure on water resources. It is worth noting that this would also entail an increase in the use of fertilisers and pesticides. This would have negative consequences for soil conservation and water quality. This aspect is especially worrying in the Mercosur countries, considering the existing subsidies for the use of pesticides and fertilizers.

Moreover, the livestock sector also depends on this resource, including for the production of animal feed and fodder. Thus, with the increase in production comes an increase in its water demand. Still in this context, concerns point to the ecosystem. This is because water returned to the environment in the form of liquid manure, slurry and wastewater, when in large scale, can put pressure on the surrounding ecosystem and result in pollution of surface and groundwater. This results in the growth of harmful algae that can lead to the indirect decline of aquatic species.

The study concluded that, if proper management practices are not implemented, the expansion of those sectors will raise concerns regarding the use of water, pesticides and fertilisers as well as associated pollution issues.

Atmospheric pollution

Air pollution in Mercosur countries, such as Brazil, Paraguay and Uruguay, is mainly from industrial and vehicular sources, since these countries rely mainly on hydroelectric power and other renewable energies. However, there are few air quality monitoring systems, so adequate air pollution control is not sufficient.

Regarding industrial sectors, the paper and pulp sector in Uruguay and the non-metallic minerals sector in Brazil and Argentina are causes for concern. These sectors are responsible for the emission of pollutants such as NO_x, SO₂ and particles. On the other hand, other highly

polluting sectors, as is the case of the chemical and metallurgical sectors, are expected to increase very little or even reduce, so that it would lead to a certain balance. Although some localised negative effects may occur, the study does not present alarming data.

In the transport sector, a small positive impact is expected in Mercosur countries, except in Paraguay, where the impact is expected to be negative. The expansion of some agricultural sectors is likely to lead to an increase in freight transport. However, Brazil has adopted stricter vehicle emission standards and the widespread use of ethanol in cars, which has resulted in a significant reduction in particulate matter emissions. In addition, combating air pollution has become a priority in Brazil, with the implementation of new air quality standards. This suggests that the expansion of the transport sector will not necessarily lead to an increase in air pollution, especially if ethanol replaces other fuels and pollution standards continue to improve.³⁰³

In summary, while there are some moderate concerns about air pollution due to the possible expansion of the industrial and transport sectors, appropriate control and regulatory measures could help mitigate these impacts by promoting more sustainable practices.

Waste production and management

According to the environmental impacts study by LSE, the AA will have a limited impact on waste production in Mercosur countries. The effects on industrial waste are expected to be small, since most transformation sectors are expected to suffer reduced or even negative effects. Uruguay is the only exception. This is because growth is expected in the textile, leather, wood and paper sectors and these sectors are generally waste-intensive.³⁰⁴

The only residues that could generate concern are those generated by the chemical, metallurgical and automotive sectors. However, these should shrink in Mercosur countries, shifting the focus away from environmental concerns.

Municipal solid waste generation is expected to increase in line with the projected impact on Gross Domestic Product (GDP). However, it does not seem worrying. Argentina and Brazil, for example, have established a national legal framework with specific waste management laws. In the Brazilian case, the use of uncontrolled dumps is prohibited, and local governments

³⁰³ Ibid 284

³⁰⁴ Ibid 284

are required to develop solid waste treatment plans and recycling targets. Uruguay also has a positive experience in this regard.

In general, there are no significant concerns regarding the impact of the AA on waste, both due to the limited impact on waste-intensive industrial sectors and the positive developments in solid waste management demonstrated by Mercosur countries in recent years.³⁰⁵

LSE's conclusion on environmental impacts and recommendations

Overall, the baseline analysis shows that environmental policies in Mercosur countries are less stringent than in the EU. Mercosur countries contribute around 3.5% of global greenhouse gas emissions, compared to 9.5% in the EU. By way of comparison, the energy matrix of Mercosur countries (with the exception of Argentina) is cleaner than that of EU countries. Regarding air pollution, Mercosur countries have lower levels of pollutants than the EU and countries of similar income.

However, it highlights two areas of moderate concern. First, the expected expansion of the agricultural and livestock sectors, especially in relation to increased use and contamination of water resources, if adequate management practices are not adopted. Second, moderate concerns are also foreseen in terms of the agreement's impact on deforestation, especially in relation to Brazil.

On the other hand, some positive effects are expected, as the AA agreement can strengthen the commitments of parties to the Paris Agreement, contribute to increased trade in environmental goods and services, and stimulate international cooperation for the development of green technologies and the protection of natural resources, such as fisheries. The effects of the agreement on compliance with Multilateral Environmental Agreements (MEAs) depend on the sector and issue under consideration, but in general, the AA agreement is expected to have limited direct effects on the ability of countries to meet their environmental obligations. Therefore, compliance with MEAs will depend on countries' commitment to environmental regulation, as well as the impact of the Environmental Safeguards Agreement (ESD) provisions and the efforts undertaken by parties to implement them.³⁰⁶

³⁰⁵ Ibid 284

³⁰⁶ Ibid 284

The LSE study closes with recommendations, some of which can be relatively considered simple to implement. One example would be the recommendation to implement national biodiversity strategies and action plans in the Mercosur territories. This would include the creation of conservation areas, the promotion of sustainable agricultural practices and the inclusion of local stakeholders in decision-making, such as indigenous communities.

In relation to water use, the implementation of smart pricing systems was recommended, encouraging the efficient use of the water resource in agriculture. Another measure recommended was to promote cooperation in the development and transfer of green technologies through public-private partnerships, technological cooperation agreements, and tax incentives for the adoption of sustainable technologies.

Finally, the strengthening of mechanisms for the participation of civil society, non-governmental organisations, by means of public consultations and the promotion of greater transparency in decision-making processes. This also applies to monitoring and ensuring the implementation of trade and sustainable development provisions.

Besides these, other more complex and long-term recommendations were presented, such as the effective implementation of policies to combat deforestation and illegal logging. In this context, dealing with powerful economic interests, ensuring adequate resources for inspection and enforcement, overcoming corruption and the lack of effective governance are just some of the challenges.

Another complex recommendation is the global re-evaluation of fertilisers and pesticides in agribusiness, including the review of existing agricultural policies, coordination between different sectors and stakeholders seeking scientific consensus on the impacts of these products on human health and the environment.

The elimination of local content requirements for green technologies, favouring technology transfer and competition, was also recommended. Likewise, the establishment of effective ex-post monitoring mechanisms to ensure the implementation of trade and sustainable development provisions.

In short, the LSE study demonstrated some specific concerns, which can be overcome if specific measures are adopted. However, civil society, represented by non-governmental

organisations, positioned themselves vehemently against the agreement based on the negative impacts of the AA in relation to the environment.

Opposing positions

According to a study published by The Greens/EFA in the EP³⁰⁷ the EU-Mercosur AA will deepen devastating effects on environment and nature. The transformation of forested land into land for livestock or agriculture will have environmental and social impacts. The effects of this trade agreement go "beyond fires in the Amazon and the conversion of forest land to pasture and agriculture" and can be highlighted in several areas, among which they highlight the increase in CO2 emissions due to increased maritime transport and the growing use of pesticides in Mercosur countries.

The Irish non-governmental organisation Uplift³⁰⁸ asked: "Can the EU claim to be a world leader on climate action and agree to the Mercosur agreement? It expressed itself against the AA and among the reasons, it listed three important aspects related to the negative environmental impacts. First in relation to the expansion of monocultures, such as sugar and soybean, which are directly related to high water consumption, together with the high use of fertilizers and pesticides, leading to soil and water contamination.

The second aspect concerns livestock farming and the proliferation of unsustainable agriculture, since 80% of illegal deforestation in the Amazon is directed towards beef cattle farming. According to Uplift's analysis, the Mercosur agreement threatens the EU's Ecological Pact and the "farm to fork" strategy, which aims to keep the entire production chain in line with European environmental standards.

The third weak point would be the expansion of production in the mining and fossil fuel sectors. They state that the environmental threats in this area are significant, bringing as an example the collapse of the tailings dam that occurred in two cities in the State of Minas Gerais, Brazil: Mariana and Brumadinho. These tragedies caused hundreds of deaths and immeasurable environmental damage.

³⁰⁷ Ibid 177

³⁰⁸ Ibid 266

According to a study published by Trade Differently³⁰⁹, *Statistics Netherlands (CBS) and the Dutch National Institute for Public Health and the Environment (RIVM) argue that intensive livestock farming is the main contributor to nitrogen and phosphate surpluses in the Netherlands*. To help nature at home and abroad, Dutch livestock farming should use far less soya feed instead of more. A free trade agreement that forces these farmers to compete with cheap meat from South America undermines any attempt to increase sustainability on the European continent.

They argue that only deforestation-free products should be placed on the EU market and that environmental standards should protect not only forests but also other ecosystems. Also in this context, the study devotes a chapter to indigenous peoples. According to them, 5 per cent of the world's population is indigenous, who in turn account for 25 per cent of the planet's land surface and play a crucial role in protecting the environment and biodiversity. In fact, much of the indigenous land has been turned into soya plantations or extensive cattle farming. Research has shown that the protection of indigenous peoples' land rights in the Amazon is indispensable for the protection of the forest, which is home to around 10% of the world's plant and animal species.

Another interesting study worth noting is one commissioned by the Greens/EFA Group in the EP in May this year 2023³¹⁰. According to them, some studies analysed (Austria, the Netherlands) do not focus on the environment. The arguments in terms of greenhouse gas emissions, water pollution and deforestation in the EU study (LSE/SIA) are weak.

They claim that the EU-Mercosur AA will further deepen Mercosur's specialisation in the primary sector, especially agribusiness, a sector that has been associated for several decades with increasing social inequalities and growing environmental problems. Some of the impacts associated with the EU-Mercosur AA would be losses of very biodiversity-rich biomes, carbon release and climate change impacts, increased risks of local pollution in Mercosur and the impact of increased use of antibiotics and pesticides on the health of Mercosur citizens and European consumers.³¹¹

³⁰⁹ Ibid 293

³¹⁰ Buczinski B and others, 'The EU-Mercosur Free Trade Agreement, Its Impacts on Agriculture' (*Greens/EFA Group in the European Parliament*, May 2023) <<https://extranet.greens-efa.eu/public/media/file/1/8401>> accessed 18 June 2023

³¹¹ Ibid

Furthermore, they conclude that the EU-Mercosur free trade agreement should not transfer the EU's environmental problems to Mercosur. And therefore, mirror clauses should be put in place to ensure that the regulatory requirements that EU producers must meet are also applied and enforced in EU imports. Imported food must meet the same sustainability standards as apply in the EU, notably as regards the environment, animal welfare, antibiotics and pesticides.³¹²

In other words, the EU must ensure that its trade is consistent with its environmental, climate and social objectives. Policy coherence is crucial to avoid negative impacts of the EU-Mercosur agreement. This requires (a) effective EU legislation on due diligence for commodities with forest risk; (b) effective EU legislation on veterinary medicine; (c) EU legislation on supply chain due diligence on human rights and environment for all economic sectors and products.

A study formulated in cooperation between the Austrian Institute for Economic Research (WIFO) and the Vienna Institute for International Economic Studies (WIIW) entitled "Implications of the EU-Mercosur AA for Austria - A Preliminary Assessment"³¹³ highlights the fires in the Amazon in recent years. They state that ensuring the implementation of environmental provisions in trade agreements should be considered crucial at the political level. These provisions are in the chapters on trade and sustainability and lack a general chapter on dispute settlement, which would prevent the application of punitive economic measures.

According to them, for the AA project to be successful, it is crucial that credible enforcement tools are put forward so as to reduce the risk of deforestation for agricultural expansion, increase the confidence of European consumers and substantially improve environmental sustainability. In addition, efforts should be made to improve the quality and transparency of data, for example in relation to international trade and investment, as enforceability depends on traceability.³¹⁴

³¹² Ibid 310

³¹³ Sinabell F, Grübler J and Reiter O, 'Implications of the EU-Mercosur Association Agreement for Austria - A Preliminary Assessment' (*ResearchGate*, 2020) <https://www.researchgate.net/profile/Oliver-Reiter-2/publication/343862533_Implication_of_the_EU-Mercosur_Association_Agreement_for_Austria_A_Preliminary_Assessment/links/5f5889f892851c250b9fe0a9/Implication-of-the-EU-Mercosur-Association-Agreement-for-Austria-A-Preliminary-Assessment.pdf> accessed 20 June 2023

³¹⁴ Ibid

5.3.3 The Economic impacts

As in the first two analyses presented above, which dealt with social and environmental impacts, to deal with economic impacts we will initially work with the results of the SIA prepared by the LSE and published by the European Commission.³¹⁵ The study, which is known as Computable General Equilibrium Analysis (CGE), evaluates the effects of tariff reductions and other aspects of economic integration between the EU and Mercosur, such as the impact of reductions in trade costs due to trade facilitation agreements or harmonization of standards.

According to these studies presented by the LSE, the economic impact analysis of the AA based on economic models such as the CGE points to a number of expected effects for the EU. Initially, the EU-Mercosur agreement tends to boost trade between the parties. Through tariff reductions and the elimination of trade barriers, exports and imports between the parties are projected to increase, resulting in a greater flow of goods and services. New business opportunities are foreseen for European companies. Similarly, with the harmonization of rules and regulations, together with the improvement of the business environment, new investments both from the EU to Mercosur and from Mercosur to the EU are anticipated. This can promote the development of specific sectors and boost economic growth in both regions.

With the reduction of trade and tariff barriers resulting from the agreement, there will be a consequent increase in the supply of products both from Mercosur in the EU market and from the EU in Mercosur. In addition, the increased competition will affect the prices of both imported products and competing local products, thus having a direct influence on consumer consumption patterns.

A significant share of the EU's GDP gains comes from increased consumption of cheaper imports, while a smaller share can be attributed to increased exports and investment. Increased exports lead to an increase in consumer prices. However, real wages of unskilled and skilled workers also increase, with the wages of lower-skilled workers increasing more than those of higher-skilled workers, thus reducing the real wage gap between these two categories.

For Mercosur countries, the economic effects are similar, with some exceptions. Despite strong growth in GDP, investment, imports and exports, consumer prices fall in all Mercosur

³¹⁵ Ibid 284

countries. This is due to the fact that these countries have relatively higher tariffs than the EU, and therefore a similar relative reduction in tariffs may lead to a larger reduction in prices in Mercosur than in the EU, which may offset demand-driven price increase pressures. Argentina registers stronger effects in terms of investment and GDP.³¹⁶

The welfare effects are positive in most cases. While the gains in terms of GDP are positive, welfare outcomes are also positive, since they are directly linked to changes in tax revenues. However, tariff reductions can have two opposite effects: an increase in welfare due to lower prices and higher demand, in contrast to a decrease in welfare due to lost tariff revenues. The welfare effects in the EU are more significant, with an estimated increase of 6.3 billion euros in the conservative scenario and 8.6 billion euros in the ambitious scenario, the LSE SIA concludes. Some countries may suffer negative effects as tariff revenue losses outweigh other welfare gains.

Countries outside the EU and Mercosur have mixed results. The US and Mexico are slightly negatively affected due to a possible shift in trade from the US to the EU. Countries in Latin America, the Andes, Central America and other developing countries have mixed results, with gains in exports but losses in other areas. In general, these countries face different challenges and economic impacts due to further integration between the EU and Mercosur.

The government revenues of the countries involved will also be impacted. With the elimination of customs duties on bilateral imports, revenues from these duties will be reduced. This means that there will be a decrease in government revenues from import duties and other customs duties. However, while the impact on tariff revenues will be visible, there are other factors that may mitigate or increase this impact. The increase in consumption and income in Mercosur will be projected in the increase in revenues from other taxes, such as excise taxes. In short, the reduction in revenues from import duties should be offset by increases in other taxes and revenues related to increased consumption and income.

In terms of agribusiness, we highlight the Beef, Dairy, Sugar and Ethanol sectors. As to the Beef sector, the CGE analysis considers partial tariff cuts of 15% and 30% in the conservative and ambitious scenarios, respectively. In the conservative scenario, EU beef imports from Mercosur would increase by between 26 and 37 percent, depending on the country. In this

³¹⁶ Ibid 284

scenario, Mercosur production would increase by between 0.2% and 2.1%, while total EU production would contract by 0.7%. Paraguay would have smaller impacts, while Uruguay would register the largest effects in terms of production.³¹⁷

In the ambitious scenario, with tariff reductions of 30%, EU imports from Mercosur would increase by between 54% and 78%. Production in the EU would decline by 1.2 percent, while production in Mercosur would increase by between 0.6 and 4 percent, with around 2 percent growth in the two main bloc countries. These results indicate that tariff reductions could lead to a significant increase in EU imports of beef from Mercosur, affecting both domestic EU production and Mercosur production. The proportions of impact vary across Mercosur countries, with Paraguay being least affected and Uruguay showing the largest effects.³¹⁸

As for the economic impact on the dairy sector, studies indicate that both under the conservative and the ambitious scenarios, bilateral trade between the EU and Mercosur will increase. However, it is important to note that EU dairy imports from Mercosur will not change significantly in absolute terms. Likewise, production will not show significant changes in both scenarios.

The recognition of EU designations of origin in Mercosur could increase EU exports, depending on the availability and preference of Mercosur consumers for these European varieties. In the long term, the agreement could generate opportunities for expanding exports to the EU, but this possibility is still hypothetical and depends on several factors.

The Mercosur sugar and ethanol sector has a comparative advantage with the EU, resulting in a forecast of a small decrease in EU production due to increased imports from Mercosur. While imports of ethanol from Mercosur may affect EU producers, it may also increase the competitiveness of industries using ethanol as a raw material. At the same time, cheaper sugar imports from Mercosur may make EU sugar users more competitive, and lower tariffs may boost EU exports of confectionery and sugars.

The liberalisation of trade in beverages between the EU and Mercosur will result in increased production and imports of beverages in both blocs. The EU seeks to facilitate mutual recognition of standards and protect geographical indications, while Mercosur will have

³¹⁷ Ibid 284

³¹⁸ Ibid 284

incentives to comply with European regulations. Environmental impacts are considered negligible due to the EU's environmental policies. However, there may be pressure on land and water resources due to increased agricultural production. Environmental compliance can be improved by Mercosur beverage producers. Strengthening regulatory capacities is necessary in Mercosur to face competition and take advantage of

Among the selected studies, the analysis presented by the EP in 2021 on the "Trade Aspects of the EU-Mercosur Association Agreement" stands out. This study covers the possible macroeconomic effects of the agreement. According to this analysis, macroeconomic effects are expected to be of low magnitude in relation to Gross Domestic Product (GDP), production and employment. The gains in economic activity are estimated to be around 0.1% for the EU, while in the Mercosur economies they vary between 0.0% in Paraguay and 0.5% in Uruguay. Smaller, more open economies that already have significant trade relations with Mercosur countries tend to benefit more.

The agreement is expected to strengthen the current pattern of trade specialization on a sectoral level. Manufacturing industries like chemicals, machinery, and transportation equipment are predicted to expand in the EU. On the other hand, it is anticipated that the agri-food sector will increase in production in Mercosur nations. For Mercosur, these shifts are more significant in percentage terms than for the EU.³¹⁹

In terms of trade structure, Mercosur countries represent less than 2.5% of total EU exports outside the bloc. Imports and exports between the EU and Mercosur have been decreasing over the last decades, while other trading partners have increased their share in trade with Mercosur. However, the EU market still accounts for a significant share of Mercosur's exports.³²⁰

The agreement provides for an asymmetry in tariff liberalisation, with the EU having a lower tariff coverage than Mercosur. The EU already exempts around 64.1% of imports from Mercosur from customs duties, while Mercosur exempts only 6.4% of imports from the EU. In the agri-food sector, both parties have comparable levels of tariff protection. However, tariffs are significantly higher in other industrial sectors in Mercosur. After the full implementation of the agreement, more than 90% of trade in goods will be free of customs duties in both

³¹⁹ Ibid 277

³²⁰ Ibid 277

directions, but Mercosur will reach this level of protection later due to progressive implementation.

In addition to tariffs, the analysis highlights that trade between the EU and Mercosur is heavily regulated by technical barriers to trade and sanitary and phytosanitary measures. EU regulations are generally stricter and have a more negative effect on Mercosur imports than the other way around. However, the agreement includes provisions for regulatory cooperation, which can facilitate the convergence of Mercosur countries' regulations with those of the EU and international standards. In the agricultural sector, the agreement includes provisions that open market access, but there are also exceptions for sensitive products on both sides.

The study mentioned above formulated in cooperation between the WIFO and WIIW states that positive macroeconomic effects are expected in response to the AA between Mercosur and the EU. Mercosur, as a large, still relatively closed emerging market, has its trade and investment relations with the EU-27 strongly dominated by Brazil. According to them, in the case of Austria, better access to Mercosur's services markets and a general increase in exports in this sector are expected, complementing the increase in trade in goods. However, they state that not all sectors will benefit from trade agreements, and the potential negative effects at the expense of eroding public goods such as the environment. In addition, efforts should be made to improve the quality and transparency of data, for example in relation to international trade and investment, as enforceability depends on traceability.³²¹

The Bank of Spain published an article in 2019 describing the main features of the AA between EU and Mercosur. Initially, the study states that the agreement is particularly important for the EU, given Mercosur's high tariff barriers in key areas of bilateral trade. In terms of the agreement's effect on EU activity, some available studies indicate that its long-term positive impact on activity is estimated at between 0.1% and 0.3% of GDP³²². As they point out in another study published in 2020³²³, "the estimated effects of the agreement on trade and economic activity will be significant for Mercosur". And, although it is estimated that the EU

³²¹ Ibid 313

³²² 'The EU-Mercosur Trade Agreement and Its Impact on the European Economies. Quarterly Report on the Spanish Economy (2019 Q3).' (*Banco de España*, 2019) <<https://www.bde.es/f/webbde/SES/Secciones/Publicaciones/InformesBoletinesRevistas/BoletinEconomico/Informe%20trimestral/19/Recuadros/Files/IT3T-Box3-Av.pdf>> accessed 20 June 2023

³²³ Timini J and Viani F, 'The Eu-Mercosur Free Trade Agreement: Main Features And Economic Impact' (*Banco de España*, 2020) <<https://repositorio.bde.es/bitstream/123456789/11802/1/be2001-art8e.pdf>> accessed 20 June 2023

will be less impacted by this agreement, Spain is one of the member countries whose economies will benefit most.

The study published by Trade Differently³²⁴ states that this is a neo-colonial agreement aimed specifically at exporting *raw (mining) materials and (luxury) agricultural products such as cattle feed, meat and biofuels from South American countries in exchange for EU industrial products with high added value. South American industrial companies and workers will be affected by competition from European cars, textiles, machinery, and footwear.* Tato Figueredo³²⁵, from the Institute of Popular Culture in Argentina, says:

The countries of the Global North already overstepped their territorial boundaries years ago with their economic, production and development models. After exhausting their own natural resources, they import natural goods such as food from other countries. And they dump their waste in other countries. This agreement favours sectors [industrial agriculture] that further shift the agricultural frontier, to capture resources needed by Northern countries, such as animal and plant proteins.

In 2020, Wageningen Economic Research, commissioned by the Government of the Netherlands conducted a study to examine the effects of the Agreement between the EU and Mercosur on the Dutch economy, covering the agricultural, industrial and service sectors.³²⁶ The results of this study indicate that the expected impacts will be limited. It is estimated that, if the agreement is fully implemented by 2035, there could be a potential growth of the Netherlands' GDP by 0.03%, equivalent to 287 million euros.

However, it is important to note that the Netherlands' exports to Mercosur represent only 2.3% of its total exports outside the EU, and trade between the EU and Mercosur is relatively limited, corresponding to only 2.2% of total EU trade outside the EU. Despite these figures, the net trade gains for the Netherlands are considered positive, especially in the services sector, which is the country's largest economic sector. In macroeconomic terms, the estimated impact of the

³²⁴ Ibid 293

³²⁵ Ibid 293

³²⁶ Carrico C and others, 'Impacts of the EU-Mercosur Trade Agreement on the Dutch Economy' (*Wageningen University and Research eDepot*, September 2020) <<https://edepot.wur.nl/539424>> accessed 18 June 2023

agreement is an increase of 0.03% in GDP for the Netherlands and 0.02% for the rest of the EU member countries (EU27).

Conclusion

When the six nations - the Netherlands, Belgium, Luxembourg, France, Germany, and Italy - signed the Treaty of Paris in 1951, establishing the Coal and Steel Community, they could not anticipate the magnitude of the integration process that would unfold. This initial step paved the way for the evolution of a significantly expanded union on the European continent over the ensuing decades.

Subsequently, through the Treaty of Rome, the European Economic Community (EEC) was established, and further consolidated by the Maastricht Treaty, setting the stage for more ambitious integration goals. The modern European Union (EU), as we know it today, was ultimately solidified in 2007 with the Lisbon Treaty.

What initially began as an economic union with the primary aim of fostering stability and improving living standards in post-World War II Europe has evolved into the great institution it is today. The EU is widely regarded as a cornerstone of European stability and prosperity. It boasts 27 member countries, 24 official languages, over 447 million citizens, and 19 countries sharing a common currency. The EU's single market enables the free movement of people, goods, services, and capital throughout its member states. In 2021, the EU's gross domestic product (GDP) reached €14.5 trillion.³²⁷ Furthermore, the EU ranks third among the world's largest economies in international trade, accounting for approximately one-sixth of global trade.

In contrast, the context of Mercosur's establishment differs from that of the European Union. While the EU emerged out of the need for protection against further conflict, as well as for reconstruction and economic growth to enhance the quality of life, Mercosur came into being as a result of the need for economic integration and cultural integration. Initially established by the Treaty of Asunción in 1991 among its member countries - Brazil, Argentina, Paraguay, and Uruguay - Mercosur functions as a trade bloc and a political and economic alliance. Like the European Union, Mercosur aims for the free movement of goods, services, capital, and people. In addition to its four member countries, Mercosur has associated countries, including Bolivia,

³²⁷ 'National Accounts and GDP' (*Eurostat Statistics explained*, June 2023)
<https://ec.europa.eu/eurostat/statistics-explained/index.php?title=National_accounts_and_GDP> accessed 29 June 2023

Chile, Colombia, Ecuador, and Peru. Its headquarters are in Montevideo, Uruguay, and its official languages are Spanish, Portuguese, and Guarani.

Over the past 30 years, Mercosur has undergone significant transformations. In 1994, the Southern Cone bloc acquired international legal personality through the Ouro Preto Protocol, granting it the power to negotiate agreements independently with third countries and other economic blocs. Presently, Mercosur is a customs union with free trade within its zone and a common trade policy among member countries. By 2022, Mercosur had generated a GDP of approximately \$2,2 trillion, making it the world's fifth-largest economy and the third-largest trading bloc after the European Union and NAFTA³²⁸. However, despite being a substantial emerging market, Mercosur's borders remain relatively closed to international trade.

When analysing the integration processes of both blocs, it is evident that they originated under different circumstances. While the European Union emerged in the 1950s when its founding members were ravaged by war, Mercosur came into existence in the 1990s within a regional context of underdeveloped or developing countries that sought to strengthen their economies and nations after decades of dictatorships. Another notable difference lies in the structure of the blocs. The European Union possesses a complex and horizontally structured decision-making system, whereas Mercosur has a simpler, vertically structured decision-making process. That means that Mercosur lacks the supranational nature that characterises the European Union.

In this context, the intergovernmental and non-self-executing nature of Mercosur's decisions and norms becomes a significant challenge for the advancement of both the integration process and the evolution of international trade agreements. Another critical point of comparison between the two blocs is the issue of legal security. While the European Union operates under a court system with binding decisions for all member states, Mercosur's legal framework remains open and lacks the same level of enforcement certainty.

It is important to note that although Mercosur drew inspiration from the European Union, particularly regarding the model of free movement of goods, people, services, and capital, as

³²⁸ 'Mercosur: South America's Fractious Trade Bloc' (*Council on Foreign Relations*, May 2023) <<https://www.cfr.org/background/merc-south-americas-fractious-trade-bloc>> accessed 29 June 2023

well as principles of democratic and sustainable development, its intention was never to replicate the EU's structure. That, to some extent, influenced the negotiation process of the AA.

Trade relations between Mercosur and the European Union began during the early stages of Mercosur's establishment. In fact, the European Union initiated negotiations with Mercosur member countries years before Mercosur itself was formed. Some scholars point to the European Union's initial interest in Latin America, specifically with the integration of Portugal and Spain in 1986. However, it is crucial to recognise that the 1990s marked significant geopolitical and geo-economic transformations. Europe engaged in bilateral negotiations worldwide during this period, while multilateralism prevailed.

When Mercosur officially became an economic bloc in 1991, its member countries had already established cooperation agreements with the European Union, laying the foundation for future negotiations between the blocs. Less than a year after the Treaty of Asunción came into force, in 1992, they signed a term of inter-institutional cooperation. Therefore, from a broader perspective, the AA negotiations span over two decades and encompass the entire history of commercial and political relations between the blocs.

The study also highlighted the asymmetry in negotiations, with the European Union playing a prominent role. However, the agricultural lobby in Europe became a sensitive issue from the outset due to concerns about competition from Mercosur producers. The framework agreement was only ratified in 1999, and trade offers were submitted from 2001 onwards. Following this, Mercosur became an attractive market for European companies, which became the primary investors in Mercosur countries, taking advantage of ongoing privatisation processes.

Intense but not very fruitful negotiations marked the period from 1999 to 2004. That was mainly because Mercosur was not the EU's priority, and the negotiations were conditional on the outcome of the WTO Doha Round. As a result, the negotiation process stalled from 2004 onwards, as the negotiating parties showed no room for flexibility on fundamental issues. Despite being launched in May 2010 at the Madrid Summit, limited progress was recorded until 2016. In May 2016, negotiations resumed with enthusiasm, and after 39 rounds of negotiations, in June 2019, the parties finally reached an agreement in principle for the association. Therefore, it can be said that the negotiation process took place in cycles.

Initially, it is important to note that the published texts are under technical and legal revision. Then translation into all EU and Mercosur official languages must be made to ensure their coherence and accuracy. Once the current phase is concluded, the parties involved will proceed with the official signature of the Agreement. Within Mercosur, the signature will be done by the CMC, the political body responsible for conducting decisions within the scope of the bloc. Subsequently, the Agreement must be submitted for parliamentary approval in each country involved. Within the EU, the European Parliament will approve the Agreement, so the economic part of the Agreement can provisionally enter into force. The national parliaments must ratify all European Union members' political and cooperation pillars.

It is undeniable, therefore, that the process of revision, signing and approval of the Agreement between Mercosur and the European Union will still demand political engagement and further debates. Given such complexity, the estimated timeframe before the Agreement enters into force is 2035, i.e. approximately 15 years after the announcement of the Agreement in principle.³²⁹

Importantly, the AA, which is now undergoing the legal review phase, has renewed chapters on trade and sustainable development and refers to the European Green Pact, which proposes the need to incorporate, in any trade agreement, a binding commitment to the Paris Agreement on climate. This approach reflects the increasing importance attached by the European Union to environmental and sustainability issues in trade negotiations. The inclusion of specific provisions related to sustainable development seeks to ensure the protection of the environment, promote sustainable trade practices and implement the commitments made in the Paris Agreement.

According to the SIA/LSE report published in 2021 by the European Commission, the EU-Mercosur agreement is projected to impact both blocs' economies positively. It can play an important role in the recovery from the economic crisis caused by the COVID-19 pandemic.³³⁰ However, concerns are expressed about the potential impact of the Agreement on the environment, human rights and indigenous peoples. The importance of Mercosur countries demonstrating adequate engagement on these issues is stressed before the Agreement is proposed to the Council and the European Parliament for finalisation and signature. In a

³²⁹ Ibid 326

³³⁰ Ibid 284

nutshell, this assessment highlights the importance of addressing the trade agreement's social, environmental and human rights dimensions, seeking to mitigate possible negative effects and ensure that sustainable practices and respect for fundamental rights accompany economic benefits.

However, the AA faces opposition from EU member states, especially France, Ireland, the Netherlands and Austria. The concern is mainly related to the agricultural sector, where EU countries have highly subsidised production and stricter sanitary and phytosanitary standards. That could result in unequal competition for Mercosur agricultural producers. According to the study done at the request of the Dutch government, the potential gains in terms of GDP growth are projected at 0.03% for the Dutch economy, assuming that the Agreement is fully implemented by 2035. For the rest of the EU-27, the estimate is 0.02% of GDP³³¹. For countries like Austria, the Netherlands, France and Ireland, protecting the regional agricultural market is key to avoiding economic damage and protecting local producers and reducing serious environmental risks such as deforestation and deforestation due to increased agricultural production by Mercosur countries.³³²

Some critics argue that the Agreement could lead to the dismantling Mercosur-specific industry sectors, such as automobile manufacturing, machinery, equipment, and chemicals. To address these concerns, mutual concessions and protection and safeguard clauses may be necessary to protect sensitive sectors of the economy.

In fact, the relationship between the EU and Mercosur begins with its historical and cultural ties. It develops into trade and investment ties in a perspective focused on socio-environmental responsibility. The magnitude of a trade partnership committed to environmental preservation and the continuous advancement of sustainable development must be acknowledged and valued.

However, the analysis of the AA must be contextualised in the current geopolitical moment. China, for instance, has been Mercosur's main trading partner since 2015. This fact has raised awareness about the importance of a more comprehensive trade approach that considers not only economic aspects but also the environment and the challenges and opportunities related

³³¹ Ibid 326

³³² Ibid 313

to sustainable development. Staying connected with these issues is essential to ensure trade relations' long-term viability and resilience.

Therefore, even though the negotiation of the AA has taken more than two decades, it is likely that some more time will be needed to align the remaining sensitive issues before a solid basis for continued bilateral cooperation can finally be established, taking into account not only economic interests but also the preservation of the environment and the promotion of a sustainable future for present and future generations.

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