


Interregional Free Trade Agreements

Position Paper



ANALYSIS OF THE ENVIRONMENTAL CLAUSE IN THE MERCOSUR-EU AND THE MERCOSUR-EFTA AGREEMENTS

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Inesc

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pela Integração
dos Povos



Inesc

The Institute of Socioeconomic Studies - Inesc was created in 1979 and is a non-profit, non-governmental, non-partisan and public-purpose organization. Inesc's action is oriented towards expanding social participation in the deliberation of public policies. Inesc uses budgetary instruments as a structuring axis for strengthening and promoting citizenship.

In order to increase impact, Inesc works in partnership with other organizations, social movements and collectives. The institute has a multi-thematic agenda which is articulated with the historical demands of rights-holders and the social struggle to guarantee the rights of indigenous peoples, quilombolas and peasants, among children, adolescents and youth. Inesc is inserted in debates related to Right to the city, Environment and Land, among others.

Autor

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EXECUTIVE SUMMARY

- The publication, “*Analysis of the environmental clause in the Mercosur-EU and the Mercosur-EFTA Agreements*”, aims to analyze the socio-environmental impact of the agreements between the regional blocs. It demonstrates the monitoring made by the Institute of Socioeconomic Studies on the process of dismantling public policies in the socio-environmental area and replacing it with governance based on market and trade instruments.
- Both agreements deal essentially with trade liberalization between the member countries involved in the negotiation. However, they include other provisions, such as chapters on political dialogue and cooperation. Aspects such as government procurement, intellectual property and the financial system are also highlighted in these documents, as well as a chapter that deals specifically with the relationship between trade and sustainable development.
- The Southern Common Market (Mercosur) is made up of Argentina, Brazil, Paraguay and Uruguay. All South American countries participate in the Bloc as associate members. Venezuela was admitted as a full member in 2012. However, in 2016, some members called the Democratic Clause of the Ushuaia Protocol to suspend Venezuela’s participation in protest against the government of Nicolás Maduro.
- The European Union is made up of 27 European countries, among which are some of the largest importers of Brazilian commodities such as soy, namely The Netherlands, Germany, Spain, Italy and France. The United Kingdom left the bloc in January 2020. The European Free Trade Association (EFTA) is a regional economic bloc formed by Switzerland, Norway, Iceland and Liechtenstein.

- With this publication, we suggest an interruption of signing and ratifying these Agreements, based upon a critical analysis of parts of the documents formulated after negotiations. These have been discussed behind closed doors, without the participation of civil society or other international observers. Both texts are not in full disclosure, although the Trade and Sustainable Development Chapter of the Mercosur-UE Agreement is already known. We believe that when the population cannot express an opinion on the content of an agreement which has serious implications on people's lives, we have a major problem of transparency and respect for democracy.
- In addition to the democratic issue, the publication highlights the neocolonial character of these Agreements based on encouraging the deepening of the international trade division, as well as their consequences for economic development, the environment and human rights. This is because the task of primary producers of agricultural, mineral and energy goods is reserved for the Mercosur countries. The production of manufactured goods and the provision of services with a higher added value, such as logistical and financial services, are destined for the countries of the European Union and the EFTA.
- In this sense, although both Agreements encourage the expansion of agricultural production in Mercosur countries, accelerating environmental destruction and limiting the possibilities of social and economic improvements for small farmers, indigenous peoples and other traditional communities, neither of them establishes measures for compulsory mitigation of its effect on society, the environment or the climate crisis.
- The chapter on trade and sustainable development does not incorporate dispute settlement mechanisms, making it more difficult to demand compliance with climate or biodiversity protection targets set in other multilateral negotiation spaces. In addition, the mention of the Paris Agreement is considered insufficient due to the fragility of the climate agreement in terms of its binding measures or the option for market solutions against global warming.

RECOMMENDATIONS

- Considering the current structure of the Mercosur-EU and Mercosur-EFTA Agreements, in particular, their neo-colonial character, it is essential that both negotiated texts are disregarded for ratification purposes, since they are compromised from the beginning.
- If negotiations for future agreements are resumed, they must consider as pillars the defense of democracy, human, social and environmental rights, as well as the preservation of life in all its forms and the reduction of the enormous social inequalities that take place especially in the Mercosur countries, but also between them and the European countries.
- Having a confidential negotiation for these Agreements is an affront to democracy, as it provides the right to participate in public life and to express an opinion on the future of the political community. Transparency and the participation of organized civil society must be considered values of the entire democratic process, including the negotiation, signature and ratification of international agreements. Foreign policy must be seen as a public policy. Therefore, governments must be able to publicize international affairs, a task that must involve institutions, civil society, the press and the international community.
- The ratification of agreements cannot subordinate national laws and the right to seek alternatives to the current development model, and it must also not subordinate the autonomy of subnational levels of power, especially local power. Trade agreements must seek to be the basis for integration of the peoples and countries and/ or blocs, that are signatories to these agreements, and not seek to subordinate them to the interests of large transnational corporations.
- It is essential that popular economies and the ways of life of pre-existing peoples and communities in territories impacted by the signing of these Agreements are taken into account and protected, in accordance with the ILO Convention 169, which establishes Prior, Free and Informed Consent for indigenous peoples and traditional communities.

PREFACE

The Institute for Socioeconomic Studies (Inesc) is a civil society organization with a long history on the international trade agenda. We started to take part in this debate in the late 1990s, when we actively participated in the creation of the Brazilian Network for the Integration of Peoples (Rebrip). Since then, we have remained in the collegiate coordination of this articulation, assuming the commitment to monitor the policies related to this topic, which is crucial to the economy and the peoples quality of life.

Once again, recognizing the potentially damaging effects of trade liberalization in an extremely unequal world, as well as our ability to bring about concrete changes in the way in which we understand and act on issues such as democracy, development and human rights, Inesc currently reaffirms our willingness to work with other organizations and social movements to resist the ratification of the Agreements between Mercosur and the European Union (EU) and Mercosur and the European Free Trade Association (EFTA), just as they are structured so far.

It should be noted that Brazilian civil society is literate on international trade issues. Inesc is no exception when it comes to well-informed political action in this field. Our engagement was initially sparked by multilateral debates on international trade within the scope of the World Trade Organization (WTO). In this context, our first and greatest challenge was related to the USA's expectation of extending the Free Trade Agreement between the United States, Mexico and Canada (NAFTA) to the rest of the continent. In our understanding, the new Agreement, called the Free Trade Area of the Americas (FTAA), would have harmful consequences for the environment, for gender and race equality and equity, for decent work and for the protection of so many other rights that depend on the governments' ability to design and implement good public policies.

By then, as a member of Rebrip and in articulation with the Continental Social Alliance (“Aliança Social Continental” is a network of organizations, mostly trade unions, focused on trade and regional integration), Inesc promoted a large campaign against this Agreement. Finally, in November 2005, when the fourth Summit of the Americas meeting took place, the FTAA was discarded as an alternative to the regional integration of the American continent. This experience was followed by participation in the entire discussion process related to the Doha Round, which, as we know, is considered a failure. Inesc was present in all the main debates related to the commercial agenda in contemporary times.

Now, pending the ratification of the agreements between Mercosur and the EU, and between Mercosur and EFTA, we are once again taking a stand and contributing to Brazilian society and decision makers in order to clarify concerns and suggest courses of action. This publication, which we now share with the general public, intends to revive the debates on the commercial agenda in the country, with specific focus on socio-environmental issues. Thus, believing that the commercial policy of each country must contribute to real development, that is, the one centered in life and people, the ratification of these agreements does not seem viable. We reject the confidentiality through which this agreement was negotiated and recommend the reopening of the dialogues with the active participation of global civil society.

Enjoy your reading!

Iara Pietricovsky
José Antônio Moroni

PRESENTATION

This publication aims to analyze the impact of the Bi-regional Association Agreements between Mercosur and the European Union, and Mercosur and the European Free Trade Association, which aim to promote the liberalization of trade between the blocs and in different economic sectors. This document was produced in the heat of events. Therefore, it is necessary to draw attention to the very peculiar context in which it lies.

In addition to the transformations that have been happening since the 1990s - whether in the structure of trade agreements or the incorporation of the so-called “sensitive issues” by the international trade regime, like the environment - the present moment is of acute political, economic and social crisis for all parties involved. An extra layer of complexity was added to this picture with the global Covid-19 pandemic, which brought challenges, still without satisfactory answers, about the economic model that should be adopted after the health crisis.

An example of this challenge is precisely the risk regarding the global circulation of goods, which has become more tangible with the pandemic. In addition to products and goods, logistical activity may serve as a transportation means for live microorganisms and possibly diseases. In spite of this sharper perception of the dangers that international trade offers to workers and societies, we witnessed logistics being considered a priority throughout 2020, thus staying away from the prohibitions imposed by lockdown regulations. In other words: Instead of restructuring industrial pro-

duction organized globally, opening space to think about a programmed decrease based on short productive cycles and redistribution of income at the local level, we chose to reinforce the economic logic that brought us to where we are.

The democracy issue - in particular, the emergence of a demophobic policy promoted by far-right governments around the world - serves as a backdrop for the responses that are being presented to face problems related to economic recovery. One aspect of the democracy crisis is the dismantling of social protection models around the world. The progressive democratization backslide, also known as “de-democratization”, caused by the contemporary development of neoliberalism, understood as a system aimed at social organization, erodes the perception about the meaning of citizenship. The end of the so-called “welfare state” also weakens ideas that once constituted the political imagery of modern societies, such as republic and solidarity. In this sense, we are witnessing a restriction of democratic spaces for social participation, accompanied by an accelerated process of dismantling public policies and by the commodification of well-being as a rule for the functioning of societies. Brazil is no exception.

The nature of this state, which is undergoing restructuring at the beginning of the 21st century, must be pointed out. From promoter of universal policies aimed at economic development and rights-keeper, the figure that best describes the role assumed by current neoliberal governments is, as defined by the “new public management” group, that of “project builder”. This image helps to explain the way in which state functions are concentrated, more and more strictly, in the management

of *stakeholders* and the creation of opportunities for investment by national and transnational private parties. The state, then, starts to serve as mediator for the interests of economic agents considered most relevant, which is different from the state acting as a mediator between the public and private interest. Considering that agents of the financial market are valued and prominent in the contemporary scene, we are faced with a dramatic situation, as the market's primary objective is to favor maximum concentration of wealth.

Thus, the relationship between the financial system and trade is profound and deserves the attention given by this presentation. Both are fundamental to the dynamics of neoliberal globalization. On the one hand, trade liberalization demands the opening of national economies to facilitate and intensify the flow of goods and services between countries, which was, in turn, driven by industrial decentralisation and the establishment of global production networks. On the other hand, liberalization in the scope of finance implied (i) greater convenience for importing and exporting capital, (ii) greater disintermediation of financial operations by public agents and (iii) greater interconnection of different segments of finance, resulting in the deregulation of national financial markets. Thus, trade benefits from the deregulation of national financial markets as it (i) facilitates the circulation of money, (ii) protects investment and (iii) stimulates credit operations (buying and selling money).

But what happens to trade under financial control, if we don't live in an industrial economic order anymore? Throughout the 20th century, the financial system behaved primarily as the guarantor (creditor) to the indus-

trial policy of the different countries. Today, however, financial dominance over economies lies beyond credit. There's a certain expectation of autonomy in relation to production, as is the case with the multiplication of financial products and services observed since the early 2000s. In fact, the flow of financial transactions over currencies, influenced by speculation, has been surpassing commercial transactions (of goods). Therefore, the economic effects of this new financial rationale must be understood. This dynamic between finance and micro-economics (families and companies) shows us how foreign trade (circulation and exchange) is one of the axes that allows us to rearticulate these two spheres of value (production and distribution or finance as a space for distribution and (re)configuration of socially produced gains).

Let's consider the relationship between trade and finance in more detail, since the mutual implications between trade and commodity production seem obvious. The simple answer to this equation is that trade and finance are intertwined because the international division of trade has historical relations with the monetary pattern and exchange-rate dynamics, and these, in turn, with the geopolitical division of the world. The logistics revolution and the establishment of global production networks, which followed it, radically fragmented the countries' trade profile, affecting their ability to acquire currency. In this way, it is possible to say that the trend of homogenization of consumption (of goods) is equivalent to the extreme differentiation of the so-called comparative advantages, a phenomenon caused by the dispersion of production stages. As a result of this division, the tension

between homogenization and hyper-specialization or differentiation of exchanges in the international sphere produced a diagram of complex and unequal relations from a macroeconomic point of view that was, in part, registered by economic thinking as “interdependence”.

It turns out that today, as in the past, the notion of economic interdependence reduces societies of late industrialization to a peripheral insertion, that is, dependent, in the capitalist system. The idea of reduction is used in the sense of imposing functional complementarity and based on overexploitation between the parts that make up any production network. In fact, for Latin American countries, this type of arrangement led to a gradual setback of industrialization policies that had been encouraged since the 1950s (and lasted until the mid-1970s) as part of the development project. It is notable that, in parallel with the process of deindustrialization, the extractive and agro-industrial sectors gained tremendous momentum, being the basis of the entire neo-developmental policy of the governments of the progressive cycle in the region, operating in the first fifteen years of the 21st century. Just remember that the “green revolution” in Brazil, which launches the logic of agribusiness, coincides with this moment of transition between developmentalism and the neoliberal impulse that started in the country around the “lost” decade of 1980.

Therefore, when - as will be seen in the following article - trade liberalization is given a neocolonial character, this statement is based on inequality, in terms of added value, of the exchanges established by this type of agreement. At this point, it is possible to reintroduce the monetary dimension in the

debate, since the quality of commercial exchange constitutes one of the determining factors for the greater or lesser availability of (strong) currency, understood as a measure of the restriction to access markets (and technology) for all societies. At the same time, the value of any currency on the international market depends on the exchange rate, that is, on a financial transaction of buying and selling. Today, in the absence of a concrete parameter for the pricing of currency as a financial asset - a role that gold had played in the past - the market discovered a new quantification measure in the speculative order of the financial system based on trust, that is, on debt (not based on work, as in the labor theory of value). That is why currency is spoken of as a fiduciary apparatus. And that is why behaviors, attitudes, and, above all, history, culture and morals, join the financial game of perceptions that endorse or collapse a country, a currency, a market or even an individual.

Returning to the case of Brazil, if the high external demand (volume) for agri-mineral commodities reinforced the weight of these activities on the country’s GDP, their low relative added value and fluctuations of the Brazilian Real in foreign markets leave the country in a position of economic and financial fragility. From a national policy point of view, agribusiness has strengthened in the last two decades as a group whose endeavor has become indispensable to the financing of the Brazilian State. All this protagonism cooled down a classic dispute between economists about which economic sector would “truly” contribute to the modernization of the country: industry or agriculture. With developmentalists on one end, neoliberals on the other, the rise of agribusiness as a priority

sector for the national economy (as a highly technological industry) puts an end to this issue. In practice, however, investment in technology for the production of agri-mineral commodities has not resulted in greater improvement or processing of primary products, nor has it increased the added value of this type of product. What happens is exactly the opposite. The increased use of technology for the production and extraction of commodities is equivalent to a smaller degree of processing - a logic encouraged by the great international *traders* that monopolize the food market. This logic of updating and strengthening colonial dynamics between center and periphery is a reality that is unequivocally inscribed in the Agreement between Mercosur and the European Union.

We then move on to the difficult answer with regard to the above proposal of articulating production, trade and finance. International trade and finance are relatively more ghostly abstractions for the modern mind than production. However, both require hard facilities and infrastructure to operate. For example, trade depends on logistics (ports, waterways, highways, railways and airports). On the other hand, financial speculation with agri-mineral commodities would not exist without monoculture farms, large mines and pasture areas. The incentive for this economic activity, in other words, the profit that can be obtained from it, is significant. But its importance in driving the manufacturing industry is not trivial. The greater the demand and expectation of profit from these commodities, the greater the exploitation of territories, biodiversity, workers and the people who live around these operations. The following article consolidates this statement with concrete

examples, highlighting socio-environmental and climatic impacts resulting from the ratification due to the Agreements between Mercosur and the European Union, and Mercosur and the European Free Trade Association.

Finally, let's look at a technical issue that is no less important. An aspect of these Agreements is the fact that, in addition to the commercial clauses (such as the tariff exemption for product import and export), several other provisions are added, whose objective is to create conditions for the effectiveness (or massive liberalization) of commercial transactions. For instance: government procurement, intellectual property and investment protection. In addition, it is common to observe a list of "principles" that discipline, in the manner of a *compliance* agreement, the behavior of the stakeholders on topics considered sensitive. The reason why one invests in this type of behavior regulation is the "risk" that certain attitudes can bring to an investment. It is worth remembering that one of the effects of financial domination over the economy, as already mentioned, is the introduction of speculative logic in the different spheres of life. It is precisely this dimension of speculation connected to the everyday life that allows us to understand the ubiquity of financialization processes, their agility and transformation, which, in turn, are always accompanied by control and surveillance regimes (moral element).

From a rhetorical point of view, it is claimed that this design helps to establish conformity among members. From a legal point of view, the absence of mechanisms for the resolution of conflicts, as well as for the compulsory application of these principles and rules, may cause them to lose their intended practical effect.

So, what governs the relationship between the acceding countries is not some negative right, which provides for sanctions of inappropriate conduct. Instead, we are facing a more fluid way to enforce compliance rules with international agreements or even to encourage the internalization of policies by a society. Indeed, it is a line of action that we can call “positive”, in the sense that, although registered in the agreement, is not intended to be legally imposed, but by a kind of optimism that invests in the decision-making freedom of autonomous political units. In other words, this format of agreement produces a technology of blackmail that conceals, as freedom of decision, a voracious pressure on societies to comply with the laws of the market. In short, what we have is the transposition of a speculative logic into the norms that govern international relations.

This was the context in which the Agreement between Mercosur and the European Union was negotiated. It is also under this logical framework that, at the time of writing this article, its ratification takes place. An event that, if carried out, brings together two pieces of frightening symbolism. On the one hand, Portugal, the first country to colonize Brazilian lands, would become the spokesman for an unequal and neocolonial Agreement. On the other hand, the ratification by a far-right government, such as the current one in Brazil, would serve as political capital in the market, something that would redeem a pusillanimous, inefficient and disorganized government before the most relevant economic agents in the current scenario: investors and financial market speculators. The article that we now present, authored by Adhemar Mineiro, a member of the Brazilian Network

for the Integration of Peoples (Rebrip) - which has been struggling for a long time to fight negative social effects of trade liberalization -, shows how these Agreements fully reflect the cultural transition of which we are living witnesses, being possible to admit them, even, as key pieces for the reconfiguration of the contemporary order under a new neoliberal rationale.

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Brasília, Brazil, March 2021*

INTRODUCTION

This year, the winter in Brazil was hot again, not because of temperatures, although these were also above average, but because a light was shed on a serious national problem. The fires, which since last year have taken on large territorial dimensions in the Amazon and the Pantanal, two important Brazilian biomes, ended up getting attention, in Brazil and abroad, to possible effects of trade agreements (which also involve other aspects, such as cooperation and political dialogue) between Mercosur and the European Union (EU), and Mercosur and the European Free Trade Association (EFTA).¹

Both agreements, although they have been negotiated consistently since 2012, were accelerated since the institutional rupture of 2015/2016 in Brazil, which ended the short second term of Dilma Rousseff, and had their negotiations concluded in 2019, the first year of Jair Bolsonaro's administration. Now they are undergoing ratification, but the volume of criticism - whether from civil society or sectors of the countries' own governments - can cause them to take longer than expected or even be suspended. It is possible that significant changes will have to be made to enable the approval of these agreements, which would in fact imply further negotiations.

Discussions are technically closed, and documents, in the process of legal amendments and translations, can no longer be modified. Thus, it is understood that any hypothetical dialogue to make changes should be done "from scratch", that is, from a new negotiation process, perhaps even from a redesign of the initial agreement that delimits its objectives and contents.

¹ EFTA consists of Switzerland, Liechtenstein, Norway and Iceland. The bloc has small countries and populations, with relatively small Gross Domestic Products, but high per capita incomes.

However, trade negotiators are skilled and pragmatic and the interests at stake are critical. The creation of eventual "bridges" and "shortcuts" (last minute, unplanned negotiations) has often been detected as a means to close deals that, in the end, were not accepted by public opinion and/or by the bodies that should approve or ratify what had been created.

The purpose of this brief analysis is to make a critical reading of the contents of the agreements with regard to their clauses and their environmental effects, which are key elements for discussions on the approval of these agreements. The centrality of the environmental theme reflects not only the perception of Mercosur social actors, but also of the social and political actors on the European side, including countries that make up the European Union and those that form the EFTA. It is also worth noting the disastrous position of the Bolsonaro administration on social and environmental issues, neglecting commitments made by Brazil in international climate agreements. A great example of this reluctance is the Minister of the Environment's explicit speech about infraconstitutional changes that would allow Brazil "to go by with the cattle drive" - alluding to an expression in Portuguese that gives the idea of opening the gates so that all the cattle passes through. This popular expression can be read as a figure of speech for a mass dismantling of environmental regulations, in the sense of taking advantage of a situation (the Covid-19 pandemic, when public opinion is very much focused on health issues) to make changes that do not depend on the approval of bills, in particular, constitutional changes that require a qualified quorum in voting. However, in this case, given the interests of the mining, energy and agribusiness sectors, especially with regard to the expansion of agriculture, the expression can also be read literally.

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STRUCTURE OF THE AGREEMENTS

The Mercosur-EU Agreement, formally the Mercosur-European Union Biregional Association Agreement, consists of three basic chapters: political dialogue, free trade and cooperation. Dialogue began with the 1995 Interregional Framework Cooperation Agreement (known as the Madrid Agreement). Concurrently, negotiations begin for the Free Trade Area of the Americas (the FTAA, launched following the US proposal at the December 1994 Summit of the Americas in Miami), and the World Trade Organization (WTO) begins to operate. It is, therefore, an Agreement with a long negotiation process, and a structure in the style of the

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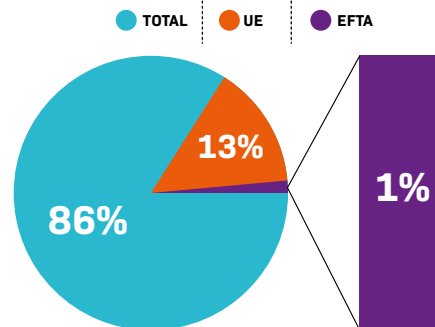
WTO, which means that it goes far beyond trade issues, covering topics such as services, investments, intellectual property, government procurement and others, in which the regulatory and limiting aspects of the political freedom of the signatory countries are the most relevant.

The center of the Agreement is the chapters and the essential contents of trade liberalization understood in a broad sense, that is, taking into account these other aspects covered by the WTO. This means that the chapters on cooperation and political dialogue are accessories in the negotiation.

The fundamental bargain, however, is clear and of a neocolonial matrix: a little openness in the EU markets for agricultural products from Mercosur in exchange for broad concessions in the markets for industrial products, in addition to the areas of services, intellectual property and public procurement, by Mercosur coun-

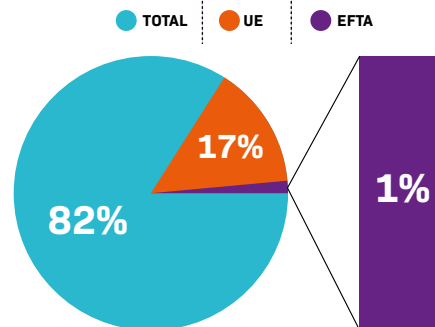
tries. Within the scope of development strategies and national policies or even integration within Mercosur, the bloc has the function of producing primary agricultural, mineral and energy products. The countries of the European Union, on the other hand, are tasked with producing manufactured articles and providing services with greater added value. Considering the environmental, social and economic perspectives, the role given to Mercosur countries has an enormous impact, accelerating environmental destruction and limiting social and economic improvement. The sectors of primary production are not very inclusive from the social point of view, while also being exclusive due to the capital needed for the production process, while also being evidently concentrators of income, wealth, and political power.

EXPORTAÇÕES BRASILEIRAS ACUMULADAS - 2015-2019



13% of Brazilian exports go to European Union countries and approximately 1% of exports go to EFTA countries. See table on the next page

EXPORTAÇÕES BRASILEIRAS ACUMULADAS - 2015-2019



17% of Brazilian imports come from EU countries and approximately 1% come from EFTA countries. See table on the next page

IMPORTS AND EXPORTS TO/FROM BRAZIL SELECTED BLOCS 2015-2019 (in USD FOB)

	2015	2016	2017	2018	2019
EXPORTS					
TOTAL	190.971.087.339,00	185.232.116.301,00	217.739.218.466,00	239.263.992.681,00	225.383.482.468,00
EU	33.849.174.898,00	28.780.682.080,00	29.769.487.866,00	32.535.383.860,00	31.019.640.445,00
EU (%)	17,72%	15,54%	13,67%	13,60%	13,76%
EFTA	2.916.762.444,00	2.471.696.432,00	1.800.817.158,00	1.782.395.427,00	2.438.718.971,00
EFTA (%)	1,53%	1,33%	0,83%	0,74%	1,08%
IMPORTS					
TOTAL	171.458.999.759,00	137.585.830.976,00	150.749.494.421,00	181.230.568.862,00	177.347.934.749,00
EU	31.033.856.076,00	30.515.649.134,00	32.056.006.750,00	39.121.605.877,00	32.936.166.302,00
EU (%)	18,10%	22,18%	21,26%	21,59%	18,57%
EFTA	3.160.738.436,00	2.457.742.534,00	2.488.312.127,00	2.801.615.437,00	3.197.327.033,00
EFTA (%)	1,84%	1,79%	1,65%	1,55%	1,80%

Sources: Ministry of Economy, International Affairs and Foreign Trade Special Secretariat (SPCINT) and Special Secretariat for Productivity, Competitiveness and Employment (SEPEC).

(at <https://www.gov.br/produtividade-e-comercio-exterior/pt-br/assuntos/comercio-exterior/estatisticas/balanca-comercial-brasileira-acumulado-do-ano>)

Elaborated by Inesc.

In the agricultural sector, it is important to observe the impacts of water consumption to boost production and intensive use of chemicals from the traditional package of big-scale commercial export agriculture, causing damage from the use of fungicides, pesticides, fertilizers, genetically modified seeds and other elements that affect soils, waters, and human and animal populations present in the environment.

It is also worth highlighting the negative social and economic repercussions on family farming. Some aspects go beyond the pressure for large properties and agribusiness expansion over production areas of family farming. Even if family farmers resist and integrate in the agribusiness supply chain, they will be negatively impacted, both by subordination to large chains of commercial export agriculture, and by the dynamics of export trading

companies. Products coming from the European market, such as powdered milk and processed grapes (such as grape juice and wines), can further affect this sector.

Even in the industry sector, it should be noted that what may be reserved for the Mercosur countries are some areas of production that European nations may prefer to transfer to the region because of their destructive environmental and/or energy consumption impacts (such as aluminum and cellulose production). This would further contribute to the environmental degradation in Mercosur countries, either through direct effects from industries such as the initial phases of chemical, steel and other industries, or through indirect effects such as the need to build plants to supply cheap energy, with high environmental impact.

Therefore, we must fundamentally assess whether the return to a “colonial-like pact”, with enormous social and environmental effects, should remain valid as a development strategy for the future of Mercosur countries. Or whether it is possible to look for an alternative strategy that allows the increase of income and employment, and its redistribution, with strong elements of environmental preservation and integration, while sustaining democracy, which can be put under discussion by a strategy of concentration of income and power.

Perhaps it was not by chance that the negotiation of the agreements advanced when the main economy of Mercosur, Brazil, went through a period of institutional rupture, soon followed by an anti-democratic government with little to no concern for inequality, social exclusion, environmental preservation and the climate crisis.

Although not part of the European Union, EFTA countries are located on the European continent and maintain a strong

connection with the EU. In addition, they are also part of other networks. This is the case for Norway and Iceland, which have historical links with the other Scandinavian nations participating in the EU (Sweden, Denmark and Finland). Because they have very generous tax rules (to say the least, as many consider them tax havens) and deregulated capital movements, in general, Switzerland and Liechtenstein are used by the rest of Europe for investments in other regions. The two countries also depend on good relations with the EU for maritime trade, since they have no outlets to the sea, and in many areas, they have production chains that are well integrated with the European bloc, which is the case of Switzerland. Thus, the document produced by Itamaraty on the Agreement points out that, “due to this proximity, many of the points foreseen in the Mercosur-EFTA Agreement follow standards established in the Mercosur-EU Agreement, especially with regard to the disciplines that regulate trade in goods and rules of origin”².

The Mercosur-EFTA Agreement, despite a joint declaration and an action plan from 2000, actually begins in 2015, with an “exploratory dialogue” on the possibilities for expanding Mercosur’s foreign trade, followed by brief negotiations from 2016 till 2019, using the EU process as a reference. Thus, it is clear that this agreement had an accelerated course of negotiation and conclusion, very different from that between Mercosur and the European Union, which went back and forth, with long periods in which dialogues were paused. This development only happened quickly because it had the structure and contents formulated after long discussions with the EU.

² Ministry of Foreign Affairs, MERCOSUR-EFTA FREE TRADE AGREEMENT - INFORMATIVE SUMMARY PREPARED BY THE BRAZILIAN GOVERNMENT, Brasília, 2019, available at http://www.itamaraty.gov.br/images/MERCOSUL-EFTA/2019_09_03_-_Acor-do_Mercosul_EFTA-2.pdf

However, the agreement with the EFTA takes into account the particularities of each of the countries that make up the association, except for Liechtenstein, which is jointly dealt with Switzerland. This is because, while the EU is a common economic area, EFTA is a sum of national entities. In other words, the particular characteristics of Switzerland, Norway and Iceland are treated in their specificity, especially in the trade of goods.

This consideration is important, since countries have their own characteristics. For example, Switzerland has a more complex economy, with strong dominance of financial interests and relevance in some areas, such as chemicals and pharmaceuticals and precision mechanics. However, it has a very defensive stance in relation to the agriculture and livestock markets. Norway and Iceland, on the other hand, have some specialization in the area of fish, but the first is distinguished by the great expertise in services associated with the oil industry. In addition, oil generates significant funds for the country, making it a considerable investor and, therefore, associated with financial interests. Furthermore, Norway is resilient with regard to agricultural activities, as shown by the country's trajectory of participation in other spaces for trade discussion, in particular, the WTO. Perhaps this is why the agreement designed by EFTA has limitations on the entry of agricultural products from Mercosur, making an exception for soybeans, fruits and fruit juices, in addition to peanuts, in the case of Norway. This means that, despite being much smaller markets, the EFTA countries contribute to encouraging the flow of expansion of soy production in Mercosur, particularly in Brazil, either in its direct form of grains or as an element of animal feed.

Regarding services and product trade, the structure of the agreement is very similar to the one with the EU, with more emphasis on financial services. However, it is worth pointing out a possible experimental point, but of great interest to international investors, according to the Itamaraty disclosure document³.

For the first time in an extra-regional trade agreement, Mercosur adopts rules on investment facilitation, with procedures for institutional dialogue between governments and the private sector on both sides in identifying business opportunities, clarifying regulatory requirements and overcoming bureaucratic barriers for the establishment and operation of companies.⁴

This means that ideas that were being drawn on investment facilitation models (including the model developed by Brazil, among others) are included in the construction of the agreement.

The text is not yet available, but these investment facilitation and "dialogue" rules must be analyzed in detail, as, until now, mechanisms have been envisaged, ultimately, between governments. Therefore, it is essential to verify what status the private sector gains in the writing of this type of clause. This is a reason for strong international debates and controversies due to the existence of the so-called "ISDS models" (*Investor-State Dispute Settlement*), which end up allowing private investors to sue National States if they identify potential damage to their investments and interests.

³ Ministry of Foreign Affairs, op.cit.

⁴ Ministry of Foreign Affairs, op.cit., P.9.

BINDING TREATY ON BUSINESS AND HUMAN RIGHTS

The Binding Treaty on Business and Human Rights is an important reaction to the agreements that incorporate the so-called “ISDS model”, which includes clauses that benefit transnational companies or subordinate human rights to the economic interests of trade and investment.

The treaty aims to prevent human rights violations committed by transnational companies that may go unpunished due to their ability to escape the jurisdictions of the countries that regulate their activities, including through clauses in free trade and investment agreements.

The discussions for the elaboration of the Binding Treaty on Business and Human Rights started in June 2014, when the UN Human Rights Council adopted Resolution 26/9, of the same month and same year.

The Treaty is drafted by an inter-governmental working group and deals with the responsibility of transnational companies on human rights.

One of the vectors that put pressure on the Human Rights Council for the adoption of the Binding Treaty was the Global Campaign to Dismantle Corporate Power, launched during the Rio+20 Conference, in 2012, in Rio de Janeiro, composed of several international, regional and national entities. Such entities continue to follow the discussions of the Binding Treaty and seek to influence its regulation.

Regarding government procurement, markets for EFTA service and product suppliers were also opened, as in the case of the EU. Regarding intellectual property, existing commitments in international treaties are reaffirmed and consolidated, in which countries on both sides participate, especially those assumed in the WTO's intellectual property agreement, called TRIPS.

AGREEMENT ON TRADE-RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS (TRIPS)

The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) is one of the agreements signed at the end of the Uruguay Round of negotiations, which resulted in the creation of the World Trade Organization (WTO). Its conclusion and incorporation into the structure of the WTO was the result of enormous pressure from the USA, the European Union, Japan and other developed countries. It is, therefore, one of the agreements that starts to function as a pillar of the WTO since 1995, and that incorporates the topics of intellectual property in the discussion of international trade (in particular, patents, very dear to transnational companies). It has been used as a floor for international trade negotiations, in which, whenever possible, developed countries try to establish more defenses, especially for patents, and intellectual property in general, causing the agreements to operate in standards that were called “TRIPS Plus”, which guarantee even more than the simple TRIPS agreement.

THE ADOPTION OF ENVIRONMENTAL CLAUSES ON AGREEMENTS

In addition to the direct impacts on the environment included in these two agreements, it is very important to note the existence of chapters that try to preserve social and environmental concerns on the part of the negotiators. For this reason, the chapter on Trade and Sustainable Development is worth a careful evaluation.

This chapter, both in the Mercosur-EU Agreement and in the Mercosur-EFTA Agreement, opens space for the presentation of pertinent considerations and concerns, functioning to reiterate

the crucial point is that the various concerns expressed in the Trade and Sustainable Development chapter cannot be legally addressed.

existing commitments which were signed in several multi-lateral spaces. Among them, there are several human rights agreements, sustainable development goals of the 2030 Agenda, UN conventions on climate change and biodiversity, the Paris Agreement, fundamental principles of labor law

of the International Labor Organization and others.

The chapter also provides for the organization of spaces of civil society participation, although it fails to explain in detail how the participation would actually happen. In the documents published so far, the wording of civil society participation is enclosed in brackets, which, in the language of diplomatic negotiation, means that its existence and/or imple-

mentation are still under discussion⁵. In any case, it is vital that the concern with social participation is explicitly presented.

However, from what is known of the agreement, the various concerns expressed in this chapter are not binding, cannot be demanded and only allow for possibilities of political pressure or eventually pressure from consumers through markets. Further, non-compliance does not result in sanctions or the triggering of dispute settlement mechanisms, provided for in the trade agreements themselves or in the other agreements that serve as a basis for the commitments repeated in the trade agreements. Evidently, in practice, political or market pressure could happen with or without the chapter, with awareness or mobilization of institutional political actors or civil society being enough. Conceived and structured in this way by negotiators, the chapter leaves societies and states without legal instruments to punish companies in the event of violations of social and environmental rights.

Ultimately, the Trade and Sustainable Development chapters in both agreements function as a kind of textual reference to prevent potential critics from saying that the matter has not been mentioned or expressed. However, their existence does not

Ultimately, the Trade and Sustainable Development chapters in both agreements function as a kind of textual reference to prevent potential critics from saying that the matter has not been mentioned.

⁵ Article 14, referring to the "Subcommittee on Trade and Sustainable Development and Points of Contact", in the Chapter on Trade and Sustainable Development of the last proposal for an agreement that was disclosed on the website of Itamaraty - Ministry of Foreign Affairs of Brazil - appears as follows form in point 3, item c: "(c) make recommendations to the Trade Committee, including with regard to topics for discussion with the [civil society mechanism], referred to in Article of Chapter ... [general institutional provisions]". Thus, it is worth noting the brackets, which indicate that there is no consensus. Available at http://www.itamaraty.gov.br/images/2019/Comrcio_e_Desenvolvimento_Sustentavel.pdf, p.12.

represent any practical consequence for the operation of trade agreements or their obstruction in case of non-compliance⁶.

This fact is quite relevant, given that, sometimes, the exalted competitiveness of some sectors at the international level is based on the reduction of labor costs due to violation of rights to which countries are signatories, dismantling of legislation, auditing mechanisms and/or inspection instruments related to the environment or basic human and social rights. It is through these perverse mechanisms - which transform business production costs into social costs and undermine labor and environmental rights - that companies reduce costs and increase their profits and their ability to compete.

TRADE AND SUSTAINABLE DEVELOPMENT CHAPTER

Currently, the only chapter on Trade and Sustainable Development available is the one contained in the Mercosur-EU Agreement. Based on said chapter, it is possible to craft a brief analysis of relevant points, and a prediction of the possible provisions of the same chapter of the Mercosur-EFTA Association Agreement.

In the “Informative Summary Prepared by the Brazilian Government” on the Mercosur-EFTA Association Agreement⁷, the presentation of the chapter on Trade and Sustainable Development displays the following:

The chapter on Trade and Sustainable Development aims to reiterate the parties’ commitment to protecting labor conditions and the environment. It enshrines respect for the fundamental principles of the International Labor Organization (ILO) and the Sustainable Development Goals of the 2030 Agenda, according to the national capacities of the parties.

The chapter deals with topics such as climate change, contemplating the Paris Agreement, and protection of biodiversity. The chapter provides for cooperation and the exchange of information, and a forum for the participation of civil society. The chapter is not associated with the sanctions of the agreement’s dispute settlement mechanism.

This text demonstrates that the chapter of the Mercosur-EFTA Association Agreement should show similarities to the one present in the Mercosur-EU Agreement. With this in mind, it is worth making a quick summary of each article.

The first article in the chapter on Trade and Sustainable Development of the Mercosur-EU Association Agreement cites a series of international documents to which EU and Mercosur member countries are signatories⁸ and recognizes the interdependent character of the economic, social and environmental dimensions of the development process, among other points.

6 As is explicit in the Ministry of Foreign Affairs’ informative summary of the Mercosur-EU Agreement, “the chapter is not associated with sanctions under the agreement’s dispute settlement mechanism”. Mercosur-European Union Association Agreement, “Informative Summary Prepared by the Brazilian Government”. Available at http://www.itamaraty.gov.br/images/ed_acesso_info_auditorias_brasil/MERCOSUL/MERCOSUL-UE/2019_10_24_-_Resumo_Acordo_Mercosul_UE_CGNCE.pdf, julho/2019, p. 14.

7 Available at http://www.itamaraty.gov.br/images/MERCOSUL-EFTA/2019_09_03_-_Acordo_Mercosul_EFTA-2.pdf.

8 “The Parties recall the Agenda 21 and the Rio Declaration on Environment and Development of 1992, the Johannesburg Declaration on Sustainable Development and the Johannesburg Plan of Implementation on Sustainable Development of 2002, the Ministerial Declaration of the United Nations Economic and Social Council on Creating an environment at the national and international levels conducive to generating full and productive employment and decent work for all, and its impact on sustainable development of 2006, the Declaration on Social Justice for a Fair Globalisation of 2008 of the International Labour Organisation (ILO), and the Outcome Document of the UN Conference on Sustainable Development of 2012 entitled “The Future We Want” and the document “Transforming our World: the 2030 Agenda for Sustainable Development”, adopted in 2015.” MRE, Mercosur-European Union Association Agreement, op. cit., pp. 1-2.

Article 2 refers to ensuring the self-determination of the signatories to develop national policies. That means the right to national regulation, and the establishment of a political space for national decisions. The existence of this segment puts the whole chapter into perspective⁹. However, it is noted that this relativization also appears in other chapters of the Agreement, with Services as an important example.

Article 3 deals with the topic of transparency and reaffirms the importance of transparent treatment both of measures related to environmental protection and labor that may affect trade and investments, and of measures related to trade and investments that may affect environment and labor.

Article 4 deals with multilateral standards and international agreements related to labor issues that must be taken into account by the signatories to the negotiated agreement.

Article 5 does the same, except that, in this case, it deals with environmental issues.

Articles 6 and 7 consolidate the understanding of the parties' commitment to the themes of climate change and biodiversity, respectively.

Article 8 talks about the commitment to the sustainable management of forests and the role of commerce in fulfilling this objective, in addition to reforestation, aiming at conservation and sustainable use.

Article 9 determines the same pact, except in relation to fishing and aquaculture.

Article 10 establishes that measures to protect the environment and labor con-

ditions that may affect trade and investments are based on globally recognized technical and scientific evidence and international standards, when available.

Article 11 deals with a relationship of corporate responsibility on the supply chains of commerce. It draws attention to the fact that large corporations, responsible for encouraging world trade, must manage their global supply chains and suppliers responsibly, in order to contribute - through their market power and the dependence they create in the relationship with suppliers - to the dissemination of good labor and environment-friendly practices.

Article 12 stipulates commitments to deepen economic, social and environmental sustainability that can be part of additional measures to encourage trade and investment.

Article 13 points out the commitment to work together with other organizations, especially the existing multilateral ones, such as the ILO, the WTO, UNCTAD and others, on the issues of labor rights and sustainable development.

Article 14 addresses the aforementioned Subcommittee on Trade and Sustainable Development and the Points of Contact, which addresses, among other issues, the issue of civil society participation.

Article 15 establishes conflict resolution on the chapter's main topics. The fifth point is the most interesting, as it states that "no Party shall use the dispute settlement resource under Title VIII (Dispute Settlement) for any issue arising from this Chapter."¹⁰ Thus, it excludes any conflict over sustainable development from the agreement's dispute settlement mechanism.

⁹ "The Parties recognise the right of each Party to determine its sustainable development policies and priorities, to establish the levels of domestic environmental and labour protection it deems appropriate and to adopt or modify its law and policies." MRE, op. cit., p.2.

¹⁰ "No Party shall have recourse to dispute settlement under Title VIII (Dispute Settlement) for any matter arising under this Chapter."

Article 16 refers to consultations to be established between parties regarding doubts about the interpretation of the chapter.

Article 17 talks about the organization of an experts panel to try to resolve deadlocks that have not been resolved by the consultation mechanism of the previous article.

And finally, Article 18 concerns possible revisions and improvements in the chapter, which can be carried out by the Subcommittee on Trade and Sustainable Development.

EFFECTIVE EFFECTS VERSUS INEFFECTIVE PROTECTION

traditional possibilities used by governments to reinforce a consolidated national development strategy.

As previously stated, from an environmental, social and economic point of view, the role that is reserved for the Mercosur countries has an enormous impact, accelerating environmental destruction and the climate crisis. The possibilities for social and economic improvements are also limited, since primary production sectors are not very inclusive, while also being concentrated, considering the capital needed to boost the production process. These are traditional sectors, unable to promote an internal dynamics based on innovation and its function as promoter of development.

Regarding environmental issues, the Agreements still have several negative consequences. They reinforce unfavorable effects of the recent specialization of production for all Mercosur countries, such as the impacts of Chinese demand around the world. This revived the course of specialization designed in the adjustment programs of the 1980s. At the time, the programs, agreed with international financial institutions such as the IMF and the World Bank, described productive specialization based on agricultural and mineral commodities as the fundamental path for generating payment balances and managing foreign debt. In this sense, the new market led by China's tremendous growth, characterized by its voracity in the consumption of agricultural, energy and mineral commodities, served to confirm this trend.

In the case of Mercosur, seen as a bloc and as individual countries, the strategic connection with the Chinese economy from the first decade of the 21st

The essential contents of what was negotiated in both agreements, slowly in the case of conversations with the EU and quickly in negotiations with EFTA, reaffirm the resumption of a colonial production structure on the part of the Mercosur countries, which specialize in supplying primary products, basically agricultural, mineral and energy commodities to Europe. In this dynamic, the nations of Mercosur buy manufactured products from the European partners of the two blocs, opening up their service area and making major concessions in other fields.

the government procurement sector, which becomes quite restricted in its ability to function as an instrument of public policy for development

Emphasis should be placed on the government procurement sector, which is quite restricted in its ability to function as an instrument of public policy for development, one of the

century ends up reiterating a centralizing and environmentally hostile trend. The Mercosur primary-export model strengthens big-scale export agriculture and mining, sectors that accumulate income, wealth and power and which have their operations associated with negative impacts on the environment and traditional populations in the territories where they operate. In Brazil, this situation is worsened in the current period, with a government that claims to not see the expansion of agribusiness and mining spaces - and their impacts - as problems¹¹.

ucts required by the productive matrix adopted by the agribusiness sector in Mercosur countries, thus leading to disastrous consequences for local and regional environment.

In the case of Brazil, which stands out in production, there are some estimates of these impacts, even before the agreements negotiated with the European Union and EFTA were ratified. According to the Greenhouse Gas Emission Estimate System (SEEG, Climate Observatory, Brazil)¹², on the assessment of the increase in greenhouse gas emissions due to the expansion of agriculture in Brazil:

In 2019, emissions from the agricultural sector totaled 598.7 million tons of CO₂ equivalent, an increase of 1.1% over 2018. The sub-sector that contributed most to total emissions (61.1%) was enteric fermentation, the name given to the process of digesting cellulose in the rumen of animals such as bulls, which results in methane emissions. Beef and dairy cattle account for 97% of emissions from enteric fermentation. Managed soils represented 32.2% of the total emissions, mainly caused by the use and deposition of beef cattle manure, together with the use of synthetic fertilizers, accounting for 24.8% and 17.4% of the sub-sector's emissions, respectively. Liming was previously accounted for in the land-use change sector, but has been incorporated into agricultural and livestock emissions in the Fourth National Inventory, a change that was adopted by SEEG, in the managed soil sub-sector. The other sub-sectors, such as animal waste management, irrigated rice cultivation and the burning of agricultural residues, especially sugarcane straw, complete the remaining 6.7% of national emissions from the agricultural sector for 2019. Analyzing the sector's emissions by activity, it can be seen that livestock accounted for 76% of the total, with emphasis on beef and dairy cattle, representing 62% and 8.7% respectively, and pig raising, with 2.4%. The third activity of the agricultural sector was the use of synthetic fertilizers and liming (application of limestone), with a total share of 9.6%. SEEG, 2020

the attempt to expand the supply of these commodities, especially those linked to agriculture points to an expansion of production areas, which would put enormous pressure on biomes, environmental reserves, indigenous peoples and traditional populations or even to unexplored regions

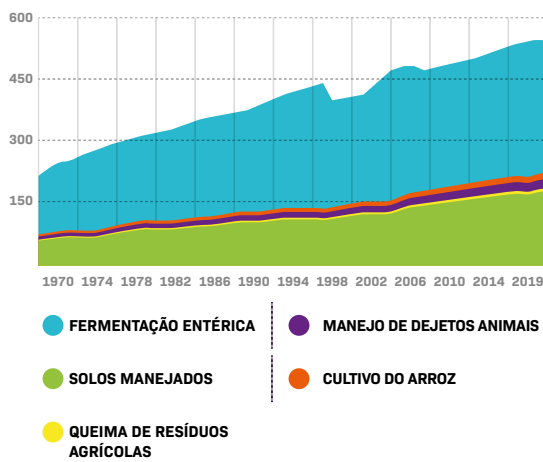
These losses have been identified before the new trade agreements with the two European blocs come into force. However, these agreements, now in the process of finalization, tend to intensify this situation, driven by the deepening of commercial ties with the dynamic and voracious (in the consumption of raw materials, especially) Chinese economy.

As a result, the attempt to expand the supply of these commodities, especially those linked to agriculture, points to an expansion of production areas, which would put enormous pressure on biomes, environmental reserves, indigenous peoples, traditional populations, or even unexplored regions. In addition, it would promote the intensification of production in existing areas, which would also increase the use of fertilizers, pesticides and other prod-

¹¹ In addition to trade negotiations, the current Brazilian government has often pointed to the dismantling of environmental protection policies. In this regard, it is worth consulting the document of the National Association of Environmental Public Servants at http://www.ascemanacional.org.br/wp-content/uploads/2020/09/Dossie_Meio-Ambiente_Governo-Bolsonaro_revisado_02-set-2020-1.pdf. The policy of dismantling is reflected in a very objective way in the 2021 Budget Proposal. See, in this regard, Inesc's technical note on the Proposed Budget Law at <https://www.inesc.org.br/nota-tecnica-meio-ambiente-e-o-ploa-2021/>.

¹² SEEG 8, Analysis of Brazilian Greenhouse Gas Emissions and Their Implications For Brazil's Climate Goals. 1970-2019, Climate Observatory, 2020, p. 13. Available at https://seeg-br.s3.amazonaws.com/Documentos%20Analiticos/SEEG_8/SEEG8_DOC_ANALITICO_SINTESE_1990-2019.pdf.

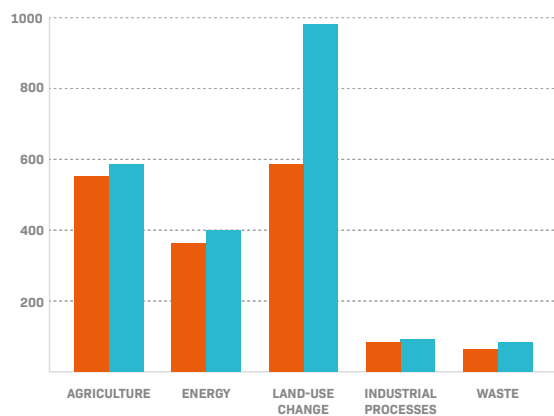
Figure 1: Evolution of greenhouse gas emissions in agriculture by sub-sector from 1970 to 2019¹³



Source: Greenhouse Gas Emissions Estimate System, by Climate Observatory (SEEG-Brazil, 2020)

Figure 2: Evolution of greenhouse gas emissions by sector in 2010 and 2019¹⁴

PANORAMA GERAL DAS EMISSÕES BRASILEIRAS



Source: Greenhouse Gas Emissions Estimate System, by Climate Observatory (SEEG-Brazil)

Another noteworthy contribution is the study by IPAM (Amazon Environmental Research Institute), which, among other assessments, exposes the impact of the

¹³ SEEG 8, op. cit, p.13.

¹⁴ SEEG 8, op. cit, p.13.

expansion of agriculture and livestock on the most recent fires in the region:

Forest fires, which can be triggered by sparks from fires in newly deforested areas and already established agricultural areas, or ignited in bad faith to degrade forests, are usually less frequent in the region because this type of forest has a certain resistance to fire. (Nepstad et al., 2001). However, this resistance has been broken by the edge effect¹⁵ (ecological alterations linked with development of sudden, artificial edges of forest fragments), resulting from the fragmentation generated by deforestation, logging and severe drought events (Cochrane et al., 2002).¹⁶

In addition, it is important to comment that, even in the industrial area, the opportunities that open up focus on products centered on “perverse competitiveness”, that is, often based on competitive advantages due to the erosion of labor rights, as well as low environmental costs resulting from insufficient legislation, poor law enforcement or both. This means more pressure to use these “advantages” from the point of view of structuring industrial sectors in the Mercosur countries to “take advantage” of these opportunities, passing the resulting environmental damage on to these nations. Additionally, opportunities to expand sectors producing energy-intensive industrial goods (petrochemicals and basic chemicals, steel, aluminum and others). To be viable, they end up increasing the supply of cheap energy, with the construction of dams, increased production and consumption of fossil fuels, or even with cleaner forms of energy generation, which also have environmental costs.

¹⁵ Edge effect is a change in structure, composition and/or in the relative abundance and richness of species’ biodiversity. This effect is more intense in small isolated fragments of forests. Thus, as the fragmentation of forests increases because of deforestation, the effect increases.

¹⁶ ALENCAR, Ane, RODRIGUES, Lucas and CASTRO, Isabel, “Amazonia on Fire: What burns - and where”, IPAM Amazônia, Technical Note no. 5, August 2020. Available at <http://www.observatoriodocli-ma.eco.br/wp-content/uploads/2020/08/NT5-V1.pdf>.

These “opportunities” also appear to foreign investors protected by the agreements, which end up reinforcing these trends.

Still on the environmental consequences, in relation to deforestation, there is a sustainability impact assessment presented by the European Union that suggests the effects of deforestation could not be negative¹⁷.

deforestation can grow from 5% to 25% per year for six years exclusively due to the increase in beef exports generated by the agreement

This information, however, is questioned in an open letter signed by several economists¹⁸. They argue that the analysis minimizes the action of the agreement on deforestation in Mercosur countries by using an old document on the topic as a reference, in place

of the “Global Forest Resource Assessment 2020” provided by the Food and Agriculture Organization of the United Nations. Instead, the study refers to the 2016 report and makes use of outdated information. Critics also clarify that, according to a report by experts hired by the French government, deforestation can grow from 5% to 25% per year for six years exclusively due to the increase in beef exports generated by the agreement.

17 “As regards deforestation, the experience of the period from 2004 to 2012, when Brazil dramatically decreased the rate of deforestation while agricultural production was expanding, shows that agriculture and meat production are not an obstacle to the protection of forests, provided that sound policies are in place. Thus, the decrease of deforestation will ultimately depend on the adoption and effective enforcement of appropriate environmental policy measures, such as the ones that allowed the decrease of deforestation. In this regard, the report recommends a number of key measures that should be put in place by the Mercosur countries and highlights the importance of the commitment undertaken by Brazil under the trade and sustainable development (TSD) chapter to implement effectively its Paris Agreement pledges, including very substantial ones on deforestation (for example reforesting 12 million hectares by 2030, ending illegal logging, compensating any legal logging and strengthening the forest code).”, “European Commission publishes draft Sustainability Impact Assessment for the Trade part of the EU-Mercosur Association Agreement”, publicado na página de comércio do website da União Europeia. Available at <https://trade.ec.europa.eu/doclib/press/index.cfm?id=2164>.

18 “Open Letter Regarding the Economic Impacts of the EU-Mercosur Agreement”. Available at <https://kurtbayer.wordpress.com/2020/11/09/open-letter-regarding-the-economic-impacts-of-the-eu-mercosur-agreement/>.

CHANGES IN BRAZIL’S POLITICAL FRAMEWORK AND AGREEMENT FEASIBILITY

Referenced in the framework agreement signed in 1995, negotiations between Mercosur and the EU continued slowly until 2002, with some conversations defining generic frameworks, such as scope and objectives in each area of dialogue. Two adjustments in this first phase of definitions seem important: tariff liberalization covering about 90% of the products in the “trade in goods” sector and the agreement known as Trade-Related Investment Measures (TRIMS). This second point is relevant because of the huge changes that have occurred in bilateral and regional investment agreements since that period, giving more and more guarantees for investors, be they large investment funds (portfolio and paper investments) or large transnational corporations and their investment flows, some of them being direct foreign investments. Thus, the basis initially defined for the investment chapter in conversations between Mercosur and the European Union did not go into much depth on a topic that is always sensitive, particularly for developing countries. This was the reason presented by the Mercosur negotiators for not breaking the negotiations, which were paused several times, but never terminated. Even in the stages of stagnation, there were signs that they could start over at any time.

AGREEMENT ON TRADE-RELATED INVESTMENT MEASURES (TRIMS)

The Trade-Related Investment Measures Agreement (TRIMS) came into force in 1995, the same year as the WTO. It establishes rules on the regulation of foreign investments at the national level. TRIMS acts specifically on trade in goods, focusing on possible violations of Article III (national treatment) and/or Article XI (elimination of quantitative restrictions) of the General Agreement on Tariffs and Trade (GATT). This means that this Agreement prohibits the conditioning of foreign investments to predetermined or established performance requirements in favor of the national interest, such as rules of local content and obligation to export. As can be seen, one of the consequences of adhering to TRIMS is the reduction of the space for maneuver of National States, in particular those considered “under development”, to create and adopt robust industrial policies. Originally, TRIMS does not cover the commercialization of services.

When negotiations for the creation of the FTAA began to fade, from the end of 2003, until they were definitively interrupted in the first four-month period of 2004, investments were made to stimulate the dialogue between Mercosur and the EU, since, at that time, it was common to say that governments of the region did not seek trade agreements based on “ideological definitions”. At that time, there were attempts to carry out the arrangements with the EU, which ended up being hampered

by the Europeans’ concession capacity in agriculture and by the resistance of the Mercosur countries in areas such as manufactured goods and intellectual property, points of intense demand on the part of the EU bloc, especially on the issue of appellation of origin. Still, to try to close the negotiations, in 2004 Brazil even offered concessions to Europeans in government purchases, since there was a strong investment program to be implemented by the Brazilian state-owned company Petrobras, and the offer could represent easy access to bids foreseen in that area. The effort did not lead to closing the agreement, and the negotiations were “frozen” thereafter, but the offer set a precedent to add the topic of government procurement to the agenda for discussions in that negotiation process.

FREE TRADE AREA OF THE AMERICAS (FTAA)

The Free Trade Area of the Americas (FTAA) was a proposal made by then President Bill Clinton (USA) during the Summit of the Americas, in Miami, on December 9, 1994. Its objective was to eliminate customs barriers between the 34 American countries, except for Cuba, thus forming a free trade area, whose deadline to come into effect would be the end of 2005. Throughout this period and through the International Campaign Against the FTAA, civil society organizations and social movements from the continent have come together in opposition to this project of trade liberalization and its harmful consequences for the economic development and well-being of the peoples of the South. In 2005, as a result of the political and social struggle, the proposal failed and was closed.

Then, these “frozen” negotiations were almost forgotten. The increase in trade of agricultural products from the Mercosur countries to China, which grew spectacularly at that time, cooled the pressure from agribusiness entrepreneurs to set the agreement with the European Union. Meat and soy, two of the main products trying to enter the European markets, were highly demanded by China, and business expansion reduced business claims to almost nothing. On the other hand, under Lula's administration at the time, trade negotiations were primarily focused on the possibility of concluding the Doha Round of the WTO, which would resolve, in its chapter on agriculture and in discussions on subsidies, part of the agenda that discontinued talks with the USA (FTAA) and hindered negotiations with the European Union. With the failure of these negotiations in July 2008, this route was rendered unfeasible. However, in this period, the acute international financial crisis took the focus away from trade negotiations, with developed countries focusing on protectionist policies to defend their own markets. On the other hand, new negotiation possibilities were opened for Brazil (G-20 and BRICS) that made dialogues with the EU more distant.

The talks were resumed after the 6th European Union - Latin America and Caribbean Summit, held in 2010 in Madrid. This was mainly due to a statement by the then Brazilian President Lula, who believed that the agreement should be attempted again. Negotiations were resumed very slowly over the first few years, and while Mercosur negotiators demanded an “exchange of offers” (when each side says what they are willing to offer in terms of trade openness), regulatory frameworks have made progress in some

areas, such as services, government procurement and intellectual property. This process continued until 2016, when transactions accelerated, with the first exchange of offers.

It is worth noting the political situation in which this took place, with President Mauricio Macri taking office in Argentina with a liberal approach in late 2015, and Michel Temer taking an acute liberal turn when he took over the government during the process of institutional rupture and impeachment of President Dilma Rousseff throughout 2015 and 2016. The exchange of offers proved to be insufficient, the talks for expansion followed, with several points of resistance, and the date set for the announcement of closing negotiations, during the WTO Ministerial conference in Buenos Aires, Argentina, in December 2017, was not fulfilled.

After 2012, negotiations with the EFTA progressed in the same vein as those with the European Union.

EU negotiators continued to search for more concessions, while negotiating with their sectors domestically. For example, the German automobile industry installed in Brazil, which for a long time opposed the agreement. As curious as it may seem, the resistance of European multinationals' subsidiaries in the country was essential to make the trade agreement unfeasible. This is because some companies, such as Volkswagen, had investments in progress that would be weakened by the new conditions present in the agreement, a point that ended up resolved by the combination of new deadlines for implementation of such conditions, and possibly some national agreement between the German government and the company.

The political fragility of Temer's administration also appeared as an obstacle to greater concessions on the part of Brazil, Mercosur's largest economy. Especially from May 2017, Temer and his allies seemed more concerned with avoiding his overthrow than with advancing any measure that could weaken his base in Congress. Trade agreements always impose losses on some sectors, and that is why the Brazilian government, which had taken an active position in 2016, started to have a passive one thereafter. In Argentina, the approval of unpopular measures by the Macri government, such as the pension reform, at the end of 2017, also weakened the country's negotiation leverage.

Thus, the conclusion of trade negotiations with the two blocs (EU and EFTA) became politically viable only in 2019, with a new Brazilian government with a liberal economic bias, when Bolsonaro was elected. In Argentina, the closing of negotiations with the European Union revealed the strong liberal orientation of

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the Macri Government in preparing for the Argentine electoral process. The vehemently liberal positioning in the economy provided the definitions and concessions that helped enable the closing of the agreement with the strategy of "pulling the rope" of the European bloc's negotiators, that is, seeking concessions to the limit. Also contributing to this was the willingness of the negotiators on the Mercosur side to make

all sorts of concessions to make the process feasible. For the Bolsonaro administration, the closure also appeared as a political asset that would differentiate its government from previous governments due to its capacity to take and implement positions.

The positions of the Bolsonaro administration, which does not care about the perverse consequences on the environment and the areas of social (indigenous and quilombola) and environmental reserves, help to sign the agreements, since the expected effects on these sectors are enormous. The official policy of this government is to dismantle environmental protection as a strategy to privilege its political base (land-grabbers, miners, large landowners and others). Firstly, this allows for the internal support needed to close the agreements without great resistance in Brazil.

FINAL CONSIDERATIONS

Much of the recent debate, especially public opinion, about the agreements under discussion for ratifying Mercosur's commitments to the EU and EFTA concerns their impacts on the environment and their relationship to the climate crisis. These problems were intensely reinforced by the repercussion in the international press of the fires in the Amazon and the Pantanal in 2019 and 2020. This, of course, drew the attention of society and social organizations in Europe and Mercosur to the theme of environment in Brazil (and Mercosur) and to the effects of expanding a production model that is supported by the sectors of agriculture and livestock and mining over the areas of social and environmental reserves. Consequently, the agreements in the process of ratification were also in the spotlight, as they serve a model based on the expansion of primary production.

As previously pointed out, these agreements, once in force, end up reinforcing this type of model, although they didn't

originate the model. In the case of Mercosur, trade with European countries, both from the EU and the EFTA, is already based on this pattern that favors inequality, here called the colonial type model. It economically and politically strengthens a social sector that bases its source of income on patrimonial control over land and mines - often exploiting them in a predatory manner - and on short-term gains, in which the social and environmental preservation have little importance. The end of the negotiations is facilitated not only by a confluence of liberal governments within the Mercosur, but also by the existence, in Brazil, of governments that endorse social inequality or neglect environmental concerns, while having little commitment to maintaining democracy.

The bargain on which the agreement is built, as pointed out, is of a clear colonial nature: some opening of EU markets for agricultural and mineral products from Mercosur in exchange for broad concessions from the South American countries for the market of manufactured goods, services and to secure European intellectual property, in addition to those in the area of public procurement, which were extended to conclude the agreement. In this way, instead of pointing to greater integration between the Mercosur countries, the prospect is for an intensification of competition between them, especially when it comes to export of soybean and livestock related products. The agreements with the EU and the EFTA help disunite Mercosur countries, making them rivals, not partners who should cooperate around objectives and a general development strategy considering the bloc. While Europeans are working to improve their integration process, Mercosur loses traction, becoming a kind of club for competitors.

Finally, it is necessary to consider the limitations pointed out in the chap-

ter on Trade and Sustainable Development in order to curb these general trends in some way. As seen, in practice, the discussion on Trade and Sustainable Development is merely an enumeration of good intentions to fulfill the international commitments already assumed by the signatory parties, including when it comes to mechanisms for the participation of civil society to monitor compliance with these commitments. However, it is far from having a binding character, that is, collection capacity, either through dispute settlement mechanisms present or indicated in the agreements, or in other possible legal contexts.

The possibility of pressure in defense of reasonable social, labor and / or environmental parameters depends, more than anything, on outside pressure by the various governments, civil society and specific groups interested in securing their rights. In this sense, these interests are ultimately ensured by other chapters of the same agreements or by possible dispute settlement bodies in multilateral spaces, such as the World Trade Organization and, in the case of investments, the International Centre for Settlement of Investment Disputes (CIADI), arm of the World Bank. This dynamic attests to the power of the transnational corporate world over the practical management of trade agreements such as those currently being discussed.

In view of this, one might wonder: would transforming the chapter on Trade and Sustainable Development into something more powerful and binding solve the problem? Probably not. For this process to be actually efficient, not jury-rig, stakeholders would have to return to the negotiating table. This measure would already be very complex, as demonstrated by the long period of talks between Mercosur and the European Union. More than

that, it would be necessary to change the agreement's essence, which should have the spirit of integrated development between the regions, both between Mercosur and the EU and between Mercosur and the EFTA. On the other hand, Mercosur would have to review its position as an exporter of agricultural, mineral and energy commodities. If that doesn't happen, any changes - even if they make the chapter on Trade and Sustainable Development binding and more participative - can end up being frustrating, since they would not be able to modify the nature of this design.

Another agreement is possible, but not with the established framework. This should be the starting point to eventually reformulate the terms of what has been discussed. A chapter of trade that is more fair than free must be cherished, along with chapters on political dialogue and development cooperation, since a free relationship between unequal parties cannot be just. This seems to be the path to agreements that can effectively guarantee social, labor and environmental rights, with participation and protection of commitments.

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