



# Pathways from the (semi) Periphery: Early Assessment of EU Mercosur Trade Agreement in Principle (Environmental and Development Aspects)

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## ABSTRACT

In the current international and domestic context, imagining a more complex bilateral trade agreement is more accessible than between the European Union (E.U.) and Mercosur (the South American International Trading Bloc). The tensions between these major trading blocs only aggravate international trade and economic relations. Consequently, the World Trade Organization (WTO) is bracing for its most significant challenge since its establishment in 1994. Between the E.U. and Mercosur's complex trade agreement and the WTO's challenge, the post-COVID-19 international legal environment has become even more complicated.

The aims of this paper are: (1) to analyze the importance of the E.U.–Mercosur agreement within the current institutional trade framework; (2) to present some of the most controversial dilemmas posed by the present agreement; and (3) to evaluate the extent to which the agreement may support or hinder more sustainable and inclusive development among both trade partners. This study will focus on Brazil due to its geography, population size, and historical efforts to bring the nation closer to the international periphery and its radical turn to authoritarian populism. Additionally, Brazil's Amazon Rainforest's global necessity is essential for this study.

**Keywords:** Free Trade Agreements, Development Policy Space, Institutional Innovations, Inclusive and Sustainable Development, Protection of Public Goods, Variety of Models of Growth, Pathways from (semi) Periphery

## INTRODUCTION

Trade talks between the E.U. and Mercosur nations began in 1999. The original goal was to complete trade talks by 2004, and afterward, an agreement on agricultural liberalization was supposed to be reached. Said goals, however, have yet to materialize. During the subsequent years, both nations continued bickering. Both nations introduced controversial arguments in the talks that included environmental and health concerns, the role of state-owned enterprises, and the uncertainties regarding global agricultural liberalization. Nevertheless, trade negotiations accelerated during the last fifteen months, probably due to changed circumstances for both trading blocs in the broad, international trade environment.

Based on the reactions of European farmers and Brazil trade representatives, there appear to be winners and losers due to the agreement – preliminary conclusions have already been

drawn regarding the potential beneficiaries. This analysis also reveals which issues may become more endangered and competitive, such as labor and social welfare standards, public health protection, environmental protection, and other trade-related risks. Per the article's analysis, several stakeholders from each nation (or trading nation) have expressed serious concerns regarding the trade agreement.

In addition to such hesitant reactions, the article analyzes a, perhaps, more subliminal deficiency not yet understood. This agreement may place Brazil in a rather societally and economically vulnerable situation by pushing Brazil to specialize in exporting natural and agricultural products. Should this happen, further advancements toward unorganized, unsustainable, and rapid deforestation of the Amazon rainforest are *very* likely to occur, not to mention the overall social and economic stagnation that could ensue in Brazil. Despite the elaborate chapter on Trade and Sustainable

Development of the agreement, such a trajectory is likely to occur due to the premature deindustrialization in Brazil. All in all, Brazil's difficulties in adequately participating in the developed global economy were never considered during the talks leading up to the trade agreement.

There are calls for the trade agreement to be renegotiated so that safeguards may be provided for more inclusive and sustainable development between both trading blocs. This article explores several possible ways to improve this agreement in principle. There are two decades' worth of basic premises that must be conceptually re-examined. In doing so, however, the possibility exists that developmental, environmental, health, labor, and social concerns may only be effectively addressed if negotiated at multilateral rather than bilateral levels of trade negotiations. In the current international and domestic context, it is hard to imagine a more complex bilateral trade agreement than the one between the European Union (E.U.) and Mercosur (the South American International Trading Bloc – with the founding members: Argentina, Brazil, Paraguay and Uruguay). The tensions between these major trading blocs worsen international trade and economic relations. Consequently, the World Trade Organization (WTO) is bracing for its most significant challenge since its establishment in 1994.

The Doha Development Round trade-negotiation stalemate left too many questions unanswered. Perhaps the most notable question is *how* the world trading system could become more "development-friendly," per the Doha Declaration's stipulation. The complex negotiations, the plethora of expectations, and the everchanging international economic context only led to the infamous Doha stalemate.<sup>1</sup> Said standstill caused an increase in bilateral and regional trade negotiations, further fragmenting international trade law. The major trading blocs, particularly the U.S. and the E.U., entered such agreements. Some resulting agreements have been deemed "mega-regional trade agreements," illustrating their comprehensive trade and socioeconomic impacts on all trade participants.

<sup>1</sup> Some trade experts were convinced that the successful completion of the Doha trade could have presented a significant boost for the international economy, recovering from the crisis, and incredibly beneficial to the developing countries dependent on export markets. For this argument, see Bernard Hoekman, *The Doha Round impasse and the trading system*, VOX CEPR POLICY PORTAL (June 19, 2010), <https://voxeu.org/article/doha-round-impasse-and-trading-system>.

Other experts, such as Dani Rodrik, were convinced that the Doha Development Round needed to be more understood from the beginning and could not contribute to the structural improvements of most of the developing countries, even if completed. Dani Rodrik, *Let the Doha Round Fail*, PROJECT SYNDICATE (November 21, 2005), <https://www.project-syndicate.org/commentary/let-the-doha-round-fail?barrier=accesspaylog>; Dani Rodrik, *Don't Cry for Doha*, THE GUARDIAN, August 8, 2008, <https://www.theguardian.com/commentisfree/2008/aug/08/wto.internationalaidanddevelopment>; Tom Palley, *Globalization and the Changing Trade Debate*, THE LEVY ECONOMICS INSTITUTE OF BARD

Recent trade initiatives, such as the Transatlantic Trade and Investment Partnership (TTIP), the Trans-Pacific Partnership (TPP), the Comprehensive Economic and Trade Agreement (CETA), and others, have drawn more vital public interest, the public has expressed more concerns than historically so.<sup>2</sup> Regarding the period that the General Agreement on Tariffs and Trade (GATT) was enacted, the modern international economy was broadly accepted as a guarantor of global economic prosperity, assuring stability for all participants. Such normative and general acceptance led to establishing of the World Trade Organization (WTO) in 1995, providing a more formalized and structured international trade framework. The WTO was designed to build a more neutral institutional framework through which all participants could operate on formally neutral premises, as articulated in its fundamental principles and rules. The formalized framework conceptually assumed that all gains from enhanced trade would be evenly dispersed among all participants.

Since the establishment of the WTO, however, the international legal and economic framework has substantially changed. From a legal perspective, the WTO has produced extensive dispute resolution mechanisms that enjoy extensive jurisprudence. These mechanisms guide us in understanding international trade law's many nuanced principles and rules. WTO jurisprudence has been analyzed in detail by numerous international trade experts. Luca Rubini, for example, has studied the significant inconsistencies in WTO decisions regarding global trade subsidies. Upon developing a standard assessment model, Rubini analyzed 24 WTO decisions and concluded, "Of these 24 decisions, 14 have been assessed as correct, seven are wrong to a varying degree, and three are highly dubious."<sup>3</sup> Per Rubini's conclusions, these inconsistent WTO findings may be attributed to the gradual extension of the WTO's jurisprudence. The inconsistencies may also stem from insufficiently articulated international subsidy rules that harm relations with developing nations. Developing nations often struggle to build internationally competitive sectors, and their industries may - in some cases - harm the equally

COLLEGE, Public Policy Brief no. 91, October 2007, [http://www.levyinstitute.org/pubs/ppb\\_91.pdf](http://www.levyinstitute.org/pubs/ppb_91.pdf).

<sup>2</sup> There is. However, a growing number of trade experts are cautious about the proliferation of free trade agreements. See, for example, Prema-Chandra Athukorala: »The failure to make progress with the process of multilateral liberalization under the WTO does not make a valid case for giving priority to FTAs. Several non-economic factors, including the bandwagon effects, have primarily driven the proliferation of FTAs over the past three decades. If the road to a multilateral approach to trade reforms is closed, the better time-honored alternative is unilateral liberalization combined with appropriate supply-side-reforms. FOREIGN TRADE REVIEW, December 30, 2019, <https://journals.sagepub.com/doi/abs/10.1177/0015732519886771>, p. 7.

<sup>3</sup> Luca Rubini, *The Age of Innocence - The Evolution of the Case-Law of the WTO Dispute Settlement: Subsidies as a Case-Study*. ROBERT SCHUMAN CENTRE FOR ADVANCED STUDIES RESEARCH PAPER No. 2016/33. Available at SSRN: <https://ssrn.com/abstract=2870526> (July 1, 2016).

legitimate efforts of some developed countries to restructure specific segments of their industries.<sup>4</sup>

From an international economic perspective, understanding the two to three decades' worth of development is even more complex. On the one hand, trade liberalization has helped developing nations achieve higher growth and overall development. The most notable example is China, which started to pursue comprehensive reforms following its opening to the world economy in 1979 and concluded with its successful accession to the WTO in 2001. China's rise and integration into the world economy has been so rapid and consistent that the scope of this article cannot even begin to touch on China's advancements. Per the simple examinations that can be made about trade conflicts and major trade blocs, China exerts significant influence over central international economic relations. On the other hand, not all developing nations have been as fortunate as China; many are still as poor as before 1995.<sup>5</sup> More recently, even China's Belt and Road Initiative (BRI) has struggled to gain credible traction.

Some of the world's largest economies generate persistent trade surpluses, most notably the E.U. trading bloc between Germany, China, and Japan. However, some of the world's largest economies, notably the United States, also cause the most persistent trade deficits. While this study avoids the sophisticated debate addressing why trade surpluses and deficits do not necessarily reveal all the facts<sup>6</sup> This study's scope is to analyze the numerous imbalances that cause nations to independently resort to their mechanisms, which only sometimes comply with WTO rules (and other international commitments). "Said outdated unilateral measures, such as the imposition of tariffs based on "national security and defense," often trade barbs with the modern complexities of the WTO."<sup>7</sup> These issues are exemplified by applying nineteenth and early twentieth-century trade instruments to the trade complexities within the modern WTO regime. Inevitably, trade tensions are often exacerbated without finding common ground for tangible improvement, including improvements to international law and inclusive, sustainable development for all participants.

Modern international trade is much more than just bi- or multilateral trade agreements that enhance trade between participants. Modern-day trade agreements often produce benefits and inequalities that harm more participants than non-members. Thus, trade agreements must be carefully drafted and finalized to achieve commonly desired outcomes. Such careful, comprehensive approaches are

necessary for anticipated benefits from trade agreements to satisfy many participants, and costs may increase due to such faulty considerations. Whether it is the North American Free Trade Agreement (NAFTA) or the CETA being discussed, free trade agreements often promise more benefits than they can produce. Consequently, in most developed countries, the backlash against such trade agreements becomes inevitable.

The following sections explore the extent to which the recently finalized trade agreement between the E.U. and Mercosur follows the path of previous trade agreements and to what extent this new agreement will establish a more balanced, inclusive, and sustainable agreement between some of the world's foremost trading blocs. The theoretical goal of this normative analysis is to explore the possibilities for realistic improvements – both procedural and substantive – to craft more balanced, inclusive, and sustainable trade agreements in the future.

## UNDERLYING CONCEPTUAL ASSUMPTIONS

More than removing any remaining tariff and non-tariff barriers to trade to promote safe exchange between trading partners is required for fully implementing modern-day trade agreements. The *fundamental* goal of modern-day trade agreements is to support inclusive, sustainable, and diverse development for all trade partners without excessive interference in domestic frameworks. However, balanced playing fields should prevent labor, social, tax, and environmental manipulation by all involved participants. Non-trade concerns, including participatory democracy, human rights, pluralism, and institutional diversity, should also be enshrined. If all these trade and non-trade concerns were to be consecrated, our observations would significantly differ from what we currently witness and have previously discussed in the introductory section. As later discussed in this article's conclusion, said initiatives yield the answers for the perfect trade agreement.

Trade experts increasingly call for the comprehensive restructuring of modern trade agreements for several reasons. In naming only a few of them, there are numerous benefits that trade parties may enjoy. As clarified by John Van Reenen, there are four significant benefits to trade: the opportunity to specialize, to capture the benefits from the larger market, to innovate under competitive pressure, and

<sup>4</sup> *India Wins U.S. Solar Case at WTO but Impact Disputed*: »The WTO panel upheld India's claim that California, Connecticut, Delaware, Massachusetts, Michigan, Minnesota, and Washington broken the rules by incentivizing the use of local contents, thereby discriminating against Indian and other imported solar suppliers.« REUTERS, June 27, 2019, <https://www.reuters.com/article/us-usa-trade-india-wto/india-wins-us-solar-case-at-wto-but-impact-disputed-idUSKCN1TS2B0. WTO DS 456>.

<sup>5</sup> Paolo Davide Farah, *Trade and Progress: The Case of China*, COLUMBIA JOURNAL OF ASIAN LAW, Vol. 30, No. 1, 2016, pp. 51 - 112.

<sup>6</sup> Maurice Obstfeld, *Targeting specific trade deficits is a game of whack-a-mole*, FINANCIAL TIMES, April 22, 2018: »It is a fallacy that countries lose out unless their exports exceed their imports

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<sup>7</sup> Mona Pinchis-Paulsen, *Trade Multilateralism, and U.S. National Security: The Making of the GATT Security Exception*, MICHIGAN JOURNAL OF INTERNATIONAL LAW, Forthcoming. Available at SSRN: <https://ssrn.com/abstract=3353426> (August 9, 2019).

to enjoy the benefits from an international flow of ideas.<sup>8</sup> However, this is not to say that every nation should engage in extensive trade; indeed, the pie becomes more prominent, and the pieces are equally distributed. Western governments – especially the United States government – underestimated the rise of China and its resulting impact on the world economy. They have not developed the policies to address the “losers” of increased trade, and Reenen is convinced that: “[i]f there had been better policies, there would be much less of a political backlash against trade than we are seeing right now.” In essence, it may be time to re-examine the benefits and shocks of free trade.<sup>9</sup>

Dani Rodrik took this concept one step further through his distinction between free trade as a concept and the actual nature of modern-day free trade agreements. Depending upon how carefully a free trade agreement is crafted, agreements may produce either freer and more mutually beneficial trade or purely lopsided and redistributable outcomes.<sup>10</sup> Modern free trade agreements require careful cost and benefit analysis to avoid the latter, which is a more miserable outcome.

Not all trade agreements automatically bring positive outcomes. William Baumol and Ralph Gomory concluded that free-trade agreements may foster mixed results, ranging from good to mediocre and to dire consequences. They emphasized that “[free] trade is not always and automatically benign.”<sup>11</sup> Many elements must be carefully aligned to establish an appropriate equilibrium (a situation of mutual gains for the trading partners). Among them is the need for governments to rhetorically and intellectually support advancements toward more sustainable equilibriums. Trade gains are not only felt by individual firms and industries; the entire nation feels such impacts.<sup>12</sup> Moreover, trade partners need to become more considerate of other parties and not merely focus on gains for themselves.

Such a statement foreshadows the opposite end of the equilibrium – the wrong side of things. Often, one trading partner may improve their trade position at the expense of another. “Bad equilibrium” often leads to conflict between trading partners. In this sense, challenges seem insurmountable as some of the most significant difficulties lie

between bad and mediocre equilibriums resulting from conflict zones. Such a move from deviant to good equilibriums would require at least three elements: (1) sufficient dialogue in which partners may pursue domestic policies consistent with productive potential *without* harming the other; (2) the ability to trade partners to recognize that successful socioeconomic development is in the best interest of other trading partners and vice versa (‘enlightened self-interest’ in place of competitive rivalries); and (3) the ability for both partners to enact policies that are inclusive to the economic, financial, and social sectors that include the entire economy and society. Nevertheless, each country retains the right to pursue its socioeconomic model *without* imposing its preferences and policy choices on other trading partners.<sup>13</sup> To achieve the “possibility of coexistence among different development strategies, institutional systems, and forms of social life... room for national and regional diversity, deviation, [and] heresy” must be created.<sup>14</sup> For Roberto Unger, “merely maximizing and perfecting free trade isn't nearly as important as is reconciling the global openness for the coexistence of various institutional regimes.”<sup>15</sup> The concept of ‘one institutional size fits all’ undermines international trade, economic, and financial frameworks. That said, alternative solutions are conventional and decentralized, and many centers around public-private partnerships. Yet, such solutions may constitute the prescriptions many developing nations aspire to.

Various institutional models that suit the potential of developing regions worldwide are available. Indeed, some offer more balanced, inclusive, and sustainable developmental outcomes for the future, and others may address the issue of the persistent structural imbalances of the world economy.<sup>16</sup> Indeed, global markets do not assume identical institutional policy arrangements among the diverse member states. Different institutional arrangements stem from varying traditions and decision-making processes; thus, the international regulatory framework is not necessarily incompatible with the various institutional structures of the many member states. All in all, developing countries around the world should not be subjected to the further oppression of world trading regimes.

<sup>8</sup> John van Reenen, *A Healthy Re-examination of Free Trade's Benefits and Shocks*, THE ECONOMIST, May 5, 2018, <https://www.economist.com/blogs/openfuture/2018/05/open-markets-0> (interview).

<sup>9</sup> John van Reenen, id.

From the perspective of international trade law on the meaning, importance, and complexities of modern free trade agreements, Harlan Grant Cohen, *What Is International Law For?*, AMERICAN JOURNAL OF INTERNATIONAL LAW, vol. 113, issue 2, April 2019, <https://doi.org/10.1017/ajil.2019.4>. See Gregory C. Shaffer, *Retooling Trade Agreements for Social Inclusion* (July 20, 2018), UNIVERSITY OF ILLINOIS LAW REVIEW, 2019, no. 1, pp. 1-44, <https://illinoislawreview.org/wp-content/uploads/2019/03/Shaffer.pdf> and Nicholas Lamp, *The 'Development' Discourse in International Trade Lawmaking* (May 19, 2015), WORLD TRADE REVIEW, 16(3), 2017, 475-500.

<sup>10</sup> Dani Rodrik, *What Do Trade Agreements Do?*, JOURNAL OF ECONOMIC PERSPECTIVES 32 (2), 2018, pp. 73-90, DOI: 10.1257/jep.32.2.73, p. 73.

<sup>11</sup> Ralph E. Gomory and William J. Baumol, *GLOBAL TRADE AND CONFLICTING NATIONAL INTERESTS*, MIT 2000, p. 72.

<sup>12</sup> *Ibidem*, pp. 20-22.

<sup>13</sup> *Ibidem*, pp. ...

<sup>14</sup> Roberto M. Unger, *FREE TRADE REIMAGINED: THE WORLD DIVISION OF LABOR AND THE METHOD OF ECONOMICS*, Princeton University Press, 2007, p. 180.

<sup>15</sup> *Ibidem*.

<sup>16</sup> United Nations, *TRADE AND DEVELOPMENT REPORT 2019: FINANCING A GLOBAL NEW GREEN DEAL*, report by the UNCTAD secretariat, Geneva, September 25, 2019, [https://unctad.org/en/PublicationsLibrary/tdr2019\\_en.pdf](https://unctad.org/en/PublicationsLibrary/tdr2019_en.pdf).

The conceptual background of our discussions has attempted to show that the benefits of free trade are far from automatically guaranteed. Additionally, the costs of modern free trade often need to be more recognized. The distributional effects of current free trade agreements are vital but often require more appreciation or attention by individual governments. One of the many reasons for such ignorance is the positive and negative effects that free trade may have on incomes, prices, jobs, and firms within the various sectors of the economy. Less competitive firms and regions are generally prone to further losses because of trade liberalization and the more competitive firms and regions that dominate such liberalization. Consequently, public backlash – whether justified or unjustified – often relates to the complexities of free trade relations and the overall socioeconomic development, even in most developed countries. These relations are often context-specific and typically depend on the quality of domestic institutions and their policies – not to mention the careful calibration of free trade agreements.

### FREE TRADE AGREEMENTS BETWEEN DEVELOPED AND MIDDLE-INCOME COUNTRIES – EXAMPLE OF NAFTA

After providing a more complex, conceptual, and normative background for understanding and assessing modern free trade agreements, a short analysis of the NAFTA free trade agreement may help to establish the framework for evaluating the EU-Mercosur free trade agreement.

In establishing bilateral free trade agreements, several possible types of trading partners and outcomes exist. Bilateral free trade agreements may be reached between two developed nations, developed and developing nations, or developed and “middle-income” nations. That said, more positive outcomes are likely to be achieved when a developed nation is involved in a trade agreement, generally between two developed nations or between a developed and developing nation. In instances where one partner is growing, and the other is middle-income, outcomes are generally less beneficial – if beneficial at all – mainly for the middle-income country. Most benefits stem from free trade agreements tend to favor the developed

nations involved. Meanwhile, most middle-income nations cannot climb the “value-added products” ladder yet must compete with developing nations specializing in low-skill and low-wage production. Of course, these possibilities above must be more concise regarding economic and social development. These examples are for reference when assessing and analyzing free trade agreements.

The NAFTA agreement, recently renamed the United States-Mexico-Canada Agreement (USMCA), is an excellent example of high initial expectations with uneven economic outcomes between Canada, Mexico, and the United States of America.<sup>17</sup> As a result of its poorly implemented labor standards, thousands of American and Canadian plants have closed, costing thousands of people their jobs and financial security.<sup>18</sup> Despite Mexico receiving hundreds of relocated plants and jobs (that relocated from Canada and the U.S.), Mexico's lack of labor laws and low levels of unionization have only worsened conditions for Mexican laborers. The wages of Mexican workers have stagnated since the introduction of NAFTA, and according to the UAW (United Automobile Workers) reports, the average autoworker in Mexico makes 3 USD an hour or less.<sup>19</sup>

In the agriculture sector, America benefited, and Mexico did not.<sup>20</sup> Mexico's small corn producers were decimated, whereas the United States subsidized its agriculture, including corn production, causing U.S. corn imports to double. Consequentially, 1.3 million small farm producers were driven from their land in Mexico, and American Agribusiness (and large Mexican farms) benefitted from NAFTA's enactment. All in all, however, NAFTA has qualitatively and quantitatively failed all these nations. NAFTA's rather complex economic and social implications do not offer the space this article would need for analysis.<sup>21</sup> That said, it only takes a little space to understand that NAFTA's initial expectations were not fulfilled, and economic and social imbalance has only accrued. But with that said, it would be lengthy and almost impossible to calculate NAFTA's impact on other issues the three nations now face. Problems include Mexico's debt and currency crisis, Mexico's low levels of investment and large segments of informal employment, and the United States shareholder value principle and low levels of social investment.<sup>22</sup>

<sup>17</sup> Eduardo Zepeda, Timothy A. Wise, Kevin P. Gallagher, Rethinking Trade Policy Development: Lessons from Mexico under NAFTA, CARNEGIE ENDOWMENT FOR INTERNATIONAL PEACE, Policy Outlook, December 2009, [https://carnegieendowment.org/files/nafta\\_trade\\_development.pdf](https://carnegieendowment.org/files/nafta_trade_development.pdf)

<sup>18</sup> Jerry Dias and Dennis Williams, *Don't Tinker with NAFTA*. Could you fix it? NEW YORK TIMES, New York Times, July 21, 2017, <https://www.nytimes.com/2017/07/21/opinion/dont-tinker-with-nafta-fix-it.html>. See also Sander M. Levin and Harley Shaiken, How Can Americans Compete With Mexicans Making a Tenth of What They Do, New York Times, November 19, 2019, <https://www.nytimes.com/2019/11/19/opinion/UAW-GM-Mexico-Nafta.html> The authors argue that Mexico should improve employees' rights before signing off a new trade pact.

<sup>19</sup> Jerry Dias and Dennis Williams, *Don't Tinker with NAFTA*. Fix it. NEW YORK TIMES, New York Times, July 21, 2017, <https://www.nytimes.com/2017/07/21/opinion/dont-tinker-with-nafta-fix-it.html>.

<sup>20</sup> Felicity Lawrence, *Trump is Right: NAFTA is a Disaster. But U.S. Workers aren't the Big Losers*, THE GUARDIAN, November 18, 2016, <https://www.theguardian.com/commentisfree/2016/nov/18/trump-p-nafta-us-workers-not-big-losers-mexican-workers-suffer-most>.

<sup>21</sup> For a comprehensive analysis of the impact of NAFTA on the trading partners, see Ranko Shiraki Oliver, *In the Twelve Years of NAFTA, the Treaty Gave to Me... What, Exactly?: An Assessment of Economic, Social, and Political Developments in Mexico Since 1994 and Their Impact on Mexican Immigration into the United States*, 10 HARV. LATINO L. REV. 53 (2007)

<sup>22</sup> Comprehensive overview of the impact of NAFTA on the trading partners by Ranko Shiraki Oliver, *In the Twelve Years of NAFTA, the*

Nevertheless, it is realistic to state that NAFTA did *not* increase the productivity of Mexican workers.<sup>23</sup> (despite massive inflows of investments), and it did not reduce the U.S. trade deficit with Mexico, not to mention that stagnated wages did not increase for U.S. workers.<sup>24</sup> Conversely, corporations and shareholders benefitted greatly from the deal, and, for consumers, large farms have helped to create a "new middle class" in some Mexican cities.

The NAFTA agreement is the first in that it stretches far beyond conventional free trade with its expansion to investment, regulation, the environment, labor, and dispute resolution mechanisms regarding investment and other vital areas. To some experts, it has been a biblical reference for future U.S. free trade agreements with many partners worldwide. Twenty-five years later, however, NAFTA has yet to meet many initial promises and expectations. The NAFTA agreement's preamble has itself, proven a failure - its text promises that the governments of the United States, Canada, and Mexico are resolved that (among other things) the agreement will enhance the competitiveness of their firms in the global market, foster creativity and innovation, create employment opportunities and improve the working conditions of the already-employed, shed light on environmental protection, and preserve their flexibility to safeguard the public welfare and sustainable development.<sup>25</sup> Such promises are not the realities of today.

The preamble is almost laughable because the outcomes could not have been more opposite. Socioeconomic impacts were stark and highly uneven, and the many industries that relocated to Mexico certainly did not help migratory and environmental matters (Mexico now has the most enormous pile-up of hazardous waste the nation has ever seen; their water is now contaminated with nitrogen and other chemicals). NAFTA has only worsened the economic and regulatory asymmetries among the three countries.<sup>26</sup> However, not all socioeconomic difficulties can be attributed to the NAFTA agreement *per se*, considering the rise of BRICS (Brazil, Russia, India, China, and South Africa) - most notably China. As the authors of NAFTA's evaluative task force recognized, the original NAFTA

template did not develop a "new regional strategy to compete effectively with other manufacturing exporters."<sup>27</sup> The abovementioned impacts are only a few reasons why evaluative authors have called for a profound reform of NAFTA rather than treating the template, as it currently stands, as the be-all and end-all of free trade agreements.<sup>28</sup> Perhaps the most important lesson to be gained from NAFTA's failures is that "a trade agreement is no substitute for coherent national development."<sup>29</sup> Although the need for a coherent national plan was mainly a reference to Mexico, all three nations could and should develop coherent national strategies for their rights. Only the nations, even developed ones, who actively shape the institutions of the market economy and support inclusive socioeconomic development can effectively cope with the opportunities, challenges, and adverse effects of comprehensive free trade agreements.

The recent attempts to renegotiate NAFTA did not carefully consider the existing imbalances of both internal and external origin; therefore, it is unrealistic to expect that a "new NAFTA" will substantially improve the mediocre trade equilibrium between the three nations. The minor changes made to NAFTA, besides the acronym itself, include the following: labor-related measures that have a minimum wage for the automotive industry, the strengthening of environmental standards and digital trade, rules of origin that state that an automobile's value must come from within the governed region, and trivially-increased shipment values between Canada and Mexico.<sup>30</sup> Analysts of the changed agreement anticipate that benefits will be minimal, probably very skewed, and likely be made through "one-time" increases for both employment and wages. Contrarily, however, the renegotiated agreement may now seriously focus on social, health, labor, and environmental risks after years of weak enforcement. U.S. oil and gas companies can sue the Mexican government if Mexico adopts higher ecological and public health standards.<sup>31</sup>

The general lack of political and institutional improvement between the bloc's trading partners will ultimately not allow for the appropriate change needed to balance the scales between the three nations, not to mention policymakers'

*Treaty Gave to Me... What, Exactly?: An Assessment of Economic, Social, and Political Developments in Mexico Since 1994 and Their Impact on Mexican Immigration into the United States*, 10 HARV. LATINO L. REV. 53 (2007)

<sup>23</sup> João Paulo A. de Souza, Leopoldo Gómez-Ramírez, *The Paradox of Mexico's Export Boom Without Growth: A demand-side explanation*, STRUCTURAL CHANGE AND ECONOMIC DYNAMICS, vol. 47, 2018, pp. 96-113, <https://doi.org/10.1016/j.strueco.2018.08.001>

<sup>24</sup> Kevin Gallagher, *What Will Trump Deliver on Trade?* THE AMERICAN PROSPECT, May 10, 2017, [www.prospect.org/power/will-trump-deliver-trade/](http://www.prospect.org/power/will-trump-deliver-trade/)

<sup>25</sup> From Preamble of NAFTA agreement. Can.-Mex.-U.S., December 8, 1993, 32 INTERNATIONAL LEGAL MATERIALS, 289 (1993).

<sup>26</sup> Kevin P. Gallagher, Timothy A. Wise, Enrique Dussel Peters, *Executive Summary in The Future of North American Trade Policy: Lessons from NAFTA*, PARDEE CENTER TASK FORCE REPORT, Boston University, November 2009,

<http://www.bu.edu/pardee/files/2009/11/Pardee-Report-NAFTA.pdf?PDF=task-force-report-nafta>, pp. 3-9.

<sup>27</sup> *Ibidem*, p. 6.

<sup>28</sup> *Ibidem*, p. 5.

<sup>29</sup> *Ibidem*.

<sup>30</sup> See more at the official website of the Office of the United States Trade Representative, <https://ustr.gov/trade-agreements/free-trade-agreements/united-states-mexico-canada-agreement/factsheets/strengthening>

<sup>31</sup> Analysis of small gains and heightened social, health, and environmental standards in Sandra Polaski, Jeronim Capaldo, Kevin P. Gallagher, *Small Gains & Big Risks: Evaluating the Proposed United States-Mexico-Canada Agreement*, Global Development Policy Center, Boston University, GEG POLICY BRIEF 007, June 2019, <http://www.bu.edu/gdp/2019/06/07/small-gains-big-risks-evaluating-the-proposed-united-states-mexico-canada-agreement/>.

general lack of understanding about the true issues underlying NAFTA. Per expert analyses, labor safeguards will realistically have little impact in practice, mainly because of the remaining loopholes.<sup>32</sup> Per these same analyses, from an environmental perspective, the renegotiated agreement fails even to mention climate change.<sup>33</sup>

So long as private corporate interests continue to have the ultimate say, much as they have with the USMCA, personal interests will almost always surpass the public good and remain inconsistent with the hope for a solid and sustainable framework for future free trade agreements. A more reliable and sustainable template for development would require the reimagining of institutional trade to become more inclusive and sustainable at almost every fundamental level. Especially sensitive are the free trade agreements between leading industrial countries and large middle-income countries, like Mexico or Brazil, especially if the goal is to avoid the middle-income trap (productivity and wage stagnation, as well as other imbalances in areas such as environmental protection) within those countries.

## E.U. – MERCOSUR TRADE AGREEMENT IN PRINCIPLE: UNRESOLVED DEVELOPMENTAL AND ENVIRONMENTAL ISSUES – NON-TRADE CONCERNS

The previous section's analysis of the NAFTA (USMCA) agreement reveals how difficult it is to create a productive, mutually beneficial trade framework between a large advanced economy and a sizeable middle-class economy. Twenty-five years later, Mexico remains barraged by wicked problems, struggling to change their low-income and low-skilled economy and access many of the necessary resources (and previously promised) for the overall betterment of their nation. Indeed, increased social, financial, and environmental unrest calls for the comprehensive rethinking of such trade agreements in the interest of developed and developing countries. Even in the U.S., societal unrest indicates that the NAFTA agreement is far from perfect for n the most prosperous nation, as many domestic regions bear more costs and receive fewer benefits. Unfortunately, a lack of administrative expertise and institutional focus only exacerbates the suffering caused by many of the nation's free trade agreements – NAFTA being perhaps the most notable.

Keeping NAFTA theoretically and applicably in mind, this research question now becomes: to what extent does the EU-Mercosur trade agreement present qualitative improvements compared to NAFTA's failures? Suppose this research concludes that the EU-Mercosur trade agreement presents little substantial improvements compared to NAFTA. In that case, Brazil stands a chance of being entangled in the same web that Mexico is – a web of prolonged stagnation, where the benefits are unevenly distributed along sectoral, regional, and international boundaries. One of the characteristics that makes the EU-Mercosur agreement so different from other free-trade agreements is the time spent on the negotiating process.<sup>34</sup> Politicians spent two decades negotiating the agreement – so long that even the media championed its finalization as beneficial for both sides by claiming: "a victory for E.U. leaders who have been defending free trade against the tide of anti-globalization, and a win for the conservative presidents of Brazil and Argentina."<sup>35</sup> If unanimously ratified, the E.U. will be the first significant trading bloc to conclude a trade agreement with the Mercosur bloc with conservatively high tariffs. Indeed, the deal is not all about the tariffs; it encompasses a range of issues, including access to public procurement and the greater freedom to provide services.<sup>36</sup>

The E.U.'s global dominance and Brazil's prominence in the Mercosur trading regime make *trade liberalization* significant for both sides. Internationally, Brazil is already the largest exporter of agricultural products to the E.U. According to E.U. trade statistics, Brazil's primary exports are nothing to scoff at – they trade foodstuffs, beverages, and tobacco products to the E.U., followed by vegetable and mineral products. Perhaps complimentary, E.U. exports mainly consist of machinery, appliances, and chemical and mineral products to Brazil. The E.U. has established a positive relationship with Brazil, as they've become the largest investor in the Brazilian economy.<sup>37</sup>

The EU-Mercosur trade agreement utilized the momentum gained from such a relationship – both sides' goals were straightforward and articulated. The E.U.'s interests lie in liberalizing the exports of cars and car components, chemicals and pharmaceuticals, and the overall liberalization of and access to numerous public services. Comparatively, Brazil's interests lie in exporting foodstuffs

<sup>32</sup> Ibidem, p. 6.

<sup>33</sup> Ibidem, p. 9.

<sup>34</sup> For the documents and other relevant materials regarding the E.U. – Mercosur trade relations, see <https://ec.europa.eu/trade/policy/in-focus/eu-mercrosur-association-agreement/>

See also European Parliament, The Trade Pillar of the EU-Mercosur Association Agreement, [https://www.europarl.europa.eu/RegData/etudes/BRIE/2019/640138/EPRS\\_BRI\(2019\)640138\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2019/640138/EPRS_BRI(2019)640138_EN.pdf)

Karina L. Paquariello Mariano, Bruno Theodoro Luciano, *The Parliamentarization of E.U. Trade Policy: Unveiling the European*

*Parliament's Involvement in EU-Mercosur Trade Negotiations*, EUROPEAN POLITICS AND SOCIETY 20 (5), December 18, 2018, pp. 591-608.

<sup>35</sup> E.U., *Mercosur Reach Agreement on Trade*, WALL STREET JOURNAL, June 28, 2019, <https://www.wsj.com/articles/eu-mercrosur-reach-agreement-on-trade-11561745957>

<sup>36</sup> E.U. – *Mercosur Trade Deal: What it all Means*, FINANCIAL TIMES, June 30, 2019, <https://www.ft.com/content/a564ca96-99e7-11e9-8cfb-30c211dcd229>

<sup>37</sup> European Commission, *EU-Mercosur trade agreement: key facts*, [https://trade.ec.europa.eu/doclib/docs/2019/june/tradoc\\_157954.pdf](https://trade.ec.europa.eu/doclib/docs/2019/june/tradoc_157954.pdf)

because of its vast agricultural sector, organized primarily in large (industrial) farms.<sup>38</sup>

However, *contention* between the two parties is the real reason trade negotiations took so long. In addition to trade liberalization, the most contentious points negotiated revolved around sustainable development, labor standards, and the regulation of state-owned enterprises. Trade talks were supposed to be complete by 2004, pending the anticipated agreement on world agricultural liberalization. Sixteen years later, such a goal still has not come to fruition. Subsequently, both sides introduced concerns that, at one time, were dependent on global agricultural liberalization, including environmental concerns, health concerns, and the responsibilities of state-owned enterprises. Other priorities that included potential financial and economic crises were placed on the back burner for both parties, only prolonging the time necessary for meaningful negotiation. Nevertheless, the previous fifteen months have seen accelerated negotiations, primarily due to changed circumstances. The E.U.'s acceleration resulted from the need to reach bilateral agreements worldwide (CETA, JEFTA) to declare their commitments to multilateralism during vicious trade wars. The two Mercosur countries - Brazil and Argentina - wanted to show their commitments to trade liberalization and gain access to the European market in light of the two countries' conservative governments.

The abovementioned aspects are the valid reasons why the EU-Mercosur trade agreement finally came closer to completion after two decades' worth of negotiations. Both parties have hailed the agreement as a significant success. The E.U. has emphasized its commitment to expanding open international trade. At the same time, the Mercosur parties have committed to new opportunities for export to the E.U. market, primarily the export of agricultural products. Although the trade agreement covers extensive trade aspects, including government procurement, small and medium-sized enterprises, and sustainable development, the agreement's underlying theme could not be more apparent: bit's *beef-for-cars* trade. Such a label may be an

oversimplification and is somewhat misleading regarding the extent and scope of the agreement. However, observing the current trade patterns between the two trading blocs, such an oversimplification is partially unjustified.

Based on reactions from highly involved stakeholders, certain preliminary conclusions may be drawn regarding who the potential beneficiaries are and who stands a chance of losing the most if the agreement is ratified. The Paris Agreement even stands a possibility of losing ground if the deal goes through. As summarized by the international media, the Mercosur bloc's most significant success rests in "increased access to the European market for agricultural goods – notably beef, poultry, sugar, and ethanol. Brazilians expect tariffs to be eliminated on orange juice, instant coffee, and fruits, which would signal a huge victory for the agribusiness sector," said economist André Perfeito of Spinelli in São Paulo.<sup>39</sup> For the E.U.,

*"the biggest gain is a vastly improved export environment for its companies, which will now have an advantage over other parts of the world that still face Mercosur's traditionally high tariffs and other trade barriers. The agreement will ultimately remove duties on 91% of goods that E.U. companies export to Mercosur. Some of the most important wins for Europe include the slashing of duties on cars and car parts, chemicals, machinery and textiles, and improved market access for E.U. wine and cheese."*<sup>40</sup>

Many stakeholders, however, have expressed real concerns about the trade agreement in its current form. Among them, on the European side, are farmers who fear that "the impact of the Mercosur agreement would be devastating on the European farming model," as expressed by Pekka Pesonen, Secretary-General of the E.U. Farmers' in Cooperatives Association (Copa-Cogeca).<sup>41</sup> E.U. farmers and their associations argue that Brazil's farming model relies on sizeable industrial agriculture, with Brazil's farmers enjoying a much larger "toolbox" than E.U. farmers. Despite the most elaborate and extensive agricultural support in the world, European farmers claim that they are required to pursue more sustainable farming

<sup>38</sup> Despite the main focus on Brazil, other Mercosur countries have different socioeconomic positions. Paraguay, for example, stands to benefit substantially from the trade agreement (according to specific estimates by 42 percent, since currently 92 percent of its exports to the E.U. face high tariffs). Therefore, the overall assessment of the trade agreement requires a broad, comprehensive overall evaluation in the ratification process. See Victor Enciso Cano, Manuel Castillo Quero, Tomás De Haro Giménez, EU-Mercosur Trade Agreement: Finding Winner Products for Paraguay, EU-MERCOSUR trade agreement: Finding winners products for Paraguay Tomo 49 • N° 2 • 2017 Rev. FCA UNCUYO. 2017. 49(2): 289-302, [https://eulacfoundation.org/en/system/files/doc\\_87.pdf](https://eulacfoundation.org/en/system/files/doc_87.pdf)

<sup>39</sup> Supra at 36.

<sup>40</sup> Ibidem. Assessment of quantifiable, albeit relatively modest gains are provided by Baltensperger, Michael, and Dadush, Uri (2019). *The European Union-Mercosur Free Trade Agreement: Prospects and risks. Bruegel Policy Contribution Issue n°11 | September 2019. The authors see the agreement as an opportunity for the E.U. to reform its agriculture and*

*for the Mercosur countries to adopt the outward-oriented export strategy. Moreover, they see the agreement as an insurance policy against further deterioration in the rules-based multilateral trading system.*

See Ricardo Marletti Debatin da Silveira, Rogéiro Gaspari Coelho, Mercosur, and the E.U. Conclude Negotiations on Important Trade Agreement, INTERNATIONAL TAX REVIEW, September 26, 2019.

See also the correlation between the authoritarian leaders and the depth of preferential trade liberalization, Baccini, Leonardo, and Wilfred M. Chow. *The Politics of Preferential Trade Liberalization in Authoritarian Countries*. INTERNATIONAL INTERACTIONS 44, no. 2 (2018): 189–216.

<sup>41</sup> Sarantis Mechalopoulos, EU Farmers Boss: 'Devastating' Mercosur Trade Pact Exposes Europe's Double Standards, EURACTIV, July 2, 2019, <https://www.euractiv.com/section/agriculture-food/news/eu-farmers-boss-devastating-mercocur-trade-pact-exposes-europes-double-standards>.



methods, which necessitates reducing the use of chemicals; therefore, their competition with Brazil's farmers, who enjoy lesser limitations, is restricted.<sup>42</sup> The former has already approved "a huge array of previously banned pesticides with virtually no debate or study."<sup>43</sup> With a newly elected president, European farmers are convinced that they will be the losers of this trade agreement,<sup>44</sup> the most affected sectors are beef, poultry, pig meat, sugar, bioethanol, oranges, and rice.<sup>45</sup>

However, Mercosur stakeholders are equally skeptical about whether the agreement keeps Argentina's best interests in mind, citing the asymmetry between European and Argentinian wine producers (not to mention Latin America's trade unions calling for greater transparency of impact studies and gathered data). Brazil's main trade union, the Unified Workers' Central, also expressed fears that "the agreement was signed at a time when the four Mercosur countries were facing high unemployment rates, leading to deindustrialization, job losses, and job insecurity."<sup>46</sup>

Apart from agricultural sensitivities, two decades' worth of negotiations saw its fair share of concerns regarding environmental issues, health about drug patents, the role of multinational companies (especially about the car industry), climate change, and the greater transparency of environmental impact assessments and document availability, despite some released documents' occasional, fragmented natures, much of the agreement's specifics still needed to be removed or released with severe delay. Excluding the public from trade negotiations eroded constituent trust on both sides. A recent survey by the Bruegel Institute indicated a growing distrust toward *trade openness* in key E.U. member states, especially in France and Germany, where people are becoming more critical of deepening trade openness and more favorable toward more excellent protection from foreign competition.<sup>47</sup>

The E.U.'s international and domestic environment has changed dramatically over the previous decades. Two decades ago, trade talks were primarily focused on multinational market access, access to natural resources, and access to liberalized services. Since then, public concern has changed, dramatically shifting towards environmental awareness, public health, climate change, labor and social standards, and the untrustworthiness of international corporations. These legitimate concerns, for better and worse, have significantly influenced

international trade agreements. These concerns increasingly overshadow and shape domestic and regional dialogue during the E.U.'s ratification processes. Already, the CETA agreement has experienced a wave of critiques and hesitancy so soon after its finalization, and it may be realistic to expect the same reaction in the context of the Mercosur trade deal. Initial reactions from the Austrian and Irish parliaments and other European bodies indicate an overall hesitancy in accepting these agreements.

Global public discontent with such trade deals, especially the Mercosur, has only been fuelled by the recent wildfires that have depleted much of the Amazon Rainforest. Although such an event is not new, Brazil's submission to such events – the federal government claiming that nothing can be done – has only fuelled European opinion that something must be done to eliminate these fires. Perhaps dangerously, European finance ministers (during Finland's presidency) threatened to ban Brazil's beef imports unless the Brazilian government took action to extinguish these forest fires (E.U. Observer).<sup>48</sup> The Finance minister of Finland explained that European finance ministers were (and still are) responsible for several instruments that can mitigate climate change. In close cooperation with the European Commission, such a claim was supported by European foreign ministers and heads of state.

These European threats endangered the likelihood that any proposed trade agreements between the two factions would ever come to fruition. Thus, European reactions to the EU-Mercosur trade agreement – not to mention the future of the E.U. – should be viewed from at least two different perspectives. On the one hand, the deal embodies growing international concerns regarding environmental and climate issues. Despite the comprehensive chapter on trade and sustainable development (TSD)<sup>49</sup> And the commitments made to the Paris Climate Accord, such chapters take time to implement. Moreover, the requirements to comply with the stricter standards of sustainable farming or improved labor standards could only become operational in the free dissemination knowledge, know-how, technologies, and good practices. Therefore, only if the TSD chapter is embedded with the broader context of enhancement of the knowledge economy would such a chapter not amount to another form of hidden and unfair protectionism. If, on the other hand, a chapter on TSD is subservient to other chapters of

<sup>42</sup> Ibidem.

<sup>43</sup> David Miranda, *Fires are Devouring the Amazon and Jair Bolsonaro is to Blame*, THE GUARDIAN, August 26, 2019, <https://www.theguardian.com/commentisfree/2019/aug/26/fires-are-devouring-the-amazon-and-jair-bolsonaro-is-to-blame>

<sup>44</sup> Supra 41.

<sup>45</sup> Ibidem.

<sup>46</sup> Pedro Pablo Cortés, *EU-Mercosur Deal Divides Both Sides of the Atlantic*, EURACTIV, July 10, 2019, <https://www.euractiv.com/section/economy-jobs/news/eu-merc-sur-deal-divides-both-sides-of-the-atlantic/>.

<sup>47</sup> Sébastien Jean, Philippe Martin and André Sapir, *International Trade Under Attack: What Strategy for Europe?*, Policy Contribution, Issue no. 12, August 2018, p. 2, [https://bruegel.org/wp-content/uploads/2018/08/PC-12\\_2018\\_final.pdf](https://bruegel.org/wp-content/uploads/2018/08/PC-12_2018_final.pdf)

<sup>48</sup> Andrew Rettman, *EU to Discuss Brazil Beef Ban Over Amazon Fires*, E.U. OBSERVER, August 23, 2019, <https://euobserver.com/environment/145723>

<sup>49</sup> Overview of the European Commission's approach toward securing labor and environmental standards while promoting trade in different parts of the world available at <http://trade.ec.europa.eu/doclib/press/index.cfm?id=1870>

the agreement and the overarching goal of further trade liberalization, the imbalances in trade, sustainable development, and labor standards could only grow further apart.<sup>50</sup> This angle calls for more conditioning, threats with trade sanctions, and renegotiations, if not outright suspension of the agreement, even before the long and protracting process of ratification has started.

Another angle, however, is far more complex and less visible. It stems from the insight into the long and arduous path of Brazilian Development in the previous few decades. According to insight from Roberto Unger, a former Minister of Strategic Development who is also responsible for Amazonian development,

*The Amazonian debacle is part of a national misdirection. Brazil has underinvested in its people and relied increasingly on producing and exporting commodities. In the Amazon, the 'easy way out' leads to destruction. The only system with a chance of saving the people and the trees is a knowledge economy.*<sup>51</sup>

Brazil's path of development as a middle-income nation, with still-vast internal inequalities, is one of the characteristics of premature deindustrialization. Unable to adopt and expand advanced and innovative modes of production beyond the limited area of Sao Paulo, Brazil has become "one of the most striking examples of premature deindustrialization."<sup>52</sup> Due to the commodity price boom at the beginning of the 21<sup>st</sup> Century and Chinese demand for agricultural, ranching, and mining products, "manufacturing has declined dramatically as a percentage of output and exports. Rather than being replaced or converted, belated Fordism shrank."<sup>53</sup>

Against all odds, Brazil could not become a modern, inclusive, and sustainable knowledge society – despite

significant economic and social achievements, such as lifting 30 million people from poverty into the middle class; thus, entrepreneurship even became a focus. As is frequently seen (Mexico being the prime example), such a pathway may lead to social and economic stagnation, reverting society's development to much more unstable and unsustainable patterns.<sup>54</sup>

A lack of knowledge, the failure to institute the necessary political environment for an inclusive knowledge economy, and the rise of China's international dominance flushed Brazil into a downward economic spiral. Only some areas outside Sao Paulo can boast similar development patterns around this vast, vastly unequal, diverse country.<sup>55</sup> Despite the establishment of internationally recognized institutions (such as one of the most significant development banks in the world – BNDES), despite the rise of prominence of some of the biggest state-owned companies, and despite receiving a high share of international investments from the E.U., U.S. and increasingly from China,<sup>56</sup> Brazil remains trapped in the economic boom and bust cycle. It remains a large developing country, fragile and vulnerable to the pressures of globalization and internal inequalities.

Understanding the patterns of Brazilian development<sup>57</sup> and the opportunities, constraints, and vulnerabilities. The role of Brazil as a significant emerging economy is just as crucial today as it was twenty years ago. The recent damning Amazonian fires of 2019 are just the tip of the iceberg in understanding Brazil's unequal and unbalanced patterns of development. A lack of action on behalf of the Brazilian government forced E.U. politicians to apply pressure largely unutilized in other situations. It ultimately forced the Brazilian government to act more steadfastly.<sup>58</sup> Such threats and pressures were eventually discussed and

<sup>50</sup> This is how the recent call by the French and Dutch governments for stricter enforcement of environmental and labor standards through tariffs could be interpreted. See France and the Netherlands for more arduous E.U. trade conditions, FINANCIAL TIMES, May 4, 2020.

<sup>51</sup> Roberto M. Unger, *How to Save the Amazon Without Condensing to Brazil*, THE NEW YORK TIMES, August 26, 2019, <https://www.nytimes.com/2019/08/26/opinion/amazon-rainforest-fire.html>

<sup>52</sup> Roberto M. Unger, KNOWLEDGE ECONOMY, Verso 2019, p. 166.

<sup>53</sup> Ibidem.

<sup>54</sup> Alvaro Santos is convinced, however, that »despite the international constraints, countries can expand their policy space – if they deem it desirable – and find room for policies they want to advance.« He has provided this conclusion based on an extensive analysis of the divergent approaches of Brazil and Mexico toward their international integration. See *Carving Out Policy Autonomy for Developing Countries in the World Trade Organization: The Experience of Brazil and Mexico*, 52 VA. J. INT'L. L. 551-632 (2012), p. 632.

See also Jara, Alejandro, and Sebastian Herreros. *Trade Policy Maker in Latin America*. In THE ASHGATE RESEARCH COMPANION TO INTERNATIONAL TRADE POLICY, pp. 489–508. Routledge, 2016, and Lin, Jingyuan. LATIN AMERICA VS EAST ASIA: A COMPARATIVE DEVELOPMENT PERSPECTIVE. Routledge, 2019 and Moreira, Mauricio Mesquita, Ernesto H. Stein (eds.), TRADING PROMISES FOR RESULTS:

WHAT GLOBAL INTEGRATION CAN DO FOR LATIN AMERICA AND THE CARIBBEAN. Inter-American Development Bank, 2019.

<sup>55</sup> Supra 50, pp. 166-167.

<sup>56</sup> Overview of the increasingly important role of China in Latin America as partner in trading and finance, see Enrique Dussel Peters (ed.), China's Financing in Latin America and the Caribbean, Universidad Nacional Autónoma de México, 2019 [https://dusselpeters.com/CECHIMEX/20191001\\_CECHIMEX\\_RED\\_ALC\\_Chinas\\_financing\\_in\\_Latin\\_America\\_and\\_the\\_Caribbean\\_Enrique\\_Dussel\\_Peters.pdf](https://dusselpeters.com/CECHIMEX/20191001_CECHIMEX_RED_ALC_Chinas_financing_in_Latin_America_and_the_Caribbean_Enrique_Dussel_Peters.pdf)

See also Heriberto Araújo, *How China Could Stop Brazil's Ecological Tragedy*, THE NEW YORK TIMES, October 18, 2019, <https://www.nytimes.com/2019/10/18/opinion/china-brazil-amazon.html>.

<sup>57</sup> Overview of historical, socioeconomic development of Brazil presented by Tom Hewitt in the chapter *Brazilian Industrialization*, in Tom Hewitt, Hazel Johnson, Dave Wield, INDUSTRIALIZATION AND DEVELOPMENT, OXFORD UNIVERSITY PRESS, 1992, pp. 66 – 96. See also Frieden, Jeffrey A. *Modern POLITICAL ECONOMY AND LATIN AMERICA: THEORY AND POLICY*. Routledge, 2018.

<sup>58</sup> While expressing legitimate concerns, we should not neglect the fact that »Deutsche Bank, BNP Paribas, Blackrock, and Vanguard collectively own more than \$1.1bn in debt in the three most significant soy, and the three largest cattle companies, and own \$6bn worth of shares in these companies.« Sarah Lake, *How E.U. Firms and Banks Help*

articulated during the G7 Summit in Biarritz. The European leaders placed a moratorium on beef import bans and using the Amazon Fund there. In addition, international partners offered Brazil twenty million euros for recovery efforts. The donation was so high that Brazil viewed it as highly insulting rather than generous aid.

After decades of living on the periphery and attempting to integrate into the international economy, the international community has yet to assess Brazil's historical development efforts fairly. The main risk posed by the EU-Mercosur agreement is that the Brazilian economy may be further pushed to specialize in agriculture and natural resources rather than allowing Brazil the opportunity to expand its economy. Realistically, when said specialized economy comes to fruition, the destruction and deforestation of the Amazon Rainforest is all but inevitable. Despite the commitments made by the TSD chapter, destruction and deforestation of the Amazon Rainforest is, as the previous sentence describes, a more probable scenario. The trade agreement is neither healthy nor sustainable for Brazil's citizens, farmers, workers, and indigenous peoples. The deal currently needs more supportive mechanisms for a prosperous and inclusive knowledge economy and more balanced regional development for the geographically vast nation. The absence of a coherent strategy to climb the ladder of industrialization and the lack of a national and international strategy that would accommodate the environment may force Brazil to pursue the most convenient solutions at hand rather than keeping the nation's long-term goals in mind. Ultimately, these short-term solutions rely on natural resources and agriculture and would be inextricably linked with the excessive, unsustainable, chaotic, and environmentally disastrous depletion of the Amazon Rainforest.

Not only is there little interest in understanding Brazil's decades-long attempt at developing itself as an advanced economy, but there is also an equally lethargic effort to understand the national and international importance of the Amazon Rainforest. The Amazon rainforest covers 61% of the Brazilian territory and is home to 30 million people. There is not yet a comprehensive strategy to secure "technological, entrepreneurial, and legal innovation premised on a definitive settlement of land tenure [that] can allow for the sustainable harvesting of heterogeneous tropical rain forests and their use as sources of new drugs and forms of renewable energy."<sup>59</sup> Such a shift towards knowledge-intensive industries would require an area geographically larger than

Western Europe. It would need the support of the EU-Mercosur trade deal, especially within the sustainable development chapter. Only when understanding the severity behind the Amazon's destruction may we know the insufficient nature of the EU-Mercosur trade deal, especially Article 8 on Trade and Sustainable Development. Indeed, unsustainable development will prove costly for Brazil and the entire world.

It is a prime task of Brazil's federal and state governments to articulate and implement a sustainable and inclusive knowledge economy not only in the Amazon rainforest but beyond. Equally important is that the international community, especially the European Union, offers its expertise and support for assisting Brazil in sustainably restructuring its economy, whether it be through complete technology transfers, the development of skillsets, or the provision of finances necessary for bringing Brazil back from the brink of destruction.

Thus, this article's careful analysis has revealed both the positives and the negatives offered by the EU-Mercosur trade deal.<sup>60</sup> By extension, such collaboration between the two parties should extend much further than this trade deal. Sustainably restructuring the Brazilian economy should be a collaborative endeavor. Modern free trade agreements generate comprehensive distributional effects beyond traditional trade liberalization and maximization. Therefore, these agreements require more institutional and developmental creativity to reduce the possibility of negative consequences.

The fact is that free-trade agreements are becoming gravely unpopular around the E.U. Breugel's survey states, "68 percent of the French, and 55 percent of Germans, consider that globalization increases social inequality."<sup>61</sup> However, this article does not intend to discuss to what extent the general public actually distrusts open international trade, even in the most advanced economies around the world, and whether it is justified. The purpose of this article is to establish the steps necessary for *fair* and *sustainable* free trade, ensuring – through two vital elements – that (1) domestic policies secure broad opportunities and inclusive prosperity for all citizens and (2) negotiations are transparent and include extensive goals beyond the traditional scope of trade liberalization. Such expanded goals should include access to the instruments necessary for tackling climate change; clear and compelling rules of adequately taxing multinational companies irrespective of their origin; adequate safeguards to maintain and improve

*Fund Amazon Fires*, E.U. OBSERVER, September 17, 2019, <https://euobserver.com/opinion/145901>.

<sup>59</sup> Roberto M. Unger, *supra* 50.

<sup>60</sup> We should remember that the agreement between the E.U. and Mercosur would also negatively impact African farmers, smallholders, and export crop producers, as Dirk Kohnert shows. Therefore, when analyzing such a comprehensive trade agreement, global trade impact must also be considered. See Kohnert, Dirk, *The Impact of the E.U.-MERCOSUR Deal on Africa in Times of Resurging*

*Protectionism* (September 3, 2019), SSRN: <https://ssrn.com/abstract=3447164> or <https://dx.doi.org/10.2139/ssrn.3447164>.

See also Pedro da Motta Veiga, Sandra Póltonia Rios, *Mercosur Experience in Regional Integration: What Could Africa Learn From It?*, CINDES Policy Paper, June 2019, <https://www.policycenter.ma/sites/default/files/PCNS-PP1907.pdf>.

<sup>61</sup> *Supra* 47.

labor and social standards; and proper protection to protect the public's health, the environment, and other critical public goods.

## CONCLUSION

Modern free-trade agreements are more difficult to negotiate, with no ultimate guarantee that ratification will be any smoother. On the other hand, there is little doubt that trade agreements, be they bi- or multilateral (as well as the entire international trade framework), are at a crossroads. The ratification of the E.U. – Mercosur trade agreement is far from certain. France fears losing a market share as the leading E.U.'s main agricultural power. Austrian lawmakers have already rejected the E.U. – Mercosur trade deal. Similar voices of opposition come from the Irish parliament, as it has called on its government to organize an opposition to the agreement inside the European Union. The main reasons for opposition on the European side are increased imports of farm products and environmental issues despite the comprehensive commitments envisaged by the TSD chapter. However, from the European perspective, the intention to ratify the E.U. – Mercosur agreement, led by Germany, remains strong. The outcome of the ratification process is uncertain. Based on the experience with the CETA agreement, the only sure thing is that it will attract a lot of attention from all the European stakeholders. From the Mercosur group perspective, the final ratification process is also uncertain. The concessions given by the Mercosur countries in public procurement, intellectual property, and investments will more likely benefit the E.U. side. Currently overwhelmed with the latest debt restructuring efforts, Argentina is well-known for advancing responsible farm-level agricultural practices. In 2019, Argentina launched the Argentine Carbon Neutral Program to minimize the climate impacts of soybean value chains and beef production.

There are divergent development pathways between the Mercosur group of countries, which yield further uncertainties as to what extent the TSD chapter may or may not be effectively observed and enforced in practice. This issue impacts the presence or absence of the E.U.'s commitment to providing new technologies, advice on alternative renewable energy sources, energy efficiency,

and other meaningful ways to help strengthen Mercosur countries' competitive levels and inclusive, sustainable development. The TSD chapter can be either a new mechanism for protectionism or a new mechanism for improved and increasingly equitable cooperation. The interpretation of the TSD's potential role may decide the fate of this trade agreement.

After World War II, the negotiation of free trade agreements took tremendous effort, ideas, skills, and creativity to establish the useable Bretton-Woods regime, including the GATT regime. The framework facilitated broad-based social development in most developed and developing countries for over a quarter of the 20<sup>th</sup> Century. It was a period of expanded social and political rights in many parts of the world, during which governments maintained power over international financial flows and the development of the public sector, including comprehensive development and industrial policy.<sup>62</sup>

Today, replicating the international trade and financial regime developed in the context of the twentieth-century Bretton-Woods compromise is neither plausible nor desirable. In the context of a modern, knowledge-based economy and society, we need new national and international approaches to facilitate more inclusive and sustainable development. The broad involvement of independent civil society is necessary to preserve global public goods and enhance inclusive, sustainable growth.<sup>63</sup> The EU-Mercosur trade agreement offers the opportunity to finally provide meaningful content to the principles of sustainability and development.<sup>64</sup> In doing so, Brazilian development would significantly improve, as would the European social-market economy. Simultaneously, the renegotiated and improved trade agreement would confirm that it *is* possible to maintain international trade openness *without* it being at the expense of the environment, labor, and social standards but in close coordination with said standards. As such, the EU-Mercosur trade agreement could become the ultimate source of inspiration and encouragement to other bilateral and multilateral treaties seeking to pursue the shared good and shared prosperity, goals that have yet to be fulfilled in recent decades that are now attainable in the 21<sup>st</sup> Century.

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<sup>62</sup> An argument for the need to incorporate industrial policy space for developing countries articulated by Gregory Shaffer, *Bargaining Over the Policy Space in Trade Negotiations*, chapter XVII in Alvaro Santos, Chantal Thomas and David Trubek (eds.), *WORLD TRADE AND INVESTMENT LAW REIMAGINED: A PROGRESSIVE AGENDA FOR AN INCLUSIVE GLOBALIZATION*, Anthem Press 2019 (Kindle edition).

See Eslava, Luis and Sandhya Pahuja, *The State and International Law: A Reading from the Global South*, *HUMANITY: AN INTERNATIONAL JOURNAL OF HUMAN RIGHTS, HUMANITARIANISM, AND DEVELOPMENT*, vol. 11 no. 1, 2020, p. 118-138. *Project MUSE*

<sup>63</sup> Capling, Ann, and Patrick Low (eds.), *The Domestic Politics of Trade Policy Maker: State and Non-State Actor Interactions and Forum Choice in GOVERNMENTS, NON-STATE ACTORS AND TRADE POLICYMAKER: NEGOTIATING PREFERENTIALLY OR MULTILATERALLY*, 2010, 4-28.

<sup>64</sup> Analysis of the E.U. trade policy shifting between trade idealism and trade realism provided by Katharina L. Meissner, *COMMERCIAL TRADE REALISM AND E.U. TRADE POLICY: COMPETING FOR ECONOMIC POWER IN ASIA AND THE AMERICAS*, Routledge 2018.