



**THE GROWING IMPORTANCE OF SUSTAINABLE DEVELOPMENT IN FREE TRADE
AGREEMENTS: ANALYSIS OF THE EU- MERCOSUR NEGOTIATIONS**

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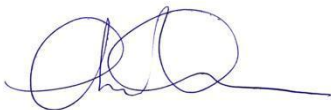
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*“We have entered a new era.
Global society is interconnected as never before. [...] I suggest that we have arrived in the Age of Sustainable Development.”*

Jeffrey D. Sachs, *The Age of Sustainable Development*

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List of abbreviations

AA: Association Agreement

ALC: Latin American and Caribbean countries

ALADI: *Asociación Latino-americana de Integración*

ALALC: *Asociación Latino-Americana de Libre Comercio*

BNC: Bi-regional Negotiations Committee

CCoE: Council of Europe

CLATE: *Confederación Latinoamericana y del Caribe de Trabajadores Estatales*

EAEC: European Atomic Energy Community

EC: European Community

ECFC: European Coal and Steel Community

EEC: European Economic Community

EU: European Union

EFTA: European Free Trade Association

FTA: Free Trade Agreement

GATS: General Agreement on Trade in Services

GATT: General Agreement on Tariffs and Trade

GDP: Gross Domestic Product

ILO: International Labour Organisation

INPE: National Institute for Space Research

MDGs: Millennium Development Goals

Mercosur: Southern Common Market

NAFTA: North American Free Trade Agreement

NDC Nationally Determined Contributions

OEEC: Organisation for European Economic Co-operation

Parlasur: *Parlamento del Mercosur*

PICE: *Programa de Intercambio y Cooperación Económica*

SDGs: Sustainable Development Goals

SIA: Sustainability Impact Assessment

TEU: Treaty on European Union

TFEU: Treaty on the Functioning of the European Union

TRIPS: Trade Related Aspects of Intellectual Property Rights

TSD: Trade and Sustainable Development Chapter

UN: United Nations

UNCED: United Nations Conference on Environment and Development

UNFCCC: United Nations Framework Convention on Climate Change

WCED: World Commission on Environment and Development

WEO: World Economic Outlook

WTO: World Trade Organisation

Introduction

'Sustainability' and 'Sustainable Development' found their roots around the 1970s, when the international community became aware that meeting the necessities of the present must not in any way compromise the ability of future generations to meet their needs. The strong interdependence between development and the environment began to be recognized, and this gave rise to the concept of sustainability as it is known today. A broad concept in constant evolution that, starting from a vision centred primarily on ecological aspects, has moved towards a more global meaning, which takes into account, in addition to the environmental, economic and social dimensions. The three aspects, considered in a synergistic and systemic relationship, have been employed to arrive at a new definition of progress and well-being beyond the traditional idea of monetary wealth and GDP-based economic growth.

Today, we no longer speak of development but of 'Sustainable Development', as confirmed by the numerous instruments adopted on a large scale by members of the international community. This theme is becoming increasingly central, to the point of defining the quality of Free Trade Agreements (FTAs). In the case of economic-trade negotiations, issues such as environmental protection, labor and social justice are not the main subject of the negotiation, nor are they the direct competence of the parties. Still, they do, however, inevitably enter into it, influencing it and sometimes even determining its outcome. Therefore, it could be argued that Sustainable Development is today a fundamental part of economic policy, so much so that players such as the European Union (EU) have adapted their trade policy to include a chapter on Trade and Sustainable Development (TSD) in their agreements. The FTAs negotiations between the EU and Mercosur are a clear example of how the new international reality, attentive to environmental and social issues and not only to commercial ones, requires a more significant effort from the parties. In this specific case, these are blocks somewhat similar from a cultural perspective (language, history, religion), but different when looking at the levels of development and integration. On the one hand, the European Common Market has a long history of integration, has reached a high level of evolution

and has supranational decision-making and operational structure that has allowed it to quickly implement foreign policies of “inter-regionalism” between regional organizations and groups. On the other hand, in principle constituted on the European model of the European Economic Community (EEC), the Southern Common Market is a regional integration process based on explicitly intergovernmental decision-making and operational structure, which finds itself opening for the first time to a trade agreement of such a large scale. Therefore, it is no coincidence that the negotiation of the agreement between the two countries, which began in 1999 and officially concluded on June 28, 2019, at the G20 Osaka Summit, lasted 20 years and required more than 30 rounds of negotiations. The differences between the parties were reflected in the objectives, institutional competence and negotiating mandate, and sustainability. At first, the issues discussed were mainly economic/trade, political, and cooperation issues. However, during the long negotiation, the issue of sustainable development became increasingly impossible to ignore, leading to the provision of the chapter entitled "The Trade and Sustainable Development" chapter, which its proponents widely touted as an effective response to the environmental and social concerns of the international landscape on the agreement (Harrison and Paulini, 2020). Despite this, the EU-Mercosur FTA has subsequently been exposed to numerous criticisms questioning its sustainability and causing (and continuing to cause) slowdowns in the post-negotiation process.

It should be noted, among other things, that there have been numerous complaints because the agreement was reached without waiting for the publication of the second¹ and more current Trade Sustainability Impact Assessment (SIA)² carried out by the independent consultancy company "London School of Economics Enterprise" in December 2020. Moreover, the European Parliament has recently suspended the ratification process until the text is "modernized" and measures are established to ensure

¹ A first SIA was published in 2009.

² SIAs are trade-specific assessments carried out by external consultants to support major trade negotiations. They examine how the trade and trade-related provisions of the agreement under negotiation could affect economic, social, human rights, and environmental issues in the European Union (EU) and in the partner country, as well as in other relevant countries.

the agreement's sustainability (European Parliament, 2020). Thus, the current situation sees a very ambitious trade and cooperation agreement, strongly influenced by the theme of sustainable development, which is now at the centre of media and international attention and whose future is still uncertain. In this study, the bilateral negotiation of the Free Trade Agreement between the European Union and Mercosur is analyzed, considering the different phases that led to the agreement and talking about when and how sustainable development became such a central theme in international trade agreements. Criticism of the EU-Mercosur agreement and the different positions of the parties and member countries that have been most vocal on sustainability will be evaluated. The ultimate goal is not to find a 'solution to the negotiation that has already produced specific results. Rather, it is to explain how in a landscape where the Rio Convention, the Paris Agreement and the Sustainable Development Goals attribute to States the shared responsibility to safeguard the ecosystem, ensure respect for human rights and avoid dangerous climate change caused by human activities, the issue of sustainability can not be ignored or put in the background compared to economic interests. A shared position of the parties on this issue is essential and can certainly contribute to the success of the EU-Mercosur agreement. For this reason, during the final discussion, we will talk about how the future of this negotiation and future interregional trade negotiations could be. It is intended to explain, in essence, how Sustainable Development is becoming more and more a central theme in Free Trade Agreements. The research question of this work is: is it possible nowadays, in a globalized international panorama that promotes a new, wider and more complex concept of progress-wellbeing, to conduct a trade negotiation like the one between the two EU-Mercosur blocs without considering the fundamental principles and issues of Sustainable Development? As will be shown, this is not possible considering the ever-increasing power of the 'sustainability' argument. Therefore, trade and Sustainable Development chapters are not only essential but must be increasingly effective. For this reason, states are being called upon to 'modernize' and adapt their negotiating strategies and also to consider the possibility of introducing new guarantees and sustainability monitoring tools.

First of all, the interest in this topic arises from the curiosity towards international negotiation and its evolutionary process. The dynamics of international negotiation in today's globalized world are increasingly unpredictable, and there are many challenges to be faced due to relatively new issues and topics. Among these, we find the modern concept of progress-well-being that considers environmental and social dimensions, in addition to trade, requiring a more challenging approach to inter-regional negotiations. Furthermore, attention to Sustainable Development, which in the past has often taken a back seat to commercial interests, is now inevitable. This thesis was created to draw attention to this new reality and the behavior that states are adopting towards it.

The methodology used to conduct this analytical study is mainly inductive and is configured in the qualitative method. Through the bibliographic review of official primary sources of the European Union, Mercosur, member countries and through previous studies, facts, policies, actions and negotiation techniques have been analyzed to create exhaustive evaluative research that confirms the thesis that nowadays sustainable development and trade activities are closely linked in a relationship of interdependence.

Literature Review

Over the past few decades, sustainability and sustainable development have been themes in many academic papers, faculty programs, local government and company boards, and public relations officers' offices (Singh, 2016, p. 63). By reviewing the available research material, one can see that the topic has been and continues to be very broad, complex, and dynamic. In order to carry out the present study, the theories behind the concept of Sustainable Development, as well as declarations, conventions, the Millennium Development Goals (MDGs), and the Sustainable Development Goals (SDGs), were first considered. For quite some time, based on a great trust in technological progress, nature was considered a particular form of capital (Hotelling, 1931) that was "exchanged" in exchange for technical skills, services, knowledge, and expertise to be left to future generations. In the '80s, the formation of a new concept of progress led to a new model of development, which sees its culmination in the concept of "Sustainable Development", currently at the centre of international debate as a source of divergent interpretations in the field of economic analysis. For more than thirty years, issues arising from environmental, social and related to the unequal distribution of wealth have raised questions about the objective of growth that had long guided the international landscape, giving rise to an enormous amount of studies and research. The literature, but especially the studies, articles and general works currently found on digital platforms, talk about Sustainable Development by relating it to different topics. In order to carry out this study on the growth of the importance of Sustainable Development in interregional Free Trade Agreements, it was necessary to separate the valuable material from the irrelevant, focusing on the point of view presented by the prevailing economic theory: the neoclassical, which proposes the idea of economic growth as a necessary condition for sustainable development. This model, which sees its roots in Solow (1992), later expanded, is today a dominant element in response to current issues. Other works complement this doctrinal system by emphasizing that sustainable growth is in line with economic growth and environmental protection, and social development. Initially, the environmental dimension was the one most considered

by scholars. Then, slowly, the focus shifted to social issues as well. Numerous neoclassical analyses have further complemented the model by arguing that the pursuit of growth must be aligned with environmental protection issues. Gene Grossman and Alan Krueger (1995) and then Walt Rostow (1960), for example, established a link between economic growth and sustainable development, presenting for the first time the view that through economic growth, it is possible to solve many problems of Sustainable Development. Wilfred Beckerman, a world-renowned British professor and economist, also presented this optimistic model of the ability of modern economies to adequately manage environmental problems in his tight critique of the Meadows Report (Beckerman, 1972, p. 336). Currently, neo-classical economists assert how sustainable development should reflect the need for societies to maintain the ability to produce economic well-being over time and ensure that future generations have access to the same level of well-being. In this context, sustainable growth is seen as the "non-decline" of individual well-being (Vivien, 2008). In line with these theories, prominent figures such as Jeffrey Sachs (American economist, academic, public policy analyst and one of the world's leading experts on sustainable development, economic development and the fight against poverty) have recently expressed their views on Sustainable Development, proposing an accurate vision of the interdependent relationship between this reality and the economic-political one. Sachs' book "The Age of Sustainable Development" published in 2015, proposes a definition of Sustainable Development that is that of an "intellectual quest" that is both an analytical theory and a normative framework, but also a new way of understanding the world and a method to solve global problems. Therefore, it definitively introduces the idea that this concept must guide nations' political, economic and social choices. According to Sachs, "The gigantic world economy is creating a gigantic environmental crisis, one that threatens the lives and well-being of billions of people and the survival of millions of other species on the planet, if not our own" (2015, p. 2). However, the solution to this issue is not "degrowth", nor stopping trade relations between countries and making new agreements such as the EU-Mercosur FTA. Rather, it would be making development happen in a "sustainable" way. The normative side of sustainable development, the basic concept of

Sachs' study, involves four primary goals: economic well-being, social inclusion and coherence, environmental sustainability; and "good governance" (discussed in section 1.1.4 of this study). Sachs understands that the world we live in is first and foremost "an unequal world" (Sachs, 2015, ch. 2) in which there are substantial economic differences within countries and between industrial and less developed countries. For this reason, in chapters 3, 4 and 5 of his book, he examines the processes of convergence and those of divergence to understand why some countries have developed while others have remained poor, and as did the experts who preceded him, he seeks solutions. He, too, does not limit himself to purely economic matters but carries out a broader study, proposing a "clinical economics" that offers a diagnosis adapted to the actual conditions of each country. The social sphere is another critical point, highlighted in more recent times, to which the author devotes chapters ranging from 7 to 11. Sachs also considers another of the current issues: that of "a world too full" (Sachs, 2015, ch. 2), as this "world (is) already bursting at the seams, with humanity pushing against planetary boundaries" (Sachs, 2015, p. 199). He poses the problem of further economic growth and questions whether it can be reconciled with environmental integrity. In this regard, Sachs' answers are very optimistic, in line with neoclassical ideas. In essence, all that would be needed to solve the problem would be "for the world economy to develop in a fundamentally different way in the future" (Sachs, 2015, p. 199). This concept, which was used as the "starting point" of this study, has animated the declarations, conventions, Millennium Development Goals (MDGs), and Sustainable Development Goals (SDGs), which are the existing evidence of how sustainable development has become a central theme in both academia and business (Singh, 2016, p.64). Beginning with the 1972 Conference on the Human Environment, which articulated the links between the environment and development, sustainability was officially introduced as a topic of interest to international society that was beginning to become alarmed by the phenomenon of global environmental change. In 1983, the UN General Assembly created the World Commission on Environment and Development (the Brundtland Commission), which gave birth to the document "Our Common Future, " defining Sustainable Development. Although the Commission's approach has been criticized for

being "vague and optimistic," the concept of sustainable development gained political momentum during that time to take the concept "to the next level" (Singh, 2016, p. 66). The next step was the UN Conference on the Environment and Development (UNCED), held in Rio de Janeiro (Brazil) in 1992, whose documents explicitly addressed sustainable development by officially bringing the concept to the international stage. In this regard, UNCED has sought to guide sustainable development by establishing a set of principles and a plan of action based on the concept. The commitment to sustainable development was clearly articulated in Agenda 21, a 500-page collection of agreed-upon practices and recommendations to achieve sustainable development in almost every area (Singh, 2016, p. 66). The document's approach has been criticized by some experts, who support the idea that "implementing the principles of equity and living within ecological limits can only be accomplished if social, political, and economic systems have the flexibility to be redirected toward sustainability as well as integrated and the environment" (Prizzia in Singh, 2016, p. 67). In 1997, the Kyoto conference on climate change enabled the birth of the Kyoto protocol, the general framework for developed countries to agree on specific targets to reduce their greenhouse gas emissions. The year 2000 saw the birth of The Millennium Development Goals (MDGs), which are an even more practical expression of the principle of balancing the economic, social, and environmental pillars of sustainable development (Singh, 2016, p. 67). In 2012, the United Nations Conference on Sustainable Development in Rio gave birth to the new Sustainable Development Goals (SDGs), while the 2015 Paris Conference on climate change gave birth to the Paris Agreement. The official material on Sustainable Development is also extensive. There is a significant amount of information. Those mentioned are the primary documents that have been used during the writing of this thesis. Numerous other official documents have been consulted in the creation of this work. Even in the multilateral documents, as we have seen in the formation of theories, we can see how the debate started from a primary emphasis on environmental issues (1972), to a shared emphasis on environmental, social and economic development (1992), to an even greater emphasis that aims at economic

development that allows for the improvement of the well-being of the most disadvantaged people, now and in the future (current events).

Sustainable Development has increasingly become a central theme, entering international trade agreements. The bilateral relationship between the European Union and Mercosur, which has lasted 20 years, has been taken into account during this study to explain the increasing role of sustainability in interregional FTAs. To date, it is possible to find many comprehensive analyses of the negotiations and the EU-Mercosur Agreement, as these have interested international policy experts and the public. Although the negotiations have not always been transparent and not all documents have been made public, the analyses have followed one another, keeping up with the dynamism of the negotiations. There is, therefore, an extensive bibliography on EU-Mercosur relations (recall, for example, the works of Esteveordal and Krivonos 2000 Santander 2002,; Bouzas 2004; Bizzozero 2001; Peña 2010; Molle 2010; Sanahuja 2007 and 2019; Gómez Arana 2014; Makuc, Duhalde, and Rozenberg, 2015; Cienfuegos 2016; Ghiotto and Echaide 2019; Grieger 2019; Bellucci 2020, among others) that has studied in detail and from different perspectives: the difficulties inherent in the negotiating agenda and the numerous asymmetries between the two trading blocs, (due in large part to Mercosur's internal shortcomings as an "imperfect customs union" in terms of free movement and application of standard rules); the agenda of offensive and defensive interests of both sides; and the limitations of the respective market access offers that involved areas such as agricultural and industrial goods, government procurement, or the scope of non-tariff barriers and trade protection measures (Sanahuja and Rodríguez, 2019, p. 4). These difficulties have explained the numerous events of stalemate and suspension of negotiations. We recall the 2004 halt of negotiations and the temporary suspension in 2012 after the dialogue had been resumed at the 2010 EU-Latin America and Caribbean Summit in Madrid. The existing literature also analyzes how the negotiations have been influenced by factors such as: the evolution and subsequent blockage of the WTO multilateral trade negotiations (2003); by the 2008 international economic crisis, which caused a decrease in the international flow of goods by the rise of China in Mercosur markets and the recent "trade war" sparked

between the United States and China; by political changes in Mercosur countries that brought to power governments more or less favorable to free trade; and, finally, by the rise of Sustainable Development as a central issue in interregional trade negotiations. Since 2019, when the "agreement in principle" based on the trade pillar was reached as part of a broader association agreement, a growing body of material related to the topic of "Sustainable Development in the EU-Mercosur FTA" has been developing. The documents come mainly from the EU, which showed particular attention to the topic. On the Mercosur side, the studies that have been found come mainly from Brazil and Argentina (the main actors in the negotiations with Europe) and Uruguay and Paraguay, which remained in the shadows of the negotiations. The subject is currently at the centre of media attention and that of experts and public opinion. The Agreement has given rise to discordant opinions; some argue that it could jeopardize sustainable development in favor of economic growth.

On the other hand, some argue that the economic growth that will occur thanks to the Agreement will push towards more sustainable development. In any case, the common opinion is that the issue of sustainability is now an issue that the parties must inevitably consider. Therefore, in this thesis, we wanted to focus on Sustainable Development in relation to the EU-Mercosur Agreement, leaving out the purely economic part and analysing financial data, which would not have been helpful for this study.

1. SUSTAINABLE DEVELOPMENT AND TRADE

1.1 Background on Sustainable Development

1.1.1 Antecedents

International attention to the environment and global ecological disasters began to focus as early as the 1960s. At that time, confidence in progress (which took the form of economic development) was at an all-time high, and the environment had a strictly instrumental value. Soon, however, a certain amount of concern began to arise concerning the work of industries and governments of that time that favored unlimited growth and investment policies without considering environmental aspects and resource scarcity. In the '70s, during the United Nations Conference on the Environment in Stockholm in 1972 (the first world conference to make the environment a major issue), the participants adopted a series of principles for sound management of the environment, including the Stockholm Declaration and Action Plan for the Human Environment³ and several resolutions⁴. The Stockholm Declaration, which contained 26 principles (including the right to a healthy environment), placed environmental issues at the forefront of international concerns and marked the start of a dialogue between industrialized and developing countries on the link between economic growth, pollution and the well-being of people around the world (UN, 1972).

1.1.2 The birth of the concept of Sustainable Development

The concept of "Sustainable Development" appeared for the first time in 1987 with the publication of the Report "Our Common Future" (known as the "Brundtland Report"), presented by the World Commission on Environment and Development

³ The Action Plan contained three main categories: Global Environmental Assessment Program; Environmental management activities; International measures to support assessment and management activities carried out at the national and international levels. These categories were broken down into 109 recommendations.

⁴ One of the major results of the Stockholm conference was the creation of the United Nations Environment Programme (UNEP).

(WCED), established in 1983⁵, to send a warning about the negative environmental consequences of economic growth and globalization. The report sought to find possible solutions to the problems caused by industrialization and population growth, formulating a guideline for sustainable development that is still valid today. From that moment, the International System became aware that the classic development, linked exclusively to economic growth, would have caused the collapse of natural systems in a short time. With the emergence of a greater sensitivity to environmental issues, the attitude of the political and business world has been increasingly changing, focusing on the protection of natural resources, territories and the social sphere. Therefore, progress and well-being began to be identified not only with economic growth but with "sustainable growth", that is, growth based on the three-dimensional concept of sustainability. The three meanings of this concept: environmental, economic and social are closely related, representing the difficult challenge to identify and undertake a path of development able to respect them all. Development is, therefore, "sustainable" if it improves the quality of life in a lasting way. This new concept, made up of the two words 'Sustainability' (a notion that refers to the idea of maintenance/conservation over time) and "Development" (indicating a change towards a situation preferable to the present one), has led to the formation of the idea of "quality progress". As stated in the Brundtland Report, in fact, "Humanity can make development sustainable to ensure that it meets the needs of the present without compromising the ability of future generations to meet their own needs" (UN, 1987).

In 1991, the World Conservation Union (WCU), the United Nations Environment Programme (UNEP) and the World Wide Fund for Nature (WWF), the world's three most powerful organizations dedicated to preventing environmental catastrophe, have further specified the issue in the strategy for sustainable living "Caring for the Earth."⁶ Sustainable development means improving the quality of life without exceeding the carrying capacity of the supporting ecosystems on which it

⁵ United Nations General Assembly, Resolution 38/161 of 19 December 1983.

⁶ This document extends and emphasizes the message of the World Conservation Strategy, published by the same organizations in 1980.

depends (World Conservation Union et al., 1980 and 1991). Later, the United Nations Conference on Environment and Development (UNCED), also known as the "Earth Summit", held in Rio de Janeiro (Brazil) in June 1992, finally announced a new approach to development. It highlighted how different social, economic and environmental factors are interdependent and evolve together and how success in one area requires action in other areas. The primary goal of the Conference was to produce a blueprint for international action on environmental and development issues that would help guide international cooperation and development policy (UN, 1992). The Earth Summit had many achievements: the Rio Declaration and its 27 universal principles, the United Nations Framework Convention on Climate Change (UNFCCC), the Convention on Biological Diversity, the Declaration on the principles of forest management and the "Agenda 21", a daring program of action calling for new strategies to invest in the future to achieve overall sustainable development. For the International System to respond positively to the challenge of Sustainable Development, further meetings followed. Among these, we recall the United Nations Framework Convention on Climate Change of 1997, which gave birth to the international environmental treaty on global warming "Kyoto Protocol"⁷, which entered into force in 2005 and was renewed after its mandate in 2012.

1.1.3 A new development strategy

While "globalization" has triggered a widespread process of trade liberalization and opening in the countries of the world, the beginning of a third millennium in the year 2000 allowed the UN to present a new development strategy for the changing realities and needs of the 21st-century world. This resulted in the adoption of the Millennium Declaration, in which the eight⁸ MDGs were set out. In the following years,

⁷ The treaty included an obligation to reduce emissions of pollutants (carbon dioxide and five other greenhouse gases, i.e. methane, nitrous oxide, hydrofluorocarbons, per-fluorocarbons and sulphur hexafluoride) by no less than 8.65% of 1990 emissions over the 2005-2012 period.

⁸ Eradicate extreme poverty and hunger; achieve universal primary education; promote gender equality and empower women; reduce child mortality; improve maternal health; combat HIV/AIDS, malaria and other diseases ; ensure environmental sustainability; develop a global partnership for development.

numerous conferences were held, which led to creating multiple documents concerning the management of natural resources, environmental legislation and, finally, climate change. We recall the 2002 World Summit on Sustainable Development in Johannesburg; the 2005 World Summit in New York in which the Member States, among other things, declared their firm commitment to the liberalization of trade and also took note of their "Responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity"⁹ (UN, 2005); the 2008 High-Level Meeting on Achieving the MDGs in New York; and the 2010 Millennium Development Goals Summit which sees a further commitment of the Member States to Achieve the MDGs. In 2012, 20 years after the Earth Summit, the United Nations Conference on Sustainable Development in Rio (also known as "Rio+20") took stock of the progress made in the agreements already made and launched a new project (contained in the final document "The Future We Want") containing 17 new SDGs and 169 "targets". The SDGs follow up on the MDGs that preceded them and represent the "common goals"¹⁰ of Member States on a set of critical issues for development. These include "no poverty", "zero hunger", "climate action", "life on land", "responsible consumption and production", and "Decent Work and Economic Growth". The new plan, called "Transforming Our World: The 2030 Agenda for Sustainable Development by 2030", was approved by more than 150 world leaders at the 2015 United Nations Summit on Sustainable Development held in New York. Two months later, at the 2015 Paris Conference on Climate Change (also known as "COP21"), the Paris Agreement, a legally binding international treaty on climate change, was signed, then ratified by 187 parties and entered into force in 2016. This Agreement is a landmark in the multilateral climate change process because it brings together, for the first time, all nations in a common cause to undertake ambitious efforts to combat climate change and adapt to its effects. The Paris Agreement works on a 5-year cycle, so countries should have submitted their Nationally Determined Contributions (NDCs) in 2020. This was not

⁹ United Nations, A/RES/60/1.

¹⁰ "Common goals" is used by the UN to specify that they apply to all countries and all individuals. No one is excluded, nor should anyone be left behind along the path necessary to get the world on the road to sustainability (UN, 2015).

possible due to the COVID-19 Pandemic that caused, among other things, the postponement of COP21 to November 2021. Nevertheless, the discourse of Sustainable Development is increasingly relevant and enjoys the full attention of the International System that is now moving towards a new reality post health crisis, which requires an even more sustainable approach to the economy and society. This is one of the main topics of the G20 2021, which will be held in Italy in October. In this regard, the Italian G20 Presidency has relaunched the Sustainable Finance Study Group within the Finance Track with the ultimate aim of promoting the transition towards a more sustainable economy. To conclude this *excursus* on the history of Sustainable Development and its evolution, which will be helpful for a complete understanding of this study, it can be said that not all the agreements reached to date have fully achieved the hoped-for effects. However, they have initiated the development of a social conscience in which care for the development of humanity sustainably is “the only right way to go”.

1.1.4 The Economic Dimension of Sustainable Development

Speculation on the economic dimension of the concept of sustainability began when the notion of development, understood not only in the sense of economic growth but also as the ability to meet human needs by improving efficiency and quality of life. As we have mentioned (see 1.1.1), for an extended period, politics promoted the economic dimension without paying attention to any other aspect, following the idea that progress and well-being were the direct consequence of economic growth. In those years, the measurement of welfare was in terms of GDP following the system consolidated in the economic literature by Simon Kuznets and then developed in the systems of national accounts adopted by the United Nations Agencies.

With the advent of the three-dimensional concept of sustainability, the economic dimension lost its centrality, and two new dimensions were added: environmental and social. In the modern concept of progress and well-being, these three dimensions interact to create sustainable development. Each of these meanings refers to a different

guiding principle: "fair access to resources" for the social dimension, "preservation of the integrity of the biosphere and its ecosystems" for the environmental dimension, "efficiency in the use of resources to generate income" for the economic dimension. If we were to imagine these three dimensions, we could say that each constitutes a whole. These three sets converge, giving rise to an area. Only this area included in the intersection of the three sets represents a genuinely sustainable development, where all aspects are reconciled. Any other area will favor only one dimension or only two dimensions to the detriment of the remaining ones (see figure 1). Although the economy remains today a critical factor in developing countries, the economic dimension alone is not, therefore, sufficient to advance societies and improve the quality of life of citizens.

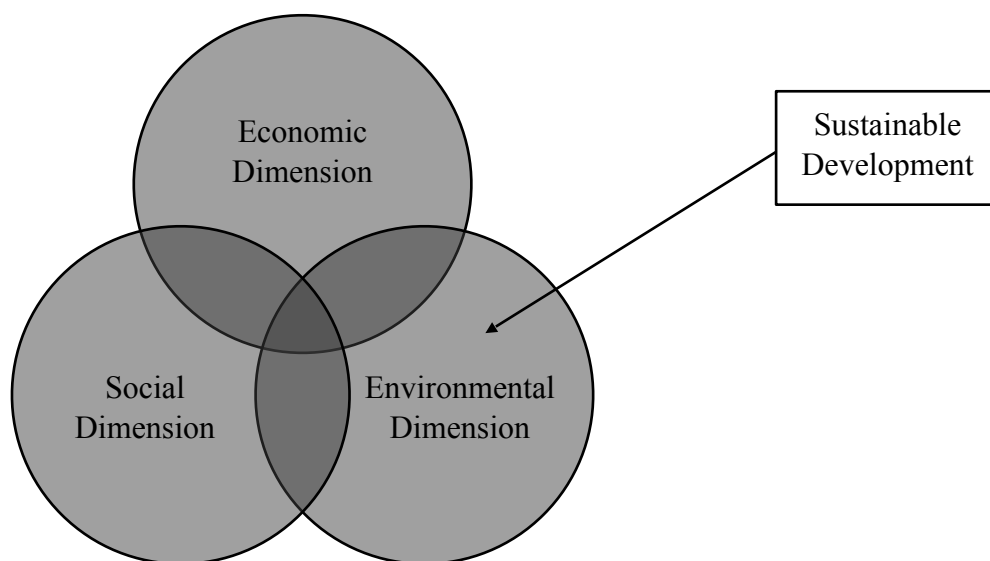


Figure 1, Sustainable Development Dimensions, adapted from the United Nations (2020).

Consequently, effective policies for sustainability are those that achieve a balance between these three aspects. This result can only be achieved by promoting cooperation between the three dimensions, which should be enabled to reach a compromise solution while referring to different guiding principles. In this sense, the presence of "good governance" is indispensable, ensuring a solid commitment to sustainable development and nurturing a sense of shared participation. Some experts, including Jeffrey Sachs, assert that governance constitutes the fourth dimension of sustainability, which participates in supporting the other three (2015). Given the difficulty of establishing universal norms for implementing the SDGs, as governments and sets of rules to govern the world are many and varied, the task of governance is to establish "shared principles" (Sachs, 2015). Among these principles, first is the accountability of governments and companies that must always be fully responsible for their actions. Second, we find the transparency that also transcends the type of government and company considering that governments and organizations can be held accountable for actions and behaviors only if the public and market actors are duly informed. The third principle is participation, i.e. the ability of citizens and stakeholders to participate in the decision-making process; a fourth principle is "polluter pays", according to which the party responsible for producing pollution is also made responsible for paying for the damage caused to the environment (Sachs, 2015). Through adherence to principles such as those listed, quality growth and economic sustainability can be achieved. So, the economic dimension of sustainability depends mainly on international economic policy choices. Only through governance actions is it possible to make the economy a positive tool for sustainable development. According to the European Parliament resolution of October 7, 2020, trade can undoubtedly be an essential tool to achieve sustainable development goals by helping to reduce poverty.

1.1.5 The International Perception of Sustainable Development

The international perception of Sustainable Development today has grown a lot compared to past years. The current reality sees fairly active participation in the

achievement of common goals provided by interstate agreements. The international instruments adopted on a large scale by members of the international community, aimed at ensuring quality economic, environmental and social development, have led to a revolutionary change in the policies of most countries, especially in trade, environmental and labor policies. Despite this, there are still numerous legislative differences between states. First of all, it must be considered that not all countries have ratified the same Conventions and are part of the same agreements; then, different regions of the world implement and respect the principles of sustainability differently depending on their culture, governments or level of development. Such a situation can be seen by comparing the European countries and the Mercosur countries, which are the subject of this study. While the EU seems to pay more attention to Sustainable Development issues, some Mercosur countries seem to neglect specific sustainability issues. In particular, Brazil (especially in recent years under Bolsonaro's presidency) has received a great deal of criticism because, despite being part of international agreements such as the Paris Agreement, it does not put in place adequate measures to ensure compliance with standards such as environmental ones or those that protect the rights of indigenous peoples living in the Amazon area. As an example, let us consider the legislative differences between European and South American countries concerning the use of pesticides and, in particular, the difference between the limit of glyphosate in water between Germany and Brazil: while in the former, the limit is 0.5 micrograms, in the latter it is 500 micrograms (Fatone, 2020). This is because international agreements such as the Paris Agreement do not contain an obligation of the outcome, beyond a requirement for states to report actions taken to achieve NDCs (Bronckers and Bruni, 2021, p. 28). These remain, in fact, voluntary. As another example was given during a think tank "The Paddy Ashdown Forum" in October 2020, agriculture in the EU and MERCOSUR is another Sustainable Development topic that is perceived differently. While Europe believes that agriculture is in a sense "a public service," in Latin America, it is seen as a commodity traded and provides economic and social development throughout the region (Dreyer et al., 2020). This different perception creates different environmental policy outcomes. In this sense, the EU has promoted hyper-subsidization

that has primarily prevented innovation in agricultural techniques. In Mercosur, on the other hand, the digital world and agriculture are currently working together to develop better environmental practices both in terms of artificial intelligence applied to fields (Dreyer et al., 2020). These differences are worth considering when negotiating the TSD of an FTA such as the EU-Mercosur FTA.

1.1.6 The role of the ILO

Goal 8 of the SDGs "Decent Work and Economic Growth," mentioned earlier (see 1.1.3), aims to "Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all."

Indeed, an essential point in the debate about how to make globalization more socially sustainable concerns the question of how to ensure that trade liberalization maintains or improves labor standards rather than undermining them (ILO, 2015). In recent years, labor standards and numerous other labor-related issues have been increasingly integrated into bilateral and regional trade agreements. Indeed, when talking about Sustainable Development, one must also consider its social sphere, which in FTAs is mainly shaped by protecting the right to work. The number of trade agreements, including provisions on labor has increased from 4 in 1995 to 21 in 2005 and 58 in June 2013 (ILO, 2015). It continues to grow. It is crucial to mention, in this regard, the critical role of the International Labor Organization (ILO), the only UN agency that has brought together the governments, employers, and workers of UN member states since 1919 to set labor standards, develop policies, and design programs that promote decent work for all (ILO, 2021). The ILO has identified "eight fundamental Conventions" that cover topics considered to be fundamental principles and rights at work: "freedom of association and the effective recognition of the right to collective bargaining; the elimination of all forms of forced or compulsory labour; the effective abolition of child labour; and the elimination of discrimination in respect of employment and occupation" (ILO, 2021). Currently, ratifications by many UN Member States are still required to achieve the goal of universal ratification of all core conventions, and the fact

that some countries have already ratified the ILO Conventions and others have not is often an obstacle when negotiating the TSD of a trade agreement. FTAs can, however, require parties to ratify certain international conventions on labor and environmental protection. Typically, there is a greater tendency in TSDs to require ratification of labor conventions that are less ratified than environmental conventions. This reflects the potential of TSDs (in fact, the conclusion of trade agreements with labor provisions has often led to a wide range of cooperative activities between the signatory parties¹¹), but also their current weakness, as evidenced by the EU-Korea¹² FTA that led the EU to consider insisting that the other party ratify certain international conventions before the ratification of the agreement.

1.1.7 The role of the WTO

In order to further the understanding of this study, it is appropriate also to mention the role of the World Trade Organization (WTO), an intergovernmental organization created to supervise, regulate and facilitate the numerous trade agreements between its member states, which currently number 164 countries (including European and Mercosur countries) and comprise 97% of world trade in goods and services (WTO, 2021). The Organization was established in 1995 at the Uruguay Round¹³, giving it the role previously held by the General Agreement on Tariffs and Trade (GATT). As we have seen previously (see 1.1.2 and 1.1.3), in those same years, a growing environmental concern at UNCED was taking place, which led to the creation of the multilateral norms and treaties on Sustainable Development issues. Therefore, it is no coincidence that the creation of the WTO coincided with the intensification of the

¹¹ For example, the Mercosur Regional Plan on Labour Inspection has triggered joint multinational inspection activities, often facilitating improvements in national practice (ILO, 2015).

¹² When the agreement was signed in 2011, Korea had committed to "sustained and continuing efforts" to ratify four of the ILO's eight core conventions. Given Korea's real lack of commitment, the European Commission resorted to dispute settlement procedures in December 2018. In 2021, the experts' ruling indicated the limited value of the obligations in the EU's FTAs.

¹³ This name refers to the negotiations which, between 1986 and 1994, involved the GATT member countries and whose results were enshrined in the Marrakech Agreement.

discussion on the relationship between international trade and the environment. The WTO, which, unlike the GATT, has a structure much more in line with those of modern organizations, has incorporated the agreements and conventions previously adopted¹⁴ to administer and extend them according to the new needs of international trade.

In 2001, the WTO launched a new round of negotiations, the Doha Round, which shows the difficulties of the new international reality, in which it is no longer only the advanced economies of the West that decide the concessions to be obtained in terms of liberalization of international trade. However, new global players such as developing countries tend to impose their agenda. The start of negotiations was guided by the Doha Development Agenda, containing declarations in line with the SDGs. Compared to agreements already reached in previous rounds, this one focused mainly on agriculture, a sector considered very sensitively at the time. The negotiations were supposed to end in 2005. However, they experienced a stalemate that lasted until 2013, when the Bali Agenda (also called "Doha Light") was defined, focusing on the elimination of bureaucratic and administrative barriers to trade and specific measures in favor of the least developed countries (Zupi, 2018, p. 37). After the Bali Agreement in 2013, there was the Nairobi Agreement (2015), again setting aside controversial issues such as agriculture, services and market access to focus on reaching an agreement on eliminating tariffs and promoting pro-development measures on agriculture and transparency. The WTO suffered crisis and marginalization in the turbulent phase of globalization and still struggles with specific topics (agriculture, services, and market access, among others).

Today, trade agreements are the legal foundations of global trade, granting WTO members necessary trade rights while binding governments to keep their trade policies transparent and predictable (WTO, 2021). The WTO manages this global system of trade rules, helps developing countries build their trade capacity, and provides a forum through which member states can resolve disputes generated by agreements

¹⁴ Among these, on top of the GATT, it is important to mention the General Agreement on Trade in Services (GATS) and the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS).

(WTO, 2021). The WTO is very active in this regard: since its inception, 98 member states have appealed to it, and over 500 appeals have been filed (Zupi, 2018, p. 39)

The WTO also contributes to the implementation of the SDGs in FTAs. For example, the Preamble to the WTO Agreement (1954) and the Singapore Ministerial Declaration of the WTO (1996) are just some of the official documents in which the WTO affirms its commitment to develop and promote international trade in a way that contributes to sustainable development. In this regard, the WTO collaborates with the UN's Department for Economic and Social Affairs in monitoring progress in attaining the SDGs. In addition, the WTO reports annually to the UN's High-level Political Forum on WTO efforts to achieve trade-specific targets in the SDGs (WTO, 2021).

1.2 The Growing Importance of Sustainable Development in FTA

1.2.1 Sustainable Development in FTA

The new concept of sustainable economic growth has inevitably caused an increase in the importance of Sustainable Development in international trade relations. It is now a fundamental part of international relations and is included in most FTAs. Interested organizations have decided to include the topic in trade agreements and have done so following different approaches. The EU or EFTA¹⁵ preferred a "promotional" approach, while some, such as the US and Canada, preferred a "sanctions-based" approach. To date, the success of both approaches in bringing about positive change seems to have been relatively modest (Bronckers and Gruni, 2021, p.25). There is, in fact, no evidence that one approach has produced better and more significant results than the other. FTAs, especially those that prefer a "promotional" approach, has often received criticism about their TSD because they cannot always guarantee their implementation. Promotional TSDs are often condemned as ineffective, and it is often

¹⁵ Since 2010, the ESTA Member States included the TSD in their FTAs.

requested that they be strengthened with assurance measures to induce compliance with sustainability standards. This is because sustainability obligations in promotional TSDs are often considered less transparent, making it more difficult for parties to comply. The big dilemma arises, however, when considering states' jurisdiction over Sustainable Development. Essentially, one wonders how far TSDs can go. Sustainable Development is not a matter of direct competence of the parties negotiating an FTA but is based on the coordination of international policies. The TSD chapter in FTAs does not create new labor and environmental standards but instead builds on existing obligations and commitments made by parties in relevant multilateral forums. These forums, such as the ILO for labor standards and the various multilateral environmental agreements, have their mechanism for monitoring the implementation of their specific instruments. It must be remembered, therefore, that even if interregional trade agreements today contain a chapter dedicated to the topic of "sustainability," trade policy, and in particular FTAs, were not designed to be instruments for implementing international conventions, and forcing their purposes could even sterilize their effectiveness (Bronckers and Gruni, 2021, p.25). FTAs can and should reinforce international conventions that outline the universally mandated principles and standards of sustainable development, but they cannot replace them.

1.2.2 Sustainable Development in EU FTA

For about 15 years, the EU has included labor and environmental standards in its FTAs with third countries. Since the 2011 FTA with Korea, these have been included in a "TSD" sustainability chapter (Bronckers and Bruni, 2021, p. 25) that promotes compliance with international environmental and core labor standards. Among the topics most touched upon in European TSDs are climate, biodiversity, chemical and waste management, sustainable management and conservation of forests, sustainable fisheries, respect for workers, and "responsible business conduct." As we have said (see 1.2.1), the EU's approach to date has been different from that followed by others. The

EU has preferred a "promotional" approach that calls on parties to comply with a set of standards without providing for sanctions if obligations are not met. These standards fall into three different groups: "obligations based on existing international agreements, obligations related to existing domestic legislation, and more aspirational clauses referring to higher levels of protection" (Bronckers and Bruni, 2021, p. 26). The first group includes obligations related to the ratification of international environmental and labor conventions. As we have seen (see 1.1.6), free trade agreements can impose or require "best-effort" on parties to ratify specific international conventions if they have not yet done so. This happens most often with labor conventions, as most of the multilateral environmental agreements considered relevant to international trade by the WTO are believed to have already been widely ratified¹⁶ (Bronckers and Bruni, 2021, p. 27). At the same time, FTAs can commit parties to respect, promote, and implement the core principles of Sustainable Development (even if a party has not ratified the convention elaborating on that particular principle); or they can obligate parties to "effectively implement" multilateral labor and environmental conventions that have already been ratified. For example, Article 6.2 of the TSD of the EU-Mercosur FTA contains the obligation to "effectively implement the UNFCCC and the Paris Agreement established thereunder" (2019). Regarding the obligations related to existing domestic legislation, the European TSDs confirm the autonomy of each party to regulate labor and environmental issues (as long as the laws are in line with international commitments), but at the same time affirm the obligation not to lower the level of domestic labor and environmental protection. Within the TSD, this translates into the "non-regression clause" (TSDs must not weaken domestic labor and environmental laws) and the "non-enforcement clause" (TSDs must enforce domestic labor and environmental laws). These clauses are found in Article 2 of the FTA EU-Mercosur TDS. However, they are a source of debate among experts, as "both these obligations

¹⁶ This is not to say that all of the EU's trading partners have ratified the full list of environmental conventions. For example, Colombia and Singapore have not ratified the UN Fish Stocks Agreement, and Singapore has not signed the Cartagena Protocol to the UN Convention on Biological Diversity. (Bronckers and Bruni, 2021, p. 27).

are conditioned on intended or actual effects on trade and investment"¹⁷ (Bronckers and Bruni, 2021, p. 30), and it is very difficult to verify their effectiveness¹⁸. Finally, the third point, "more aspirational clauses referring to higher levels of protection," refers to the fact that the EU FTAs also include another set of more vague provisions created to raise labor and environmental protection standards.

The European Parliament strongly criticizes the promotional approach of the European TSDs. Together with some Member States, stakeholders and scholars, it calls for better enforcement of the TSDs and the introduction of sanctions. Currently, the TSDs of the EU FTAs do not provide for sanctions in case of violation of the agreements and have dispute settlement mechanisms separate from the general ones of the other trade agreement chapters. This is another highly criticized point, as it is believed that this choice further weakens the credibility of sustainability standards. The European Commission, also supported by other stakeholders and scholars, continues to defend the approach used up to now¹⁹ while admitting that some improvements are necessary. The new Sustainable Development Strategy, promoted in particular by the 2030 Agenda from the Paris Agreement on Climate Change, has prompted the EU Commission to note the ongoing debate on the effectiveness of the "too soft" approach of TSDs. In 2018, the EU Commission decided to present a new proposal for the chapter on Trade and Sustainable Development, identifying 15 action points resulting from the debate (which lasted almost a year) with the Member States, the European Parliament, and civil society. The new action plan, published in February 2018, considers further actions on the practical implementation and enforcement of the TSDs chapters, including, among others, the possibility of introducing sanctions in case of non-compliance. Lately, the EU approach is becoming more rigid. In the recent post-Brexit trade agreement with the UK (signed in 2020), the EU has proposed a new

¹⁷ These clauses are often included with the intention of encouraging trade or investment. This often proves to be a limitation for the EU's partners who, for example, in circumstances such as the pandemic, are restricted in granting temporary or specific exemptions to general labor laws.

¹⁸ It is very difficult to prove the actual relationship between the non-performance of the clauses and the trade.

¹⁹ Based on academic research suggesting the ineffectiveness of U.S. labor enforcement, the Commission has stated that a sanctions-based approach is not desirable to the European case (Raess et al., 2018).

approach that is quite far from the traditional one in dealing with breaches of obligations by its trading partners. In this case, the EU, and of course the UK, can impose "countermeasures," i.e., put in place trade or investment-related sanctions if proven that the other party's varying levels of sustainability cause trade effects (Bronckers and Bruni, 2021, p. 32). Despite these initial steps forward, experts believe that the EU should further strengthen sustainability standards in its FTAs and significantly improve the administration of private complaints about violations of these standards.

On February 18, 2021, the European Commission published its trade policy review, "An Open, Sustainable and Assertive Trade Policy." The fundamental objectives of this new approach are threefold: "supporting the recovery and fundamental transformation of the EU economy in line with its green and digital objectives; shaping global rules for a more sustainable and fairer globalisation; increasing the EU's capacity to pursue its interests and enforce its rights (...)" (EU, 2021). The EU will, therefore, remain open in its trade policy, but the new strategy proclaims a stricter and more "assertive" position, to further develop trade in the world, to be able to better deal with the economic shock of the coronavirus crisis (Amaro, 2021). There are currently 44 preferential agreements with 75 countries or subregions that the EU has notified at the WTO (2020).

1.2.3 Sustainable Development in Mercosur FTA

Mercosur's focus on Sustainable Development in international free trade agreements is a reasonably recent phenomenon, as indeed is the very negotiation of FTAs with third countries and other regions (Dreyer et al., 2020). Mercosur, which as we will see in the following chapter (see 2.2.2) sees its formation in 1991 with the signing of the *Tratado de Asunción*, has only begun to intensify its trade ties with foreign countries in the last decade, undertaking negotiations with different and much more developed realities such as the European Union (EU), the European Free Trade Association (EFTA), United States, China or Canada. Mercosur has found itself

negotiating agreements of significant scope and agreeing to negotiate the chapter on trade and sustainable development based on the model proposed by the other negotiating party. Therefore, there is not a defined approach to the TSDs chapters of MERCOSUR as there is, for example, in the EU case.

2. THE EU-MERCOSUR TRADE NEGOTIATIONS

2.1 EU-Mercosur Integration Process

2.1.1 EU Integration Process

Before entering into the analysis of the FTA negotiation between the European Union and Mercosur, let us focus for a moment on the negotiating parties. The examination of the evolution of the integration process of EU and Mercosur is, in fact, fundamental to understand the dynamics of the negotiation. Therefore, the particular aspects and the significant differences of both blocs will be examined, especially from the perspective of powers and limits of the respective constitutional bodies, starting from the European Union.

European integration was born as a result of the Second World War, given the desire for peace and international reconciliation. The first forms of cooperation of the European states, among which we remember the World Economic Outlook (WEO)²⁰, founded in 1948 and the Council of Europe (CoE)²¹, founded in 1949, had, in fact, a purely defensive purpose. The ultimate goal was to prepare all the necessary measures to avert a return to arms and the economic one to direct the funds needed to rebuild the economies of European states tried by the conflict (Bellucci, 2020, p. 6). In this regard, in 1948, the Organisation for European Economic Co-operation (OEEC) was created to administer the funds of the European Recovery Program (also known as the Marshall Plan). These first experiences of cooperation later led to the formation, in 1952, of the

²⁰ Founded by the Treaty of Brussels, the WEO was a regional international organization of military security and political cooperation composed of 6 members (Belgium, France, Luxembourg, the Netherlands and the United Kingdom and the Western European Union). It formally ceased to exist on June 30, 2011.

²¹ Founded by the Treaty of London, the CoE is an international organization whose purpose is to promote democracy, human rights, European cultural identity and the search for solutions to social problems in Europe. It is unrelated to the European Union and should not be confused with organs of the latter. The CoE currently has 47 member states, 27 of which are part of the EU.

European Coal and Steel Community (ECSC)²², whose objective was the creation of a common market for coal and steel products. In that case, an intergovernmental decision-making model was followed²³, which saw an asymmetry in the distribution of powers²⁴ based on a tripartite structure composed of High Authority, Common Assembly and Special Council of Ministers (Bellucci, 2020, p. 7). This model was then slowly abandoned in favor of one that respected the subdivision and balance of powers and competencies of the central organs of the organization to give it more extraordinary powers and incisive force. In 1950, the Schuman Declaration²⁵ represented the beginning of European integration; in 1957, with the Treaty of Rome, the member states of the ECSC established the European Economic Community (EEC) and the European Atomic Energy Community (EAEC). The EEC was born to establish a customs union²⁶, which would promote a progressive abolition of customs duties, restrictions and barriers to promote the free movement of goods, capital, services and people. Its structure was composed of the Common Assembly (now the European Parliament), the Court of Justice, the European Commission and the Council of Ministers (now the Council of the European Union). The EEC was a new reality with particular characteristics compared to existing international organizations. It was a supranational organization in some ways resembling a typical international organization, for example, because of the obligations and provisions of an international nature born of agreements of an institutional and constitutive nature. For others to a form of the federal state, for example, because of the representation within the institutions present, governments also included citizens,

²² The founding members of this group were six: Germany, Italy, France, Belgium, the Netherlands and Luxembourg.

²³ Like the one on which Mercosur is currently based.

²⁴ This was seen, for example, through the differences in the concentration of competencies, decision-making and legislative powers of the High Authority, which carried out functions that were defined as "supranational" (Bellucci, 2020, p. 7).

²⁵ In his speech, Robert Schuman, the then Foreign Minister of the French government, introduced for the first time the concept of Europe as an economic and political union.

²⁶ This customs union was inspired by the BENELUX model, which was an early form of economic cooperation between the Netherlands, Belgium and Luxembourg. It was created by the London Treaty of Customs Union in 1944 in order to eliminate tariff barriers between the countries, and create what is known as "economic regionalism."

favoring a social and economic integration (Bellucci, 2020, p.8). Another new element was the supranational nature of the legal acts issued by the EEC, which, unlike the intergovernmental nature²⁷ in which the legal acts are directed to the Member States (which must execute them within their legal system), provides for direct application within the Member States (Bellucci, 2020, p.9). This mechanism owes its operation to the partial transfer of legislative power from the Member States to the EU, which, over the years, has become increasingly affirmed thanks to the jurisprudence of the Court of Justice, which has established the primacy of European Union law over domestic law, establishing the need to let the former prevail in the event of incompatibility²⁸ (Bellucci, 2020, p.10). The partial transfer of legislative power, together with the cession of monetary sovereignty and the consequent introduction of a single currency in 2002, have allowed a significant advancement of the integration process and the path towards forming a single European market. Since 1975, the EEC saw a further stage of its progress with the entry of states accepted according to the conditions of accession²⁹ contained in the Accession Treaties, the Copenhagen³⁰ criteria and the Maastricht Treaty.³¹

In the 1980s, there was a further push towards the acceleration of European integration, which led to signing treaties such as the Single European Act of 1986. It introduced several innovations, including the mechanism for European cooperation in foreign policy and the European Commission's White Paper (1985), which encouraged European traders and investors to adapt their instruments to the free market. This part of

²⁷ On which Mercosur is still based today (see 2.1.2).

²⁸ This can be seen in the judgment of the Court of Justice of July 15, 1964, Case 6/64 Costa v. ENEL.

²⁹ These can be summarized in the three criteria that countries must meet in order to join the organization: 1) the political criterion, whereby the candidate state must demonstrate the presence of stable institutions that guarantee the democratic principle, the rule of law, human rights and respect for minorities ; 2) the economic criterion, whereby the candidate state must allow a market economy and fair competition of those who are part of it ; 3) the criterion of adherence to the *acquis communautaire*, i.e. acceptance of the principles of the EU and the obligations arising from membership (Bellucci, 2020, p. 12).

³⁰ Established during the 1993 European Council.

³¹ Among other things, the Maastricht Treaty establishes the "Euro convergence criteria", i.e. the economic and financial requirements that candidate countries must meet in order to join the Economic and Monetary Union (EMU) and adopt the euro as their currency.

the integration process laid the foundations for creating an organization that was no longer solely economic. This finally happened with the Maastricht Treaty of 1992, which first changed the name of the EEC to European Community (EC) and then assigned it a series of essential tasks to promote, among which we recall: economic and social cohesion among member states and harmonious development; a high degree of competitiveness of economic performance; lasting and non-inflationary growth; raising the standard of living and quality of life; balanced and sustainable development of economic activities; a high level of employment and social protection; and finally environmental protection. To pursue these results, the EC was structured by four leading institutions (Parliament, Council, Commission and Court of Justice) and had general and sectoral policies in different areas. The Maastricht Treaty also introduced the three pillars that form the basis of the European Union: The first was characterized by the "Community method", which defined the institutional operation of the organization based on a logic of integration. It was reflected in the entire system of sources, institutions and the supranational character of the organization. The Community method was flanked by the "intergovernmental method", operating in the second and third pillars, for which decisions were taken by consensus between the parties. This method was reflected in the cooperative nature of the organization and saw the governments of the member states as protagonists, with full decision-making power on matters such as development policies. Therefore, through the Maastricht Treaty, non-economic policies were introduced, such as cohesion, development, protection of human rights, or the environment. These topics have then evolved in subsequent treaties, which have continued the process of European integration. These include the Treaty of Amsterdam in 1997, the Treaty of Nice in 2001 and the Treaty of Lisbon in 2007. With the latter Treaty (Lisbon, 2007), among other things, the EC officially became the European Union (EU), the founding treaties³² were reorganized, and the three-pillar structure of the Maastricht Treaty was cancelled, allowing matters of cooperation (for example, asylum and immigration policies) to be dealt with through ordinary Community procedures. This was another significant step in the history of European integration,

³² Now divided into two treaties : TEU and TFEU.

which entailed a further transfer of sovereignty of the Member States to the organization³³, limiting intergovernmental decisions to a few matters concerning standard foreign policy and security (Bellucci, 2020, p.15). EU competencies range from economic policies (with a standard agricultural policy and structural funds for achieving socio-economic objectives) to foreign affairs (with a standard foreign policy), defence and environmental protection. Despite the solid foundations built over the years, the process of European integration has often been put at risk in recent years. Factors such as the economic crisis of 2008 and that of 2011 have revealed the difficulty of managing the many economic asymmetries between the Member States and have given rise to binding solutions in tax matters, exhausting the discretion of Member States in the preparation of fiscal policies. Another challenge has been given by the crisis of recent years, which has shown the inadequacy of the Dublin Convention for the determination of the State responsible for examining asylum applications (Bellucci, 2020, p.17). The latest challenge for the EU is the current COVID-19 pandemic which, among other things, has required an extensive investment³⁴ plan to support economic recovery, further testing the weak financial instruments at the EU level. To conclude this brief *excursus* on the history of European integration, we can say that today the EU is a supranational union. Community law is directly applicable in the territory of individual member states, thus distinguishing itself from any international organization, including Mercosur.

2.1.2 Mercosur Integration Process

The integration of Mercosur countries has developed differently from that of the European Union due to several factors. First of all, Latin American countries have been European colonies for a long time, and their economies have always been oriented

³³ However, member states retain a large part of their national sovereignty in their own domestic policies, through their national parliaments and governments.

³⁴ On July 21, 2020, the European Council decided to approve an economic recovery plan allocating 750 billion euros, of which 390 billion in subsidies and the remainder in long-term loans at favorable interest rates.

towards the production of raw materials. This made economic development difficult and compromised, for a long time, the possibility for Latin American economies to be competitive with those of Western countries. For this reason, even before the 1980s, Latin American countries began experimenting with the first attempts at integration, based on the model of existing integrations such as the EEC. The first of these attempts were made during the *Convención de Montevideo* in 1960, in which was established the *Asociación Latino-Americana de Libre Comercio* (ALALC), which, however, was not successful because of the vast differences among countries³⁵. Another attempt followed in 1969, among the non-LAC countries that established the *Andean Pacto*, also unsuccessful. The first tangible steps towards the formation of the current regional composition of Mercosur were taken in the 1980s when the South American states finally saw the end of their respective dictatorial experiences and were faced with common economic problems (e.g., high inflation rates, closed markets, and unemployment) (Bellucci, 2020, p.20). At that time, strengthening relations with other states was the best solution identified by Latin American countries to allow internal recovery. In 1980, with the *Tratado de Montevideo*, the *Asociación Latinoamericana de Integración* (ALADI) was created, an intergovernmental body tasked with promoting the integration of the Latin American region to establish a common market. From that moment, the first bilateral or inter-regional pacts for economic cooperation began to appear. Subsequently, relationships such as that between Argentina and Brazil became not only economical but also political. In 1985, these two countries signed the Treaty of Iguazú, initiating negotiations for an economic agreement to integrate their respective economies and, therefore, laying the foundations for the formation of the current Mercosur. On July 29, 1986, Argentina and Brazil signed the *Acta para la Integración Argentina-Brasilña*, which established the *Programa de Intercambio y Cooperación Económica* (PICE), based on principles such as symmetry, balance, preferential treatment in third markets, progressive harmonization of policies and participation of

³⁵ Among other things, the 10 ALALC countries could not agree on tariffs, and the lack of an effective dispute resolution system prevented the many political differences between the countries from being overcome.

the business sector. In 1988, Uruguay joined³⁶ the process of regional integration. In the same year (1988), the *Tratado de Integración, Cooperación y Desarrollo entre Argentina y Brasil* was also signed, setting a 10-year deadline for eliminating asymmetries. In 1990, the *Acta de Buenos Aires* was signed, which set a deadline for the formation of the common market³⁷. The climate of general optimism generated by the end of the Cold War and confidence in the institutional mechanisms of multilateralism caused an essential acceleration in the integration process. Finally, on March 26, 1991, Argentina, Brazil, Paraguay³⁸ and Uruguay signed the *Tratado de Asunción*, giving a basic institutional structure to Mercosur and establishing a free trade area. The treaty also outlined guidelines to allow the entry of other member states with "full membership" status or as "associate members". Several South American countries decided to join the agreement: the first was Chile and Bolivia, which joined as associate members (1996); later, Venezuela joined and remained a full member until 2017, when it was suspended due to allegations of lack of democracy in its institutional set-up and persistent violation of human rights.

In all these years, Mercosur has been very much inspired by the Treaty of Rome (1957), so despite the history of the two blocs (EU and Mercosur) shows the significant difference in their development process, we can affirm that their ultimate goals are very similar and that both maintain a constant negotiation between members, which allows the continuous evolution of the integration process. There are, therefore, similarities between Mercosur and EU and enormous differences if we look at the decisional and operative structure of the institutional bodies. The institutional structure of Mercosur was outlined in 1994 with the *Protocolo de Ouro Preto*, in which the Member States established the powers, procedures and limits of the organs, giving the Latin American bloc legal personality under international law. The Mercosur currently consists of three decision-making bodies: the Common Market Council, the Common Market Group and

³⁶ Through the *Acta de Alvorada*.

³⁷ The deadline was set at December 31, 1994.

³⁸ Paraguay was suspended in 2012 and readmitted in 2013, for violating the *Cláusula Democrática* of the Ushuaia Protocol (1998), whose adherence is preparatory to obtaining full membership status in Mercosur.

the Mercosur Trade Commission. In addition to these, there are advisory bodies: the Mercosur Parliament (*Parlasur*), the Economic and Social Advisory Forum and the Mercosur Administrative Secretariat. These bodies' decision-making and operational structure are intergovernmental and not supranational as in the EU since there has been no transfer of sovereign powers over Mercosur by the Member Countries (Bellucci, 2020, p.24). Therefore, the effectiveness of Mercosur's legal acts is very different from that of the European Union, as all legal acts of a binding nature must be approved by consensus and with the presence of all member states. In addition, a national transposition act is required for these acts to become enforceable (i.e., effective towards citizens), and it must be considered that the system of ratification and transposition of Mercosur law is different in each Member State. For a long time, this system has hindered the standardization of the legislative systems of the Mercosur States (which is still an open process), giving more room for the many political asymmetries between countries (Caichiolo, 2017). This procedure has been accused several times of being unsuitable³⁹ to foster the legislative integration of member countries since it leaves free choice on the transposition of a decision coming from Mercosur to the discretion of the governments of the member states. It should also be noted that there is an almost total absence⁴⁰ of institutions or compliance bodies to counteract violations of Mercosur law. The issue becomes even more complex when one considers that the constitutions of the four-member states establish that "national constitutional provisions prevail over those arising from international agreements of any kind or form" (Bellucci, 2020, p. 30). Only recently, case law has held that Mercosur law constitutes an autonomous legal order whose provisions prevail over the norms of international law in national legal systems.

³⁹ Currently, approximately 70% of Mercosur legislation is not transposed by member states (Bellucci, 2020, p. 29).

⁴⁰ The only secondary protection mechanism in Mercosur law is the arbitration mechanism, regulated by the Brasilia Protocol (PB) in 1991 and enhanced by the Olivos Protocol in 2002 (Bellucci, 2020, p. 31).

The legal and political nature of integration processes has been the subject of many studies among political analysts. Some of them, including Andrew Moravcsik,⁴¹ have argued that Mercosur's integration process is exclusively state-led, with limited participation from civil society. In this regard, it must be said that, unlike the EU, Mercosur has not seen the active participation of member state societies in its integration process. This theory, based on liberal intergovernmental theories, is called "intergovernmental institutionalism" and refers to situations in which supranational institutions occupy a more important role in the integration process, determining policies and guiding the decision-making process. Even in the case of the European Union, states have been and remain the main actors in the process. However, in this case, the circumstances resulting from the dialogue between society and government results in accepting that states become the main actors in the integration process since integration processes are primarily driven by economic interests (Moravcsik in Caichiolo, 2017). In the EU, supranational institutions can play a more decisive role in the regional integration process by proposing legislative reforms without having to respond to political pressure from national parties and national parliaments (Moravcsik in Bellucci, 2020, p. 27). They (the supranational institutions) can strengthen interstate agreements, allowing nation-states to take advantage of them for domestic legitimacy and the pursuit of their preferences (Moravcsik in Caichiolo, 2017). Moravcsik defends the importance of two components of the integration process: bargaining among nation-states and national preference formation, which are very much present in the European case. While European integration can, therefore, be defined as the fruit of a 'series of rational choices made by national leaders' (Moravcsik, 1998, p. 18), Mercosur integration, which is often defined as 'an unfinished customs union' (Oddone in Bellucci, 2020, p. 33), is much weaker. Suffice it to say that internal groups are largely disjointed and have a limited impact on decision-making. Institutions lack the autonomy

⁴¹ Professor of Politics and International Affairs, director of the Liechtenstein Institute on Self-Determination, and founding director of the European Union Program and the Faculty Colloquium on International Relations at Princeton University. Moravcsik developed the theory of 'liberal intergovernmentalism' to explain the politics of the European Union (EU) and has worked on liberal theories of international relations.

to implement decisions that affect all member states. There are countless asymmetries⁴² in the political-commercial and social system. This difference demonstrates the different nature of the two blocs, one supranational (EU), the other intergovernmental (Mercosur). It is necessary to start from this basis to understand the numerous difficulties that the two blocs have encountered and still encounter in negotiating the EU-Mercosur FTA.

2.2. EU-Mercosur FTA Negotiations Analysis

2.2.1. The Mandate

After explaining the characteristics of the two blocs and their differences, we can dwell on the analysis of the EU-Mercosur FTA negotiations, which gave birth to a long and complex process that required more than 30 rounds of negotiations throughout 20 years. The negotiations officially date back to 1999, but the bi-regional relationship between the EU and Mercosur began sometime earlier. In 1985⁴³ the EU was Mercosur's largest trading partner, accounting for 26% of all trade (EU Commission, 1994). In April 1991, the Mercosur countries' foreign ministers and the European Commission met for the first time since signing the Treaty of Asunción. The purpose of the visit was to introduce Mercosur and study the possibility of a cooperation agreement between the parties (EU Commission, 1994). The first informal meeting between European and Mercosur foreign ministers took place in Guimarães (Portugal) in May 1992. On that occasion, the European Commission and the Mercosur Council signed an inter-institutional cooperation agreement aimed at "promoting the transfer of European know-how on the subject of integration" (EU Commission, 1994). The agreement also established a Joint Advisory Committee composed of representatives of both parties, which met twice a year to intensify the dialogue between the institutions and promote

⁴² We recall the prominence of Argentina and Brazil within MERCOSUR, which in all these years has not allowed the formation of an equitable system of powers among member states.

⁴³ In the following years, EU exports to Mercosur increased further, reaching a peak of over 40% in 1992-93 and becoming the fastest growing market for European exporters.

and monitor cooperation. This was initially very focused on the "exchange of information, staff training, technical assistance and institutional support". Later, the Committee outlined further guidelines for cooperation between the Union and Mercosur, establishing that it would focus on three areas: "agriculture, technical standards and customs" (EU Commission, 1994).

Negotiations between the EU and Mercosur to define a "framework for negotiations" between the two regional groupings began with the proposal of the then Vice President of the European Commission, Manuel Marín, who introduced the possibility of creating a free trade area between the two blocs at a meeting of EU and Mercosur foreign ministers held in São Paulo (Brazil) in 1994 (Bizzozero, 2001, p. 376). The proposal was accepted by the foreign ministers of both sides who affirmed their willingness to establish a strategy to strengthen relations, initiating an institutional dialogue which can be seen reflected first in the declarations⁴⁴ of the summits of the two regions: those of the EU in Corfu and Essen, and those of Mercosur in Buenos Aires and Ouro Preto; then in the joint declaration of Brussels (1994), and finally in the European negotiation proposal (Bizzozero, 2001, p. 376). The basis of these negotiations was from the beginning strategic for both blocs, even if the emphases were different. Since 1994, the EU adopted a "two-phased strategy" that aimed to enter into an initial agreement with Mercosur to lay the groundwork for the conclusion of a broader interregional association agreement (Grieger, 2019, p.7). In that year, the EU reconfirmed itself as the leading foreign investor in Mercosur, accounting for 70% of European direct investment in Latin America; therefore, the signing of a first AA could have preserved its position in Mercosur, especially given the Free Trade Area of the Americas (FTAA) negotiations, which began in the same 1994.

On the other hand, for Mercosur, the option of "open regionalism" stemmed from the need to negotiate on different fronts and the search for a competitive insertion in international markets (Bizzozero, 2001, p.377). The exports of Mercosur member states to the EU have always been concentrated in primary products or products from

⁴⁴ At their respective summits, the heads of state and government of the two groupings echoed this desire to strengthen ties in pursuit of more ambitious goals.

the agricultural sector in which Mercosur is very competitive. So, the main objective of the negotiations with the EU was to gain access to agricultural markets. It can be said, therefore, that the beginning of EU-Mercosur negotiations is the result of the response that the two regional associations decided to give to the new needs of the international system given by factors such as the logic of strategic security; globalization; and the increasingly constant phenomenon of the construction of regional associations (Bizzozero, 2001, p. 380).

The Madrid European Council signed the Interregional Framework Cooperation Agreement in 1995. The purpose of the Agreement was precisely to "strengthen the existing relationship between the parties and prepare the conditions for creating an interregional association" (EU and Mercosur, 1995), meeting the parties' expectations. To achieve this goal, the Agreement covered "commercial, economic and integration cooperation, as well as other areas of mutual interest, to strengthen relations between the parties and their respective institutions" (EU and Mercosur, 1995). The Agreement entered into force on July 1, 1999, and still governs trade relations between the two blocs, pending its replacement by a new AA.

Negotiations of the EU-Mercosur Free Trade Agreement became a significant item on the European agenda. In July 1998, the European Commission recommended the Council of Ministers to authorise it to open negotiations with Mercosur by presenting a draft negotiating mandate. Based on this document, in September 1999, the EU Council of Ministers adopted negotiating directives, instructing the Commission to begin negotiations, starting on 1 July 2001⁴⁵ (Molle, 2008, p. 101). The mandate remained hidden for a long time (as are still today, many other documents of this negotiation) until a recent leak released the French version of the document.⁴⁶ It contains the directives describing the path for the negotiation process. The document has three parts: Trade, Political Dialogue, and Cooperation (Ghiotto and Echaide, 2019,

⁴⁵ The request that the negotiation be pursued before that date was made in light of the WTO round, which was to take place shortly thereafter (Molle, 2008, p. 101).

⁴⁶ This document can be found at Bilaterals.org <[Bruxelles, le 17 septembre 1999 VERSION CONSOLIDEE UNIQUEMENT A USAGE INTERNE UE-MERCOSUR DIRECTIVES DE NEGOCIATION, PAR LA COMM](#)>

p.9). In essence, this mandate states that "the agreement must promote economic and social progress, taking into account the principle of sustainable development and the needs of environmental protection" (Ghiotto and Echaide, 2019, p. 9). These concepts, which are surprisingly modern and still relevant today, are perfectly in line with the principles of sustainable development that developed in those years and led to the signing of numerous multilateral conventions (see 1.1.2 and 1.1.3). They confirm that Sustainable Development issues have been part of the agreement from the beginning. In the mandate, the longest and most detailed part is the one on Cooperation, which covers transport, fisheries, telecommunications and customs, agricultural, statistical, technological and educational Cooperation, among others.

Europe in 1999 wanted to modernize the administrative reality of the bureaucratic systems of the Mercosur countries to facilitate trade and investment (Ghiotto and Echaide, 2019, p. 9). In this regard, some measures are proposed in the mandate, for example, technical assistance and cooperation between institutions, working groups and exchange of information on the methodologies applied. In this sense, an attempt was made to address the significant asymmetries that have existed and still exist today between European and Latin American countries (where there are severe economic, political and social deficits). Furthermore, the mandate contained the mode of dialogue set by the EU, which was intended to take place both at the ministerial level and between officials and parliaments (Ghiotto and Echaide, 2019, p. 10). Thus, a deeper integration was encouraged that was not limited to economic matters, which remained central to the mandate giving rise to several objectives. The first objective is to encourage the harmonization of the administrative and customs systems. Another is to achieve the liberalization of trade in goods in 10 years,⁴⁷ yet another is to achieve the progressive liberalization of services.⁴⁸ The agreement was intended to promote harmonizing the customs systems and, consequently, of the administrative systems of both parties. In this regard, mechanisms for "regulatory cooperation" were incorporated,

⁴⁷ Taking into account, of course, the sensitivity of some products.

⁴⁸ Again, the mandate establishes a 10-year term.

establishing open consultation for the "harmonization of regulatory requirements based on international or European standards" (EU, Title 3 p. 7).

To proceed with the preparatory work for the negotiations, the Cooperation Council established in the 1995 Agreement met in Brussels in November 1999. On that occasion, the parties defined the structure, methodology and timetable for future negotiations. Also established was the EU-Mercosur Bi-regional Negotiations Committee (Molle, 2008, p. 101), the principal negotiating mechanism accompanied by the Cooperation Subcommittee, three subgroups on specific areas of cooperation, and three other technical groups related to trade issues.

2.2.2. The Negotiation Process

The official negotiations of the FTA EU-Mercosur were launched in April 2000, experiencing different phases and various ups and downs that led to numerous interruptions. The first phase of negotiations took place from 2000 to 2004, including 15 meetings of the Bi-regional Negotiations Committee (BNC) and three ministerial meetings. During the first round of negotiations (April 2000 and Madrid Summit, May 2002), the objectives and scope of the agreement were defined. The topics covered political, economic, trade and cooperation issues. At that time, the strategies of both sides seemed "synchronized in an interregional logic, based on liberal visions of open regionalism and the globalization process with a negotiating matrix based on the WTO-plus trade agreement model"⁴⁹ (Sanahuja and Rodriguez, 2019, p. 5), whereby the parties intended to "implement as soon as possible a substantial cooperation package in areas of common interest" (EU, Mercosur, 2002); among them: the areas of customs, internal markets, macroeconomic coordination policy, the social dimension of Mercosur, norms and standards, and agriculture, among others (EU, Mercosur, 2002). As we will see later (see 2.3.1), among the themes related to cooperation, Sustainable

⁴⁹ "WTO Plus" is commonly used to describe commitments made by members during their WTO memberships with content and levels of obligations that exceed those required by the agreements. For example, when a country negotiates its accession to the WTO, it may be asked to make concessions that exceed existing WTO agreements' requirements or commit to following stricter rules than those required by the WTO. These are the WTO plus commitments or concessions.

Development in its three dimensions was also beginning to make its way into the spotlight. During the first phase, the negotiations were directly linked to the discussions on agriculture within the WTO and the progress made on the liberalization of agricultural products (Ghiotto and Echaide, 2019, p. 10). Between 1998 and 2000, the EU had become the primary recipient of Southern Bloc exports.⁵⁰ At the same time, Mercosur (led by Brazil and Argentina) had attracted the attention of the United States (US) and China,⁵¹ which had undertaken economic initiatives towards it. This had an impact on the EU's trade decisions. Facing competition with the US and China, the EU invested time and resources into monitoring Mercosur and its third-party trade partners (Meissner, 2016, p. 105). In this way, the EU, which had gained a privileged position in Mercosur in previous years, lost political and economic presence in the region. The competition with the US motivated the European Commission to pursue negotiations. The negotiation of the EU-Mercosur FTA took place simultaneously as the FTAA negotiation, with Brazil trying to use this as a means of blackmail to obtain a better agreement for Mercosur. Both negotiations found difficulties in reaching an agreement, proving to be "unprecedentedly comprehensive" (Meissner, 2016, p. 105). In both, the most challenging issue was agriculture. In this regard, the position of the European Commission was: "it could not negotiate agribusiness in the FTA (...) unless the US would do the same and unless the US and Japan would stop subsidizing their (respective) agricultural markets" (Meissner, 2016, p. 105). Like the US, the EU tried to circumvent the agriculture negotiations by dividing the negotiations into different phases. The EU was confident in an agreement on new multilateral rules in the WTO Doha Round negotiations, which undoubtedly would have had an impact on the EU-Mercosur talks, but this did not happen (see 1.1.7) as, already in 2003, the crisis of the multilateral trading system and the Doha Round within the WTO became evident (Ghiotto and Echaide, 2019, p.10). Between 2000 and 2004, the EU committed to a 90% opening, vis-à-vis Mercosur, but without liberalization in agricultural products

⁵⁰ Approximately 30% of total Mercosur trade went to the EU (Makuc, Duhalde and Rozemberg in Ghiotto and Echaide, 2019, p. 10).

⁵¹ Between 1991 and 2001, the export volume from Brazil to China tripled. Nel 2004, Brazil even announced that it would start FTA talks with China (Meissner, 2016, p.102).

(which were most significant interest to Mercosur). The EU offered the entry of these sensitive products under the "quota system", while the expansion should have depended on the outcome of the WTO rounds (Molle, 2008, p. 103). However, the last offer exchanged was unsatisfactory (as both sides remained firm on their position), and the mismatch in the level of ambition for trade liberalization in agriculture caused the EU-Mercosur negotiations to be frozen. At the same time, FTAA talks were also frozen.

The period between 2004 and 2009 was "one of mutual disinterest" (Sanahuja and Rodriguez, 2019, p. 11). During those years, there were meetings of officials trying to resume negotiations but failing to do so. The failure was mainly due to the internal political conditions of the two blocs that were not conducive to dialogue. While the new South American progressive governments pursued "neo-developmentist" policies visibly misaligned with the EU, it preferred a liberal model of "open regionalism", and in those years, the number of its members was growing more and more.⁵² Only in 2008, the financial crisis and its consequent impact on the reduction of exports (in addition to the WTO crisis) pushed the European Commission to seek the resumption of negotiations at the global level and Mercosur.

The second phase of negotiations began in 2010, against the backdrop of a stalled Doha round and stalled FTAA talks. The reopening of negotiations was announced at the 6th EU-LAC summit in Madrid⁵³ (May 2010), arousing the discontent of a group of European countries (including France, Austria, Poland, Ireland, Hungary, Luxembourg and Finland) concerned, among other things, about the increase in beef and poultry imports.⁵⁴

The new phase of negotiations involved developing regulatory frameworks on the one hand and the preparation of bids on the other (Makuc, Duhalde, and Rozemberg, 2015, p. 28). Nevertheless, this period was characterized by a particular slowness of

⁵² In 2004 alone, the EU incorporated 10 new members, bringing the total to 25.

⁵³ During the summit, the establishment of the European Union Foundation - Latin America and the Caribbean (EU-LAC) was also decided upon as an instrument for strengthening joint cooperation and strategies and measures were discussed.

⁵⁴ This group of countries sent a letter to the European Commission rejecting the negotiations, criticizing the secrecy of the negotiation process, and warning that an agreement with Mercosur would lead to a 70% increase in beef imports and a 25% increase in poultry imports (Sanahuja and Rodriguez, 2019, p. 11).

negotiations. During the 2011 and 2012 rounds, there were nine negotiating rounds and several BNC meetings). Despite this, there was no exchange of offers, and progress was only made in the regulatory chapters on services, government procurement, customs, trade facilitation and intellectual property. Mercosur⁵⁵ proposed incorporating several figures to rebalance the trade asymmetries between the two blocs. However, on the other hand, the EU remained anchored to protectionism in agricultural matters, causing a reluctant response from Latin American countries to make, for example, concessions on the liberalization of trade in services.

Moreover, the European Commission's announcement that starting in 2014, it would remove several upper-middle-income countries (including most Mercosur countries) from the "General System of Preferences" (Ghiotto and Echaide, 2019, p.11) put pressure on Mercosur, increasingly led by Argentina and Brazil. Faced with the new reality, the two powers reacted in different ways: Brazil attempted to accelerate negotiations (driven mainly by pressure from the agribusiness sector), while Argentina⁵⁶ continued to defend trade instruments that took into account asymmetries, intending to reach a balanced agreement (Larisgoitía and Bianco in Ghiotto and Echaide, 2019, p. 11-12). The waters moved from 2014 onwards, with the end of the commodity cycle and the arrival in power of liberal-conservative governments in Argentina and Brazil (2015), which allowed adopting a liberal strategy of external openness (Sanahuja and Rodriguez, 2019, p. 5).

The last phase of negotiations focuses on the period 2016-2019, emphasizing the new crisis scenario of globalization and how this factor affected the agreement's success. In June 2015, a Ministerial Meeting was held in Brussels, resulting in a joint statement in which both parties reaffirmed their total commitment to conclude the

⁵⁵ At that time, Mercosur was facing the suspension of Paraguay and the joining of Venezuela to the bloc and center-left governments, while Argentina and Brazil were pursuing other priorities as part of a South-South cooperation program supported by the huge gains of the commodity boom cycle (Grieger, 2010, p. 7).

⁵⁶ During this phase, Argentina had been very active, proposing the "infant industry clause" that allowed the elevation of tariffs applied in those industrial sectors that the government intends to strengthen or restructure (later abolished in the last phase of the negotiations), and insisting on supporting the "temporary admission" and "restitution" schemes to foster competitiveness (Ghiotto and Echaide, 2019, p.11).

negotiations (EU and Mercosur, 2015). In that same period, tendencies towards fragmentation of international trade and protectionist impulses induced by the rise of new nationalist and extreme right-wing political actors (recall the election of President Trump in 2016) emerged in the international system, calling into question the multilateral system. In 2016, EU-Mercosur negotiations officially resumed and, since then, the exchange of market access offers took place. The reopening of the dialogue can be considered an expression of the defense of open trade and the multilateral system and can be seen as a political response to this crisis of globalization (Sanahuja and Rodriguez, 2019, p. 5). At that time, political changes in the Mercosur countries brought more pro-free trade governments to power. The governments of Argentina and Brazil put aside several of the demands that had previously stalled negotiations, intending to support "smart insertion into the world" (Ghiotto and Echaide, 2019, p. 12). For its part, the EU adopted an offensive trade stance framed in its policy on "Trade for All" (2015). However, agriculture remained the most challenging point of negotiation, with EU member states declaring defensive interests in this regard. 2017 saw the failure to announce the end of negotiations during the 11th WTO Ministerial Conference in Buenos Aires.

2.2.3 The 2019 Agreement

In June 2018, in Montevideo, the parties understood the pillars of political dialogue and cooperation, but the closure of the trade chapter of the agreement did not happen. Nevertheless, agricultural liberalization remained a problem for some European countries, and even on the Mercosur side, statements were made against the agreement calling for the inclusion of an "industrial development clause," the granting of "special and differential treatment," and the establishment of a limit to protection under geographical indications requested by the EU, among others (Consejo Industrial del Mercosur, 2018). This showed that, in reality, the trade pattern that has always characterized EU-Mercosur trade had not changed much during the negotiations, but rather many asymmetries between the parties remained (Cienfuegos, 2016. p. 231).

Despite this, the challenges posed to the multilateral trading system by growing U.S. unilateralism and protectionism, the uncertainties of the impact of the U.S.-China "trade war," the looming exit of the United Kingdom from the EU, and the electoral dynamics in the EU and Mercosur countries in 2019 finally created the opportunity to conclude the negotiations (Grieger, 2019, p. 7-8).

On June 28, 2019, the European Union and Mercosur reached a political agreement for an ambitious trade agreement covering issues such as tariffs; rules of origin; technical barriers to trade; sanitary and phytosanitary measures; services; government procurement; intellectual property; small- and medium-sized enterprises; and sustainable development (EU Commission, 2021). The agreement was announced at the 2019 G20 summit in Osaka, after 20 years of negotiations, under global media attention. The culmination of the negotiations was seen as an opportunity for the actors involved to take a normative role, sending a powerful political signal in the face of the rise of economic nationalism (Sanahuja and Rodriguez, 2019, p. 5). Economically, the agreement, if ratified, would create the largest free trade zone in terms of population and a market that accounts for nearly a quarter of global GDP. Moreover, the EU would gain essential advantages in the industry and services sectors and some agricultural products (among them wines and dairy products). In contrast, Mercosur would gain better access to the European market for its agricultural exports (Sanahuja and Rodriguez, 2019, p. 18).

2.3 The Sustainable Development in the Agreement

2.3.1 The Sustainable Development in the negotiations

In 1995, Sustainable Development was already an issue in the EU-Mercosur negotiations, as can be seen in the European Commission document "European Union/ Latin America: Current Situation and Prospects for Strengthening the Partnership 1996-2000", approved by the European Council in December 1995, in which the Commission's strategy for external relations with Latin America is reaffirmed, based on

a dialogue with the various regional integration groups, with a view to "contributing to the creation of a strategic alliance on issues where convergent positions exist, in order to improve bargaining power on the international scene and promote models of sustainable development that ensure the positive inclusion of the various actors in the globalization process" (Bizzozero, 2001, p. 378). From its inception, the concept was the outline of the negotiation and can also be found in the Interregional Framework Cooperation Agreement of 1995, focusing on environmental issues. In this regard, Article 17 - "Cooperation on environmental protection", states: "The Parties, following the objective of sustainable development, shall promote that the protection of the environment and the rational use of natural resources be taken into account in the different areas of interregional cooperation" (EU, Mercosur, 1995). A more modern and broader consideration of the theme can be found: in the First Meeting of the EU-Mercosur bi-regional negotiations committee (Buenos Aires, April 6-7, 2000), in which the parties established the principles of the negotiations, giving priority to their relations in the "political, economic, commercial, cultural and cooperation fields, building a deeper and more comprehensive partnership between the two regions, which should be based on democracy, sustainable development and economic growth with social justice" (point 1, General Principles and Objectives); and in the 2002 Second Meeting of Heads of State and Government of the European Union and Mercosur, point 3 of which reads: the parties "decided to strengthen and deepen their political dialogue on issues of mutual interest in the international agenda, in particular: (...) sustainable development, taking into account the economic, social and environmental dimensions" (EU, Mercosur, 2002). Since then, with its three dimensions (see 1.1.4), the theme has gained more and more space in the international discussion and the EU-Mercosur negotiations. As we will see later (see 2.3.3), even during the negotiation standoff, sustainability concerns still gave rise to actions such as the EU's call for a first Sustainability Impact Assessment (2016). Furthermore, in 2009, the report of the European Parliament on the strategy of the European Union for relations with Latin America, in its paragraph c) "with regard to the social sphere of the bi-regional strategic partnership", point 25 recommends "a coordination of the positions of the two regions on the way to achieve

the Millennium Development Goals in view of the high-level session of the United Nations to be held in September 2010" (2009/2213 (INI)), referring in particular to "those (the goals) which concern the fight against poverty, the creation of stable and quality employment and the social integration of marginalised groups, in particular indigenous groups, children, women and people with disabilities" (EU Parliament, 2009/2213 (INI)). The Parliament considered that the MDGs were "among the most important objectives to be achieved by 2015, focusing on investments in the poorest countries and most vulnerable populations" (point 26) and invited the two regions to "find common ground before the high-level meeting on the MDGs in September 2010 (EU Parliament, 2009/2213 (INI)).

Accordingly, on 17 March 2010, the Committee on Development of the European Parliament⁵⁷ called on the EU and Latin American and Caribbean countries (LAC) to "improve their partnership and cooperation mechanisms, placing greater emphasis on the defense of human rights and political, environmental and social rights, including the cultural rights of indigenous minorities" (point 1). They urged them to "strengthen their partnership to address ecological challenges" (point 4), calling for greater attention to "combating climate change" through "the establishment of essential measures based on the preservation of forests and natural resources, as well as a sustainable agricultural model making use of agroforestry and natural reforestation measures" (point 6). Finally, they called for "the signing of the ILO conventions, by all countries concerned, (see 1. 1.6 of this study) and in particular Convention 169 on the Rights of Indigenous Peoples" (point 14).

Negotiations resumption in 2010 were based on the parties' general principles and objectives during the first phase (2000-2004). The theme of Sustainable Development became more and more prominent in the trade part of the agreement. On the occasion of the visit of the EU Trade Commissioner⁵⁸ to discuss Mercosur negotiations in Paraguay and Uruguay (2011), it was reaffirmed that the EU-Mercosur

⁵⁷ It is a standing committee of the European Parliament which has been dealing mainly with the development and cooperation policy of the European Union since 1997.

⁵⁸ EU Trade Commissioner Karel De Gucht visited Paraguay and Uruguay on 7-9 February 2011.

trade part of the AA was not intended to cover only issues related to goods, but also issues such as services, investments, government procurement and trade and sustainable development. During the following years, the topic became increasingly central to the negotiations. In September 2017, the parties established the formation of a Sub-Committee on Trade and Sustainable Development, whose task, among other things, was to prepare the Trade and Sustainable Development Chapter for inclusion in the agreement.

2.3.2 The Trade and Sustainable Development Chapter

The parties presented the Trade and Sustainable Development (TSD) Chapter as "the solution" to the many criticisms the agreement has received and continues to receive regarding its sustainability (see 2.5). It includes 15 pages on this topic, "establishing principles and actions regarding labor and environmental aspects of sustainable development of specific relevance in a trade and investment context" (Article 1.1), with the aim of "enhancing the integration of sustainable development into the trade and investment relations of the Parties" (Article 1.1). In the TSD, the Parties explicitly recognize "that the economic, social and environmental dimensions are interdependent and mutually reinforcing in sustainable development" (Article 1.3). They reaffirm their "commitment to promote the development of international trade in a manner that contributes to the goal of sustainable development, for the welfare of present and future generations" (Article 1.3), giving evidence that interregional trade agreements cannot in any way avoid considering the issue. The Chapter considers that Parties should adopt laws and policies "consistent with each Party's commitment to international agreements and labor standards" (Article 2.1), while still leaving "freedom to determine their policies and priorities for sustainable development, to establish levels of domestic environmental and labor protection (...) and to adopt or amend their laws and policies" (Article 2.1). Policies must not weaken levels of environmental protection or waive/waiver/not effectively enforce legislation regarding environmental or labor law to encourage trade

or investment (Articles 2.3, 2.4 and 2.5). Similarly, environmental and labor legislation must not be applied "in a manner that would constitute a disguised restriction on trade or unjustifiable or arbitrary discrimination" (Article 2.6), further confirming that trade and sustainable development must cooperate harmoniously and transparently (Article 3), without one impeding the success of the other.

The TSD deals with several topics of sustainable development by relating them to the trade sphere of the agreement, among which we recall: multilateral agreements on labor standards (Article 4); multilateral agreements on the environment (Article 5); trade and climate change (Article 6); trade and biodiversity (Article 7); trade and sustainable management of forests (Article 8); trade and sustainable management of fisheries and aquaculture (Article 9); technical and scientific information (Article 10); and trade and responsible management of supply chains (Article 11). Specifically, concerning multilateral labor standards and agreements, the Parties reaffirm their commitment to "promote the development of international trade in a manner that fosters decent work for all, including women and youth" (Article 4.2). In this regard, each Party commits: to "respect promote and effectively apply internationally recognized core labour standards as defined in the ILO core conventions" (Article 4.3); and to "ratify ILO core conventions, protocols and other relevant ILO⁵⁹ conventions to which it is not yet a party (...)" (Article 4.4). About Multilateral Environmental Agreements, the parties (recognizing the importance of the environmental dimension (Article 5.1)) reaffirm their commitment to "promote and effectively implement, multilateral environmental agreements (MEAs), protocols and their amendments (...)" (Article 5.3). Furthermore, in article 7, the parties recognize the importance of the conservation and sustainable use of biological diversity per the Conventions⁶⁰ adopted on the subject; and in article 8, "the importance of sustainable forest management and the role of trade in pursuing this objective and the restoration of forests for conservation and sustainable use". About the

⁵⁹ See 1.1.6 of this study.

⁶⁰ The Parties recognise the importance of the conservation and sustainable use of biological diversity consistent with the Convention on Biological Diversity (CBD), the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), the International Treaty on Plant Genetic Resources for Food and Agriculture, and the decisions adopted thereunder and the role that trade can play in contributing to the objectives of these agreements (article 7.1).

topic of Climate Change, however, the parties recognize "the importance of pursuing the ultimate objective of the United Nations Framework Convention on Climate Change (UNFCCC) to address the urgent threat of climate change and the role of trade in doing so" (Article 6.1), so they commit to "effectively implement the UNFCCC and the Paris Agreement resulting from it" (Article 6.2).

Concerning Dispute Resolution, the TSD chapter incorporates a particular dispute resolution mechanism for the issues it addresses. In the case of Sustainable Development issues, the enforceable (complex law) dispute resolution mechanism provided in the General Agreement to resolve trade issues does not apply, but a non-enforceable (soft law) dispute resolution mechanism does. Simply put, the agreement does not provide enforceable penalties for violations of the provisions contained in the TSD. Any dispute that arises in this regard must first be resolved amicably by the parties to the dispute through consultations to reach a mutually satisfactory solution. In Article 15, the Parties stipulate resolution through "dialogue, consultation, exchange of information and cooperation." Only if a mutually satisfactory solution cannot be reached (in 120 days), a panel of experts may be requested to examine the issue (Article 17.1). For compliance with multilateral agreements, the expert⁶¹ opinions or information requested by the panel should include information and advice from relevant bodies (e.g., the ILO in labor matters). This dispute resolution mechanism is currently criticised by many on the international scene, experts and some EU member countries, as it is considered too "weak" to make the TSD effective.

2.3.3 The Sustainability Impact Assessment

The Sustainability Impact Assessment (SIA) is a DG Trade-specific tool for supporting major trade negotiations. This tool provides an in-depth analysis of the potential economic, social, human rights and environmental impacts of trade negotiations as they are taking place. On the EU-Mercosur Agreement, the first SIA was

⁶¹ The group does not envision, except in a symbolic way (since the final report will be shared publicly), the "participation" of civil society.

requested in 2003 by the European Commission and conducted by a consortium of independent consultants led by the Institute for Development Policy and Management at the University of Manchester, producing results from 2006 to 2009. An initial Sustainability Impact Assessment (SIA) was published in 2006, and specific studies for agriculture, automotive and forestry were published in 2007. In 2009, a final SIA of the Agreement's potential economic, social and environmental implications was published. However, this first SIA did not consider the latest trade flows and political changes in the Mercosur countries and did not provide a human rights analysis (Grieger, 2019, p. 10).

Nevertheless, it was further confirmation that Sustainable Development issues were already making their way into the Agreement at that time. In 2010, the Commission published a Position Paper regarding the SIA, highlighting the possibility of achieving a positive impact of the Agreement, while unable to avoid noting several concerns set out in the Report, for example, concerning the potentially significant adverse impacts of the Agreement on the environment. Given the negotiation dynamics, which went on much longer than expected, a new SIA was requested from the London School of Economics (LSE) in 2017. The Final Report was published in December 2020, after the signing of the Agreement in Principle between EU and Mercosur, demonstrating, according to critics, that this study did not in any way guide the negotiation and decision-making processes (Cavazzini, 2019). The methodology used for this new SIA has also been widely criticized by academics, as its use usually results in more significant positive impacts than other models (Cavazzini, 2019). The Report argues that the Agreement itself is not dangerous for the environment (Co2 emissions, deforestation). Instead, what is dangerous is the states' behavior. In March 2021, the European Commission published a new Position Paper, confirming that the Agreement will have a positive impact on the economies of both the EU and Mercosur countries (increasing wages and contributing to the reduction of inequality); but also considering, inevitably, concerns about the potential impact of the Agreement on the environment (in particular on deforestation, human rights and indigenous peoples).

About Mercosur, it should be noted that no Sustainability Report has been published to date. After the announcement of the conclusion of the Agreement, the industrial sectors asked the government of Mauricio Macri (then president of Argentina) to make their impact studies public. This never happened, but some government officials and negotiators commented unofficially that some impact studies did not show profits for Mercosur (Lamiral, 2019), while others, including the chief negotiator, Horacio Reyser Travers, questioned the effectiveness and usefulness of SIAs (Ghiotto and Echaide, 2019, p. 9).

2.4 Current Situation

The EU-Mercosur FTA is currently an "Agreement in Principle", undergoing legal review and translation. Once this phase has been completed, it will be presented to the European Parliament and Parlasur for approval and then to the parliaments of member states for ratification. Therefore, the agreement is not yet effective, but it has already been demonstrated to have a significant impact on a global level. It is at the center of the international debate due to numerous criticisms, especially from Europe. As we will see later (see 2.5), these criticisms are, above all, of a social nature and linked to respect for agro-food standards, environmental impact and protection of human rights. In addition, the recent issues arising from the Bolsonaro government's shift in environmental and agrarian policies in favor of the interests of landowners and agro-exporters, which have caused a sharp increase in forest fires in the Amazon in the year 2019. According to Brazilian sources from the National Institute of Space Research (INPE), a total of 11,088 square kilometers of rainforest was destroyed from August 2019 to July 2020 (9.5% more than the previous year), while in the last year, there was a further increase of 1.8% (data from June 2021). In addition, the latest reports state that in recent years the system of environmental fines (one of the primary means to protect the rainforest and punish illegal deforestation) has been hampered in favor of economic interests (Spring, 2021). These recent events have increasingly weakened the initial enthusiasm for reaching the agreement. Today the point of maximum distance between

the two parties has been reached. Recently, many European states have expressed their opposition to the trade agreement, complaining that the pact is incompatible with the objectives of the European Green Deal and the Paris Climate Agreement (Tabarrini, 2021). France, in particular, immediately stated that it had no intention of endorsing the agreement in its current conditions, concerned about the fate of the rainforest (and, less explicitly, by the threat of South American beef to French exports). Ireland, Austria⁶² and Belgium have also expressed their opposition to approving the agreement "as it is". Moreover, on October 6, 2020, the EU-Mercosur agreement was rejected in plenary by the European Parliament, stressing that it "cannot be ratified in its current form" (EU Parliament, 2020) due to its environmental impact, lack of commitments on human and labor rights and incompatibility with the Paris Agreement. In paragraph 36 of the Resolution, the Parliament recalls that the agreement, "like all EU trade agreements, must ensure a level playing field and respect for European standards and modes of production" (2020). Additionally, it "contains a binding chapter on sustainable development that must be fully implemented, enforced and evaluated, as well as specific commitments on workers' rights and environmental protection, including the implementation of the Paris Agreement on climate change and related development standards" (EU Parliament, 2020). The Parliament's position is clear. The agreement in its current form is not strong enough to bind countries to meet Sustainable Development standards. This is because of the lack of guarantee instruments in violation of the TSD chapter (see 2.3.2). At the informal EU27-LAC ministerial meeting held in Berlin on December 14, 2020, European Commission Executive Vice President and Trade Commissioner Dombrovskis, European Commission High Representative/Vice President Borrell, and the ministers of Argentina, Brazil, Paraguay and Uruguay, discussed a way to proceed with the ratification and entry into force of the EU-Mercosur agreement. They expressed their willingness to increase cooperation to proceed with the agreement's implementation and reaffirm their commitment to "effectively implement the international commitments outlined in the agreement,

⁶² Chancellor Sebastian Kurz recently stated that he sees the agreement as a threat to Europe's environmental credibility, even sending a letter to António Costa, Portugal's prime minister, who currently holds the rotating presidency of the EU.

including the Paris Agreement." According to the statement, "cooperation will enhance the agreement's potential to contribute to the overarching shared goal of sustainable development by observing the principles and guidelines of the 2030 Agenda for Sustainable Development" (EU Commission and Mercosur 2021). However, this was not enough to calm discontent. In February 2021, 65 members of the European Parliament called for reopening the negotiation and including critical points in the agreement that would oblige to stop certain practices such as deforestation. On the other hand, the Mercosur countries also seem to have lost the will to agree. Not only Brazil, led by President Bolsonaro, continues to implement its nationalist policy in Amazonia, but also Argentina has expressed its concerns about an alleged "imbalance" in favor of the EU in the agreement, stating that it wants to renegotiate some parts of it (Tabarrini, 2021). Moreover, despite the diplomatic commitment of Portugal (holder of the Presidency of the EU Council until June 2021), which would like to bring the final negotiations to a conclusion, the future perspective seems to be that of a slow ratification process. At present, Slovenia, which holds the Presidency of the EU Council, has other priorities, and 2022 will see France, which, as we have said, does not support the agreement. This phase of stalemate, also determined by the Covid-19 pandemic, could leave room for other trade powers such as China (Tabarrini, 2021), which has recently overtaken the EU as the first reversing country in Latin America and which would be ready to take over from the EU in trade flows with Mercosur (also facilitated by the active vaccine diplomacy in the region).

2.5 Criticism of the agreement

As we have mentioned (see 2.4), the EU-Mercosur FTA is currently controversial in Europe and Mercosur. On both sides, we find those in favor of the agreement and those who reject it. On the EU side, the agreement has been warmly welcomed by industry associations and several agriculture sub-sectors with offensive interests (as it would eliminate or lower tariff barriers allowing for the growth of bi-regional trade in goods, services and investment). However, many international

policymakers and environmental groups have become increasingly vocal in expressing concerns about the potential impact of such an agreement on farmers and climate change, the environment, and human rights in Latin America.

First of all, recall that there are numerous concerns among European farmers, who fear competition from cheaper South American products (including beef, poultry, rice, and cane sugar) and the distorting effect that could occur due to an excessive increase in imports into the European Market and its impact on employment⁶³ (Latino, 2021). A second problem, also European, is given by the risk of derogations to the high standards of food safety of the EU due to the application of the "principle of equivalence"⁶⁴, which, if on the one hand, helps to facilitate transactions by simplifying the terms of trade between trading partners, on the other hand, can create problems related to the techniques used in Latin American countries to achieve the required standards.⁶⁵ A third issue is the need to boost exports of agro-alimentary products, which will occur with the entry into force of the agreement. This could result in an incentive to increase the volume of intensive and extensive production, jeopardizing the effectiveness of control measures against deforestation (as is already happening in Brazil). A fourth problem, again linked to the environment, is the increase in transport, which represents one of the primary sources of environmental pressure and is responsible for a large part of greenhouse gas emissions, contributing to climate change. Finally, a further concern is that the EU-Mercosur FTA could exacerbate an already highly degraded situation in terms of human rights, especially about Latin American indigenous communities who are victims of "land grabbing" (Latino, 2021).

There are also different reactions to the possible entry into force of the agreement on the Mercosur side. In this case, the most evident concern is that of industrial sectors due to asymmetries in the competitiveness of the two blocs, which

⁶³ This position has been shared by some European leaders since the aftermath of the closing of the FTA negotiations.

⁶⁴ According to which the regulations and guarantees provided by the official certification and inspection systems of different countries are in part recognized as equivalent or, if they are divergent, are considered to provide the same level of protection.

⁶⁵ Recall the "*carne fraca*" case involving Brazil or the massive use of pesticides and growth hormones in Argentina and Uruguay.

could compromise the possibility of Latin America deriving benefits from the agreement. In addition to these issues, there are also environmental ones. The *Confederación Latinoamericana y del Caribe de Trabajadores Estatales* (CLATE) has declared itself opposed to the approval of the agreement. They share European concerns and join the transatlantic coalition "Stop Mercosur-EU", an alliance of more than 400 civil society organizations and social, environmental and student movements from both Europe and South America calling for a halt to the agreement between the two trading blocs.

3. DISCUSSION AND CONCLUSION

Sustainable Development is, by now, an essential concept that has acquired increasing importance in the dynamics of international politics. The numerous agreements demonstrate the realities, multilateral treaties, and international organizations developed since the 1980s on the subject, but also (and above all) by the fact that, in line with the new concept of progress, Sustainable Development is currently an essential topic in agreements of an economic nature. The case of the EU-Mercosur FTA, which has been extensively analyzed during this study, has been purposely chosen because it demonstrates the growing importance of the concept of Sustainable Development and its determining capacity in trade negotiations. Although 20 years have passed since the beginning of negotiations between the European Union and Latin American countries, and numerous obstacles and crises have been overcome before reaching the "Agreement in Principle", the future of the EU-Mercosur FTA is still uncertain. This is due in part to the numerous political and economic asymmetries between the two blocs that continue to persist over time, but above all to the recent events related to Brazilian environmental policies and the numerous criticisms of the agreement regarding environmental and social issues, which do not allow to proceed with the approval of the treaty itself. This situation gives a clear sign of the importance of the dimensions of Sustainable Development and how much it can condition the ratification and validity of the FTAs. In a globalized international panorama that promotes a new, broader and more complex concept of progress-well-being, where the SDGs and the Paris Agreement (among others) determine the fate of the International System, it is no longer possible to make agreements without including all the environmental and social costs. Just as it is no longer possible to ignore Sustainable Development issues in order to favor economic interests, for this reason, nowadays, a more significant effort is required from the States that must commit themselves to guarantee the respect of environmental and social standards within trade agreements. This does not mean that FTAs should create new environmental and social standards, as this is not their competence, but that they should ensure compliance with existing obligations and commitments undertaken by the parties in the relevant multilateral

forums. In this regard, the TSD of the EU-Mercosur FTA has been analyzed in this study as an effective response to the environmental and social concerns raised by the agreements' critics. Still, this does not appear to play as decisive a role in strengthening countries' commitments on climate change as set out in the Paris Agreement, nor in providing a solid framework for addressing other important environmental and social issues. Additionally, it does not ensure that the agreement will not lead to increased environmental and social damage; nor that the agreement's effects are adequately monitored so that its effects can be predicted. It must be remembered that the chapter is not placed on the same level as the other parts of the trade treaty since it is excluded from the general dispute resolution mechanism provided, instead, for economic matters. Thus, the inclusion of a "specific system" of resolution does not seem to be sufficient to compromise the parties to respect the provisions contained in the chapter. It does not provide for any means of guaranteeing the imposition of sanctions and specific binding obligations, and the institutional structures that have been created to implement the commitments in the chapter are also weak. Moreover, the ineffectiveness of the TSD is accompanied by the lack of impact studies to examine the intended effects of the agreement. As we have seen throughout this study, the SIA carried out by the LSE for the European Commission was published three months after the negotiations closed, in October 2019, and did not take into account the documents published in July 2019; while Mercosur never published any studies. This means that the SIAs have not guided the negotiators in any way during the process and that there still prevails a great trust in trade liberalization without considering its environmental or social effects. TSDs are indispensable but still very weak to address Sustainable Development issues in line with the central role they have acquired so far (and are continuing to acquire) within FTAs. At this point, further action is expected on the practical implementation and application of the TSD chapters, including, among other things, the possibility of sanctions for non-compliance with the directives. Only in this way, perhaps, will it be possible to overcome the new phase in which the EU-Mercosur negotiations currently find themselves. Withdrawing from the agreement is not, in fact, a possible option, especially for Europe, which would lose a good part of its influence in the Latin

American continent and, at the same time, would also cast doubt on its commitment in the environmental and social field. Furthermore, a possible renunciation of the agreement would push Mercosur towards China and the United States. The topic is vast and does not allow us to know how the parties will deal with this new crisis. Both have announced that they want to go ahead with the ratification, but reality shows that the two blocs are increasingly distant from each other. What is certain is that the impact on the environment of the agreement can be potentially devastating, so the issues of Sustainable Development cannot be neglected. As we have seen, the opening up of trade channels for primary goods can fuel the cycle of deforestation in many regions of MERCOSUR countries and compromise the balance of ecosystems, encouraging the loss of biodiversity and increasing the phenomena of land grabbing in the areas of cultivation for practices such as fuel production, cattle breeding and mining. In addition to the critical situation, the health crisis derived from the Covid-19 pandemic has partly diverted attention from the agreement. Nevertheless, the European Parliament has been evident on the issue. The agreement "as is" is not good. It does not prevent environmental impacts and does not ensure compliance with specific commitments on workers' rights and environmental protection, including implementing the Paris Agreement on climate change and related development standards. We do not know if changes will be made regarding the TSD of the EU-Mercosur agreement or guarantee instruments will be included, but it is clear that there are several hurdles to overcome before approving the agreement and that these relate to the environmental and social spheres. With certainty, what can be said is that, whichever way the parties go, they cannot avoid considering the growing importance of Sustainable Development in FTAs, just as future international trade agreements will not be able to do so (taking inspiration from this experience).

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