

今後のE P A交渉、広域経済連携の 可能性国・地域に関する実態調査 報 告 書

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当該事業結果の要約

我が国の中南米諸国との経済連携協定に係る現状は、既に締結済のメキシコ、チリに2010年11月に交渉完了に至ったペルーを加えた3カ国に留まる。他方、隣国の韓国は、我が国が締結済・交渉中の3カ国に加えて、メルコスールとの間で交渉可能性を議論する為の共同協議対の設置を進めるなど、我が国に先んじて、当該地域との関係強化を進めている。今後、経済成長の著しいブラジルを含む中南米最大の市場のメルコスールにおける日本企業の競争力強化や、資源の安定供給の確保という観点から、隣国に遅れをとることなく、メルコスールとの経済連携協定の可能性を検討する必要性に迫られている。

こうした背景をうけ、本調査では、今後の交渉可能性の検討にあたっての一助とすべく、メルコスールのF T A / E P Aの取組状況、各国の貿易・産業実態及びそれらに関連する政策、交渉入りした際に想定される論点等を整理した。

本報告書の構成と要約は以下のとおりである。

6つの章から成る本報告書において、その方法論は、量的および定性的情報の収集及び分析に基づく。最初の4つの章では、メルコスールの法的枠組みを構成する条約や協定及びこれまでの貿易の発展具合を示す貿易統計等の分析に焦点を当てている。第5および第6章については、ブラジルの通商政策の決定にあたり影響を及ぼし得る官民双方のキーパーソンへのインタビュー結果の分析を中心に構成される。

第1章においては、メルコスールの法的枠組みに関連した条約や協定（対外共通関税、原産地規則、紛争解決、セーフガード条項など）の内容を明らかにしつつ、メルコスールや加盟国内の各関係機関の構造、メルコスールへのベネズエラの加盟問題及びメルコスールの統合モデルにおける特異な点や例外的な措置についても評価した。

第2章では、メルコスール内の意思決定プロセスが、第三国と国際協定の交渉をした場合に、どのように影響し得るかを理解するための情報を供している。メルコスール各国がどのような調整手順を踏んで交渉に対する姿勢を決定しているのか、また各国の政府機関の機能を知る事は、メルコスールの関心事項に対応しながら交渉を纏める上では非常に重要と言える。

第3章においては、メルコスールと第三国との間で既に発効している貿易に関する協定を分析することで、将来の交渉時に想定される論点、貿易自由化のレベル、関税撤廃期間に加えて、特定のメルコスール加盟国内において存在し得るセンシティブ品目や除外品目に関する情報を供し、続く第4章では、前章での情報及び貿易統計に基づき、既にメルコスールが第三国と締結済の貿易に関する協定によって獲得されたであろう利点を検討した。ここでは、協定の双方の締結国について貿易関係がどのように発展したか、また、どのような個別セクターが貿易自由化による恩恵を受けたか、或いは被害を被った

かを評価した。これにより、我が国と経済連携協定を締結する事を想定した場合におけるメルコスール内の各産業界の立場をある程度予見する事が可能となった。

第5章では、ブラジル政府と民間部門の双方におけるキーマン或いは利害関係者とのインタビューの結果を纏めた。インタビュー相手の政府機関関係者や企業代表者の人選に際しては、我が国とメルコスール間の貿易による補完関係のみならず、両国で競合する可能性の有る領域について貿易統計及び定性分析を用いながら考慮した。インタビュー相手の優先順位については、先ずブラジルの政府関係者及び財界関係者、次にアルゼンチンの関係者として、パラグアイ及びウルグアイ両国の関係者については意図的に除外している。また、インタビュー内容は、我が国がメルコスールとEPA交渉を開始する事を想定した時の、我が国とブラジルとの利害に関し、すべての項目をカバーするよう努めた。また第5章においては、現在の我が国とブラジルの貿易構造に基づき、ブラジル政府及び財界の主要な利害関係者と共に我が国とブラジルの経済連携協定締結の実現可能性の正当性を立証する事を目指した。加えて、戦略的分野への投資、技術革新や技術協力等、商業的関係よりも広い意味での非伝統的な分野について、それらが関税自由化交渉においてトレードオフとして用い得るかを検討した。

第6章では、南米地域における経済統合の深化など域内の利益に関連するテーマ及び戦略的パートナーとなり得る国や地域との貿易に関する協定のネットワークの拡大といった域外との関係等、現在、メルコスールが抱える主要な課題に触れた。ここで、第三国・地域との貿易や投資協定の交渉に関し、我が国とブラジル間の貿易構造と類似しており、且つブラジルにおける韓国製品や韓国による投資のプレゼンスが拡大している事を考慮し、ブラジルと韓国の二国間関係に特に重点をおいた。

このレポートの最後の部分では、我が国がブラジルやその他のメルコスール加盟国に対し如何様にアプローチすべきかにかかる戦略の構築を支援する事を目的として、前章までの検討や分析を基に結論を導き、どの様な政治プロセスを踏むかに依るところが大きいものの、我が国がメルコスールとの経済連携協定の交渉の立ち上げを成功させる為の推奨事項を論じた。

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Executive summary

This report was elaborated by Prospectiva Consulting at the request of Japan Economy Foundation (JEF). It is the final report of a project that aims to assess the possibilities of a free trade agreement between Japan and Mercosur being signed.

The contents of MERCOSUR Regional Trade Agreement

- Since the transition period for a Mercosur free trade area ended on December 31, 1994, most goods that meet the rules of origin requirements have been traded among the four member states free of import duties. Currently, only the automotive and sugar industries are excluded from the Mercosur intra-regional free trade regime.
- Mercosur's accession is open, through negotiation, to any countries members of the Latin American Integration Association (ALADI); however, applications must be considered by the member states. The approval of applications requires unanimous decision of the members.
- The organization structure of Mercosur defined by the Protocol of Ouro Preto comprises three decision-making bodies: Common Market Council (CMC – Conselho do Mercado Comum); Common Market Group (GMC – Grupo Mercado Comum) and Mercosur's Trade Commission (CCM – Comissão de Comércio do Mercosul).
- Venezuela's entry into Mercosur is not a consensual position in the bloc and has faced resistance by some members. Although the Argentinean and Uruguayan legislators quickly approved the initiative, the Brazilian congress only approved the entry of Venezuela in Mercosur in December 2009 after a strong lobbying from President Lula da Silva and Brazilian corporations.
- Paraguay is the only Mercosur signatory member which has not yet completed the parliamentary proceedings for Venezuela accession. The Paraguayan Senate, which is formed mainly by the opposition, has been reluctant to vote on the issue. Both in Brazil and Paraguay, the main argument used by opponents of Venezuela's entry to Mercosur is related to the fact that the government of Hugo Chavez does not satisfactorily meet democratic principles.
- Trade operations within the Mercosur are regulated by the Economic complementation agreement nº 18 (ACE 18). As established in the Treaty of Asunción, ACE Nº 18 was signed on November, 20, 1991 in order to create the needed conditions for the establishment of the Common Market.
- Although one of the goals of Mercosur was the consolidation of a customs union, so far the bloc has not been very successful in this endeavor. Due to the divergent positions among the Mercosur parties on the tariff levels that should be applied to imports from non-member countries, Mercosur has been unable to fully comply with a Common External Tariff (CET) because of the exception lists of all members.
- While the smaller economies of Mercosur such as Paraguay and Uruguay defend maintaining a tariff structure with low rates, Brazil and Argentina are in favor of high level tariffs, which serve as protection of the domestic manufacturing output.

- Currently, the CET allows exception lists for two product groups: a) the first one comprises capital goods and computer and telecom products, in which national tariffs were quite distinct and had a differentiated negotiation process; b) the second one was denominated National Exception List, which covers items for which each country considered inappropriate a sudden change in the national scale whether for protectionist reasons or in order to avoid impact on cost or investment.
- Such lists reinforce what is called "perforation of the CET", which means that when Mercosur negotiates trade agreements with third countries it will not have uniform tariffs, presenting differentiated import tariffs for each member.
- Another existing distortion in Mercosur is the double charge of common external tariffs for goods from third countries that circulate within MERCOSUR. This mechanism was applied when a product entered a Mercosur country and was later re-exported to another member of the bloc. With the approval of the Mercosur Custom Code in 2010 - mechanism that will harmonize customs procedures and standards in August 2010, it expected the elimination of double charge of the Common External Tariff in ten years.
- Given the asymmetries in the automotive sector among the Mercosur members, the negotiations of this matter among the Mercosur members were made bilaterally under the ALADI framework. Currently, there are three bilateral automotive agreements among the Mercosur members - Brazil and Argentina (ACE 14 – 38° Additional protocol); Brazil and Uruguay (ACE 2 – 68° Additional protocol) and Argentina and Uruguay (ACE 57).
- Negotiations over the sugar sector in MERCOSUR have made no significant progress since the creation of the customs union. In that case, the difference in competitiveness between the Brazilian and Argentinean production is the main reason to prevent the implementation of any program of trade liberalization.
- The Protocol of Montevideo is the main legal instrument related to trade in services within Mercosur. Trade liberalization program will be completed in ten years from the date of entry into force, which took place on December 7, 2005.
- The liberalization program provided by the Protocol of Montevideo will be embodied in successive rounds of negotiation. By early 2011, seven negotiating rounds had taken place, producing positive lists of services.
- One of the points that make the negotiating rounds difficult is the fact that the four Mercosur members have consolidated different commitments under the context of the WTO GATS (General Agreement on Trade in Services). Among Mercosur members, Argentina is the country that has gone further in the liberalization of the trade in services at the multilateral scope, while Brazil has progressed more slowly in terms of binding commitments.

FTA policy of MERCOSUR countries

- Trade policy making process in Mercosur is not fully institutionalized. As the largest country in the bloc, both in terms of trade flow and GDP, it is usually Brazil that sets the common trade policy agenda of Mercosur. In this process, Brazil tries to accommodate the interests of other members with its own interests. However, it is worth highlighting that even though other Mercosur members play a limited role in setting the agenda, they can veto a strategy that was set by Brazil.
- In Brazil, the trade policy making process is conducted by the Foreign Trade Chamber (CAMEX), a collegiate body in charge of formulating policies, coordinating and implementing the activities related to foreign trade of goods and services. It is worth to mention that although CAMEX is the Brazilian agency in charge of coordinating and implementing the decisions debated at the Council of Ministers, each ministry remains responsible for implementing matters within its competence.
- In that context, the Ministry of Development, Industry and Foreign Trade (MDIC) is responsible for implementing trade policy, based on the guidelines formulated by the CAMEX, through the Secretariat of Foreign Trade (SECEX). The Ministry of Foreign Affairs is the responsible for assisting CAMEX on the formulation of foreign policy. The Ministry of Finance formulates and implements economic policy and the participation of the private sector in trade policy formulation is institutionalized through periodic meetings of CONEX (the CAMEX Private Sector Advisory Council), and through several sectoral competitiveness forums.
- Even though domestic constituencies do not play a prominent role in influencing the Brazilian government to start a trade negotiation, they often have the power to either defend or promote the agreement according to their interest.

The contents of MERCOSUR's FTA's already in effect and/or signed

- Brazil attributes great relevance to regional trade agreements as a beneficial complement for a balanced and non-discriminatory multilateral trade system. Through Mercosur, Brazil has signed agreements this category with most countries in South America.
- Most of the free trade agreements signed by Mercosur countries are characterized by the liberalization of goods only. The most significant progress related to trade in services has been made so far with Chile. As to the other issues (investment, government procurement and intellectual property protection rights), there has been little progress in negotiating agreements, whereas there is still no regulatory framework in the context of Mercosur on these issues.
- Regarding the most sensitive Mercosur industries, in general, they are divided in two groups: those that Mercosur countries have competitive advantage both in the global markets or/ and in the domestic market as is the case of sugar. And, secondly, there are those segments that due to the lack of competitiveness in the global market have differentiated tariff profile among the Mercosur countries, such as segments of capital goods, telecommunications products, defend a more protectionism position. These segments are mainly from Brazil, the country that has the most developed industrial sector in Mercosur.

The benefits achieved by the FTA's already in effect

- The extensive network of free trade agreements to which Mercosur members take part covers most countries in South America, positioning the South American region as a major hub for Mercosur markets, serving both consumers and suppliers of their products.
- In this sense, regional trade is very important to Mercosur, considering that the Mercosur exports profile includes products with higher value added and not just agricultural and mineral commodities, as it happens in the Mercosur global exports.
- Another relevant aspect noted in all Mercosur FTAs with regional partners was the inclusion of extra trade issues such as the improvement of the physical infrastructure in the region, thereby expanding both the inter-regional trade and international exports from the region.
- Most of free trade agreements signed by Mercosur countries reinforces the Southern cone bloc's strategy to build a regional development space, in which, Brazil has relevant role in setting a deeper integration agenda.

Advantages and Disadvantages expected to be brought by Japan-Mercosur EPA

- Given the lack of prospects for concluding in the short term the negotiations at the multilateral level, there have been few opinions in the private sector and government agencies about the possible gains or losses on completion of the Doha Round. In general, the Brazilian private sector believes that if the Doha Round is completed, the agreement will be limited with the consolidation of punctual sectors and without significant gains.
- The lack of experience in forging negotiations of free trade agreements with developed countries as well as the lack of competitiveness especially in some industrial segments led the country to favor trade agreements with Latin America, Middle East and African countries.
- One of the main concerns of the Brazilian negotiators is that once an agreement with a developed country has been reached, it will set the standard to other agreements. For that reason, the Brazilian negotiators are particularly zealous to make concessions.
- Considering the most recent trade arrangements, the standard profile of the Mercosur strategic partners is generally characterized by small and medium-sized economies, which are able to consume industrialized and agriculture products from Mercosur at the same time they are relevant suppliers of natural and mineral resources to the South American bloc.
- The existing Mercosur's FTAs are concentrated mainly on the liberalization of goods. New issues such as services, government procurement, investments and intellectual property are usually not negotiated in the existing trade agreements.
- Bilateral negotiations with developed countries generally involve a broader agenda of issues that includes cooperation on several technical, economic and political areas, investments on strategic areas among other instruments.

- Besides the Mercosur-EU talks, the rapprochement between Brazil and the United States are the current priorities in international negotiations with developed countries.
- The main difficulties faced by Mercosur countries to progress in Mercosur-EU negotiations involve both domestic and European resistance. On the European side, there has been a strong involvement in the European Parliament against the agreement with Mercosur, mainly by the European agribusiness industry. Regarding the Brazilian position, the appreciation of the Brazilian currency, which undermines the competitiveness of the Brazilian products abroad, was mentioned by most business entities as well Brazilian government agencies as the main impediments to progress in the trade liberalization of the industry.
- Although there is no expectation to conclude an ambitious agreement with European Union, the Brazilian government continues to push the private sector to move on with the negotiations. In that case, the political appeal to the private sector is linked with the historical cultural identity as well as the amount of European investments in Brazil.
- The Brazilian industrial segments are those who feel most threatened by the possibility of a free trade agreement with Japan. Their arguments are based mainly on the lack of complementarity between the production chains of both parties.
- South Korea has taken a very active position with the Brazilian government in order to broaden and strengthen political and economic relations between the two countries.
- For South Korea, its business and policy strategy with Brazil is not only restricted to market access. It is also included in its agenda the development of innovation and investment in strategic sectors for economic development in Brazil. This approach is more qualified than the Chinese strategy and favors South Korea since the country has positioned itself as an important ally for Brazil's development.
- Although Argentina's position is very eloquent on specific points of interest, particularly on intra-Mercosur issues, which may prevent the progress of negotiations for a while; in general, Brazil gets to handle the regional demands, accommodate the interests within the bloc and advance the Mercosur agenda of negotiations. Regarding the other members, Uruguay generally is aligned with Brazil, while Paraguay positioned very little within Mercosur.

Issues of current MERCOSUR's FTA's in negotiations and/or discussions

- In the last Mercosur Ministerial Summit that took place in December 2010, the Mercosur's Ministers of Foreign Affairs signed framework agreements to negotiate future free trade arrangements with Syria, the Palestinian Authority and the United Arab Emirates, besides broader agreements with Cuba, Australia and New Zealand.
- There were also commitments on the discussion of a common automotive policy by 2012 and the unification of tariffs on capital goods by the end of 2013. In order to facilitate the fulfillment of these initiatives, the MERCOSUR countries should enhance political integration.

- The discussion on investment agreements has always been sensitive to certain Mercosur members, particularly for Brazil; however, this last Ministerial Summit featured some news. The member countries decided to start negotiations on agreement to protect investments of their companies within the Mercosur.
- The conclusion of a deal to open government procurement regime in Mercosur did not develop satisfactorily in the last ministerial summit. Brazil is revising the protocol so that it applies to national legislation. The issue should be discussed again in 2011.
- With a more optimistic view than that the Brazilian private sector, the Brazilian delegation headed by Ambassador Evandro Didonet, stated that the delay in the exchange of offers in the last round negotiations did not change the positive climate of the negotiations. Moreover, the Brazilian delegation insisted that the negotiations are progressing and said that delays as these are expected.
- In a rapprochement effort considered strategic for both parties, Brazil and the United States are seeking to expand the topics of interest in the bilateral agenda, including increasing the expansion of trade and investment. The most recent move toward the strengthening of the bilateral relations was the visit of U.S. president Barack Obama to Brazil in March 2011. During this meeting, it was signed ten cooperation agreements, among them, the TECA (Trade and Economic Cooperation Agreement) and the agreement that provides for liberalization of civil aviation between the two countries.

Conclusions and recommendations

- Given the sensitivity that international negotiation for trade liberalization within Mercosur, Japan as an interested party may have to accept asymmetries in favor of the Mercosur countries in the negotiations for an FTA, as the European Union is doing to advance the negotiations towards an agreement.
- Brazil and other Mercosur members are more willing to make commitments on these "new issues" than they have been in the past, however, it is important to take into account that Mercosur negotiators would hardly accept the consolidation of commitments following the rules of free trade agreements previously established by developed countries with other trading partners.
- Japan which already has good political relations with the Brazilian government should expand its relevant political profile to the economic realm. A closer approach between countries may occur through enhanced mechanisms of cooperation in strategic areas for economic development in Brazil.
- The Brazilian government, through the Ministry of Foreign Affairs has already shown itself open to intensify their political and economic relations with Japan and it is even willing to listen to any proposals for trade agreements that the Asian partner has to improve the business environment of both countries.
- The distance and the Japanese's low profile regarding Brazil is a counterpoint to the more active positioning of South Korea. In view of some segments of the Brazilian government and in most industry representatives, South Korea sees Brazil as a strategic partner, not only acting to expand access to the Brazilian market but also making significant investments in strategic areas for development in Brazil as well implementing cooperation channels for the development in innovation and technology.

- The political approach and a more apparent interest from Japan in strengthen bilateral relations, which should include effective measures for bilateral cooperation, may be an interesting strategy for Japan to follow in relation to Brazil and other Mercosur members (remembering that it is Brazil who decides the agenda of the Mercosur for extra-regional negotiations).
- Even the different positions among the Mercosur countries regarding the international negotiations may be conciliated, since Brazil in its role of coordinating the formulation of the Mercosur international trade strategy is able to accommodate intra-Mercosur interests and advance the negotiations if the situation is treated as national and/ or regional interest.
- Japan should be open to propose new formats of agreements; whereas the current format of trade agreement can no longer meet the new demands that are emerging with the deterritorialization of capital and technology.
- The design of the Japanese strategy to propose a trade agreement with Mercosur should consider the current position of Brazil as a global player, which means the country is not only willing to open its vast domestic market without obtaining relevant gains in return.
- The feasibility of an agreement between Mercosur and Japan depends on the concessions that Japan is willing to do as well as the inclusion of new topics that go beyond trade and have been able to maximize the development of both parties.

Introduction

This report was elaborated by Prospectiva Consulting at the request of the Japan Economic Foundation (JEF). It is the final report of a project that aims to assess the possibilities of a free trade agreement between Japan and Mercosur being signed.

The report is divided into six chapters and its methodology was based on the collection and analysis of secondary sources (both quantitative and qualitative data) as well as primary sources. The first four chapters are concentrated mainly on the analysis of the treaties and protocols that shape the Mercosur's legal framework as well as trade data that indicates the evolution of trade in the region. Regarding the outcomes of the fifth and sixth chapters, they are composed mainly by primary sources, in that case, interviews with key interlocutors both the private sector and the Brazilian government in charge of formulating the Brazilian trade policy. In the following lines it will be provided more details on the content and approach adopted for each of the chapters of the report.

In the first chapter, it is described relevant issues that comprise Mercosur's regulatory framework, including the content of the main treaties and protocols (ie. common external tariff, rules of origin, dispute settlement system, safeguards clauses, etc.); the organization structure of Mercosur and the attributions of each institutional body; and the accession of the Bolivarian Republic of Venezuela to Mercosur. In this chapter, it will also be evaluated the singularities and exceptions that take part of the Mercosur integration model.

The second chapter of the report provides information to understand how the decision making process within Mercosur works in case of negotiations of international agreements with third countries. In that sense, it is important to know which are the procedures adopted by the member countries to coordinate their positions as well as the role of key government agencies in each country in order to accommodate Mercosur's interests and conclude a negotiation process.

In the following chapter, an analysis of the scope of trade agreements in force between MERCOSUR and third countries will provide the Japanese government with information on the more usual format of agreement adopted by Mercosur; the negotiated issues; the level of trade liberalization as well as the tariff phasing out schedule and possible limitations and sensitivities that may exist between Mercosur members.

Based on inputs provided in the third chapter and also in trade statistics data, the fourth chapter will examine the benefits achieved by the Mercosur trade agreements already signed. In this case, it will be examined the trade evolution between Mercosur and its trade partners and the identification of sectors benefited or harmed by trade liberalization. Through this mapping will be possible to know the position of Mercosur's industries regarding a trade agreement with Japan.

Chapter five summarizes the outcomes of the interviews with key players and stakeholders both in the Brazilian government and private sector. The selection of government agencies and business representatives included in this map was made based on possible trade complementation considering Mercosur and Japan, as well as possible conflicting areas by both parties. Trade data and qualitative analysis were used for this analysis. It is important to highlight that priority was given to government and business representatives in Brazil and secondarily Argentina. Paraguayan and Uruguayan officials and business representatives were intentionally left out the mapping.

The interview script sought to cover all relevant topics regarding Brazilian and Japanese interests in an international trade negotiation. Based on the current bilateral relations between Brazil and Japan, this chapter also aimed to validate with key stakeholders from the Brazilian government and the private sector the feasibility of a trade agreement between Mercosur and Japan. Additionally, this chapter also sought to identify non-traditional issues in a broader sense than the commercial relationship (such as investments in strategic areas, innovation and technological cooperation and other topics) that could be used as a trade-off in a trade negotiation between Japan and Mercosur.

In Chapter six, it was included the main relevant issues on the current Mercosur agenda, considering both the intraregional scope as is the case of a deepening of the regional integration in the South American bloc and issues related to extra-regional interests such as the expansion of the network of trade agreements with strategic partners. In case of negotiation of trade and investments agreements with third parties, it was given special emphasis to bilateral relations between Brazil and South Korea, considering the similarity of the trade profile between this Asian partner and Japan and the growing presence of South Korean products and investments in Brazil.

Finally, in the last part of this report, it was provided conclusions and recommendations based on the information gathered in the previous chapters with the aim of assisting the Japanese government to develop its strategy of rapprochement with Brazil and other Mercosur partners, which may result, depending on how the political process is conducted, in a successful launch of negotiations on a trade agreement with South American bloc.

1. The contents of MERCOSUR Regional Trade Agreement

- Summaries of each chapter of the agreement
- Current tariff rate
- Rules of Origin
- Other issues

Historical context of regional integration in South America

During the early 1990s, in a historical context marked by the collapse of the USSR and the rapid expansion of the neoliberal doctrine as well as the pressures of globalization, the Southern Cone countries came together and created the Mercosur in 1991 to carry out their integration project and thus accelerate their economic development based on common democratic values and social justice. In addition to its primordial object which was the establishment of a common market, Mercosur was also conceived with the objective of achieving stability in the region, since the network of common interests deepens the relationships of both economic and political ties, neutralizing the trend towards fragmentation.

The political dimension of Mercosur since its inception has been an important aspect within the bloc either to serve as a means of supporting democracy in the region or increasing the Southern Cone's geopolitical profile in the international arena. Such political interests have often given Mercosur momentum and compensated for difficulties on the trade liberalization front. For instance, regional infrastructure agenda, cooperation programs in education and culture, and greater interaction among political actors of member states have extended the scope and deepened the level of intra-Mercosur relations.

After the initial enthusiasm with the creation of Mercosur in 1991, and especially with its undeniable commercial success until 1998, a series of difficulties became apparent and led the Southern Cone bloc to a state of stagnation. In addition to the stagnation of the process of coordination of macroeconomic policies, considered a fundamental step to advancing the integration process, Mercosur has also stalled its process of institutionalization. In this regard, rapid advances occurred until 1994, when a free trade zone was in theory consolidated, a common external tariff was created and the bloc was granted as an international legal personality. After that, the bloc entered a phase of clear dilemma, especially because of Brazil's unwillingness to move towards greater degrees of institutionalization and supranationalism in Mercosur.

From the difficulties of Mercosur, Brazil as regional leader has sought to shift the focus of the integration of its commercial and economic aspect and start actions that foster the political coordination and cooperation as well the physical integration of regional infrastructure. Such actions resulted in the the creation of the Initiative for the Integration of the Regional Infrastructure in South America (IIRSA) in 2000, and in the articulation of the South American Community of Nations (CASA) in 2004 that in 2008 it would become the Union of South American Nations.

These recent regional integration arrangements such as UNASUR, unlike the initial proposal of Mercosur, which aimed to develop further regional development both in regional economics and in political aspects, has a more comprehensive view of the scope of integration.

In this sense, UNASUR's has as its guidelines: the positioning of South America as a unit of regional identity; the strengthening the cultural ties and political and social rights of people of the region besides continuing the integration of infrastructure and reaffirm the subcontinent as an important in the context of a multipolar world order.

It is clear that the creation of UNASUR will not solve immediately the many bottlenecks in the process of regional integration, such as low institutional framework, the lack of political and economic coordination and low social participation in the integration process. However, under the political point of view, the new organization is a considerable advance in the history of sub-regional integration.

As for the future of UNASUR and the development of the regional integration process, these are still underway. However, the emergence of the Union of South American Nations has historic importance for bringing the countries of South America, that despite the enormous challenges they still face, reaching an unprecedented level in South America.

Legal Framework of MERCOSUR

The Treaty of Asuncion was the basic agreement that created Mercosur, whose aim was the establishment of a common market to allow the free movement of goods, services, people and capitals between the four countries. However, the design and issues raised by the Treaty of Asuncion was a transitional arrangement; therefore, it was incomplete and pending of future complexions. In that sense, to improve the legal framework of Mercosur, a series of protocols were annexed to the Treaty of Asuncion to cover specific topics that were not covered in the basic agreement.

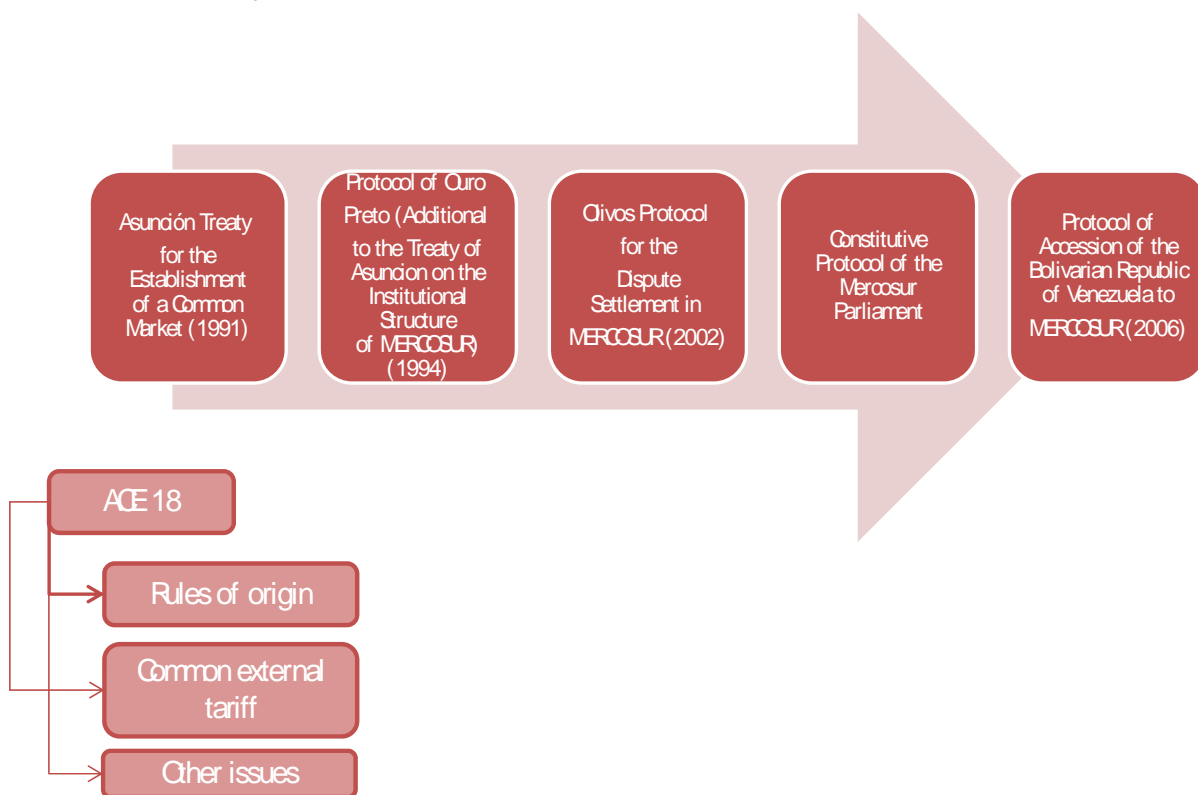
Regarding the pending issues, the first additional protocol to the Treaty of Asunción was the Protocol of Ouro Preto, in addition to establishing the institutional structure of Mercosur has also endowed the regional bloc with legal personality under international law, allowing the relationship with other Mercosur countries, economic blocs and international organizations. In 2002, the ratification of the Protocol of Olivos, revoked the Brasilia Protocol, aiming to improve the dispute settlement mechanism and ensure greater flexibility to the mechanism, making it more comprehensive than the legislation of the previous legal instrument. Currently, the mechanism for settling disputes within Mercosur is still under development, and the rules available at the Olivos Protocol may be the embryo of a permanent system for dispute settlement in Mercosur.

In December 2005, as a result of the need for increased the civil representation and the ideological and political diversity of the peoples of Mercosur, it was included in the legal framework of Mercosur, the Constitutive Protocol of the Parliament of the Mercosur, which established the creation of a Mercosur parliament. This body replaced previous institutional body - the Joint Parliamentary Commission. Still at the end of 2005, Venezuela submitted its application for accession to Mercosur and its entry into the bloc was formalized through the Protocol of Accession of the Bolivarian Republic of Venezuela.

To implement the goals set in the Treaty of Asuncion in relation to trade liberalization that was proposed in the creation of Mercosur, it was signed in November 1991 an agreement on economic complementation

(18 ACE) under the legal framework of ALADI (Latin American Integration Association) among the four member countries. Such instrument regulates the trade of Mercosur and aims to create the conditions necessary for establishing the Common Market. Under the ACE 18, it was also signed several additional protocols in order to improve through the inclusion of new issues that had not been considered at the signing of the agreement and so deepen the integration process among Mercosur countries.

In that sense, the chart below illustrates a summary of the most important basic documents that shape the legal framework of Mercosur. However, it is important to note that these five basic legal documents do not exhaust the legal sources that make up the rules of Mercosur. In addition to the Treaty of Asunción, its additional protocols and agreements, Mercosur has also as its legal sources all decisions, resolutions and directives issued by its institutional bodies.



More details on the legal provisions of the foundational texts of Mercosur, and a summary of the contents of the Treaty of Asunción and its protocols are available in Annex I to this study. In this chapter will be treated in more detail only the contents of the Economic Complementarity Agreement n° 18, considering that this legal instrument dealing with the trade and economic issues of Mercosur.

Economic complementarity agreement n° 18

Under the ALADI legal framework, economic complementarity agreements are bilateral or plurilateral agreements that foresee the establishment of regional free trade among its signatories, covering the complete phasing out of tariffs and other restrictions for the tariff universe. In that sense, the trade operations within Mercosur are regulated by the Economic complementarity agreement n° 18 (ACE 18). Provided for the Treaty of Asunción, ACE N° 18 was signed on November, 20, 1991 in order to create the needed conditions for the establishment of the Common Market.

The original text of the economic complementarity agreement was comprised by seven chapters, two annexes and four appendices whose contents will be summarized briefly below:

- Chapter I – Purpose of the agreement
- Chapter II – Trade liberalization program
- Chapter III – Convergence
- Chapter IV – Adherence to the Mercosur
- Chapter VI – Changes
- Chapter VII- Final provisions
- Annex I – General regimen of origin
- Annex II – Safeguards clauses
- Appendices (I to IV) – Exception lists for each country

As the development of the common market was taking shape, new demands were required to cover all trade and integration issues. Aiming to meet such demands, new additional protocols were included in the legal framework of Mercosur.

Currently, the economic complementarity agreement n° 18 comprises 80 additional protocols, which includes changes in the regime of origin and updates in the lists of exceptions as well as covers topics that had not been addressed previously (sanitary measures, antidumping, subsidies and countervailing measures).

Common external tariff

Although one of the goals of Mercosur was the consolidation of a customs union, so far the bloc has not been very successful in this endeavor. The most important characteristic feature in a customs union is the adoption of the Common External Tariff (CET), and until now the member countries have been unable to comply it fully because of the exception lists for all members.

This happened due to the divergent positions among Mercosur parties on the tariff levels that should be applied to imports from countries not members. While the smaller economies of Mercosur as Paraguay and Uruguay defend the maintaining a tariff structure with low rates, Brazil and Argentina are in favor of high level tariffs, which serve as protection of the domestic manufacturing output. Given these differences, it was possible to foresee the difficulties in reaching an agreement on the adoption of a Common External Tariff that would accommodate the diverse interests of the member countries.

Although incomplete, from 1.1.1995, the four partners adopted the Common External Tariff (CET), based on the MERCOSUR Common Nomenclature (NCM), with the import duties levied on each of these items. The structure of the approved Common External Tariff in Mercosur set tariff levels between 0 and 20%, at intervals of 2 percentage points according to the degree of development along the production chain.¹

A solution for products that generated more controversy, due to very different national tariffs, was to accept temporarily different tariffs so that the burden of a higher tariff would be taken only by the country concerned. In this sense, the CET allows exceptions for two product groups: a) the first one comprises capital goods and computer and telecom products, in which national tariffs were quite distinct and had a differentiated negotiation process²; b) the second one was denominated National Exception List, which covers items for which each country considered inappropriate a sudden change in the national scale whether for protectionist reasons or in order to avoid impact on cost or investment. For these exception lists it could be apply tariffs up to 35% for a short list of products which should return to a maximum of 20% rate within a period not exceeding six years from the date of 01.01.1995.

Although, initially, the exception lists have been created as temporary solution to meet differentiated interests of the Mercosur members, in the course of time, such exceptions have become in a permanent instrument to protect or promote specific industries in their economies. Currently, both Argentina and Brazil may include 100 products in the exception list, which is not covered by the common external tariff of Mercosur. Uruguay and Paraguay may include 125 and 150 products, respectively, considering they are smaller and weaker economies. Such lists reinforce what is called "perforation of the CET", which means that Mercosur when negotiating a trade agreements with third countries will not have uniform tariffs, presenting differentiated import tariffs for each member.

The tariff convergence period was postponed several times and the latest attempt to eliminate exceptions to the CET took place in December 2010. On this occasion, it was established a schedule to eliminate the exceptions to the Mercosur common external tariff in a period of 10 years for covering all the items of trade between the four partners.

Another element that was until recently considered a distortion in the Mercosur was the double charge of common external tariffs for goods from third countries that circulate within MERCOSUR. This mechanism

¹ Tariffs on raw materials ranges from 0% and 12%; capital goods from 12% to 16% and consumer goods from 18% to 20%.

² In Brazil, this measure resulted in maintaining the policy of granting "ex-tariff" for such products, since they were not produced in MERCOSUR, with the aim of modernizing the industrial park.

was applied when a product entered a Mercosur country and was later re-exported to another member of the bloc.

In August 2010, there was the approval of Custom Code that will harmonize customs procedures and standards adopted by the four members. One of the main advances of the Custom Code is the elimination of double charge of the Common External Tariff (CET) for goods from third countries that circulate within MERCOSUR. Under the agreement, the goods entering the region will pay the customs charges once and can move freely in the member countries of Mercosur. The end of the double collection was a requirement of the European Union (EU) to progress in talks with Mercosur.

The country most affected by the end of the double charge of CET is Paraguay, a country which has no sea access, and therefore its imports come by Brazil or Argentina before going into Paraguayan territory. About 20% of the Paraguayan tax collection is generated by import tariffs.

The agreement will be implemented gradually with three phases for the complete elimination of double charge of the CET: the first phase will start in January 2012, reaching all industrial goods such as cars or computers. The second phase starts from 2014 and will include all products with an import tariff rate between 2% and 4%. And the last step will be implemented in 2019 and will reach all the remaining goods.

Regimen of Origin

In Mercosur, the classification of goods as originating from a country depends upon adherence to criteria established by the Rules of Origin of the bloc. In this sense, only those goods considered as originating from Mercosur member countries can benefit from the tariff preferences provided to the trade bloc.

The provisions of the MERCOSUR origin are defined by the Forty Fourth Addition Protocol to the Economic Complementation Agreement n° 18 (ACE – 18), which was incorporated as a regulation through the Decision CMC n° 01 of 2004 and other complementary regulations.

The Mercosur origin is defined through general or specific rules. Under the Mercosur general rules, products must meet at least one of the following requirements in order to be considered MERCOSUR origin:

- I) they must be wholly obtained or produced in Mercosur;
- II) if non-originating materials are used in the production of the good, a change of tariff heading must take place, or
- III) the c.i.f. value of inputs from third countries must not exceed 40% of the f.o.b. value of the final product³; or
- III) in cases of assembly operations, the c.i.f. value of inputs from third countries must not exceed 40% of the f.o.b. value of the final product.

³ Paraguay counts on a differentiated scheme, in which the regional value content is 40%. This rule will be valid until December 31, 2022.

Specific rules apply to; *inter alia*, foodstuffs, pharmaceuticals, textiles, and steel, telecommunications, and informatics products. Such products are listed in Sixth second protocol to the Economic Complementation Agreement nº 18.

One important thing to highlight when examining the rules of origin requirements in Mercosur is that they are transitional in character. Once the Mercosur customs union is in full operation, which should occur only when the common external tariff has been fully implemented, there will be no need for any rules of origin within the bloc.

In that sense, the last update on Mercosur origin took place in 2010, when the Common Market Council extended the Mercosur origin regime by December 31, 2016, provided for in the Decisions CMC Nº 01/04 and 01/09, for all intra-zone trade. Besides the Mercosur regime that regulates the origin in the intra-zone trade, there are also rules of origin applied in agreements signed between Mercosur and third countries.

The Mercosur Trade Commission has the authority to revise or set up new rule of origin requirements as the circumstances may require although, as a general rules, this should be done only in particularly exceptional circumstances. The body may also authorize requests from member governments to create or revise a specific rule of origin when there are problems of supply, availability, technical specifications, or delivery time and price.

Regarding the verification of the origin of certain goods, it is necessary to obtain the Certificate of Origin, which is issued by the authorized government body in each country. The certificates of origin should be in a format found in Annex II to CMC Decision 1/2004. In Brazil, the Ministry of Development, Industry and Foreign Trade controls the process of issuing certificates, but delegates the issue of certificates of origin to associations representing those industries.

Special industries

Since 1995, most goods that meet the Mercosur origin requirements have been traded among the four member states at zero tariffs. From 1995 to 1999, Brazil and Argentina (in the case of Paraguay and Uruguay the deadline was extended to 2000) might have a different tariff reduction scheme for sectors considered as sensitive. The aim of temporarily exempting these items from intra-regional free trade was to concede their producers sufficient time to adapt to the new competitive environment that a liberalized trade regime would create. Currently, only the automotive and sugar industries are excluded from the Mercosur intra-regional free trade regime.

a. Automotive industry

By the end of 1994, the Common Market Council issued Decision 29/94, calling for a common automotive regime among the Mercosur members no later than January, 1 2000. This regulation considered total intra-regional free trade for products in the automotive industry, a common external tariff regarding similar products coming in from third countries and the end of all types of national incentives that may distort free market competition.

However, some outstanding issues hampered the entry into force of a common automotive regimen. Among the main divergences were the definition of regional content requirements, compensation measures for Paraguay and Uruguay who have no major automakers and tax incentives granted by the Brazilian states with a view to attracting investments from automakers.

Given the asymmetries in the automotive sector among the Mercosur members, the negotiations of this matter among the Mercosur members were made bilaterally under the ALADI framework. Currently, there are three bilateral automotive agreements among the Mercosur members - Brazil and Argentina (ACE 14 – 38° Additional protocol); Brazil and Uruguay (ACE 2 – 68° Additional protocol) and Argentina and Uruguay (ACE 57). It is also important to highlight that these bilateral automotive agreements have their own rules of origin.

Taking into account these bilateral arrangements, there is no doubt that the most important agreement to the Brazilian automotive industry is the automotive bilateral agreement with Argentina. Regarding this agreement, the most recent rules for trade in automotive products were set up in June 2008. The main rules agreed were⁴:

- Term of the agreement is six years (from July 1, 2008 through June 30, 2014). From the last year of this agreement the trade of all automotive products will not subject to tariffs nor quantitative restrictions;
- Monitoring the bilateral trade flow (cars, light commercial vehicles, trucks, buses and auto parts) in each three months since July 2008.
- Automotive trade between the two countries, with a margin of tariff preference of 100% in accordance with the coefficient of deviation of the annual exports (flex), which is calculated as the rate between imports and exports of each country. If the trade deficit occurs in Argentina, the "flex" of this country cannot exceed 1.95. If the deficit occurs in Brazil, the "flex" should not exceed to 2.5, that is, with this new agreement, Argentina's access to the Brazilian market, without tariff, may be superior to the Brazilian access to the Argentinean market.
- There will not be a limit for exports between the two partners, with a margin of preference of 100%, once the coefficient of deviation of the annual exports (flex) of each country is observed.

b. Sugar industry

Negotiations over the sugar sector in MERCOSUR have made no significant progress since the creation of the customs union, a period in which Brazil has called for the intra-bloc liberalization for the sugar industry. In that case, the difference in competitiveness between the Brazilian and Argentinean production is the main reason to prevent the implementation of any program of trade liberalization.

Other issues

a. Safeguard clauses and other defense trade instruments

In December 1996, the Common Market Council adopted a Common Regulation on the Application of Safeguard Measures on Imports from third countries that it attached to Decision 17/96. The regulations

⁴ <http://www.mdic.gov.br/sitio/interna/interna.php?area=2&menu=704&refr=327>

apply to safeguards that may be established on all imported goods from outside Mercosur, except for agricultural products and textiles and apparel that are subject to WTO rules.

Based on the Common Regulation, Mercosur members are allowed to jointly set up safeguards measures against a surge in imports from third countries that severely harm or threaten to harm the domestic production of the same product or similar product produced in Mercosur. It is also possible to impose safeguards measures by individual Mercosur members. The claims of threatened harm must be made based on objective evidences and not on remote possibilities.

In that case, the implementation of the Common Regulation and any investigation to check threatened harm is delegated to a Committee on Trade Regulation and Safeguards; although the Mercosur Trade Commission has supervisory authority to order an investigation and either approve or deny the imposition of a safeguard measure.

During the transition period for a Mercosur free trade area, which ended on December 31, 1994, Annex IV to the Treaty of Asuncion allowed a Mercosur member state to impose a quantitative restriction on imports from another Mercosur country when an unexpected surge in imports harmed or threatened to harm an industry of the importing country's economy. Although the transition period has officially ended, during the late 1990s and the early 2000s, Mercosur countries responded to the disconnected currency exchange devaluations and imports surges by imposing unilateral safeguards measures that included both quantitative restrictions and new tariff measures.

In addition to the Common Regulation on safeguards measures, Mercosur has two additional regulatory framework instruments that comprise the defense trade mechanism in Mercosur: a) Common Regulation on Defense against Subsidies granted by third countries, which was adopted by the Mercosur Common Market Council through the Decision 11/97. b) Common Regulation on subsidies and countervailing measures, which was approved in June 2000 through the Decision 29/00.

More recently, it was incorporated into the legal framework of MERCOSUR (CMC Decision 13/02 and 14/02), the WTO Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade (Antidumping agreement) and the WTO Agreement on Subsidies and Countervailing Measures. Enforcement of such decisions means that the controversies on intra-zone trade can be mediated in accordance with the dispute settlement procedure in force in MERCOSUR.

The regulatory framework used by Mercosur countries is a reference point to harmonize the interpretation of the WTO Antidumping and Subsidies and Countervailing Measures as well as the investigation procedures to be adopted by States Parties. In this sense, both regulatory frameworks represent a convergence of national regulations, and therefore an important step in the process of building a Mercosur common policy on anti-dumping and subsidies. However, it should be noted that the Legal Framework is not a regulation, as it does not include common procedures for investigations neither common decision-making process. Accordingly, each member state adopts its own domestic legislation, which should adhere to the WTO agreement on Antidumping and Subsidies and Countervailing Measures

In Brazil, DECOM (Department of Trade Defense, an agency under the Brazilian Ministry of Development, Industry and Foreign Trade) is the body in charge of coordinating the negotiations related to defense trade issues for the elaboration of a common regulations for dumping and subsidies in Mercosur. In addition, DECOM has among its responsibilities to develop technical positions for the Brazilian delegation in international negotiations. The participation of DECOM occurs in collaboration with the Brazilian Ministry of Foreign Affairs.

b. Sanitary and phytosanitary measures

Based on the CMC Decision 6/96, the WTO agreement on the application of sanitary and phytosanitary measures provides the regulatory framework for the application of sanitary and phytosanitary measures by the Mercosur countries.

The Common Market Group is the authority in charge of issuing sanitary and phytosanitary norms for products that are imported into the Mercosur countries from third countries or from each other.

Regarding the procedures to issue a sanitary or phytosanitary measure, the CMC Decision 20/02 requires that before any Mercosur body issues a sanitary or phytosanitary norm, it must be submitted as a proposal to the four Mercosur governments for internal consultation. Such consultations should usually take no longer than 60 days.

c. Technical norms

Regional standards are technical standards established by a regional body for standardization, which in the case of Mercosur is the Mercosur Standardization Association (AMN). AMN is comprised of national standards bodies of the four member countries, which are IRAM (Argentina), ABNT (Brazil), INTN (Paraguay) and UNIT (Uruguay).

Mercosur standards (NM) are prepared by the AMN through its Mercosur Sectoral Committees - CSM. It is important to highlight, once approved, the Mercosur standards are automatically incorporated as national standards by its members.

In the beginning of 2011, the AMN has approved some 600⁵ norms regarding the technical requirements and presentational characteristics that products and services must fulfill in order to be commercialized within Mercosur.

In the multilateral scope, the WTO agreement on Technical Barriers to Trade was formally included in the Mercosur legal framework in 2000 as a result of CMC Decision 58/00. The Common Market Group is the body responsible for issuing mandatory technical requirements and norms for products that are imported into Mercosur from third countries as well as from each other. Such technical requirements set up the characteristics of a product or a process and methods for its production and may also add requirements related to its packaging and labeling.

As a general rule, the Mercosur members use international standards as base upon which to develop and revise Mercosur technical norms and evaluation procedures. In addition, any government or the AMN may

⁵ See more information on <http://www.amn.org.br>

suggest the adoption of a new norm to the working group of the Common Market Group as well as they may propose the revision or abrogation of an existing technical standard.

d. Non-tariff measures

Mercosur has virtually eliminated tariff and non-tariff barriers to trade on most intraregional trade between members. However, in recent years, intra-Mercosur trade has been subject to several non-tariff measures that comprise state and provincial norms that discriminate against foreign imports even if they originate in a Mercosur country; non-automatic import license requirements; and, delays in the issuance of Brazilian import licenses on sensitive products mainly from Argentina.

e. Progress on the implementation of new issues (Services, Government Procurement and Investments) within the Mercosur

Trade in services

Between 1995 and 1998, Brazil, Argentina, Paraguay and Uruguay negotiated a legal instrument to promote the trade liberalization in services within Mercosur. This negotiation was completed in December 1997 with the adoption of the Montevideo Protocol on Trade in Services in MERCOSUR through the CMC Decision 13/97 and the subsequent approval - in July 1998 - of four of Sectoral Annexes and the Initial List of Initial Specific Commitments of each country, by CMC Decision 09/98.

The Protocol of Montevideo, the main legal instrument related to trade in services, responds to the commitment of Article I of the Treaty of Asuncion on "free movement of goods, services and factors of production between the Mercosur States Parties. The protocol outlines in its 30 articles, the obligations for the regional trade in services, and a trade liberalization program to be completed in ten years from the date of entry into force. The Protocol entered into force on December 7, 2005 through the third ratification that was the Brazilian ratification. Paraguay's ratification is still pending.

In general, the services included in the sectoral annexes to CMC Decision 09/98 follow WTO commitments made by each Mercosur member. The liberalization program provided by the Protocol of Montevideo will be embodied in successive rounds of negotiation, in which the new trade liberalization commitments will be gradually incorporated into the Initial List of Specific Commitments of Mercosur states parties. By early 2011, seven negotiating rounds produced positive lists of services that identified those that can eventually be offered cross-border.

One of the points that make difficult the negotiating rounds is the fact that the four Mercosur members have consolidated different commitments under the context of the WTO GATS (General Agreement on Trade in Services). Among the Mercosur members, Argentina is the country that has gone further in the liberalization of the trade in services at the multilateral scope, while Brazil has progressed more slowly.

In order to mitigate the differences among the Mercosur members and further liberalization of services with the Mercosur, the Mercosur Ministers of Foreign Affairs decided in December 2010 to bring forward by four years from 2015 to 2011, the completion of the identification of barriers to free trade in services within the bloc. Thus, Mercosur members can start the process of elimination of remaining barriers in order to achieve, as soon as possible, the free movement of services provided for the Treaty of Asuncion.

Government Procurement

The Protocol on Government Procurement for Mercosur was adopted in December, 2004 in accordance with the CMC Decision 27/04. Two years later, the text for this protocol was replaced by a new one issued through the CMC Decision 23/06. This protocol will come into force when at least two of the four signatory states ratify it, however, it will only be effective for those members that actually do so.

On August 2010, according to the CMC Decision 23/10, the Government Procurement group was instructed to make a review in the Protocol on Government Procurement. The aim of this revision is to adapt the protocol to the national legislation of each Mercosur member and then to ensure its prompt implementation. This review was scheduled to be completed in late 2010; however, this term had to be extended by the end of 2011.

Taking into account the difficulties found to implement the Government Procurement protocol and opportunities generated by the sporting events (2014 World Cup and 2016 Olympic Games) that will take place in Brazil in the coming years, Argentina has been very keen to establish a government procurement agreement with Brazil. The Argentinean Minister of Foreign Affairs, Hector Timmerman said he had spoken with Brazilian authorities on the possibility that Argentinean companies takes part in the works that will be carried out in Brazil for such events.

Investments

In the Mercosur context, there are two instruments that deal with the legal regime for foreign investments: the Protocol of Colonia for the Promotion and Reciprocal Protection of Investments within Mercosur and the Protocol of Buenos Aires for the Promotion and Reciprocal Protection of Investments from outside the Mercosur.

The Protocol of Colonia was signed by the four members on January, 1994. To date, it still had not been ratified by any of the four countries, and there are proposals to replace it with a new document. This protocol covers direct and indirect investments made by nationals of or entities permanently domiciled in any Mercosur country. In general, each state member is required to treat investors from the other Mercosur country in a manner no less favorable than that accorded to its own nationals or those from third countries.

In August 1994, the Protocol for the Promotion and Reciprocal Protection of Investments from Outside the Mercosur was issued by the Common Market Council through the decision 11/94. To date, the only country that still has not ratified it was Brazil.

Brazilian position regarding the bilateral investment treaties

Since 1990s, Brazil signed 14 bilateral investment treaties (BITs)¹. However, none of these agreements have come into force in the country. Six of them (Germany, Chile, France, Portugal, the UK and Switzerland) were submitted to Congress for ratification. Congress never ratified them. In March 2002 a Working Group including the Ministry of Finance; Ministry of Development, Industry and Trade; Ministry of Foreign Relations and Central Bank was created to discuss measures to be taken face to the Congressional resistance to ratify them. The decision was to remove these BITs from the Congress voting agenda in 2003.

Brazil is concerned that by granting foreign companies a differentiated investment treatment compared to domestic companies, this could infringe a constitutional right established by the Constitutional Amendment 5 in 1995 which establishes that all legal entities established in the country, regardless of the origin of the capital, are considered Brazilian companies. This measure was a necessary move at the time to help attracting investments to strategic areas which were being privatized, namely telecom, energy, road concessions, among others. The policymakers considered that Brazil had a track record of stability in respecting rules and contracts and that creating a regime that did not distinguish legal entities according to the origin of their capital would be an effective measure.

The nationalization of Petrobras' assets in Bolivia in 2006 drew attention to the necessity of Brazil having more effective protection mechanisms to FDI made by domestic companies. In this specific case, Petrobras had to appeal to the BIT signed between Bolivia and the Netherlands, as the investment had been made through the company's subsidiary in Amsterdam. Another important case that drew the attention for the need of Brazil to revise its policies to BIT was Odebrecht's expel from Ecuador in 2008.

Even though Brazilian investments abroad have boomed since the Petrobras issue in Bolivia, there has not been an effective change of approach to BIT and other legal mechanisms to protect investments by Brazil.

In what regards the need of these agreements to attract foreign direct investments, Brazilian policymakers claim that these agreements are useless for a country with a track record of stability as Brazil. The very fact that Brazil is one of the countries that attract more foreign investments and it does not have any BIT in force is often quoted as justification. Also the fact that OECD countries do not usually sign BITs among themselves is used as justification for Brazil not needing FDI to attract FDI.

On the other hand there is growing awareness that with the increase of outward investments by Brazilian companies, often to countries with high political risk, Brazil will soon have to adjust its BIT policy. As it the responsibility of the Ministry of Foreign Affairs to negotiate these agreements, this awareness is balanced with the perception that Brazil has to avoid replicating traditional North-South relations to its developing country partners, so if there is a need to sign BITs, they will have to have a different format from the ones currently in force.

In this context, there are discussions in government to start negotiating BITs with strategic partners for Brazil (mainly countries with high political risk that are destinations of Brazilian FDI), following a different format from the existing BITs. This format would be less binding and it would also include what the

Intellectual property

The regulations related to the rights protection on intellectual property is not still fully developed under the Mercosur legal framework. Currently, there are only two norms dealing with intellectual property that Mercosur has issued: the Protocol for the Harmonization of Intellectual Property Norms in Mercosur with Respect to Trademarks and Indications of Origin and, under the WTO scope, the Trade-Related Aspects of Intellectual Property Rights (TRIPS agreement).

The first instrument aforementioned was signed in 1995 and aimed to establish standards, deadlines and procedures for protecting trademarks and indications of origin within the Mercosur. It was a relevant step towards the harmonization of the procedures and norms of the four countries, in which in some cases are quite different. However, only Paraguay and Uruguay have ratified the protocol and therefore it is in force only between these two countries.

As members of the WTO (World Trade Organization), the Mercosur countries are bound by the TRIPS agreement. In addition, the Mercosur members are parties to the following international conventions:

All Mercosur members
<ul style="list-style-type: none">▪ Paris Convention for the Protection of Industrial Property;▪ Berne Convention for the Protection of Literary and Artistic Works;▪ The Convention for the Protection of Producers of Phonograms Against Unauthorized Duplication of their Phonograms;▪ Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations.▪ International Convention for the Protection of New Varieties of Plants
Argentina, Paraguay and Uruguay
<ul style="list-style-type: none">▪ WIPO (World Intellectual Property Organization) Copyright Treaty▪ WIPO Performances and Phonograms Treaty
Argentina and Brazil are signatories, however they have not ratified yet.
<ul style="list-style-type: none">▪ Brussels Convention Relating to the Distribution of Programme Carrying Signals Transmitted by Satellite.
Argentina and Brazil
<ul style="list-style-type: none">▪ Ratified the Treaty on the International Registration of Audiovisual Works
Brazil
<ul style="list-style-type: none">▪ Madrid Agreement for the Repression of False or Deceptive Indications of Source of Goods▪ Patent Law Treaty (only signed)▪ Patent Cooperation Treaty (ratified)
Uruguay
<ul style="list-style-type: none">▪ Trademark Law Treaty (only signed)
No Mercosur country is part of the:
<ul style="list-style-type: none">▪ Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure;▪ Hague Agreement Concerning the International Registration of Industrial Designs▪ Lisbon Agreement for the Protection of Appellations of Origin and their International Registration;▪ Madrid Agreement Concerning the International Registration of Marks and its protocol

Source: WIPO

The future of Mercosur, its progress and difficulties

Regional trade agreements are an important part of the Brazilian trade policy. In this regard, Brazil considers Mercosur, a central factor in its foreign policy, namely an integration process that goes beyond trade issues, becoming a space for cooperation both in political sphere and the integration of regional infrastructure to facilitate trade in the region and worldwide. In addition, Mercosur is also considered strategic for Brazil's global insertion. Brazilian policymakers believe that as a bloc, Mercosur's member countries have more negotiating power with countries that are not members of the customs union, especially with the developed world.

Unlike the strategic role of Mercosur in the political context; in the economic context the Mercosur's scope toward a deeper regional integration has been questioned lately. After nearly twenty years of existence of Mercosur, the initial goal in signing of the Treaty of Asuncion was the establishment of a common market with free movement of goods, services, investment, people and capital of the bloc has not yet been completely implemented.

In this sense, the economic asymmetries and the absence of macroeconomic coordination policies among the bloc's countries greatly affect the evolution of Mercosur to higher levels of regional integration. Therefore, as mentioned in the introduction to this chapter, if Mercosur intends to continue its policy of expansion through the inclusion of new members, the future development of the regional bloc must change its scope, going to focus on broader issues of regional integration in the region, as well taking into account the structural differences between the bloc members. In this sense, Brazil as a leader and coordinator of the development of Mercosur has an important role in the conduct of this process, even having to assume any costs resulting of this process.

2. FTA policy of MERCOSUR countries

Ouro Preto protocol establishes that Mercosur Common Market Council, which is highest-level body of Mercosur, is the institutional authority within the bloc in charge of conducting its integration and decision making policies such as the launch of trade negotiations with third countries. Given its intergovernmental nature, Mercosur decision making process must be based on the consensus of all members.

However, generally speaking; the trade policy making process in Mercosur is not fully institutionalized. As the largest country in the bloc, both in terms of trade flow and GDP, it is usually Brazil that sets the common trade policy agenda of Mercosur. In this process, Brazil tries to accommodate the interests of other members with its own interests. However, it is worth highlighting that even though other Mercosur members play a limited role in setting the agenda, they can veto a strategy that was set by Brazil.

Since for Brazil it is strategic to preserve good diplomatic relations with Mercosur member countries, the whole trade policymaking process is usually undertaken in a cooperative manner. The integration of new member countries into Mercosur (namely Venezuela) should not change this process, though it will pose additional challenges to Brazilian trade diplomats that will have to accommodate broader political interests in the negotiations.

In Brazil, the trade policy making process is conducted by the Foreign Trade Chamber (CAMEX), a collegiate body in charge of formulating policies, coordinating and implementing the activities related to

foreign trade of goods and services. CAMEX is part of the Government Council of the Presidency of the Republic; its main decision making body is the Council of Ministers, comprising of the Minister of Development, Industry and Foreign Trade (who presides the Council); the Chief of Staff of the Presidency; the Minister of Foreign Affairs, the Minister of Finance; the Minister of Agriculture and Livestock; the Minister of Planning, Budget and Management and the Minister of Agrarian Development.

CAMEX must be previously consulted on any relevant matters relating to foreign trade, whether consisting of acts of other Federal agencies (ie. draft bills proposed by the Executive branch or Ministerial decrees). In addition, CAMEX also participates in inter-ministerial coordination meetings for the elaboration of Brazilian trade policy in several areas such as market access, investment, services, intellectual property, government procurement and agriculture. It also has an Executive Secretariat responsible for coordinating the referral and subsequent enforcement of decisions taken in their context.

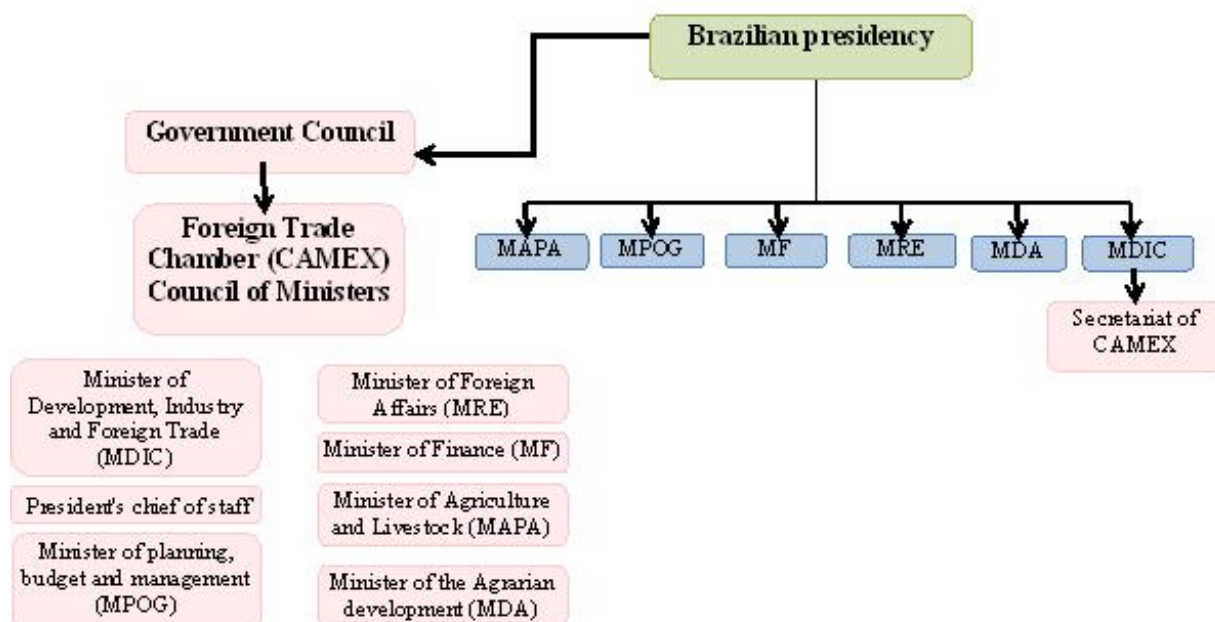
It is worth to mention that although CAMEX is the Brazilian agency in charge of coordinating and implementing the decisions debated in the Council of Ministers, each ministry remains responsible for implementing matters within its competence.

In that context, the Ministry of Development, Industry and Foreign Trade (MDIC) is responsible for implementing trade policy, based on the guidelines formulated by CAMEX, through the Secretariat of Foreign Trade (SECEX), which is divided into four departments: Foreign Trade Operations (DECEX); Trade Remedies (DECOM); International Trade Negotiations (DEINT); and Planning and Development of Foreign Trade Policies (DEPLA).

Regarding the formulation of foreign policy, the Ministry of Foreign Affairs is the responsible in assisting CAMEX on these matters, inter alia, on regional integration and trade issues. The Ministry of Foreign Affairs is the representative to the WTO in Geneva. The Ministry of Finance formulates and implements economic policy; it is in charge of customs and tax policy and administration, inspection, and revenue collection.

Finally, the participation of the private sector in trade policy formulation is institutionalized through periodic meetings of the CONEX⁶ (the CAMEX Private Sector Advisory Council), and through several sectoral competitiveness fora.

⁶ The most recent composition of CONEX was approved by the CAMEX Resolution N° 69, on September 14, 2010 (See details on http://desenvolvimento.gov.br/arquivos/dwnl_1284559956.pdf). The Conex is comprised of 20 private sector representatives, including the most relevant professional sectors to the Brazilian foreign trade.



Relevant elements that influence the beginning of an international trade negotiations in Brazil

Several different factors can influence the Brazilian government's interest in starting and/or concluding a free trade agreement. In the first level is the political motivation to strengthen diplomatic ties with the other country. There are cases in which even though the potential for promoting trade complementation was limited, the Brazilian government negotiated a preferential agreement as a political movement.

Also important for Brazilian policymakers is the format of the agreements. Mercosur engaged in bilateral negotiations with the European Union in the mid-1990s. Just before that the negotiations for a Free Trade Area of the Americas started. In both cases it was hard to reach an agreement, since as both the United States and the European Union wanted the so called "new topics" (services, intellectual property, investment, government procurement, among others) to be included. When these negotiations were taking place, Brazilian policymakers considered that the "new topics" were not of interest to developing countries.

The interest of domestic constituencies (especially business and unions) also plays an important role in determining the success of a free trade agreement in Brazil, though the role played by these constituencies in starting a negotiation is secondary to the political interests. Notwithstanding that, some sectors have been very successful in pursuing the Brazilian government to negotiate trade agreements. For instance Brazil has a bilateral agreement with Mexico specifically focused on the automotive industry. This agreement largely results from a successful articulation of business representatives from this industry in both countries. The fact that the automotive sector is dominated by the same multinational companies in both countries certainly facilitated the process.

Even though domestic constituencies do not play a prominent role in influencing the Brazilian government to start a trade negotiation, they often have the power to either defend or promote the agreement according to their interest. There are cases of negotiations initiated by Mercosur mainly resulting from political interests, though potential for exports were also high, that were hampered due to protectionist interest. This was the case in the bilateral negotiation for a free trade agreement between Mercosur and the Cooperation Council for the Arab States of the Gulf.

3. The contents of MERCOSUR's FTA's already in effect and/or signed

- Summaries of each chapter, industries' position toward FTA's, Pro and Con, etc.

Brazil attributes great relevance to regional trade agreements as a beneficial complement for a balanced and non-discriminatory multilateral trade system. In addition to Mercosur, Brazil takes part of a range of preferential trade agreements, also known as economic complementation agreements (ACE) that were signed under the ALADI's framework (Latin American Integration Association).

With a more restricted scope than a free trade agreement, such agreements grant preferential tariffs to a certain scope of goods that can evolve to a full liberalization of trade between the countries. Through Mercosur, Brazil has signed agreements of this category with most countries in South America.

After concluding free trade agreements with most countries in South America, Mercosur started to negotiate free trade agreements with extra-regional partners. Its first extra-regional FTA agreement was signed with Israel in 2007. Currently, this free trade agreement entered into force in Brazil, Paraguay and Uruguay.

Regarding the most common format of the trade agreements into force among the Mercosur and its partners, as can be seen in the table below, most of the agreements are characterized by the liberalization of goods only. The most significant progress related to trade in services has been made so far with Chile. As to the other issues (investment, government procurement and intellectual property protection rights), there has been little progress in negotiating agreements, whereas there is still no regulatory framework in the context of Mercosur on these issues.

Trade agreements that Brazil takes part	Goods	Services	Investments	Intellectual property	Government procurement	Dispute settlement
Mercosur (ACE 18)	Yes	Partial (Montevideo Protocol)	Not in force (Colonia and Buenos Aires Protocol)	Partial (Operative only for Paraguay e Uruguay)	No	Yes
Mercosur-Chile (ACE 35)	Yes	Yes (May 2009) Not in force	No (Bilateral agreements must be maintained)	Yes	No	Yes
Mercosur-Bolivia (ACE 56)	Yes	No	No (Bilateral agreements must be maintained)	No	No	Yes
Brazil – México (ACE 53)	Partial (Fixed Preference Agreement)	No	No	No	No	Yes
Mercosur – México (ACE 54)	Partial	No	No	No	No	No
Mercosur – México (ACE 55) - Automotive	Partial	No	No	No	No	No
Mercosur – Peru (ACE 58)	Yes	No	No	Yes	No	Yes
Mercosur – Colombia, Ecuador, Venezuela (ACE 59)	Yes	Under negotiations	No	Yes	No	Yes
Mercosur – India	Partial (Fixed Preference Agreement)	No	No	No	No	Yes
Mercosur – Israel	Yes	No	No	No	No	Yes

According to the trade agreements listed on the table below, the period to complete the liberalization of trade in goods ranges from 10 and 15 years, depending on the sensitiveness level of the economic sectors from each party involved. In order to meet the differentiated protection level for each partner, in general, it is created different tariff phasing out schedules.

An example that illustrates this situation is the economic complementation agreement No. 59, which includes the countries of MERCOSUR as well as Colombia, Ecuador and Venezuela. Through 67 different tariff reduction schedules, this agreement took into account the asymmetries among the signatory countries, incorporating shorter tariff reduction schedules for Argentina and Brazil and longer schedules to Colombia and Venezuela. Smaller countries such as Ecuador, Paraguay and Uruguay, received more flexible deadlines for full opening of their markets.

Trade agreements that Brazil takes part	Entry into force	End of the tariff reduction timetable
Mercosur (ACE 18)	1991	1994
Mercosur-Chile (ACE 35)	1996	2012
Mercosur-Bolivia (ACE 36)	1997	2014
Brazil – México (ACE 53)	2003	Fixed Preference Agreement
Mercosur – México (ACE 55) Automotive	2003	Sectoral agreement - Automotive industry
Mercosur – Peru (ACE 58)	2005	2019
Mercosur – Colombia, Ecuador, Venezuela (ACE 59)	2005	2018
Brazil – Guyana (ACE 38)	2004	Fixed Preference Agreement
Mercosur – Cuba (ACE 62)	2007	2012
Mercosur – India	2009	Fixed Preference Agreement
Mercosur – Israel	2010	2019

Source: Brazilian Ministry of Development, Industry and Foreign Trade

Regarding the most sensitive Mercosur industries, in general, they are divided in two groups: those that Mercosur countries have competitive advantage both in the global markets or/ and in the domestic market as is the case of sugar. And, secondly, there are those segments that due to the lack of competitiveness in the global market have differentiated tariff profile among the Mercosur countries, such as segments of capital goods, telecommunications products, defend a more protectionism position. These segments are mainly from Brazil that it the country that has the most developed industrial sector in Mercosur.

In addition to the exception lists of each country in Mercosur, the analysis of tariff reduction schedules and the specific requirements for application of rules of origin are also good sources for mapping sensitivities between trade agreements. In this sense, the table below illustrates the main sensitive products in Mercosur to the trade agreements selected.

Mercosur-Chile (ACE 35)	Mercosur-Bolivia (ACE 36)	Mercosur – Peru (ACE 58)	Mercosur – Colombia, Ecuador, Venezuela (ACE 59)
<p>For items such as beef, poultry, chocolate, furs and cured hides, glass, laminated iron or steel products, household appliances, textiles and shoes the import tariff culminated at zero on January, 2006.</p> <p>For beef, rice, temperate climate fruits, vegetable oils, soy, wine, jeeps and special use vehicles, and wooden furniture, the import tariff will reach at zero by January 2011.</p> <p>Tariff import on sugar will reach zero only on January 2016.</p>	<p>The tariff reduction schedule will reach zero by January, 2011 for the following goods: sugar cane, carton boxes, telecommunications equipment, household domestic items, chicken, and processed fruits.</p> <p>Soy products and refined sugar will have zero tariffs by January, 2014.</p>	<p>There are quota restrictions on adhesive tape, textiles and clothing added by Argentina.</p> <p>Textiles and apparel goods traded by Paraguay and Peru as well as Uruguay and Peru are excluded from any type of preferential tariff treatment</p> <p>Peru and Paraguay/Uruguay mutually excluded sugar and ethyl alcohol from receiving any kind of preferential tariff treatment.</p>	<p>Sugar is exempted from preferential tariff treatment until future negotiations.</p> <p>The same rule is applied to auto parts, clothing, steel products and textiles.</p> <p>Tariff rate quotas apply for a significant number of agricultural products.</p>

Source: ALADI

In what concerns the rules of origin, Mercosur countries adopt different regimes of origin for each trade agreement. The differentiated rules takes into account the network of trade agreements that the trade partner have with third countries in order to prevent the partner country from becoming a gateway for importing goods into Mercosur from third countries and thereby undermining the Common External Tariff.

Rules of origin in the main trade agreements with Mercosur countries

Trade agreement	General rules			Specific rules of origin are applied to
	Accumulation rules	Tariff change rules	Regional content requirements (RCR)	
Mercosur-Chile (ACE 35)	It is considered as originating all imported inputs from countries signatory to the agreement (Mercosur members and Chile)	Tariff heading (4-digit classification of the Mercosur Common Nomenclature) of the input must be different from the finished product.	The c.i.f value of the materials originating from third countries does not exceed 40 per cent of the f.o.b export value of the final product.	<ul style="list-style-type: none">▪ HS Chapters 28 and 29;▪ Telecommunication and information technology products;▪ Auto parts.▪ Milk products ; vegetable oils; wheat or mixed grain; textiles, shoes, steel products
Mercosur-Bolivia (ACE 36)	It will be considered originating all imported inputs from countries signatory to the agreement and Andean Community countries.		The c.i.f value of the materials originating from third countries does not exceed 40 per cent of the f.o.b export value of the final product.	<ul style="list-style-type: none">▪ Telecommunication and information technology products;▪ Steel products;▪ Textiles▪ Milk products ;
Mercosur – Peru (ACE 58)			RCR must be greater or equal to 55% by February 2012, and greater or equal to 60% from February 2012.	Specific rules of origin were negotiated bilaterally, varying according to the country. See annex V of the agreement.
Mercosur – Colombia, Ecuador, Venezuela (ACE 59)		Goods that have only undergone packaging or assembly operations within Mercosur are explicit excluded from intra-regional free trade treatment.	Rules varies according to the country and period: Argentina and Brazil - RCR must be greater or equal to 60%. Colombia, Venezuela and Uruguay – RCR must be greater or equal to 50% by 2012 and 55% after 2012. Ecuador and Paraguay - RCR must be greater or equal to 40% by 2011, 45% between 2011 and 2015 and 50% after 2015.	Specific rules of origin were negotiated bilaterally, varying according to the country. See annex IV of this agreement.

Source: Aladi

In that context, the existing preferential rules of origin are basically divided into general rules and specific rules for each product, in which the specific rule for certain good must prevail over the general rules. To be considered as originating from a given country, the good must meet three criteria as indicated in the table above: accumulation rules; regional content and change in the tariff classification.

Regarding the deepening of the regional integration, all these agreements highlight the importance in the improvements of physical infrastructure in order to expand intra-regional and international exports. In that

sense, such agreements, depending on the regional partner, includes cooperation instruments in the areas of energy, scientific and technical research and development, as well as the promotion of cross-border investment through the eventual signing of treaties to avoid double taxation.

4. The benefits achieved by the FTA's already in effect

The analysis of the benefits achieved by the Mercosur free trade agreements with regional partners is mainly based on trade data. In that context, it will be analyzed four free trade agreements:

- Mercosur and Chile FTA;
- Mercosur and Bolivia FTA;
- Mercosur and Peru FTA;
- Mercosur and Colombia, Ecuador and Venezuela FTA.

The methodology to measure the development of trade between Mercosur and regional partners will consider the evolution of exports and imports from the year of entry into force of the agreement (base year = 100), in which the subsequent years are expressed as relatives of the value of the base year. Trade data used for this analysis are from international databases (COMTRADE/UN) as well as official Brazilian trade database (Aliceweb, Brazilian Ministry of Development, Industry and Foreign Trade).

Besides the base year method, it was also analyzed the composition of the bilateral trade agenda in order to identify key consumer and suppliers markets among members of the agreement as well as mapping sectors that are benefited or harmed by trade liberalization.

It is important to highlight that the methodology used presents some limitations, since it includes only bilateral trade statistics, not taking into account trade diversion caused by new agreements of regional partners with third countries, as is the case of growing Chinese market share in the imports of some countries of the region. It does not take into consideration exchange rate flows between the countries. Trade interruptions caused by the embargo of goods such as occurred between Chile and Brazil due to the outbreaks of FMD were also excluded of this trade analysis.

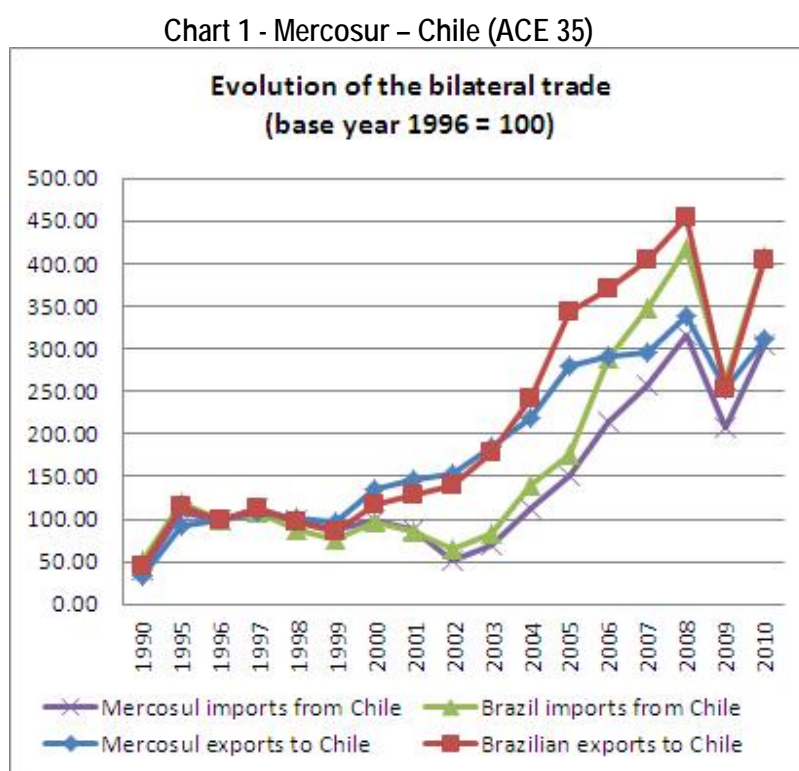
Agreements came into effect recently as in the case of Israel will not be analyzed in this part of the study, mainly by lack of available data that does not allow structuring a comparative basis over time.

Regarding the analysis of bilateral trade agenda among Mercosur members and its regional trading partners, it was considered only the flow of imports and exports from Brazil instead of the four Mercosur countries, given the economic relevance of the country in Mercosur bloc.

In summary, the assessment of the benefits and/ or eventual harms of the existing trade agreements will take into consideration mainly the expansion of regional trade, the tariff reduction schedules as well the potential diversification of bilateral trade among the players involved. Thus, the findings of this chapter will serve as a general perception on the development in the regional trade.

Mercosur and Chile FTA (ACE 35)

The free trade agreement with Chile was the first of a series of agreements that would be signed later. Since the entry into force of this agreement which took place in October 1996, the development of trade between Mercosur and Chile has increased considerably. From January, 2004, most products traded between Mercosur and Chile had duty-free tariffs.



Source: COMTRADE / ONU e Aliceweb para ano 2010

As seen in Chart 1, in the early years of the agreement, the Mercosur countries were the main beneficiaries of trade liberalization in Chile, considering that Mercosur exports to Chile grew at a faster pace than Mercosur imports from Chile. From 1996 and 2010, total Mercosur exports to Chile increased by 200% (from USD 2.96 billion in 1996 to USD 9.25 billion in 2010). On the other hand, Mercosur imports from Chile remained stable between 1996 and 2003, going to increase more steeply from 2004. From entry into force of the agreement up to 2010, Mercosur imports from Chile increased 204% (from USD 1.7 billion in 1996 to USD 5.1 million in 2010).

When analyzing the participation of Brazil in bilateral flows, there is a growth even higher than the average of Mercosur countries. During the period considered, Brazilian exports to Chile increased by 304% (from USD 1 billion in 1996 to USD 4.25 billion in 2010) while Brazilian imports from that country increased 310% (from USD 998 million in 1996 to USD 4.1 billion in 2010).

The different levels of liberalization among the signatories and greater market access for Mercosur countries can be explained by the differentiated tariff profile among the countries involved. In this case, the

Mercosur countries benefited from lower tariffs applied in Chile in that time besides the progress of the tariff reduction schedules. Chile only started to benefit from the trade agreement a few years later when the tariff reduction schedule was close to cover most of the trade between the two countries by 2004.

In terms of tariff reduction, the objective of establishing a free trade area between Mercosur and Chile has already been met. From 1 January 2006, 97.7% of the applied tariff in the bilateral trade flow was zero. The remaining products achieved that status on 1 January 2011, with the exception of highly sensitive products to Chile, which will achieve the complete trade liberalization from 1 January 2012.

Country	Simple average of MFN applied tariff				End of the tariff reduction schedule
	1997		2009		
	Simple average	Duty Range (min-max)	Simple average	Duty Range (min-max)	
Chile	11%	11 to 11	6%	6 to 12.5	2012
Argentina	11.48%	01 to 30	12.45%	02 to 35	
Brazil	14.90%	03 to 63	12.42%	01 to 35	
Paraguay	11.81%	0.91 to 23.5	10.28%	0.22 to 30	
Uruguay	12.74%	01 to 24	10.85%	2 to 55	

Source: WTO - Tariff analysis online.

Note: Paraguay and Uruguay must be considered 1998, as the first comparative year

Regarding the profile of the trade agenda between the Mercosur and Chile, in this case considering the Brazilian trade flows as a reference for the Southern Cone bloc, there is a relatively diversified bilateral agenda, including both agricultural and mineral commodities and manufactured goods, which have higher added value.

On the Brazilian side, the most significant growth of Brazilian exports to Chile happened between 1996 and 2004, when the tariff phasing out would reach zero for the majority of tariff lines. In the subsequent period from 2004 and 2010, Brazil's growth was more modest. The Brazilian products that stood out in the bilateral trade agenda were mineral fuels whose exports were negligible in 1996 and currently hold 25% of total Brazilian exports to Chile. Brazilian manufactured products were also significant in the Chilean market, namely products of electrical and electronic industries; automotive segment and capital goods.

Evolution of Brazil's exports to Chile

Main products	USD million					% change in the period	
	1995	1996	2004	2008	2010	1996-2004	2004-2010
02 - Meat, edible meat offal	0	0.04	199	12.53	124.67	452,889.41	(37.45)
27 - Mineral fuels	1	1	333	1,504	1,108.00	28,580.95	232.60
30 - Pharmaceutical products	9	10	18	51	50.97	81.23	175.59
33 - Essential oils, perfumery, cosmetics	3	3	19	62	71.86	548.16	286.57
39 - Plastics and articles thereof	56	58	147	182	194.47	153.30	32.04
40 - Rubber and articles thereof	39	35	54	74	83.03	52.01	55.12
48 - Paper and paperboard	71	37	85	127	105.79	130.22	23.82
72 - Iron and steel	117	76	164	377	238.19	116.99	45.27
84 - Machinery and equipment	168	145	258	441	391.08	78.52	51.56
85 - Electrical machinery and equipment	64	58	153	309	269.24	164.12	76.13
87 - Vehicles	262	254	543	810	787.78	113.46	45.17
Others	419	378	583	842	833.30	54.01	43.03
TOTAL	1,210	1,055	2,556	4,792	4,258.36	142.21	66.61

Source: Aliceweb

On the Chilean side, the country emerged as an important supplier of mineral products (HS chapters 26 and 74), which currently represent 67% of imports from Brazil. The evolution of Brazilian imports from

Chile as previously mentioned has grown stronger between 2004 and 2010, in final period of the tariff reduction schedule. In addition, more recently due to the growing domestic market in Brazil and the increase of the purchasing power of the Brazilian population, Chile began to provide larger scale in the food industry, including fish, fruits and beverages.

Evolution of Brazil's imports from Chile

Products	USD million					% change in the period	
	1995	1996	2004	2008	2010	1996-2004	2004-2010
03 - Fish, crustaceans, molluscs etc	19	28	47	159	254	67.86	440.43
08 - Edible fruits, nuts, peel of citrus fruits	118	141	31	73	132	(78.01)	325.81
22 - Beverages, spirits and vinegar	5	4	22	51	73	450.00	231.82
26 - Ores, slag and ash	279	202	500	1169	922	147.52	84.40
28 - Inorganic chemicals	10	12	32	84	41	166.67	28.13
29 - Organic chemicals	95	71	61	222	171	(14.08)	180.33
31 - Fertilizers	23	24	43	83	111	79.17	158.14
72 - Iron and steel	1.4	0.5	6	42	55	1,100.00	816.67
73 - Articles of iron and steel	3.6	4	9	69	66	125.00	633.33
74- Copper and articles thereof	293	230	431	1833	1779	87.39	312.76
87 - Vehicles	5	0.2	17	39	74	8,400.00	335.29
Others	331	281.3	200	338	413	(28.90)	106.50
TOTAL	1183	998	1399	4162	4091	40.18	192.42

Source: Comtrade / UN

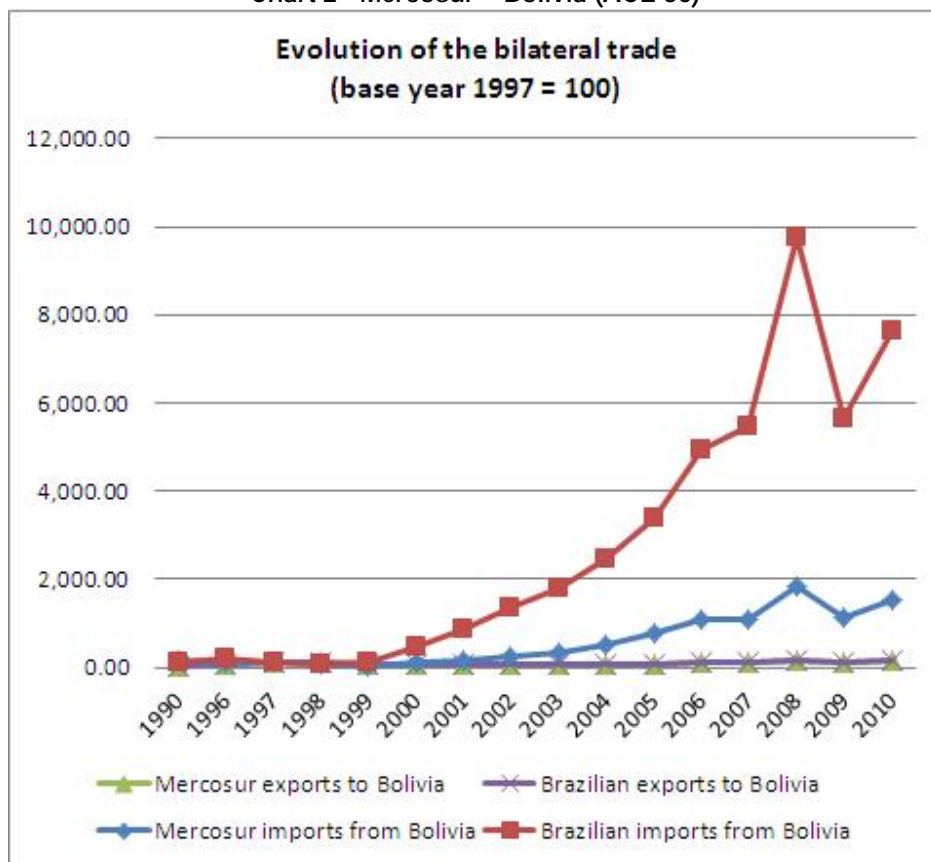
As noted in the data presented, the free trade agreement between Mercosur and Chile reached its goal of expanding trade between the signatory countries. For Brazil, Chile is an important market for its higher added value products as well as for its more competitive agricultural and mineral commodities. Although Brazil is positioned as the largest economy in Latin America, the agreement with Chile has proved balanced, positioning Chile as an important supplier of raw materials and semi-finished products for use in several production sectors in Brazil.

Mercosur and Bolivia FTA (ACE 36)

Beginning on February 28, 1997, most products traded between Bolivia and Mercosur were subject to increasing preferential tariff rates that were phased out annually so that 90 percent of the tariffs on ALADI NALADISA achieved duty-free status by January, 1, 2006.

Regarding the trade evolution among Mercosur members and Bolivia, in the chart below, it is visible that Bolivia is the main beneficiary of this agreement. Since the entry into force of this agreement, Mercosur imports from Bolivia increased from USD 168 million in 1997 to USD 2.6 billion in 2010, while the Mercosur exports to Bolivia decreased between 1997 and 2005, only increasing again in 2006, however at a very slow pace than Mercosur imports.

Chart 2 - Mercosur – Bolivia (ACE 36)



Source: COMTRADE / ONU e Aliceweb para ano 2010

Regarding the Bolivian tariff profile, this country has the tariff average rates somewhat lower than those prevailing among the members of Mercosur. Although currently trade between Mercosur and Bolivia are practically liberalized, Bolivia as one of the poorest countries in Latin America did not present significant progress in bilateral trade for the members of Mercosur.

Country	Simple average of MFN applied tariff				End of the tariff reduction schedule
	1997		2009		
	Simple average	Duty Range (min-max)	Simple average	Duty Range (min-max)	
Bolivia	9.67%	02 to 10	10.61%	05 to 20	2014
Argentina	11.48%	01 to 30	12.45%	02 to 35	
Brazil	14.90%	03 to 63	12.42%	01 to 35	
Paraguay	11.81%	0.91 to 23.5	10.28%	0.22 to 30	
Uruguay	12.74%	01 to 24	10.85%	2 to 55	

Source: WTO - Tariff analysis online

Paraguay and Uruguay must be considered 1998, as the first comparative year

Given the limited Bolivian demand for Mercosur products, the trade balance between Brazil and Bolivia is surplus to the Andean country, considering the high exports of natural resources, such as natural gas to Brazil. Since 2004, Bolivia's exports to Mercosur are concentrated primarily in this product accounting for more than 90% of Bolivian exports to Brazil.

Evolution of Brazil's imports from Bolivia - USD million

Main products	USD million					% change in the period	
	1996	1997	2004	2008	2010	1997-2004	2004-2010
07 - Edible vegetable and certain roots and tubers	0.9	1	3.6	30	23	260.00	538.89
25- Salt, sulphur, earth, stone, plaster, lime etc	1.6	3	4	6	14	33.33	250.00
26 - Ores, ash and slag	5.4	1.6	1.7	0.8	26	6.25	1,429.41
27 - Mineral fuel	0	0	689	2771	2133	-	209.58
80 - Tin and articles thereof	0	0	5	15	8	-	60.00
Others	57	23	10	34	29	(58.55)	198.97
TOTAL	65	29	713	2,857	2,233	2,358.62	213.18

Source: COMTRADE / ONU e Aliceweb para ano 2010

On the Brazilian side, the commercial expansion to Bolivia was more modest, presenting from 1996 to 2010 a growth of 62% of Brazilian exports to the Andean country. Despite being a small market, Bolivia depends considerably on exports of manufactured goods from Mercosur. In 2009, the Bolivian world imports have reached USD 4.4 billion, in which 35% corresponding to Mercosur exports to Bolivia.

Evolution of Brazil's exports to Bolivia - USD million

Main products	USD million					% change in the period	
	1996	1997	2004	2008	2010	1997-2004	2004-2010
27 - Mineral fuel	1.6	1.6	10	56	90	525.00	800.00
38 - Miscellaneous chemical products	16	20	16	29	38	(20.00)	137.50
39 - Plastics and articles thereof	23	28	39	68	61	39.29	56.41
48 - Paper and paperboard	17	24	27	45	39	12.50	44.44
64 - Footwear	26	31	17	30	42	(45.16)	147.06
72 - Iron and steel	27	28	49	180	136	75.00	177.55
73 - Articles of iron and steel	25	103	25	54	56	(75.73)	124.00
84 - Machinery and equipment	69	91	92	177	181	1.10	96.74
85 - Electrical machinery and equipment	53	66	27	67	72	(59.09)	166.67
87 - Vehicles	38	46	40	66	70	(13.04)	75.00
Others	235	280	198	363	378	(29.39)	90.91
TOTAL	531	719	540	1,135	1,163	(24.90)	115.37

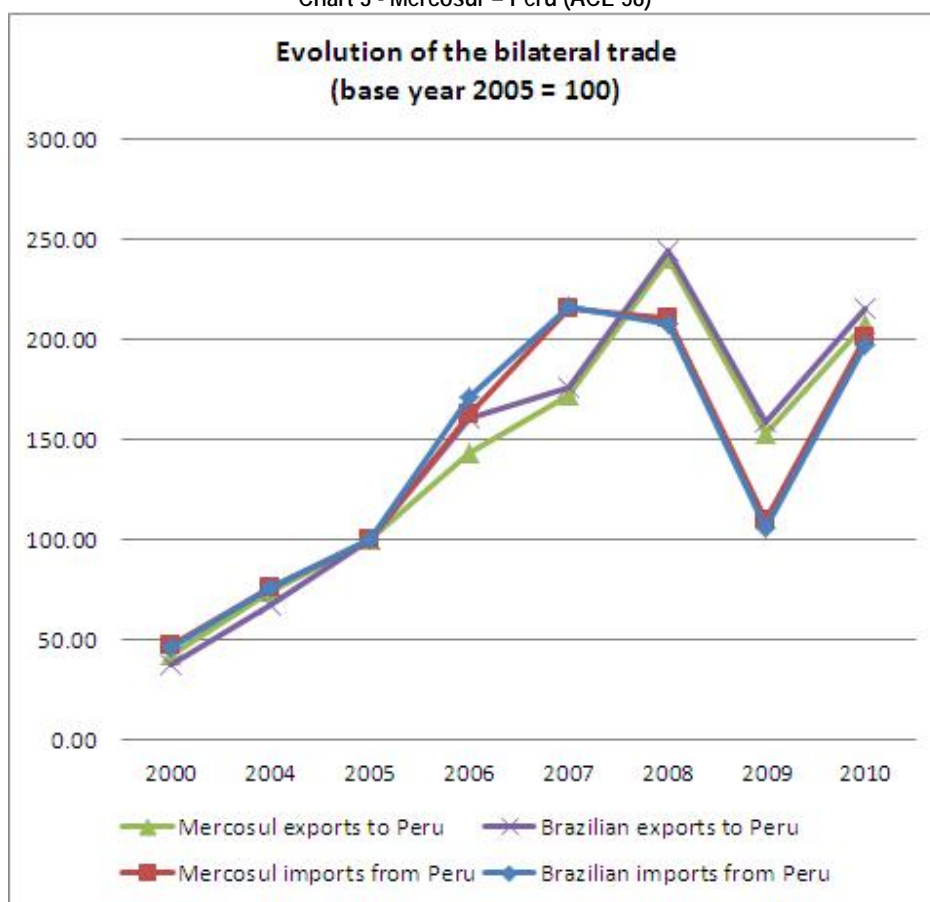
Source: COMTRADE / ONU e Aliceweb para ano 2010

The Brazilian sectors with the greatest relevance in the trade agenda with Bolivia are iron and steel, machinery and equipment, mineral fuels, electrical and electronic equipment and automobiles.

Mercosur and Peru FTA (ACE 58)

On August 25, 2003, representatives of the governments of Peru and the four Mercosur countries signed an agreement that makes Peru an associate member of Mercosur. The entry into force of this agreement took place in December 2005.

Chart 3 - Mercosur – Peru (ACE 58)



Source: COMTRADE / ONU e Aliceweb para ano 2010

The expansion of bilateral trade between the signatory countries of the ACE n° 58 was beneficial both Peru and Mercosur countries. Since the entry into force of the agreement in 2005 until 2010, Mercosur exports to Peru increased by 108% while imports grew by 101%.

Country	Simple average of MFN applied tariff				End of the tariff reduction schedule
	2004		2009		
	Simple average	Duty Range (min-max)	Simple average	Duty Range (min-max)	
Peru	9.97%	4 to 20	10.92%	9 to 17	2019
Argentina	11.27%	2 to 35	12.45%	02 to 35	
Brazil	11.72%	2 to 55	12.42%	01 to 35	
Paraguay	10.57%	2 to 30	10.28%	0.22 to 30	
Uruguay	10.73%	2 to 55	10.85%	2 to 55	

Source: WTO - Tariff analysis online

For Uruguay, it must be considered 2006, as the first comparative year

Taking into account the sensitivities of Peru, Argentina and Brazil have established a more favorable tariff reduction timetable to Peru, which would have most products at zero tariffs in 2013 (the most sensitive products from Brazil and Argentina would be phased out by 2015). On the Peruvian side, the period of tariff

reduction would be more extensive, with the tariff reductions beginning before January, 2006 and running as late as 2015 or 2018.

Before signing the trade agreement with Peru, Brazil was already presenting relevant exports to Peru, as shown in the table below. However, after the start of the tariff reduction schedule in 2006, the entry of Brazilian products in Peru increased further.

Evolution of Brazil's exports to Peru

Main products	USD million				% change in the period	
	2004	2005	2008	2010	2004-2005	2005-2010
84 - Machinery and equipment	108	135	327	317	25.00	134.81
87 - Vehicles	91	146	489	387	60.44	165.07
72 - Iron and steel	60	79	245	206	31.67	160.76
85 - Electrical machinery and equipment	43	114	242	134	165.12	17.54
39 - Plastics and articles thereof	37	58	80	144	56.76	148.28
33 - Essential oils, perfumery, cosmetics	7	9	25	28	28.57	211.11
27 - Mineral fuels	31	116	384	182	274.19	56.90
48 - Paper and paperboard	27	40	64	70	48.15	75.00
73 - Articles of iron or steel	15	12	37	103	(20.00)	758.33
40 - Rubber and articles thereof	11	17	36	39	54.55	129.41
Others	206	213	370	410	3.40	92.49
TOTAL	636	939	2,299	2,020	47.64	115.12

Source: COMTRADE / ONU

Repeating the pattern observed in trade agreements with Chile and Bolivia, Brazilian exports to Peru are also more qualified, covering medium and high-technology products such as machinery and equipment, automobiles, iron and steel and mineral fuels. In addition, Peru's strong economic growth in recent years has also contributed to the growth of bilateral flow of trade between Peru and Brazil.

Evolution of Brazil's imports from Peru

Main products	USD million				% change in the period	
	2004	2005	2008	2010	2004-2005	2005-2010
74 - Copper and articles thereof	102	188	415	397	84.31	111.17
26 - Ores, slag and ash	80	101	158	146	26.25	44.55
71 - Pearls, precious stones, metals, coir	70	70	118	68	0	(2.86)
78 - Lead and articles thereof	27	37	93	10	37.04	(72.97)
79 - Zinc and articles thereof	21	16	43	6	(23.81)	(62.50)
55 - Manmade staple fibers	10	11	14	14	10.00	27.27
27 - Mineral fuels	0	2	0	73	-	3,550.00
61 - Articles of apparel, knit or crochet	0.03	0.15	9	36	400.00	23,900.00
32 - Tanning, dying extracts, etc	3	3	5	27	0	800.00
28 - Inorganic chemicals	2	3	28	27	50.00	800.00
Others	34	28	73	103	(18.02)	269.84
TOTAL	349	459	956	907	31.52	97.60

Source: COMTRADE / UN

Regarding Brazilian imports from Peru, mineral commodities as also observed in the trade agreements with Chile and Bolivia occupies a prominent role in the flow of trade with Peru. Copper ores, mineral commodities and fossil fuel take up nearly 70% of trade import agenda with Mercosur.

Mercosur and Colombia, Ecuador and Venezuela FTA (ACE 59)

Following Bolivia and Peru, the remaining three members of Andean Community – Colombia, Ecuador and Venezuela, signed a free trade agreement with Mercosur on October 18, 2004. In that context it is important to stress that the tariff reduction schedules as well as the rules of origin requirements for goods are the result of separate, bilateral agreements between Colombia, Ecuador and Venezuela with each of the four Mercosur countries. This happened partially because the Common External Tariff in both Andean Community and Mercosur has still not been fully implemented, and so neither bloc was in a position to make a single offer binding on all their members.

Given the particularities of the 12 bilateral free trade agreements, the date these agreements actually entered into force was not uniform ranging from January, 2005 through April, 2005. Such complexity in the elaboration of tariff reduction schedules and rules of origin requirements for the seven members raised a lot of criticism by trade specialists because the agreement undermine rather than enhances transparency and facilitates new opportunities for the private sector.

In general, tariff reduction schedules for this agreement reach zero at faster pace for Argentina and Brazil than for the other five countries. This difference marks an acceptance by Brazil of the concept of special and differential treatment for smaller countries.

Country	Simple average of MFN applied tariff				End of the tariff reduction schedule
	2004		2009		
	Simple average	Duty Range (min-max)	Simple average	Duty Range (min-max)	
Colombia	12.52%	5 to 80	12.50%	5 to 80	2018
Ecuador	11.85%	3 to 35	11.65%	3 to 35	
Venezuela	12.29%	5 to 35	12.15%	5 to 40	
Argentina	11.27%	2 to 35	12.45%	02 to 35	
Brazil	11.72%	2 to 55	12.42%	01 to 35	
Paraguay	10.57%	2 to 30	10.28%	0.22 to 30	
Uruguay	10.73%	2 to 55	10.85%	2 to 55	

Source: WTO - Tariff analysis online

For Uruguay, it must be considered 2006, as the first comparative year

For Venezuela, it must be considered 2003, as the first comparative year

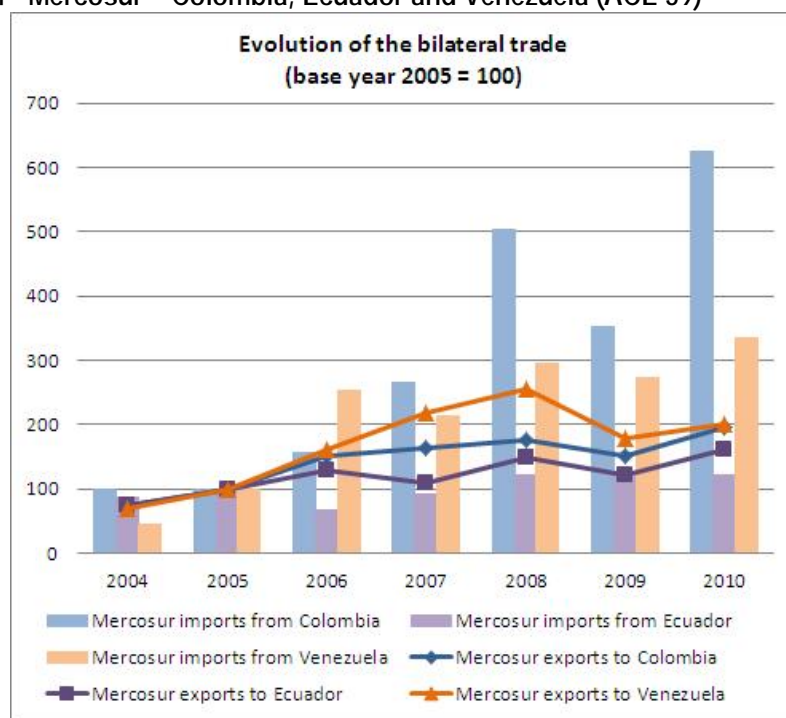
For Ecuador, it must be considered 2007, as the last comparative year

Despite the differentiated treatment given to every signatory member, the expansion of bilateral trade was growing between 2005 and 2010. Mercosur imports from Colombia increased more than 500% from USD 200 million in 2005 to USD 1,236 million in 2010. Another highlight was the Mercosur imports from Venezuela, which increased 236% over the same period from USD 541 million in 2005 to USD 1.817 million in 2010.

Considering that Brazil already had significant market share in Colombia, Ecuador and Venezuela before the ACE 59 had been entered into force, the growth of Brazilian exports to Colombia,

Ecuador and Venezuela were more modest, with growth rates of 96%, 60% and 102 %, respectively from 2005 and 2010. However, despite the relative growth of imports from the three Andean countries has been much greater Brazilian exports to those countries; Brazil's trade balance with the three Andean countries is surplus.

Chart 4 - Mercosur – Colombia, Ecuador and Venezuela (ACE 59)



Source: COMTRADE / ONU e Aliceweb para ano 2010

Considering the three Andean countries, it is observed a very diverse trade agenda of Brazilian exports to these countries, ranging from agricultural products like cereals, meat and sugar to higher value-added products like chemicals products, iron and steel, machinery and equipment, automobiles and electrical and electronic equipment. In this sense, these countries as well as Chile, Bolivia and Peru are major destinations of exports of manufactured goods in Brazil.

Regarding Mercosur imports from these countries, once again they stand out for their supply of mineral raw materials, agricultural products and intermediate inputs for the Brazilian industry. Colombia, Ecuador and Venezuela provide primarily fossil fuels. Although on a smaller scale, there are also exports from the Andean countries of intermediate inputs for the Brazilian industry as plastics, rubber, paper, iron and steel, aluminum and organic chemicals.

Bilateral relationship between Brazil and Andean countries (Colombia, Ecuador and Venezuela)

Brazilian exports to Colombia Main products	USD million		% change
	2005	2010	2005-2010
10 - Cereals	0.3	157	52,233.33
21 - Miscellaneous edible preparations	40	65	62.50
29 - Organic chemicals	22	186	745.45
39 - Plastics and articles thereof	37	104	181.08
40 - Rubber and articles thereof	54	91	68.52
72 - Iron and steel	203	204	0.49
76 - Aluminum and articles thereof	24	82	241.67
84 - Machinery and equipment	204	306	50.00
85 - Electrical machinery and equipment	217	137	(36.87)
87 - Vehicles	195	193	(1.03)
Others	416	671	61.41
TOTAL	1,412	2,196	55.52

Brazilian exports to Ecuador Main products	USD million		% change
	2005	2010	2005-2010
10 - Cereals	0.8	19	2,275
30 - Pharmaceutical products	12	28	133
39 - Plastics and articles thereof	44	96	118
40 - Rubber and articles thereof	8	20	150
48 - Paper and paperboard	26	38	46
72 - Iron and steel	76	77	1
84 - Machinery and equipment	83	134	61
85 - Electrical machinery and equipment	56	114	104
87 - Vehicles	180	69	(62)
88 - Aircraft and parts thereof	0.002	164	8,199,900
Others	163	219	34
TOTAL	649	978	51

Brazilian exports to Venezuela Main products	USD million		% change
	2005	2010	2005-2010
01 - Live animals	1	631	63,000.00
02 - Meat and edible meat offal	125	485	288.00
17 - Sugar and sugar confectionery	12	441	3,575.00
84 - Machinery and equipment	257	325	26.46
87 - Vehicles	587	283	(51.79)
85 - Electrical machinery and equipment	444	176	(60.36)
30 - Pharmaceutical products	54	150	177.78
39 - Plastics and articles thereof	24	133	454.17
40 - Rubber and articles thereof	73	128	75.34
48 - Paper and paperboard	48	86	79.17
Others	598	1,016	69.90
TOTAL	2,223	3,854	73.37

Brazilian imports from Colombia Main products	USD million		% change
	2005	2010	2005-2010
27 - Mineral fuels	33	424	1,184.85
29 - Organic chemicals	12	26	116.67
39 - Plastics and articles thereof	33	291	781.82
40 - Rubber and articles thereof	13	87	569.23
48 - Paper and paperboard	0.15	16	10,566.67
70 - Glass and glassware	2.4	32	1,233.33
72 - Iron and steel	0.3	37	12,233.33
Others	44	166	275.99
TOTAL	138	1,079	681.88

Brazilian imports from Ecuador Main products	USD million		% change
	2005	2010	2005-2010
16 - Preparations of meat, or fish etc	2	16	700
17 - Sugar and sugar confectionery	4	9	125
44 - Wood and articles of wood	0.0005	4	799,900
39 - Plastics and articles thereof	2	4	100
78 - Lead and articles thereof	0	3	-
18 - Cocoa and cocoa preparations	0.08	3	3,650
27 - Mineral fuels	70	0	(100)
30 - Pharmaceutical products	6	1	(83)
15 - Animal or vegetable fats and oils	3	1	(67)
52 - Cotton	2	2	-
Others	3	14	380
TOTAL	92	57	(38)

Brazilian imports from Venezuela Main products	USD million		% change
	2005	2010	2005-2010
27 - Mineral fuels	93	630	577.42
72 - Iron and steel	0.4	50	12,400.00
29 - Organic chemicals	5	45	800.00
76 - Aluminum and articles thereof	21	39	85.71
70 - Glass and glassware	9	13	44.44
28 - Inorganic chemicals	11	11	-
25 - Salt, sulfur, earth and stones	19	8	(57.89)
31 - Fertilizers	36	8	(77.78)
87 - Vehicles	0.8	7	775.00
40 - Rubber and articles thereof	5	5	-
Others	55	17	(68.98)
TOTAL	255	833	226.67

Source: COMTRADE / UN

Conclusions about the evolution of trade between Mercosur and trade partners

The extensive network of free trade agreements to which Mercosur members take part covers most countries in South America, positioning the South American region as a major hub for Mercosur markets, serving both consumers and suppliers of their products.

In this sense, regional trade is very important to Mercosur, considering that the Mercosur exports profile includes products with higher added value and not just agricultural and mineral commodities, as happens in the Mercosur global exports. Regarding the regional trade partners of Mercosur, the trade agreement is also positive considering they can meet the growing demand of Brazil for mineral commodities.

Another relevant aspect noted in all agreements was inclusion of extra trade issues such as the improvement of the physical infrastructure in the region, thereby expanding both the inter-regional trade and international exports from the region. In addition to that, Brazil due to its huge domestic market, it is converting itself into a relevant regional hub for the transnational companies operations in South America.

As it noted, most of free trade agreements signed by Mercosur countries reinforces the Southern cone bloc's strategy to build a regional development space, in which, Brazil has relevant role in setting a deeper integration agenda.

5. Advantages and Disadvantages expected to be brought by Japan-Mercosur EPA

This chapter aims to reproduce the main results obtained in interviews with several officials of the Federal Government that contributes – directly or indirectly - to the formulation of Brazilian trade policy in international negotiations, as well as knowing the position, interests and objections from representative of private sector regarding a possible free trade agreement with Japan.

A total of 14 interviews were conducted during the project elaboration. The selection of the respondents (government agencies and business associations) was made based on possible trade complementation between Mercosur and Japan, as well as possible conflicting areas by both parties. Trade data and qualitative analysis were used for this analysis.

It is important to highlight that among the Mercosur members priority was given to government and business representatives in Brazil. Not only Brazil is the largest Mercosur member (in terms of trade flows, GDP, population, etc.), but it is also Brazil that usually sets Mercosur's common trade policy agenda. The Argentinean government can play a role in this process, though Argentinean policymakers tend to be more concentrated on intra-Mercosur matters. The interests of Paraguay and Uruguay may occasionally be incorporated in Mercosur's common trade policy agenda, but neither one of these countries are agenda setters in the bloc.

The interviews scripts were developed with the aim of identifying sectoral characteristics and Mercosur's business sector demands as well as political positions of the interlocutors both the Brazilian government and the private sector. In addition to specific sectoral points, it was also considered more general issues in the interviews aiming to understand and identify the orientation of Brazilian trade policy and the establishment of international negotiations in the context of Mercosur.

Considering all these general topics and sectoral particularities, two different types of interview scripts were used: one for government officials and one for private sector representatives.

The topics covered in the interviews included:

- Mercosur agenda on multilateral negotiations;
- Bilateral relation between Brazil and developed countries;
 - International negotiations in place
 - Strategic partners on the Mercosur radar;
- Bilateral relation between Brazil and Japan;
 - Brazilian government and private sector position on a possible Mercosur – Japan FTA
- Presence of other Asian players in Mercosur region (especially, China and South Korea);
- Brazilian trade policy;
- Perception of the private sector on the Brazilian trade policy in the new government
- Relationship between Mercosur members in the formulation of foreign trade policy of the bloc
 - Opinion about greater autonomy for Brazil to negotiate agreements independently of Mercosur

In order to better systematize the information collected, the interview results will be presented in the next pages according to the topics indicated above.

Mercosur agenda on multilateral negotiations

Taking into account the lack of prospects for concluding in the short term the negotiations at the multilateral level, there have been few opinions in the private sector and government agencies about the possible gains or losses on completion of the Doha Round. In general, the Brazilian private sector believes that if the Doha Round is completed, the agreement will be limited with the consolidation of punctual sectors and without significant gains.

On this subject, there was a mention about a negative perception of some sectors on the Brazilian trade policy. In this case, Brazilian industrial sectors that are generally opposed to open to trade with developed countries, as is the case of ABINEE (Brazilian Association of the Electrical and Electronics Industry), were quite dissatisfied with the priority of Brazilian trade policy in multilateral negotiations instead of moving forward in bilateral trade agreements with partners that could expand Brazilian share of imports in these markets in a significant way (ie: countries of Africa and Middle East).

The chemical industry represented by ABIQUIM (Brazilian Association of the Chemical Industry) also revealed some objections to trade liberalization at the multilateral level. ABIQUIM defends the maintenance of the current tariffs or a tariff cut to be made in a longer period for sensitiveness products. Such sectoral position is helpful to measure the protectionism level of some industries in Brazil and other Mercosur members.

The representatives of the agricultural sector, which generally are more favorable to trade liberalization given its competitiveness, do not have high expectations for the conclusion of the multilateral round in the short term either. ABIOVE (Brazilian Association of Vegetable Oil Industries) was one of the agriculture representatives that prioritized the completion of the round, however the entity considers very difficult to reach a relevant agreement given the European and North American subsidies policy.

Bilateral relations between Brazil and strategic partners

Since 2002, Brazil has made little progress in expanding its network of bilateral agreements. During this period, Brazil has ratified only one free trade agreement, with Israel. As mentioned in the previous topic, Brazilian trade policy gave priority to the multilateral agenda because the country believed that it would obtain greater gains in Doha Round than those that could be gained through a regional or bilateral agreement.

Considering the difficulties in reaching an agreement at the multilateral level, as the Doha Round has been stalled for over a year without any prospect of resumption, Brazil has sought alternatives to expand its access to new markets. In addition to that, the global economic crisis has generated a worldwide wave of protectionism that is forcing the countries to seek bilateral agreements as alternatives to circumvent trade barriers.

In this setting, interviews with government agencies and private sector representatives were very enlightening to understand the position of the ongoing negotiations as well as knowing possible future arrangements of partnerships that are being drawn.

Historically, Brazil has focused negotiations of free trade agreements with developing countries. The lack of experience to in forging agreements with developed countries as well as the lack of competitiveness especially in some industrial segments led the country to favor trade agreements with Latin America, Middle East and African countries. In that context, Brazilian governmental agencies have reiterated the difficult of Brazil in having to deal with countries with greater experience in international negotiations, given that the Brazilian experience on these matters is summed up to negotiations on the FTAA (Free Trade Area of the America) and Mercosur-EU talks. One of the main concerns of the Brazilian negotiators is that once an agreement with a developed country has been reached, it will set the standard to other agreements. For that reason, the Brazilian negotiators are particularly zealous to make concessions, if the counterpart is not competitive in a particular area.

Although smaller in scope, another experience in international trade negotiations with developed countries was the recent ratification of the Mercosur-Israel trade agreement by Brazilian National Congress in 2009. This initiative was very important to Mercosur because it was the first trade agreement signed with an extra regional partner. In addition, its completion, aside from promoting trade opportunities reinforce the Mercosur's interest in negotiating trade agreements outside the region of Latin America. Notwithstanding that, the FTA with Israel was restricted to market access of goods. New topics were left out of the agreement.

As it can be noticed, there are some movements towards the expansion of the existing network of trade agreements in Mercosur. Taking into account the more recent trade arrangements, the standard profile of the strategic partners generally is characterized by small and medium-sized economies, which are able to consume industrialized and agriculture products from Mercosur at the same time they are relevant suppliers of natural and mineral resources to the South American bloc.

An additional point that identifies Mercosur's trade agreements is related to its format of the agreement concentrated mainly on the liberalization of goods. New issues as services, government procurement, investments and intellectual property generally are not negotiated in the existing trade agreements.

Following this pattern, of the four trade agreements in ongoing negotiations, three of them are with developing countries (Morocco, Turkey and Jordan). Regarding ongoing negotiations with developed countries, there is only the negotiation with the European Union.

Bilateral negotiations with developed countries generally involve a broader agenda of issues that includes cooperation on several technical, economic and political areas, investments on strategic areas among other instruments. Beyond the Mercosur-EU talks that will be analyzed in more details in the next point, another recent priority issue in the Brazilian trade policy regarding developed countries is the rapprochement between Brazil and the United States after the friction caused by the cotton trade disputes and the application of economic retaliation measures against Iran by the United Nations.

The fall of Brazilian exports to the United States has alarmed both government and business communities. In comparison to the profile of Brazilian exports to China and European markets, most merchandise sold in the United States has higher value added. On the bilateral agenda, it was defined as a priority the signing of a Trade and Economic Cooperation Agreement (TECA) which was concluded during President Barack Obama's trip to Brazil in March 2011. The TECA creates a permanent mechanism for dialogue to both governments to resolve disputes as investment and trade barriers. In addition to that, the U.S presidential visit to Brazil in March 2011 reinforces the U.S interest in closer ties with Brazil and is a clear demonstration of the recognition of Brazil as a global player. In that sense, both sides are willing to build political commitment in order to expand a bilateral agenda with convergent interests that propel trade and investments bilaterally.

International negotiations in place

Progress on international negotiations with European Union

After six years of paralysis, EU-Mercosur negotiations were resumed in May 2010. However, at the moment, the conclusion is still uncertain. Both sides have resistance to open their economic sectors deemed sensitive.

On the European side, there has been a strong involvement of the European Parliament against the agreement with Mercosur, mainly by the European agribusiness industry. In that sense, the recent powers given to European Parliament may hinder the trade agreement.

On the Brazilian side, two years ago, most of the private sector was favorable to a trade agreement with the European Union. Nowadays, little more than half of the production sector supports the agreement. The scenario has changed mainly because of the appreciation of the Brazilian currency, which undermines the competitiveness of the Brazilian products abroad. Against this protectionism trend and supported by the high prices of commodities, the Brazilian agricultural sector is the most interested in the completion of the agreement.

Within the industrial sector, the Brazilian segments that are more resistant in a broad liberalization are those related to medium and high technology products such as: electrical and electronic products (ABINEE); capital goods (ABIMAQ); chemical products (ABIQUIM).

In general, all these products deemed sensitive within Mercosur are characterized by:

- Having local production in that Brazilian exports are very competitive; and
- Having lower quality or technology compared to the products offered by the trade partner.

Besides the low competitiveness of the Brazilian products in developed markets, technical barriers was also mentioned as an element that hampers the entry of those products in European markets.

Unlike most of the Brazilian industry, the Brazilian automotive sector is supporting the progress of negotiations with the EU. This happens mainly due to the strong presence of the main European

automakers in the country as well as the political appeal of the Brazilian government. In that case, ANFAVEA argues that its position is conditioned to the national interest and not on the sectoral interest.

Regarding the negotiations of new issues (services, investments, government procurement and intellectual property), the Brazilian government said that all issues are on the table. However, the Brazilian concessions will be bound to what is offered by the EU. To date, prospects are not very positive; the Brazilian private sector expects an agreement with limited scope. This is an interesting shift in the traditional approach by Brazilian negotiators, who considered such topics non-negotiable. It is important to stress, however that commitments in the new topics such as services and investments should not exceed existing levels of market openness. On intellectual property Brazilian negotiators keep stressing that development interests should also be part of the agreement.

In case of the Argentinean position, the country is supporting the progress of the bi-regional negotiations due to a political decision of the Argentinean presidency. However, this support is not extended to other areas of the Argentinean government and its private sector, which share the same position of part of the Brazilian industrial sector.

Although there is no expectation to conclude an ambitious agreement with European Union, the Brazilian government continues to push the private sector to progress the negotiations. In that case, the political appeal to the private sector is linked with the historic cultural identity as well as the amount of European investments in Brazil. In addition, the long history of cooperation between Mercosur countries and European Union also favors the political efforts to improve the bilateral economic partnership.

Bilateral relations between Brazil and Japan

Brazilian government and private sector position on a possible Mercosur – Japan FTA

In general, the Brazilian industrial segments are those who feel most threatened by the possibility of a free trade agreement with Japan. Their arguments are based mainly on the lack of complementarity between the production chains of both parties. According to industry representatives, they are not interested in opening the Brazilian market without a corresponding trade-off that could be: the establishment of Japanese companies in the country; the opening of Japanese markets in which Brazil is competitive or/ and the joint development of technology and innovation. In this sense, Japan is not perceived as a traditional investor in the Brazilian industrial sector by the representatives that were interviewed. Its investments in the country often focus on mineral resources.

Another argument for the lack of interest in an agreement with Japan is related to productive integration that Japan has with its neighbors, that is, there would be no room for supply of Brazilian products to Japan, since its market is already supplied by these regional (Asian) partners.

Even industries that are major exporters to Japan, as in the case of the aluminum sector, showed no interest in moving into a negotiation for a trade agreement. In the case of the aluminum sector, the argument used was the tariff exemption granted by the Japanese GSP (Generalized System of Preferences) to some Brazilian economic segments. Through this mechanism, Brazilian products can access the Japanese markets without the necessity for concede the same preferences to Japan. The chemical industry also used the same argument.

On the other hand, there are some players in the agricultural sector, especially the swine meat segment, which defend the engagement of Brazil in international negotiations with Japan, since Japan is the third largest importer of agricultural products worldwide. Taking into account the high Japanese demand for agricultural products, representatives of this segment believe that there would be no clashes between the agricultural sectors of both countries, if considered the sensitivities of both parties.

The Brazilian soybean complex (soybean, meal and oil) also has a favorable position to international trade negotiations; however, it expressed concern regarding the technical barriers that can be used arbitrarily in trade between the two countries. Nowadays, sanitary and technical barriers are the main barriers to Brazilian exports to Japan.

Another element mentioned regarding the difficulties to access the Japanese market is related to the business strategy of the Japanese trading companies that generally already have supply contracts with their providers, preventing the increased participation of Brazilian products in Japan.

The current Brazilian macroeconomic environment, with the Brazilian currency appreciated, was also extensively mentioned by both the Brazilian government and the private sector as an adverse factor for the liberalization of trade. Due to the loss of Brazilian competitiveness in the global scenario, the industrial sector has made repeated trade deficits, converting the approach to new trade agreements at the moment in a very sensitive topic.

Although currently in the private sector is not ready to engaging in negotiations of new agreements with developed countries, the Brazilian government is open to receive proposals for international negotiations. In that sense, Japan should expand the negotiating scope for a bilateral agreement with Mercosur, including counterparts more attractive than the liberalization of the Japanese market for Mercosur's commodities. New topics should be incorporated in the negotiating agenda as investments in strategic sectors as well as the transfer or joint development of technology in sectors of interest to both negotiators.

Considering these new topics, the Brazilian Ministry of Science and Technology said that there is already a bilateral agenda between Brazil and Japan covering areas of interest for technical and technological cooperation. Among the areas that could be developed more bilateral dialogue are: health and biotechnology, nanotechnology, earth observation, climate change, digital television, robotics, energy etc. The lack of progress in Japan's commitment to invest in a local manufacturing unit of components for digital TV was mentioned as a setback in the bilateral relations.

The Brazilian Ministry of Foreign Affairs reiterated its willingness to consider the Japanese proposal for possible trade agreement with Japan. In this sense, the Asian country is an important trading partner for Brazil could act as a balance point for the growing Chinese presence in Brazil and Mercosur. Therefore, the assessment of the feasibility of a trade agreement as a new trading partner is an important step for the Brazilian trade policy strategy in the medium and long term.

In the case of the Brazilian Ministry of Development, Industry and Foreign Trade, the governmental agency representatives suggested that the partnership between Brazil and Japan could develop new cooperation mechanisms aiming to improve the economic and political environment for future bilateral negotiation for a free trade agreement.

The Brazilian Ministry of Foreign Affairs also stressed the importance of the future trade negotiations between Mercosur and Japan should be grounded in balance, trying to encompass and serve the interests of both parties. The current Brazilian economic position as a relevant global player means that the country is not willing to make concessions without equivalent trade-offs to open its vast market. Taking into account all these considerations, the feasibility of an agreement depends largely on the concessions that Japan is willing to make to this country will become a strategic partner for Brazil.

How Japan is perceived in Brazil

Japan is well positioned politically with the Brazilian government; however, the same cannot be said in the economic realm. Compared to decades ago, Japan had a more pronounced presence in the development of several sectors of the Brazilian economy, especially in some segments of agriculture and natural resources.

In addition, the excess of caution resulting in slow decision-making in Japan was reiterated by both the private sector and government agencies as a factor that could hinder the progress of negotiations for a possible trade agreement between Mercosur and Japan. According to one interviewee, a concrete example that illustrates the delay in the Japanese proceedings can be seen in the process of authorization for trading agricultural products, which may be characterized as technical barriers to the entry of Brazilian products in Japan. The simplification of procedures for faster release of certifications of Brazilian products is one of the main demands of the Brazilian government to Japan. In that sense, the Japanese government should reconsider these procedures in order to improve commercial relations with Brazil.

Although currently there is little readiness of the private sector in negotiating new agreements with developed countries, the Brazilian government is open to receiving proposals for international negotiations. Moreover, the Brazilian Foreign Affairs Ministry said that the Asian country is an important trading partner for Brazil could act as a balance point for the growing Chinese presence in Brazil and Mercosur.

The general perception is that unlike Japan, South Korean has taken a more active position with the Brazilian government in order to broaden and strengthen political and economic ties between the two countries. Taking into account the South Korean example, the building of a stronger bilateral agenda that not only included trade issues but also encompassed new topics of interest by both parties is seen by Brazilian as a positive step to further both the political and economic relationship.

Presence of other Asian players in Mercosur region (especially, China and South Korea)

The growth potential of the Brazilian domestic market has been the object of interest from several countries including Asian countries like China and South Korea.

Given the similarity of the trade agenda for Japan and other Asian countries, which is concentrated mainly in high value added products (electric and electronic goods, automobiles, capital goods, consumer goods, etc.), a specific question was asked during the interviews in order to understand the way that Asian countries that compete with Japan are operating in Mercosur.

In the Chinese case, its growing commercial presence in Brazil and in Mercosur has been mostly because of its competitiveness regarding prices than bilateral arrangements that facilitate the entry of such products in the region. In this sense, the Chinese invasion is not well perceived by the governments of the region, resulting in the adoption of trade remedies by Brazil to minimize this movement that is already affecting many economic sectors, mainly in the industrial sector of the country. Non-trade barriers, such as regulatory standards, prior consent, etc are also being considered.

The profile of Chinese trade and investment is guided mainly in agricultural and mineral resources. In this case, Brazil acts as an important supplier of such products to China while it consumes products with higher added value from China.

In the case of South Korea, this country has taken a more active position with the Brazilian government in order to broaden and strengthen political and economic relations with Brazil.

For South Korea, its business and policy strategy with Brazil is not only restricted to market access. It is also included in its agenda the development of innovation and investments in strategic sectors for economic development. This approach, which is more qualified than the Chinese approach favors South Korea since the country has positioned itself as an important growth strategy for Brazil.

Currently, South Korea has more industrial facilities in Brazil than Japan or China do. Its investment portfolio in Brazil includes segments of consumer electronics and automotive as well as participation in infrastructure projects with the provision of machinery and equipment for the construction of the Port of Suape in the Northeast region. To illustrate the growth of the Korean presence in the country, in 2010, Brazil received USD 1 billion in productive investment by Korean companies, equivalent to 2% of foreign direct investment in Brazil, which amounted to USD 52.6 billion this year. In the same period, China had 0.7% share of FDI in Brazil.

In qualitative terms, Korean investments are more interesting than the Chinese ones because they allow greater transmission of technology. While the Koreans concentrate their investments in the aforementioned sectors, the Chinese are betting more on mining and petroleum related activities.

Another feature of South Korea mentioned by several industry organizations interviewed is related to its pragmatism and agility both for making strategic decisions such as investments in the country and strengthening political relations.

The South Korean interest in Brazil is not recent; in 2006, South Korea produced a feasibility study for a free trade agreement with Mercosur. Based on this study, the Asian country suggested the launching of negotiations for a free trade agreement, arguing that all parties involved will have significant gains with the agreement. However, the econometric nature of the study was not well accepted by the Brazilian government and private sector, mainly because the study did not encompass political issues, making simplistic the assessment. Government representatives also stated that the study seemed to be biased, as it presented figures for potential growth of Brazilian exports which were not based on solid criteria.

The Brazilian government's position regarding a free trade agreement with South Korea is similar in comparison to other developed countries like EU and Japan. The justification from the private sector in not

starting trade negotiations were based especially on the size of the Korean market, considered small, which does not lead to relevant gains for Brazil.

Although there is no an explicit interest of Brazil for a trade agreement with South Korea, South Korean government representation has always showed interest in forge closer business ties between South Korea and Brazil. The representative of the Ministry of Foreign Affairs said that the Koreans are always putting pressure to start negotiations for an FTA.

During Dilma Rousseff's presidential inauguration, which took place on January 1st 2011, the talks between the South Korea premier Kim Hwang Sik and the Brazilian Foreign Affairs Minister Antonio Patriota included the possibility of developing a strategic partnership in high technology and infrastructure areas. South Korea has a strong interest in taking part in the building of the high speed train between Sao Paulo and Rio de Janeiro.

As economies with a relative degree of complementarity, both Brazil and South Korea tried to intensify their trade relations with the aim of benefiting each other. The latest move in this direction was the signing of an agreement on preferential tariffs last December that included the Mercosur countries and Malaysia, Morocco, India and South Korea (São Paulo Round). The agreement, however, preserves the existing tariff levels for the most competitive products exported by both countries.

Brazilian trade policy

Perception of the private sector of the Brazilian trade policy in the new government

Given the short period since the inauguration of the new Brazilian government, the private sector does not yet have a definite position on the role of government in Brazilian trade policy.

So far the discourse in defense of national industry policy due to unfavorable exchange rate for Brazilian exports adopted by president Dilma has appeased part of the Brazilian business segments, especially the ones considered more protectionists. In this sense, the perception of the private sector is that the current government has more technical profile.

In spite of the overall positive general perception of the Brazilian private sector of the new government's trade policy strategies, there are sectors that would like that the new government to be more active in international negotiations.

The swine meat segment represented by ABIPECS, which are interested in Brazil being more offensive in international negotiations, advocates a more aggressive trade policy, which expands the Brazilian presence in new markets. In the opinion of the sector, the current disconnection between the business entities suggests reactivity, that is, that negotiation of international agreements is not on the agenda of the Brazilian private sector.

Mercosur issues

Relationship between Mercosur members in the formulation of foreign trade policy of the bloc

Overall, the political relationship between Brazil and other Mercosur countries is considered fair for the formulation of Mercosur foreign trade policy.

In the Brazilian private sector, the most organized business entities (namely, ABIQUIM, ABINEE and ABIT – Brazilian Textile and Apparel Industry Association) discuss their sectoral position firstly with other domestic representative entities within their segments and in a second moment with their correspondent sectoral representatives in Argentina, Paraguay and Uruguay aiming to coordinate their regional interests and reach a consensual regional position. However, when there is no an alignment of positions, each confederation of industry (in the case of Brazil, CNI / CEB – Brazilian Business Coalition is responsible for coordinating positions) forwards the divergent positions to be arbitrated by the respective governments.

The relationship between the business entities at the regional level is relatively good for those segments in which Latin America is an important destination for their exports with higher added value, especially in manufacturing sector. In this sense, the regional integration of production chains for these segments is very important in the context of Mercosur.

In the case where there is competition between countries in Mercosur (particularly in some segments of the agricultural sector and specific industrial sectors like the capital goods - ABIMAQ), it is common for business entities in each country to adopt an independent position in this case will be arbitrated at the political level by their respective presidents, as mentioned previously.

In the case of the soybean complex, a segment that theoretically both Brazil and Argentina would have converging interests, Argentina offers a differentiated tax regime for the export of products with higher value added. This mechanism supports the export of higher value because through a lower tax incidence on these products, which generates friction with Brazil, displacing the production of value-added products to Argentina.

The Brazilian capital goods sector does not align with its correspondent representative entities in Argentina either due to the application of Argentinean measure that reduces the competitiveness of capital goods from Brazil. The measure in question was adopted in March 2001, just before the peak of the economic crisis in Argentina. Through a decree, the Argentinean government reduced to zero the import duties on machinery and equipment produced outside of Mercosur, in exception to the Common External Tariff, which is normally 14%. To avoid damaging the local manufacturers, the government also imposed a tax benefit for the Argentinean industry: the return of 14% of sales revenues in the form of a bond used in the tax rebate. Faced with these mechanisms, the Argentinean capital goods industry maintained a kind of protection from foreign competitors, and Brazil lost the tariff advantage, in theory, guaranteed by Mercosur.

The automotive sector for the fact that it is excluded from the Mercosur agreement does not line up in international negotiations either. Moreover, the Argentinean government influences the automotive trade policy which causes frequent cyclical friction and makes the neighboring country a partner relatively complicated to deal with. Considering this scenario, representative bodies of the Brazilian and Argentinian automotive industries (ANFAVEA and ADEFA, respectively) only work together on specific topics of interest.

Although Argentina's position is very eloquent on specific points of interest, particularly on intra-Mercosur issues, which may prevent the progress of negotiations for a while; in general, Brazil gets to handle the regional demands, accommodate the interests within the bloc and advance the Mercosur agenda of negotiations. Regarding the other members, Uruguay generally is aligned with Brazil, while Paraguay positions very little within Mercosur.

Opinion on greater autonomy for Brazil to negotiate agreements independently of Mercosur

In Mercosur, the CMC Decision 32/2000 establishes that Mercosur member's countries must negotiate trade agreements with third countries as a bloc. Considering this premise, Brazilian policymakers believe that as a bloc, Mercosur's member countries have more negotiating power with countries that are not members of the customs union, especially with the developed world.

However, on the private sector side, there are some objections regarding this obligation, mainly from these sectors that have divergent position within Mercosur such as capital goods industry. In that sense, there some business representatives that defends a setback for Mercosur, allowing countries greater autonomy to negotiate with partners who have more interests. Other elements that reinforce this position are the asymmetries (such as exception list) among the countries which makes difficult to make progress in the current negotiations.

On the other hand, there are business representatives which argue that a greater autonomy for Brazil to negotiate agreements independently of Mercosur is not necessary because Brazil making concessions is able to make progress in international negotiations.

Advantages and Disadvantages brought by Japan-Mercosur EPA

In the next page, it will be presented briefly the main arguments presented both by the Brazilian government and business representatives regarding a free trade agreement between Mercosur and Japan.

Information available on the table is divided into:

- Stakeholder / interviewee
- Industry
- Arguments in favor or against a Mercosur – Japan FTA
- Trade-off required

To understand the stakeholder position regarding a Mercosur – Japan FTA, it was set up different colors in which the red color corresponds to the position contrary to an agreement; the green color, a favorable position and the blue color, a neutral position.

Against	Favorable	Neutral
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Advantages and Disadvantages brought by Japan-Mercosur EPA

Stakeholder / Interviewee	Industry	Main arguments (in favor / against)	Trade-off required
ABAL Mr. Adjarma Azevedo	Aluminum	<ul style="list-style-type: none"> Aluminum industry already benefits from the Japanese GSP and it is not interested in opening its market for industrialized products. 	<ul style="list-style-type: none"> High investments are required to structure an aluminum production base.
ABIMAQ Mr. Klaus Kurt Muller Mrs. Patricia da Silva Gomes	Capital goods, machinery	<ul style="list-style-type: none"> High trade deficit with Japan. There is no expectation to expand Brazilian market share in Japanese market through an FTA. High costs and no benefits for Brazilian industry. An appreciated currency is an element of concern and clearly indicates the lack of competitiveness in Brazil. 	<ul style="list-style-type: none"> Investments in strategic areas in Brazil and the technology transfer should be discussed in a possible negotiation between the countries. Technology transfer could come from companies already operating in the country.
ABINEE Mr. Mario Roberto Branco	Electrical equipment and consumer goods	<ul style="list-style-type: none"> Unfavorable exchange rate policy does not allow the industry to think about a trade agreement. Exports are focused mainly on developing countries. 	-
ABIOVE Mr. Daniel Furlan Amaral	Soybeans, oil seeds	<ul style="list-style-type: none"> For the trade negotiations between Brazil and Japan to evolve, it is necessary that Japan starts buying products with higher added value and not just commodities. Although the entity has interest in expanding its market share in <i>high value-added products (ie.: oil seeds)</i>, the trade gains in the Japanese market are not high so that the entity to mobilize in favor of a trade agreement with Japan. 	<ul style="list-style-type: none"> Negotiations should involve other considerations besides the liberalization of market access for Brazilian commodities to the Japanese market. It is also being considered investments and technology transfer in sectors of interest to both parties. There are some opportunities for Japanese investments as palm oil.

Stakeholder / Interviewee	Industry	Arguments (in favor / against)	Trade-off required
ABIEPCS Mr. Pedro de Camargo Neto	Swine meat	<ul style="list-style-type: none"> According to ABIEPCS, Brazil should start negotiations with Asian countries because it would be an opportunity both parties. Taking into account the negotiations of the TPP, Brazil needs to consider a trade agreement with Japan in order not to lose market share. Despite its favorable position, ABIEPCS believes that the disconnection between the main private sector representatives (FIESP, CNT, CEB, CNA) indicates that this subject is not on the Brazilian private sector agenda. 	<ul style="list-style-type: none"> ABIEPCS claims that only the commercial element is not enough to begin the negotiations for a trade agreement between Mercosur and Japan. In addition, it is necessary to change the political vision between both partners, including political commitments.
ABIQUIM Mrs. Denise Mazzaro Naranjo Mr. Éder da Silva	Chemical	<ul style="list-style-type: none"> Brazilian chemical industry is included in <i>JAPAN'S GSP (Generalized System of Preferences)</i>. There is no positive agenda between Japan and Mercosur. Currently, the trade negotiations are not priority for the sector. 	<ul style="list-style-type: none"> Abiquim is interested in attracting investments to the country, especially if it is destined for export platforms. Bilateral agenda could consider the joint development of technology between domestic players and Japanese companies.
ANFAVEA Mr. Pedro Bentancourt	Automotive	<ul style="list-style-type: none"> Generally speaking, there is no interest from ANFAVEA in signing trade agreements with developed countries due to the lack of complementarity. ANFAVEA is interested in trade agreement, where there is complementarity between the parties (ie.: Mexico's automotive agreement). There are no counterparts from Japan to justify a free trade agreement with it. 	<ul style="list-style-type: none"> According to ANFAVEA, Japan should be bold in its business partnerships and investments with Brazil.
CNI Mrs. Soraya Rosar	Industry	<ul style="list-style-type: none"> The feasibility of an agreement depends more on Japan than Brazil. Due to the appreciation of the Brazilian currency, the current moment is not favorable to start negotiations with new trading partners. 	<ul style="list-style-type: none"> Japan needs to make a proposal that goes beyond trade liberalization to which Brazil is interested in negotiating a trade agreement. Negotiation agenda should include new issues in order to be successful (ie.: infrastructure, innovation, biofuels, technology, cooperation in education etc).

Stakeholder / Interviewee	Industry	Arguments (in favor / against)	Trade-off required
IBRAM Mr. Antonio Naegele Lannes Jr.	Mining	<ul style="list-style-type: none"> Entity has influence only on the formulation of public policies in domestic scope. It does not take part in international negotiations. Trade agreements negotiations are responsibility of Ministry of Mines and Energy and Ministry of Development, Industry and Trade. 	-
Ministry of Science and Technology (MCT) Mr. Reinaldo Fernandes Danna	Brazilian government	<ul style="list-style-type: none"> It is not in charge of formulating the Brazilian negotiation strategy in international forums. MCT only supports and encourages the business development of the companies with technological bias. MCT is very interested in attracting investments in technology and innovation, particularly because the Brazilian exports are increasingly concentrated in commodities. 	<ul style="list-style-type: none"> The MCT is interested in the internal development of technology on equal terms (either through partnerships or joint venture). Brazil does not want to be just a buyer. The country wants to reach an agreement on win-win format. Areas of interest shown by the MCT for cooperation between Brazil and Japan: biotech and health; nanotechnology; satellites; climate change; oceanography and fisheries resources; biodiversity; robotics and computers.
Ministry of Development, Trade and Industry - Foreign Trade Secretariat (SECEX) Mrs. Tatiana Lacerda Prazeres Mr. Daniel Godinho	Brazilian government	<ul style="list-style-type: none"> Efforts of the Brazilian government are focused on Mercosur – European Union and Brazil – Mexico negotiations. Appreciation of the Brazilian currency weakens the competitiveness of the Brazilian industry. The current economic climate in Brazil is not favorable for beginning trade negotiations with third countries. There is a negative perception from the Brazilian industry regarding market liberalization. 	<ul style="list-style-type: none"> Although the SECEX's position is skeptical about a trade agreement, the Ministry is open to receive proposals to improve the bilateral relationship such as cooperation programs.
Ministry of Finance Mr. Marden de Melo Barboza Mr. Fernando Alcaraz	Brazilian government	<ul style="list-style-type: none"> The current agenda of the Ministry of Finance is focused on the resumption of the Doha Round; Mercosur – EU negotiations and intensifying economic relations with regional partners. Furthermore, there are other elements that makes harder to set up trade negotiations (new government, lack of competitiveness of the Brazilian private sector, appreciation of the Brazilian currency, etc.) 	<ul style="list-style-type: none"> Brazilian government has opted for minimalist arrangements, consolidating positions in multilateral negotiations instead of expanding the liberalization in new issues (such as services, investments, government procurement etc.). Before starting bilateral negotiations, it is important to strengthen bilateral ties between Brazil and Japan. Japan should accept asymmetries in negotiations for a trade agreement, as the European Union is doing to progress in trade negotiations.

Stakeholder / Interviewee	Industry	Arguments (in favor / against)	Trade-off required
Ministry of Foreign Affairs Counselor Francisco Cannabrava	Brazilian government	<ul style="list-style-type: none"> ▪ The current macroeconomic scenario (with the Brazilian currency appreciated) is not favorable to start international trade negotiations. ▪ There is low inclination of the Brazilian private sector in negotiating trade agreements with developed countries. ▪ However, Japan is a relevant trade partner for Brazil. In that sense, Brazil is open to hear a Japanese proposal for an FTA. ▪ An FTA with Japan could balance the Chinese presence in the Mercosur region. 	<ul style="list-style-type: none"> ▪ Old model agreement no longer meets the demand of the parties involved and is difficult to be negotiated. ▪ A viable agreement has to have a pragmatic approach and must be taken into account sensitivities from both sides.
UNICA Mr. Alfred Szwxarc	Sugar and ethanol	<ul style="list-style-type: none"> ▪ A decade ago, UNICA started to promote an extensive promotional campaign in order to expand the market share of the Brazilian ethanol in Japan; however, this initiative was not successful. ▪ Currently, Japan is no longer a priority for UNICA due to the heated domestic market and the diversification of trade partners, including Asian countries. 	<ul style="list-style-type: none"> ▪ Although there are no partnerships between Brazil and Japan in the development of the second generation ethanol, the Brazilian sector is open to develop joint initiatives.

6. Issues of current MERCOSUR's FTA's in negotiations and/or discussions.

This chapter gathers the most relevant current issues that concern both internal and external agendas of Mercosur, especially recent events regarding the international negotiations with the extra-regional partners of the bloc.

In December 2010, the 40th Mercosur Summit took place in the city of Foz do Iguaçu in the Brazilian state of Parana. On that occasion the representatives of the South American bloc set goals for further integration among its members as well as eliminating the distortions that hinder the full functioning of the customs union.

Although there were no concrete agreements to be announced during the Ministerial summit, the Mercosur countries have set gradual targets to eliminate these distortions by 2021. In a project considered ambitious by the Brazilian Ministry of Foreign Affairs, it was established goals as the free movement of persons, following the EU model, and a timeframe to end the differences in implementing the Common External Tariff.

Among the commitments made by the bloc are the discussion of a common automotive policy by 2012 and the unification of tariffs on capital goods by the end of 2013. Machinery and equipment imported from third countries currently pay 14% to enter Brazil; however import tariff in Argentina is zero, which claims stimulate the modernization of the Argentinean industry. In order to facilitate the fulfillment of these initiatives, the MERCOSUR countries should enhance political integration.

The four Mercosur members also approved the creation of the position of a Mercosur high representative, whose responsibilities will be the political articulation, the formulation of proposals and the representation of the Mercosur members in international negotiations fora. In January 2011, the Brazilian ambassador Samuel Pinheiro Guimarães was appointed for this position. The mandate of the Mercosur's high Representative will be three years and may be renewed for the same period of equal duration.

It was also agreed a decision that anticipates in four years – from 2015 to 2011 - the deadline for identification of barriers to free trade in services within MERCOSUR in order to achieve their elimination and initiate the free movement of services as soon as possible. Although there is no guarantee of a commitment to liberalize services in the bloc, the Brazilian Ministry of Foreign Affairs considered the positive balance.

Regarding the expansion of the number of free trade agreements with third countries, the Mercosur's Ministers of Foreign Affairs signed framework agreements to negotiate future free trade arrangements with Syria, the Palestinian Authority and the United Arab Emirates, besides broader agreements with Cuba, Australia and New Zealand.

The discussion on investment agreements has always been sensitive to certain Mercosur members, particularly for Brazil; however, this last Ministerial Summit featured some news. The member countries decided to start negotiations on agreement to protect investments of their companies within the Mercosur.

Whereas current investment flows within Mercosur does not have a specific legal framework, if the agreement is signed, it will provide legal support to Brazilian companies that are installed in these countries and vice versa. Brazil was the main coordinator of the consolidation of the measure. The central point in this discussion is to what extent, Brazil having an agreement with neighboring countries, the country will not be pressured to negotiate similar treaties with European countries as well.

If these investment agreements are extended to other countries in South America, such agreements tend to hinder actions seen in the recent past, like the nationalization of the Petrobras refineries in Bolivia, the expulsion of Odebrecht from Ecuador, and the nationalization of the Sidor steel company by President Hugo Chavez in Venezuela.

Regarding the conclusion of a deal to open government procurement regime in Mercosur, this is not developed satisfactorily in the last ministerial summit. Brazil is revising the protocol so that it applies to national legislation. The issue should be discussed again in 2011.

As noted, there is an extensive list of topics to be developed in the medium term within Mercosur. Although many of the initiatives proposed are not binding, which means they are not guaranteed the full implementation of the deadline established, and may be extended indefinitely given the Mercosur sensitiveness, it is very important to keep the monitoring of internal actions of Mercosur in order to analyze the main weaknesses and distortions that may hinder negotiations for a trade agreement. By monitoring the internal actions of Mercosur, Japan can draw your trading strategy to a more pragmatic way.

Concerning the Mercosur strategy for international negotiations, in the next paragraphs, it will gather information on current international negotiations between Mercosur and European Union and the possibility of future international negotiations with strategic partners in Brazil, namely United States.

Updates on Mercosur-European Union talks

After concluding a week of negotiations in March 2011, the European Union and Mercosur will continue their efforts to prepare improved offer to the access to their markets. The expectation on this negotiation round was to present orally their offers, even without formal commitment to test how far each side could move forward. However resistance from European agriculture and Mercosur industrial sector did not allow a breakthrough this time.

According to the European statement, both parties acknowledged that a more intense work will be needed in all areas of negotiations. The results of these meetings indicate that the decidedly a free trade agreement is unlikely to be completed this year. The initial plan was to conclude negotiations in July 2011.

Mercosur and the EU will try to make offers improved to access to their markets in the next negotiation round that will take place in Asuncion, Paraguay in May 2011. The plan is moving progressively toward the conclusion of FTA, which is expected to happen between the end of 2011 and early 2012. However, some observers remain pessimistic about the conclusion of the trade agreement.

On the Mercosur side, Argentina came up with a radical change in its position, which is added to the Brazilian industrial resistance. Argentina claims that before the presidential election that will take place on October 2011 it is not possible to commit itself to opening its market to European products. The change of posture of Argentina is even more remarkable when one considers that during its presidency of the Mercosur last year the negotiations with the European Union had been resumed.

Regarding the Brazilian industry positions, the resistance has been strong because of the appreciation of the Brazilian currency, which has triggered an increase in imports. The automotive sector has expanded its opposition to opening the Brazilian market, while the agricultural sector continues to hope for greater gains in the European market.

In turn, on the European side, there are also some political issues that must make difficult the progress of the negotiations. France will have also its presidential election in May 2012. In addition, reform of the Common Agricultural Policy (CAP) is another factor of difficulty to progress the bilateral negotiations.

The schedule continues with next rounds as previously planned:

- The next round of negotiations will take place in 2 to 6 May in Asuncion, Paraguay.
- Another round is scheduled for 4-8 July in Brussels.

Possibility of other FTAs

United States

The United States has a unique importance in the international trade of Brazil. This importance is not just the percentage that the U.S. market accounts for the Brazilian exports, but most importantly the quality of export products. Unlike Brazilian exports with other developed countries, exports to the United States include significant volumes of products with medium and high value as organic chemicals, aircraft and aviation components, machinery and mechanical equipment, electrical equipment, among others.

However, in recent years, Brazil's exports to the U.S. market grew less than Brazilian global exports. The fall of Brazilian exports to the United States has alarmed both government and business communities. This decrease is explained by several reasons; including the appreciation of the Brazilian currency against the dollar, which impacts industrial products much more than commodities. Another reason is the growth of exports from Asia to the U.S., displacing the Brazilian exports. The policy of disconnection between the two countries observed in recent years also partly explains the decline in U.S. trade flows.

In an effort at rapprochement considered as strategic by both parties, Brazil and the United States have sought to expand the topics of interest in the bilateral agenda, including increasing the expansion of trade and investment. The most recent move toward the strengthening the bilateral relationship was the visit of U.S. president Barack Obama to Brazil in March 2011. During this meeting, it was signed ten cooperation agreements⁷, among them, the TECA (Trade and Economic Cooperation Agreement) and the agreement that provides for liberalization of civil aviation between the two countries.

⁷ A total of ten agreements were signed in areas such as trade and economic cooperation, air transportation; peaceful use of outer space, and support the organization of large sporting events like the World Cup and the Olympics; research on biodiversity, development of biofuels in aviation and technical cooperation in other countries.

Brazilian delegation report on the current status of the Mercosur – EU negotiations

On a more optimistic approach than that the Brazilian private sector, the Brazilian delegation headed by Ambassador Evandro Didonet, stated that the delay in the exchange of offers did not change the positive climate of the negotiations. Moreover, the Brazilian delegation insisted that the negotiations are progressing and said that delays as these are expected.

Considering the negotiations progress in the format of the agreement, the Ambassador report highlighted the following points:

Access to Markets

- There were no indications on quotas.
- The ambassador's personal impression is that the EU offer will be positive, something that will interest the Mercosur.
- EU is engaged in the bilateral safeguards negotiations

Rules of origin

- Europeans maintain its position that Mercosur must fit the rules of origin model of the EU GSP. Mercosur delegation said it would be necessary to negotiate specific rules of the agreement.
- There was no progress to this group.

SPS

- It is a key issue for the Mercosur negotiations.
- As in the case of the rules of origin the EU does not want to modify your system and is waiting for the adequacy of Mercosur.
- There was no progress to this group.

Services and Investment: The Brazilian proposal is ready, however, the Brazilian negotiators expects for an opportune time to present it. Brazil is willing to change its traditional resistance to bind commitments in services, though the Ministry of Foreign Affairs has stated that schedules will only go as far as the existing level of openness.

Geographical Indication: Mercosur is currently evaluating the EU's request list.

Government Procurement: It depends on the protocol of Mercosur and Brazil's own national regulations (Presidential temporary decree 495).

In the presentation of the international negotiations director from Brazilian Ministry of Development, Industry and Foreign Trade (MDIC), Daniel Godinho, said that after the exchange of the oral offer, there will be a strong effort to prepare the official offer. He proposed to meet with the Brazilian Coalition Business (CEB) in order to discuss the criteria to be used by MDIC in the final preparation of the list. And he also stressed that Brazilian sectors must presented a list with their prioritization of sensitivities.

As observed, in Brazil and U.S bilateral relations, not only the economic aspect is taken into account. Besides the strict trade agenda, political aspects play important role to consolidate the bilateral partnership. Although the current macroeconomic scenario in Brazil is not very favorable to negotiating a free trade agreement with any developed countries, there is room for Brazil improves its trade relations with strategic partners.

7. Conclusions and recommendations

Mercosur's evolution toward a more mature and deeper economic and political integration has some challenges to overcome as it has already been presented throughout the study. With such internal difficulties, the countries interested in benefiting from trade and investments liberalization with Mercosur should be aware that these distortions within the customs union may not allow a uniform progress of trade liberalization with the Mercosur countries.

Taking into account the sensitivity of international negotiations for trade liberalization of Mercosur, Japan as an interested party may have to accept asymmetries in favor of the South American bloc in the negotiations for an FTA, following the steps of the European Union to advance the negotiations towards an agreement. This is a basic demand of the Brazilian negotiators, without which it is very difficult to reach an agreement.

Furthermore, the current format of the existing trade agreements in Mercosur is different from the format adopted in the Japanese trade agreements. With a focus on liberalization of goods, the Mercosur's free trade agreements, despite mentioning on the future developments in the liberalization of services, government procurement, intellectual property and protection of investments, so far there were no effective advances, given that such issues do not yet have regulatory frameworks under the context of Mercosur. In that sense, although Brazil and other Mercosur members are more willing to make commitments on these "new issues" than they were in the past, it is important to take into account that Mercosur negotiators would hardly accept the consolidation of commitments following the rules of free trade agreements previously established by developed countries with other trading partners. This question refers directly to the issue of asymmetries.

Given the challenges in motivating governments of Mercosur to engage in a free trade negotiation, especially with developed countries like Japan, what has been done to advance the bilateral issues, at least for part of Brazil, is the establishment of permanent dialogue mechanisms to advance the elimination of barriers to trade and investments, as it applies in the case between Brazil and the United States.

Such bilateral arrangements, which although do not configure in free trade agreements under Mercosur scope, could be used by Japan to improve bilateral relations between Brazil and Japan, putting in discussion topics of interest on the bilateral agenda of both countries. Having a greater understanding between the parties about the real trade gains and the real commitment to make market opening in sensitive sectors, the way to launch a negotiation of a bilateral agreement will be paved. Within a horizon of medium or long term, and also considering a reversal in the current situation which makes the real one of the most appreciated currencies in the world, the dialogue can be more easily transformed into an effective trade agreement.

As mentioned by the Brazilian private sector, the fact that Japan is not placed among the top investors in Brazil reinforces the lack of interest from industry in negotiating an agreement with Japan. To change this perception of the Brazilian productive sector, Japan that already has good political relations with the Brazilian government should expand its relevant political profile to the economic realm. A closer approach between countries may occur through enhanced mechanisms of cooperation in strategic areas for

economic development in Brazil. In this sense, the Brazilian government, through the Ministry of Foreign Affairs has already shown itself open to intensify their political and economic relations with Japan and even it is willing to listen to any proposals for trade agreements from the Asian partner that can improve the business environment of both countries.

The general perception of the respondents interviewed in this study is that the distance and the Japanese's low profile regarding Brazil is a counterpoint to the more active positioning of South Korea. The reactivity of Japan to move forward with a positive agenda with Brazil contrasts with the proactive and explicit interest that South Koreans have shown in strengthening political and economic ties with Brazil. In view of some segments of the Brazilian government and in most industry representatives, South Korea sees Brazil as a strategic partner, which is not only seeking to expand access to the Brazilian market, but is also making significant investments in strategic areas for development in Brazil as well implementing cooperation channels for the development in innovation and technology.

Thus, the political approach and a more apparent interest from Japan in strengthening bilateral relations, which should include effective measures for bilateral cooperation, may be an interesting strategy for Japan to follow in relation to Brazil and other Mercosur members (remembering that it is Brazil who decides the agenda of the Mercosur for extra-regional negotiations).

By overcoming the distance between Brazil and Japan, a proposal for a trade agreement with Mercosur becomes a goal more likely to become reality. Even the different positions among the Mercosur countries regarding the international negotiations may be conciliated, since Brazil in its role of coordinating the formulation of the Mercosur international trade strategy is able to accommodate intra-Mercosur interests and advance the negotiations if the situation is treated as national and/or regional interest. This is what it is currently happening with the Mercosur-EU negotiations. Even with the resistance of the Argentinean and Brazilian private sector, the Brazilian delegation has moved forward the negotiation. In this case, the political interests overlap the sectoral interests.

However, to have this overlay of political interests over sectoral interests, Japan should be open to propose new formats of agreements; whereas the current format trade agreement can no longer meet the new demands that are emerging with the deterritorialization of capital and technology. Another point to be considered in the design of the Japanese strategy is related to the current position of Brazil as a global player, which means the country is not only willing to open its vast domestic market without obtaining relevant gains in return.

Considered all these points, the feasibility of an agreement between Mercosur and Japan depends on the concessions that Japan is willing to do as well as the inclusion of new topics that go beyond the trade and have been able to maximize the development of both parties.

8. ANNEXES

ANNEX 1

➤ Asunción Treaty

- On March 26, 1991, Argentina, Brazil, Paraguay and Uruguay signed the Treaty of Asuncion, establishing the Southern Common Market (MERCOSUR), whose main objectives were to set up a common market and the elimination of trade barriers among the signatory parties.
- Under the ALADI legal regime, MERCOSUR was incorporated as Economic Complementation Agreement nº 18. An important feature of the ALADI's economic complementation agreements is that they are open to accession by any ALADI country member.
- The Treaty of Asuncion is divided into 6 chapters, whose summary of each chapter is available below:

Chapter 1 – Purpose, principles and instruments

The first chapter of the Treaty of Asunción establishes that a common market among the State parties must be constituted by December, 31 1994.

During the transition period, whose duration lasted from the entry into force of this Treaty up to December, 31 1994, the States Parties adopted a general rules of origin, a dispute settlement system and safeguard clauses included in Annexes II, III and IV in the Asunción Treaty. Based on the interests of the State parties, such annexes have been updated in revisions of the Treaty through Additional protocols.

In the transition period, the instruments used for deepening the integration among the parties were:

- A trade liberalization program consisting of progressive, linear and automatic, accompanied by the elimination of non-tariff restrictions to achieve on December 31, 1994 with zero tariffs and no non-tariff barriers on entire tariff lines.
- The coordination of macroeconomic policies that will take place gradually and in parallel with the programs of tariff reduction and elimination of non-tariff restrictions.
- The implementation of the Common External Tariff that would foster the external competitiveness of the signatory parties.
- The adoption of sectoral agreements in order to optimize the use and the mobility of the production factors, achieving efficient operational scales.

Another relevant point included in this Chapter is related to the commitment of States parties in preserving the previous agreements signed under the ALADI framework (Latin American Integration Association) as well as coordinating their positions in external trade negotiations they may undertake during the transition period.

Chapter 2 – Organizational Structure

The Treaty of Asunción establishes that organizational structure of Mercosur will be composed by the following bodies:

(a) The Council of the common market

- The Council shall be the highest body of the common market, with responsibility for its political leadership and for decision-making to ensure compliance with the objectives and setting time-limits for the final establishment of the common market.

(b) The Common Market Group

- The Common Market Group is the executive body of the Mercosur and is coordinated by the Ministries of Foreign Affairs.

Chapter 3 – Duration of the agreement

The duration of the agreement is unlimited and it entered into force 30 days after the date of deposit of the third instrument of ratification.

Chapter 4 – Accession

This Treaty is opened to accession, through negotiation, by other countries members of the Latin American Integration Association; their applications may be considered by the States Parties after the Treaty has been in force for five years.

Notwithstanding the above, applications made by countries members of the Latin American Integration Association that do not belong to sub regional integration schemes or an extra regional association may be considered before the date specified.

The approval of applications requires the unanimous decision of the States Parties.

Chapter 5 – Denunciation

Any State Party wishing to withdraw from this Treaty shall inform the other States Parties of its intention expressly and formally and shall submit the document of denunciation within 60 days to the Ministry of Foreign Affairs of the Republic of Paraguay, which shall distribute it to the other States Parties.

Once the denunciation has been formalized, those rights and obligations of the denouncing State deriving from its status as a State Party shall cease, while those relating to the liberalization programme under this Treaty and any other aspect to which the States Parties, together with the denouncing State, may agree within the 60 days following the formalization of the denunciation shall continue. The latter rights and obligations of the denouncing Party shall remain in force for a period of two years from the date of the above-mentioned formalization.

Chapter 6 – General provisions

In this chapter, it is nominated the legal text as Treaty of Asuncion and also establishes the Joint Parliamentary Commission. The executive branches of the States Parties shall keep their respective legislative branches informed of the progress of the common market established by this Treaty.

The Treaty of Asunción is composed by five annexes:

- **Annex I** established the trade liberalization program, formalized under ALADI framework by a partial economic complementation agreement nº 18;
- **Annex II** introduced a regimen of origin for the transition period, replaced in the subsequent period of consolidation of the customs union by the regime established by **Decision 6 / 94** and **23/94** of the Common Market Council. Currently, the regimen of origin into force was established by **Decision 01/04** of the Common Market Council.
- **Annex III** covers the dispute settlement procedure, which later it was replaced by the arbitration system introduced by the Protocol of Brasilia and the system of claims within the Mercosur Trade Commission (system incorporated into the Annex to the Protocol Ouro Preto)
- **Annex IV**, on the application of safeguards, as planned ceased to apply when the period of transition;
- **Annex V**, which created the various sub-working members of the executive body of the schema, the Common Market Group. These subgroups were altered in the process of consolidation of the customs union.

➤ Ouro Preto Protocol

- It is an additional protocol to the Treaty of Asunción adopted in December 1994 at the Summit of Presidents of Ouro Preto (Minas Gerais state, Brazil).
- This protocol established the organizational structure of Mercosur and adopted the basic instruments that currently characterize the entity in common commercial policy, governing the free trade area and the customs union led by a common external tariff.

- The entry into force of the Ouro Preto Protocol conceded to the bloc the international legal personality, empowering Mercosur to negotiate on their own behalf agreements with third countries, international organizations and group of countries.
- However, differently from establishing in the Treaty of Asunción, at the end of the transition period member countries were not able to eliminate the lists of exception from State parties, converting the Mercosur in an incomplete custom union.
- The Protocol of Ouro Preto is divided into 12 chapters and 1 annex. Each of chapters is summarized below:

Chapter 1 – Organizational Structure of Mercosur

According to the organization structure defined by the Protocol of Ouro Preto, Mercosur has three decision-making bodies:

- I. Common Market Council (CMC – Conselho do Mercado Comum)
- II. Common Market Group (GMC – Grupo Mercado Comum)
- III. Mercosur's Trade Commission (CCM – Comissão de Comércio do Mercosul)

Besides the bodies aforementioned, the Mercosur also has a parliamentary representative body (Joint Parliamentary Commission), an advisory body (the Social-Economic Consultative Forum) and an operational support body (the MERCOSUR Secretariat.)

The decision-making structure of Mercosur has an intergovernmental nature, benefiting itself of the existing bureaucracy framework in the public sector of States Parties.

1) The Common Market Council (CMC)

The Common Market Council (CMC) is the highest-level body of Mercosur with authority to conduct its integration and decision making policies to ensure the achievement of objectives set by the Treaty of Asunción. The Council is composed by the Ministers of Foreign Affairs and Finance or its equivalent in the State parties.

Although the Common Market Council was created by the Asuncion Treaty, its current structure and functions were implemented by the Protocol of Ouro Preto.

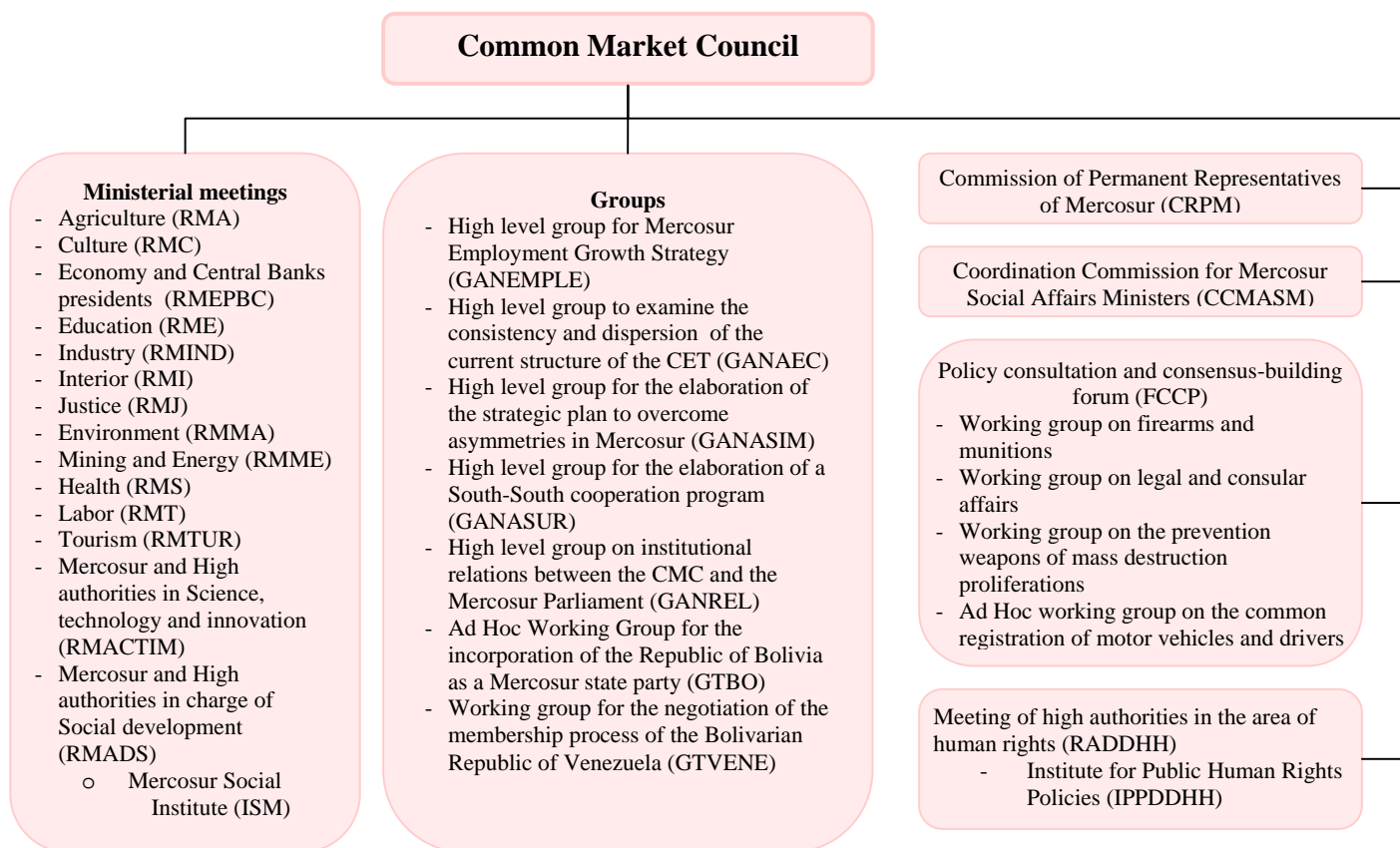
The Presidency of the Council rotates in alphabetical order every six months. It might meet whenever it deems appropriate, but must do it at least once per semester, with the participation of the Presidents of States Parties.

The Council legislates by decisions, which shall be binding upon the States Parties. The Council decisions shall be made by consensus, with representation of all member states.

The Common Market Council has the following duties and functions:

- a. To supervise the compliance of the Treaty of Asunción, of its protocols and agreements signed within its framework;
- b. To formulate policies and promote actions needed to build the common market;
- c. To exercise the ownership of the legal personality of Mercosur;
- d. To negotiate and sign agreements on behalf of Mercosur with third countries, groups of countries and international organizations;
- e. To rule on proposals submitted to it by Common Market Group;
- f. To arrange meetings of ministers and rule on agreements which those meetings refer to it;
- g. To establish the bodies it considers appropriate, and to modify or abolish them;
- h. To clarify, when it considers necessary, the substance and scope of its decisions;
- i. To appoint the director of the Mercosur Secretariat;
- j. To adopt decisions on financial and budgetary matters;
- k. To approve the rules of procedure of the Common Market Group.

The organization structure of the Common Market Council is composed by the following bodies:



2) The Common Market Group (GMC)

The Common Market Group is the executive body that takes the necessary steps to implement the decisions adopted by the Common Market Council as well as establish work programs to ensure progress towards the establishment of the Common Market.

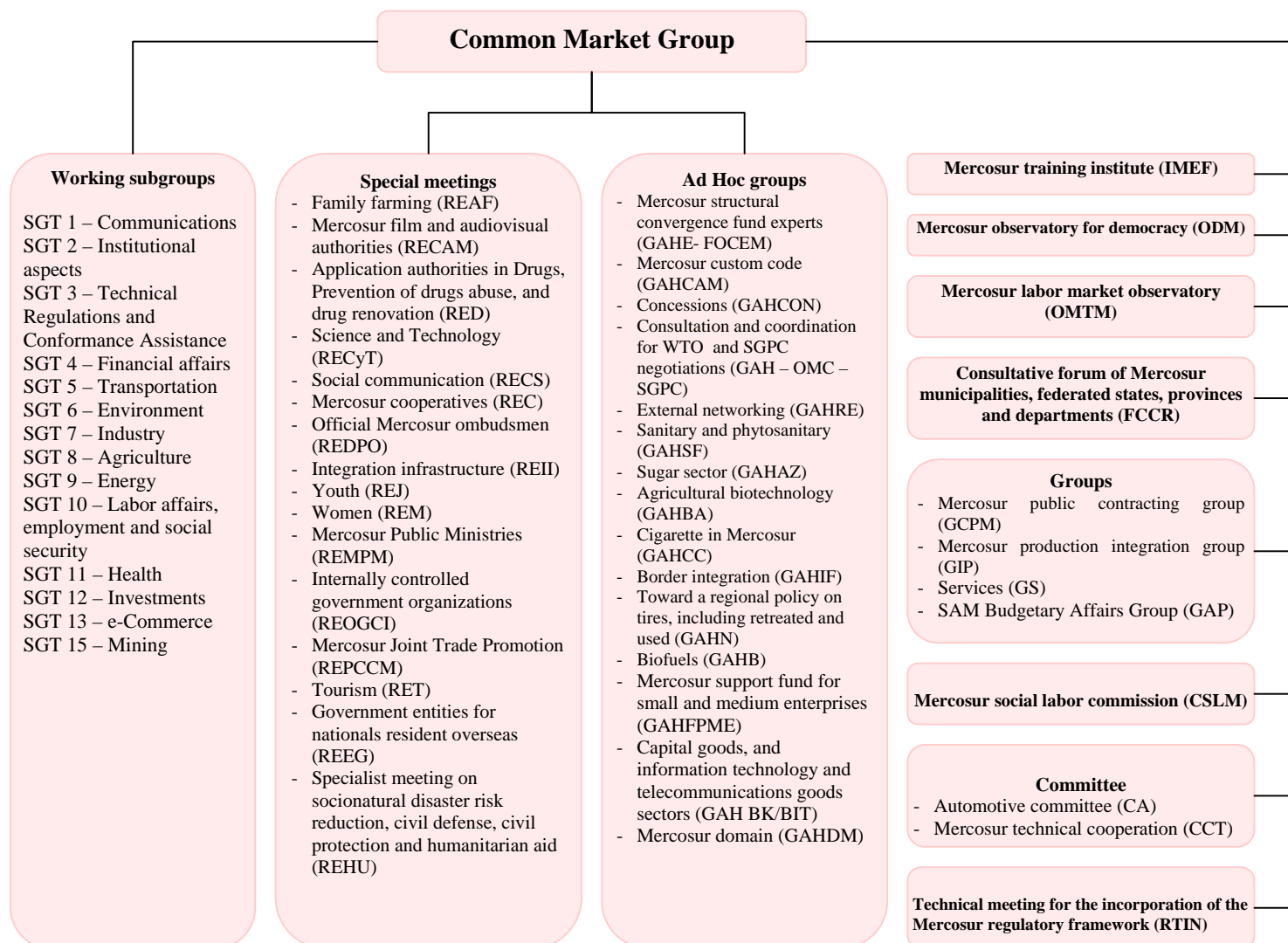
The Common Market Group is composed by four members and four alternates for each country, appointed by their respective governments, who must include representatives of the Ministries of Foreign Affairs, the Ministries of the Finance (or their equivalents) and the Central Banks. The Common Market Group shall be coordinated by the Ministries of Foreign Affairs. The Common Market Group shall hold ordinary or extraordinary meetings, as often as necessary.

The decisions of the Common Market Group shall take the form of Resolutions which shall be binding upon the States Parties.

The Common Market Group has the following attributions:

- a. To supervise, within the limits of its competence, compliance with the Treaty of Asunción, its protocols and agreements signed within its framework;
- b. To propose draft Decisions to the Council and take the necessary measures to carry out those decisions;
- c. To draw up a work program to ensure progress towards the establishment of the common market
- d. To establish, modify or abolish bodies such as working groups and special meetings for the purpose of achieving its objectives;
- e. To express its views on any proposals or recommendations submitted to it by other Mercosur bodies within their sphere of competence;
- f. To negotiate, when expressly delegated by the Council and on the basis of specific mandates, agreements on behalf of MERCOSUR with third countries, groups of countries or international bodies;
- g. To approve the budget and the annual statement of accounts presented by the Mercosur's Administrative Secretariat;
- h. To adopt resolutions in financial and budgetary matters based on the guidelines laid down by the Council;
- i. To submit its rules of procedure to the Council of the Common Market;
- j. To organize the meetings of the Council of the Common Market and to prepare the reports and studies requested by the latter;
- k. To choose the Director and supervise the activities of the Mercosur's Administrative Secretariat
- l. To approve the rules of procedure of the Trade Commission and the Economic Social Consultative Forum

The organization structure of the Common Market Group is composed by the following bodies:



3) Mercosur trade commission (CCM)

It is the body in charge of assisting the Common Market Group. The CCM has among its responsibilities to ensure the implementation of the common trade policy instruments by States Parties for the functioning of the Customs Union, as well as to monitor and review issues related to common trade policies, with intra-MERCOSUR and third countries.

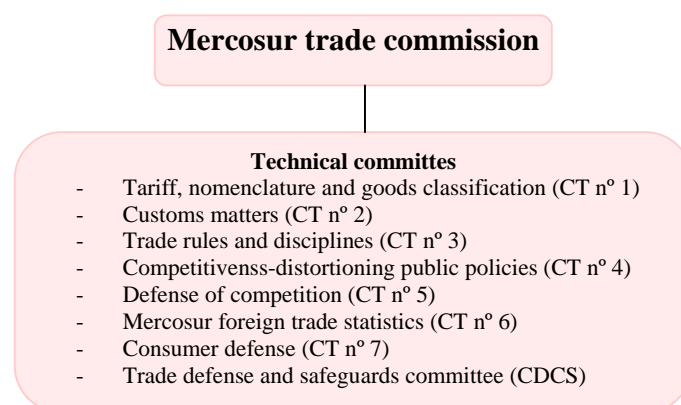
It consists of four members per country and is coordinated by the Ministries of Foreign Affairs of each member. It must meet at least once a month or whenever requested by the Common Market Group.

The decisions of the Mercosur Trade Commission take the form of Directives which is binding upon the States Parties.

The Mercosur trade commission has the following attributions:

- a. To supervise the implementation of the common trade policy instruments both within Mercosur as with respect to third countries, international organizational and trade agreements;
- b. To consider and rule upon the requests submitted by State parties in connection with the application of and compliance with the common external tariff and other instruments of common trade policy;
- c. To follow up the application of the common trade policy instruments in the State parties;
- d. To analyze the development of the common trade policy instruments relating to the operation of the custom union and to submit proposals in this regard to the Common Market Group;
- e. To take decisions connected with the administration and application of the common external tariff and the common trade policy instruments agreed by the States Parties;
- f. To inform to the Common Market Group on the development and the application of the common trade policy instruments, on the consideration of requests received and on the decisions taken with respect to such requests;
- g. To propose to the Common Market Group new Mercosur trade and customs regulations or changes in the existing regulations;
- h. To propose the revision of the tariff rates for specific items of the common external tariff, even in order to deal with cases relating to new production activities within Mercosur;
- i. To set up the technical committees needed for it to perform its duties properly, and to direct and supervise their activities;
- j. To perform tasks connected with the common trade policy requested by the Common Market Group;
- k. To adopt rules of procedure to be submitted to the Common Market Group for approval.

The Mercosur Trade Commission has eight technical committees, namely:



4) Parliament of Mercosur (the former Joint Parliamentary Commission)

The Joint Parliamentary Commission of Mercosur (CPC) was created in December 1994 by the Protocol of Ouro Preto. The CPC was the body that represented the parliaments of the State parties within the Mercosur and was replaced by the Parliament of Mercosur from May 7, 2007.

The CPC had as main functions to accelerate procedures for the entry into force of the rules issued by the Mercosur bodies and assist in the harmonization of laws within the Mercosur. In addition, the Common Market Council could request from CPC the review of priority issues.

During twelve years the Joint Parliamentary Committee was responsible for integrating the national parliaments of the States Parties with the Mercosur's institutional bodies, in particular, with the Common Market Council and the Common Market Group.

The creation of the Mercosur Parliament is part of a process begun in 2002, which objective was the constitution of bodies and procedures that was able to institutionalize the bloc and give it political autonomy.

With the deepening of the integration process, it stressed the need for greater involvement of national legislators within Mercosur. In 2004, during the XXVII Meeting of Mercosur Heads of State, at Ouro Preto, Minas Gerais, the Common Market Council (CMC) granted autonomy to the Joint Parliamentary Committee to draft a protocol establishing the Mercosur Parliament.

In 2006, the national parliaments of State parties adopted the Constitutive Protocol of the Mercosur Parliament, creating the new body. The first session of the Parliament should have been held before December 31, 2006, but it was only held on May 7, 2007, replacing the CPC.

More details on the Parliament of the Mercosur are available in Constitutive protocol of the Mercosur's Parliament section

5) The Economic and Social Consultative Forum (FCES)

It is a representative body of the economic and social sectors. It has consultative function and expresses its views through Recommendations to Common Market Group.

FCES representatives are national business entities as well unions representing such economic segments. At its meetings, the FCES's agenda comprises recommendations on issues that affect the social development within Mercosur.

6) The MERCOSUR Administrative Secretariat (SM)

It is an operational support body, in charge of providing services to other bodies of Mercosur and it has permanent headquarters in Montevideo.

The Mercosur Administrative Secretariat has the following attributions:

- a. To serve as official archive for Mercosur documentation;
- b. To publish and circulate the decisions made within the legal framework of Mercosur;
- c. Regularly inform the State parties about the measures taken by each country to incorporate in its legal system the decisions adopted by the Mercosur decision making bodies;
- d. To compile national lists of arbitrators and experts as well as performing other tasks defined in the Brasilia Protocol⁸
- e. Perform tasks requested by the Council of the Common Market, the Common Market Group and the Mercosur Trade Commission;
- f. Draw up its draft budget and, once this has been approved by the Common Market Group, do everything necessary to ensure its proper implementation;
- g. To submit its statement of accounts annually to the Common Market Group, together with the activities report.

Chapter 2 – Legal personality

In this chapter, it is established that in the exercise of its functions, Mercosur may take whatever action may be necessary to achieve its objectives, in particular sign contracts, buy and sell personal and real property, appear in court, hold funds and make transfers.

Chapter 3 – Decision making system

The decisions of the Mercosur bodies are taken by consensus and in the presence of all States Parties.

Chapter 4 - Internal Applications of the Decisions Adopted by Mercosur Bodies

In order to ensure the simultaneous entry into force in the States Parties of the decisions adopted by the Mercosur bodies, the following procedures must be followed:

- I. Once the decision has been adopted, the States Parties shall take the necessary measures to incorporate it in their domestic legal system and inform the Mercosur Administrative Secretariat. This can be done through the legislative process or through executive directives and decrees.
- II. When all the States Parties have reported incorporation in their respective domestic legal systems, the Mercosur Administrative Secretariat shall inform each State Party accordingly.
- III. The decisions shall enter into force simultaneously in the States Parties 30 days after the date of the communication made by the Mercosur Administrative Secretariat, under the terms of the preceding subparagraph. To this end, the States Parties shall, within the time-limit mentioned, publish the entry into force of the decisions in question in their respective official journals.

Chapter 5 – Legal sources of Mercosur

⁸ In 2002, the Protocol of Olivos revoked the legal provisions of the Brasilia Protocol regarding the mechanism of settlement disputes in Mercosur.

The legal sources of Mercosur consisted of:

- a. the Treaty of Asunción, its protocols and additional or complementary instruments;
- b. the agreements concluded under the Treaty of Asuncion and its protocols;
- c. the Decisions of the Common Market Council, the Resolutions of the Common Market Group and the Directives of the Mercosur Trade Commission, adopted since the entry into force of the Treaty of Asuncion.

Chapter 6 – Dispute settlement system

Disputes which arise between the States Parties must be subject to the settlement procedures laid down in the Brasilia Protocol of 17 December 1991. The details of how it works the dispute settlement system in Mercosur are explained in the correspondent section of the Olivos Protocol.

Chapter 7 – Budget

The Mercosur Administrative Secretariat has a budget to cover its operating expenses and the expenses authorized by the Common Market Group. This budget shall be funded by equal contributions from the State Parties.

Chapter 8 – Languages

The official languages are Spanish and Portuguese.

Chapter 9 – Revisions

If necessary, the State parties may call diplomatic conference in order to review the institutional structure of Mercosur established by the Protocol of Ouro Preto and the specific functions of each of its bodies.

Chapter 10 – Entry into force

The Protocol of Ouro Preto, part of the Treaty of Asunción, has undefined duration and shall enter into force 30 days after the date of the third instrument of ratification.

Chapter 11– Transitional Provision

The institutional structure envisaged in the Treaty of Asuncion on March 26, 1991, as well as its bodies, will continue until the date of entry into force of this Protocol.

Chapter 12: General Provisions

All the provisions of the Treaty of Asuncion of 26 March 1991 which conflict with the terms of this Protocol or with the content of the Decisions adopted by the Council of the Common Market during the transition period are hereby repealed.

Annex to the Protocol of Ouro Preto

This annex establishes the general procedures for complaints to the Mercosur Trade Commission,

➤ **Olivos Protocol**

Currently, the Mercosur dispute settlement system is regulated by the Protocol of Olivos, which entered into force on January 1, 2004. Before that date, the applicable instruments for dispute settlement in Mercosur were the annex III of the Treaty of Asunción and the Brasilia Protocol. There are also parallel stages: the consultations and claims procedures, provided for under the CCM directive No. 17/99, and in the annex to the Ouro Preto Protocol and in CMC decision N° 18/02, respectively. Such mechanisms are managed by the MERCOSUR Trade Commission and by the Common Market Group.

In the following sections will be briefly explained how the Mercosur dispute settlement system works:

Choice of forum by the complaining party

Disputes falling within the scope of the MERCOSUR dispute settlement system that can also be submitted to the dispute settlement mechanisms of the World Trade Organization (WTO) or to other preferential trade schemes of which MERCOSUR member states are members on an individual basis may be submitted to either forum at the discretion of the complainant.

Notwithstanding the above, the parties to the dispute may choose the forum by mutual agreement. Once a dispute settlement procedure has begun, neither party may, in relation to the same case, have recourse to the mechanisms established under other forums (*Olivos Protocol, article 1*).

Organizational structure of the Mercosur dispute settlement system⁹

The dispute settlement system under the Protocol of Olivos includes the following bodies:

- **The Common Market Group** (Olivos Protocol, Chapter 5)

An Executive body in charge of ensuring compliance with the Treaty of Asunción, its protocols and agreements signed in the framework of the Treaty. Its resolutions are binding on State parties. However, when its intervention is required to take part in the settlement of a dispute, the CMG issues recommendations, the binding nature is not expressly stated in the Olivos Protocol.

- **Ad Hoc Arbitration Court** (Olivos Protocol, Chapter 6)

⁹ Integrated database of Trade Disputes for Latin América and the Caribbean

It is composed by three arbitrators: one appointed for each of the parties and the third appointed by mutual agreement. The arbitrators are selected from lists deposited by each State with the MERCOSUR Administrative Secretariat.

The decision issued by the Ad Hoc Arbitration Court may be appealed by the States Parties to the Permanent Review Tribunal, which will review the decision solely in terms of points of law (cassation).

The decisions issued by this Court are binding on the parties and have the force of *res judicata* once the deadline for appealing to the Permanent Review Tribunal has passed.

- **Permanent Review Court (TPR)** (Olivos Protocol, Article 18)

It consists of five arbitrators: each Mercosur member designates an arbitrator and his or her substitute for a period of two years. The fifth arbitrator is elected unanimously for a period of three years. The Permanent Review Court is supported by a Technical Secretariat.

Despite its name, this Court does not sit permanently but may be convened at any time. Once its members have accepted its designation, they must be available to perform their duties whenever they are requested.

Awards of the Permanent Review court are final and take precedent over those of the Ad Hoc Arbitration Court. Its awards are binding on the parties and have the force of *res judicata*.

If the dispute involves two State parties, the Court will consist of three arbitrators. Two of the arbitrators are nationals of the two parties to the dispute and the third, who presides over the Court, is designated by the Director of the MERCOSUR Administrative Secretariat from among the remaining arbitrators who are not nationals of the States parties to the dispute. If the dispute involves more than two States parties, the Permanent Review Court will consist of all five arbitrators (Olivos Protocol, article 20)

Stages of the complete procedure for dispute settlement

Mercosur has established a system by which consultations addressed to the Mercosur Trade Commission as long as claims are addressed to the Common Market Group, and an arbitral dispute settlement system (Brasilia and Olivos Protocols)

Stage 1 – Direct negotiations

Disputes may be initiated by any State party, on its own initiative or following a claim submitted by an individual. States attempt to resolve the dispute firstly through direct negotiations, which, unless otherwise agreed by the parties, must be conveyed within 15 days from the date on which one of the parties communicates the other the decision to initiate the dispute. The States parties must inform the Common Market Group on the proceedings made during the negotiations and the results (Olivos protocol, Article 5).

Stage 2 - Optional intervention of the Common Market Group

If no agreement is reached during the direct negotiations or if the dispute is settled only in part, any of the States parties to the dispute may directly initiate arbitration proceedings before the Ad Hoc Arbitration Court.

Notwithstanding this, the States Parties to the dispute may, by mutual agreement, submit it for consideration by the Common Market Group (GMC).

The dispute may also be submitted to the GMC if another State which is not party to the dispute makes a well-founded request for such proceedings after the direct negotiations (Olivos Protocol, Article 6). The GMC makes its recommendations within a period not exceeding 30 days from the date on which the dispute was submitted for it. The Protocol of Olivos has no provisions on the nature of these recommendations, that is, whether or not they are binding. (*Olivos Protocol, Article 7*)

Stage 3 – Ad Hoc Arbitral Court or Permanent Review Court

If the parties do not wish to engage in either of the above optional phases, there are two possibilities:

- a) The States parties to the dispute may submit it directly to the Ad Hoc Arbitral Court, or
- b) The States parties to the dispute, by mutual agreement, may initiate the proceedings directly before the Permanent Review Court (*per saltum*)

The Ad Hoc Arbitral Tribunal renders its decision within 60 days, which may be extended by a court decision for a maximum of 30 days, counted from the date of the communication made by the Mercosur Administrative Secretariat to the parties and other arbitrators (Olivos protocol, Article 16)

All awards of the Ad Hoc Arbitral Court are binding on States parties to the dispute once the notification has been given; in relation to the parties, it has the force of *res judicata* once the deadline for appeal (15 days) has passed and no appeal has been made. (Olivos protocol, Article 26)

Stage 4 –Permanent Review Court (TPR)

Either of the parties to a dispute may submit a notice of appeal to the Permanent Review Court against the decision of the Ad Hoc Arbitral Court, within a period not exceeding 15 days from the date of its notification. The appeal is limited to issues of law dealt within the dispute and the legal interpretations contained in the award of the Ad Hoc Arbitral Court.

Reply: The other party to the dispute may reply to the notice of appeal within 15 days of the date of notification that the appeal was lodged (Olivos Protocol, article 21).

Final decision: The Permanent Review Court rules on the appeal within 30 days from the date on which the appeal was lodged. The award of the Permanent Review Court may confirm, modify or revoke the legal basis for the awards of the Ad Hoc Arbitral Court and takes precedence over such decisions (Olivos Protocol, articles 21 and 22). The awards of the Permanent Review Court are final, binding on States parties to the dispute from the date of its notification, and have the force of *res judicata* regarding those parties. (Olivos Protocol, article 26)

Note: Direct access to the Permanent Review Court

After direct negotiations, the parties to a dispute may agree to submit the dispute directly to the Permanent Review Court, giving it sole jurisdiction and the same competency as an Ad Hoc Arbitral Court. In such cases, the TPR awards are not subject to appeal. (Olivos Protocol, article 23).

Stage 5 – Enforcement of the award

The award of the Permanent Review Tribunal must be complied within a period determined by this Court. If no period is specified, the award must be complied within 30 days from the date of its notification. The awards of the Ad Hoc Arbitral Court against which no appeal has been made are subject to the same system compliance. (Olivos protocol, article 29)

Disagreements on the enforcement of the award: If the State which benefits from the decision consider that the measures adopted fails to comply with that decision, it has a period of 30 days from the date of adoption of those measures to bring the situation to the attention of the TPR which pronounced the final decision. The TRP then has a period of 30 days, from the date on which it was made aware of the situation, to announce a decision (Olivos protocol, article 30)

Countervailing measures: If State party to the dispute does not comply fully or in part with the decision, the other party may, within a period of one year from the end of 30-day period during which the former should have complied with the decision, initiate the implementation of temporary countervailing measures, such as the suspension of concessions or other equivalent obligations, aiming at for the enforcement of the award.

The State party benefited by the award initially seeks to suspend concessions or equivalent obligations within the affected sector. If the suspension within the same sector is considered impracticable or ineffective, it is allowed to suspend concessions or obligations in another sector, but it must state the reasons underlying that decision. The State affected by countervailing measures may challenge those reasons. (Olivos protocol, article 31)

Parallel stages to the dispute settlement system

Besides the steps described above, there are also parallel stages to the Dispute Settlement System regulated by the Protocol of Olivos: the consultations and claims procedures set forth in Mercosur Trade Commission directive CCM N° 17/99, and in the Annex to the Protocol of Ouro Preto and in the decision CMC n° 18 / 02, respectively. Such mechanisms are managed by the Mercosur Trade Commission and the Common Market Group.

Consultation to the Mercosur Trade Commission (CCM)

The directive CCM No. 17/99 states that consultations may be submitted during ordinary or extraordinary meetings of the MERCOSUR Trade Commission when it has been agreed that they should be included on the agenda. Subsequently, responses to the consultations must be given in writing on the appropriate form no later than the second ordinary meeting following the meeting during which the consultation was submitted.

The consulting State party considers that a consultation is concluded if it accepts that the response is adequate or if the issue which led to the consultation has been dealt with. It may consider that the consultation has been concluded in an unsatisfactory manner if the issue has not been solved and the remedies available within the CCM have been exhausted (Article 7 of the Directive CCM No. 17/99).

The application of this consultation mechanism does not prevent a State party from having recourse at any time to the general procedure provided for the Protocol of Olivos.

Decision CMC 18/02 states the general procedure for claims against the Mercosur Trade Commission.

Additional characteristics of the dispute settlement system

In addition to the official dispute settlement procedure, other procedures may be set up for settling in specific cases. Such procedures, however, are more limited and have a narrower scope:

Claims by private persons

Any private individual (a natural person or a legal entity) affected by the application by a State of legal or administrative measures, whose effects are restrictive or discriminatory or which results in unfair competition, may submit claims to the national section of the Common Market Group for the State party where that person has its usual residence or business office. This national section must then undertake consultations with the national section of the Common Market Group in the State party to which the offence is attributed, in order to seek an immediate settlement.

If the consultations end within the 15-day period without a solution being reached, the national section of the Common Market Group will submit the claim to the Common Market Group, which will convene an expert group to issue a ruling on the dispute within 30 days, period within which the parties appear at a joint hearing. (Olivos Protocol, article 39).

Exceptional and emergency measures

The Common Market Council may establish special procedures to solve exceptional emergency cases which could cause irreparable harm to the parties. (Olivos Protocol, articles 24)

Advisory Opinions of the Permanent Review Court

The countries may request advisory opinions to the Permanent Review Court regarding to any legal issue encompassed by Mercosur legal framework. These advisory opinions have no binding or obligatory force, considering they are only legal opinions; consequently, they do not constitute a prejudgment of any possible dispute. The requests for advisory opinions may address to the TPR by:

- a) States parties acting jointly or the decision-making bodies of the Mercosur (Common Market Council, the Common Market Group and the Mercosur Trade Commission), if they refer to any legal issue encompassed by the Mercosur legal framework;
- b) The Higher Courts of the States parties, with national jurisdiction, in case on the legal interpretation of the law of Mercosur.

Mechanisms related to technical aspects

If it is considered necessary, it may be established simplified mechanisms in order to settle differences between State parties on technical aspects regulated by common trade policy instruments.

The operating rules of such bodies, their scope and the nature of the statements to be issued are defined and approved by decision of the Common Market Council.

Final comments on Mercosur dispute settlement system

I. Except for awards, documents submitted in the in the context of procedures under the Olivos Protocol are restricted to the parties to the dispute;

II. Accession of the Bolivarian Republic of Venezuela: The dispute settlement mechanism set up by the Olivos Protocol is applicable to the Bolivarian Republic of Venezuela in disputes relating to MERCOSUR rules existing prior to that Protocol, to the extent that the Bolivarian Republic of Venezuela gradually adopts those rules (article 2 of the Protocol of Accession of the Bolivarian Republic of Venezuela to MERCOSUR).

➤ Constitutive protocol of the Mercosur's Parliament

Mercosur Parliament is the representative body of the interests of the State parties: Argentina, Brazil, Paraguay and Uruguay. It was legally established on December 2005 through the Constitutive Protocol of the Mercosur Parliament and became operational on May 7, 2007.

Although Venezuela is considered to be a full member of Mercosur its adherence process has not been completed yet. In the parliament, Venezuelan deputies will share the plenary with the Mercosur four founder countries. They will be entitled to speak, however they will not have voting rights. The protocol also establishes delegates for countries associated to Mercosur - Bolivia, Chile, Ecuador, Colombia and Peru – can speak but not vote.

Mercosur Parliament is defined by its constitutive protocol as an autonomous and independent organism, designed for representing its people and takes part of Mercosur institutional structure. According to the Protocol Preamble, the Parliament should reinforce and deep integration and democracy within Mercosur through an efficient and balanced institutional structure.

In the first stage its delegates would be elected by national parliaments from its members and in a later stage, they would be elected by direct vote of citizens following the criterion of citizen representation. In the Brazilian case, this final stage is scheduled to be held in 2012, along with local elections.

Mercosur's Parliament competences

As aforementioned the Mercosur's parliament has important functions relating to the preservation of democracy and human rights. In this first case, the clause on Democratic commitment (included in the Protocol of Ushuaia) of Mercosur members and associates aims to guarantee democratic values within the regional bloc and is mandatory to join Mercosur.

At present, the Mercosur's Parliament remains in an advisory and propositional role. Among its competences are: to prepare a preliminary opinion in all decisions, resolutions and directives issued by Mercosur decision-making bodies, when necessary for any implementation in national legislatures; request information and elaborate reports on issues regarding integration process.

Functioning of the Mercosur parliament

Mercosur Parliament is headquartered in Montevideo (Uruguay) and is required to meet at least once a month in ordinary sessions and more regularly in extraordinary sessions at the request of either The Common Market Council or on the initiative of the Parliament itself.

Until December 31, 2010, Parliament would be composed of 18 parliamentarians from each state party, elected by national parliaments from among its members. The total number of members was 90 members and all states have equal representation.

With a political agreement signed among the foreign affairs ministers of Mercosur members by the end of 2010, it was established that the most populous countries will be given more seats in the Parliament. From 2015, Brazil will entitle to 75 parliamentarians, while Argentina will hold 43 and the other members, Paraguay and Uruguay, will be entitled to 18 representatives each country.

Decisions of the Parliament, depending on perceived importance of the matter at hand, may be adopted by simple majority or absolute majority (i.e., more than half the body present at a session or the actual members of Parliament, respectively), by special majority (i.e., two thirds of the actual members of Parliament representing each member state), and by qualified majority (i.e., more than half the actual members of each country's respective delegation). Mercosur Parliament is the first bloc body in which decisions are made without need to be consensual.

➤ **Protocol of Accession of the Bolivarian Republic of Venezuela to Mercosur**

In July 2006, the Bolivarian Republic of Venezuela signed its Protocol of Accession with the other four MERCOSUR countries. For the Protocol of Accession to enter into force, it must be ratified by four members of Mercosur. Upon entry into force of the Protocol, Venezuela as a full member of Mercosur must incorporate the Mercosur rules into its national legislation as well as implementing of common external tariff and the liberalization of trade in the timeframes stipulated in the protocol. By the end of 2010, three countries (Argentina, Uruguay and Brazil) had ratified the protocol.

Venezuela's entry into Mercosur is not a consensus in the bloc and has faced resistance by some members. Although the Argentinean and Uruguayan legislators quickly approved the initiative, the Brazilian congress only approved the entry of Venezuela in Mercosur in December 2009 after a strong lobbying from President Lula da Silva and Brazilian corporations.

In Brazil, some business associations, such as the Federation of Industries of the State of São Paulo (FIESP) and the National Confederation of Industry (CNI) were concerned about the limitations that the accession of Venezuela into the bloc would pose to starting negotiations with developed countries, especially with the United States. The fact is that if there is political will and motivation for Brazil to negotiate a trade agreement with a developed country, negotiators will find a way to move forward with it, even if it is necessary to make exceptions to the common trade policy of Mercosur.

Nowadays, Paraguay is the only Mercosur signatory member which has not yet completed the parliamentary proceedings for Venezuela accession. The Paraguayan Senate, which is formed mainly by the opposition, has been reluctant to vote on the issue. Both in Brazil and Paraguay, the main argument used by opponents of Venezuela's entry to Mercosur is related to the fact that the government of Hugo Chavez does not satisfactorily meet democratic principles. In addition, the strong anti-American rhetoric of Venezuelan government as well as conflicts that Venezuela has with Colombia could undermine the interests of Mercosur in the future.

On the other hand, supporters of the entry of Venezuela in Mercosur argue that it is not fair to prevent the entry of the Venezuelan people in the bloc due to current political circumstance and isolate the Chavez government could be worse. Supporters also believe the entry of Venezuela in Mercosur could contribute to the strengthening of democracy in this country, considering that Mercosur could be able to demand the Venezuelan government complies with democratic principles.¹⁰

Before the signature of the protocol of accession in July 2006, trade relations between MERCOSUR and Venezuela were governed since 2004 by the Economic Complementation Agreement between the States Parties of MERCOSUR and Colombia, Ecuador and Venezuela, whose main purpose was to establish a free trade area.

Regarding the trade, the accession of Venezuela into MERCOSUR brings two main challenges: the implementation of the Common External Tariff and trade liberalization toward the bloc's founding members. The protocol established a period of four years for the adoption of the CET and designates the development of a timetable for its implementation. The main problem of this process is tariff convergence. The complexity of the Venezuelan tariff scheme could cause some conflicts during the process of convergence. However, Mercosur's state parties and Venezuela have agreed that the tariff removal schedules should be asymmetric.

The schedule for the liberalization of trade established in the protocol of accession stipulated different terms for all members. Argentina and Brazil should open their markets to Venezuela, from 1 January 2010. Venezuela will admit products from all MERCOSUR members to its market as of 1 January 2012. Finally, Uruguay and Paraguay should open their markets to Venezuelan products as of 2013.

During the period of tariff harmonization, the rules of existing trade agreement (ACE 59) between Mercosur and the Andean Community shall govern trade relations between Mercosur countries and Venezuela. In this sense, the protocol provides for deadlines to be accelerated in the case of products comprised by agreements signed previously between Mercosur and the Andean Community, especially for sensitive products for which the establishment of zero tariffs was moved from 2018 to 2014.

¹⁰ The Protocol of Ushuaia, which is part of the Asuncion Treaty, states that the democratic institutions are a prerequisite for the development of integration processes between the states of Mercosur. Countries that do not comply with this democratic clause can be punished with suspension.