

Could Euro Zone's GDPR serve as a Multilateral Regulatory Framework on Cross-border Data Flows?

Sergio Martinez

Abstract

In a rapidly evolving world with increasing disruptive technologies, multiple stakeholders across nations, industries and sectors are confronting growing societal demands about the need for ethics and regulatory frameworks on cross-border data flows (CBDFs). What does this mean and how to get started? These and many more are pressing questions facing policy-makers in multilateral forums with the aims of addressing recent quantifiable impacts of digital trade—a trade dimension comprising the global exchanges of emerging technologies, e.g., data flows, e-commerce, in late twenty and early twenty first centuries. While trade agreements and regional regulatory frameworks have intended to dictate principles, norms and rules for several concerns around CBDFs, institutional efforts for setting up an inclusive, multi-lateral framework are still lacking in the policy arena. With this motivation, the present paper illustrates the case of Euro Zone's General Data Protection Regulation (GDPR) as the most comprehensive legal instrument up to date that might potentially guide initial policy discussions around the so needed multilateral regulatory and ethical framework on CBDFs.

Context

The late twenty and early twenty-first centuries have brought new opportunities in the way of doing business and rethinking the role of public policies and international law instruments in technological affairs. For the most part, these opportunities have emerged from rapid advances in disruptive technologies that have altered living and working standards, innovation channels of production, among other social and economic dynamics in societies. In 2013, the McKinsey Global Institute identified twenty-five disruptive technologies that gathered four key features transforming the future of work and doing businesses: (a) rapidly-advancing technologies; (b) broad potential scope of impact; (c) significant economic value; and (d) potentially-disruptive economic impact.¹

The emergence of disruptive technologies during recent decades has opened the path for the global digital era that is increasingly shaping the future of work and systemic transitions in the world's economy. Accordingly to the McKinsey Global Institute (MGI, 2016) report, *Digital globalization: The new era of global flows*, “some 900 million people have international connections on social media, and 360 million take part in cross-border e-commerce.”² MGI's further analysis revealed that cross-

border data flows (CBDFs) accounted for USD 2.8 trillion in 2014 alone, which represented about 36 percent of global flows of all types valued in USD 7.8 trillion over the same year.³ This trend outlines the significance of economic impact driven by digital trade, e.g., e-commerce, data flows, which along with all types of flows increased world GDP by 10.1 percent.⁴

With an exponential amount of data and information generated in the digital space during recent years, citizens and consumers of digital platform services have increased their concerns about data privacy and consumer protection. Over the last three years alone, an IBM Marketing Cloud study found that 90 percent of all data online has been created since 2016, with 2.5 quintillion bytes of data being created every day.⁵ The significant size of data flows managed by digital platforms has led costumers to express concerns about their data privacy across the globe. In the U.S., The TRUSTe/National Cyber Security Alliance (NCSA, 2016) reported that “... 60 percent of Americans are more concerned about not knowing how personal information collected online is used than losing principle income...”⁶ In the Philippines, Viber conducted a data privacy customers' survey and obtained that 55.3 percent of individuals expressed they would stop using an app that

functions/digital-mckinsey/our-insights/digital-globalization-the-new-era-of-global-flows?reload

3 Ibid.

4 Ibid.

5 IBM Marketing Cloud, 10 Key Marketing Trends for 2017 and Ideas for Exceeding Customer Expectations, 2017, <https://public.dhe.ibm.com/common/ssi/ecm/wr/en/wr12345usen/watson-customer-engagement-watson-marketing-wr-other-papers-and-reports-wr12345usen-20170719.pdf>

6 Truste/National Cyber Security Alliance, U.S. Consumer Privacy Index 2016, 2016, <https://www.trustarc.com/resources/privacy-research/ncsa-consumer-privacy-index-us/>

1 McKinsey Global Institute, *Disruptive Technologies: Advances that Will Transform Life, Business, and the Global Economy*, 2013, Pp. 4, https://www.mckinsey.com/~media/McKinsey/Business%20Functions/McKinsey%20Digital/Our%20Insights/Disruptive%20technologies/MGI_Disruptive_technologies_Full_report_May2013.ashx

2 McKinsey Global Institute, *Digital Globalization: The New Era of Global Flows*, 2016, <https://www.mckinsey.com/business->

shares their data with third-parties without their knowledge.⁷

In response to consumer protection and data privacy concerns around disruptive technologies, the United Nations Conference on Trade and Development (UNCTAD, 2016) has acknowledge the institutional need to establish more compatible legal frameworks at national, regional and multilateral levels.⁸ While some countries grouped by regional or trade blocks have attempted to develop their CBDFs regulations in unilateral or bilateral basis, remaining gaps on CBDFs universal definitions, legally-binding rules and cross-countries enforcement mechanisms altogether make the case for a CBDFs multilateral framework. In this regard, UNCTAD (2016) identified three categories of gaps existent in the coverage of data protection laws: (a) Absence of country-level data protection legislation—nearly 30 percent of countries with no laws in place; (b) current legislation with broad gaps and exemptions; and (c) allowances for business to exclude certain services or practices from coverage.⁹

Regulatory Framework on CBDFs

Although multilateral rules governing CBDFs in a universal and comprehensive manner are still missing in the policy arena, regional and international organizations have developed regulatory frameworks addressing data privacy, consumer protection, among other related concerns around CBDFs. The Global System for Mobile Communications Association (GSMA, 2018) identified six mainstreaming data privacy frameworks that have recently been established in regional or international basis: (a) OECD Privacy Framework, (b) Convention 108, (c) Madrid Resolution, (d) APEC Privacy Framework, (e) ASEAN Framework on Personal Data Protection, and (f) EU GDPR.¹⁰ On the other hand, privacy has been treated under rules of trade agreements. Regarding this, Aaditya Mattoo and Joshua Meltzer (2018) pointed out privacy treatments across three representative trade agreements: (a) the WTO rules contained in the General Agreement on Trade and Services (GATS); (b) Korea-US FTA, with its Chapter 15 covering Electronic Commerce; and (c) the Comprehensive and Progressive Agreement for Trans-Pacific Partnership—CPTPP, outlin-

ing provisions on data data flows and e-commerce in its chapter 14.¹¹ Mattoo and Meltzer (2018), furthermore, stressed on the relevance of four additional privacy and data flows instruments derived from international regulatory cooperation: (a) the OECD Privacy Guidelines; (b) The Council of Europe Data Protection Convention and Additional Protocol; (c) the Asia Pacific Economic Cooperation (APEC); and (d) the E.U.-U.S. Privacy Shield.¹²

Despite the extensive bulk of regional and international instruments and trade rules including provisions on privacy, data flows and customer protection, almost all of these lack legally-binding conditions as pointed out by several authors and institutions. For instance, the Congressional Research Services (CRS, 2019) emphasized that up-to-date best practice guidelines or principles related to privacy and CBDFs are not legally binding in multilateral basis.¹³ Summing up this legal constrain to the institutional gaps on data protection laws reported by UNCTAD (2016) support the case that CBDFs should be regulated multilaterally. Though, the question facing policy-makers around the world is where to start?

The General Data Protection Regulation (GDPR)

The General Data Protection Regulation—or GDPR—is the EU regulation on the natural persons' privacy, data protection and CBDFs approved by the European Parliament on April 27, 2016, being later enforced on May 25, 2018.¹⁴ The GDPR replaces the Data Protection Directive 95/46/EC and according to an educational website, it was designed with three specific objectives: (a) harmonize data privacy laws across Europe; (b) protect and empower all EU citizens' data privacy; and (c) reshape the way organizations across the region approach data privacy.¹⁵ In less than a year since its enforcement, GDPR has proven to redirecting data management procedures across sectors and redefining the roles for key leaders in businesses to some extent. The European Commission (EC) conducted an implementation performance study in early 2019 and found increasing outcomes in rules' compliance, enforcement and awareness in the EU region.¹⁶ In terms of compliance, the number of complaints from individuals to Data Protection Authorities (DPA) increased up to 95,180 from May, 2018 to January, 2019. Individuals have mostly ex-

7 Justin Diaz, Viber Survey Highlights Key Consumer Data Privacy Concerns, 2018,

<https://www.androidheadlines.com/2018/06/viber-survey-highlights-key-consumer-data-privacy-concerns.html>

8 United Nations Conference on Trade and Development, Data Protection Regulations and International Data Flows: Implications for Trade and Development, 2016, https://unctad.org/en/PublicationsLibrary/dtlstict2016d1_en.pdf Pp. Iii.

9 Ibid. Pp. 8-10.

10 Global Systems for Mobile Communications Association, Regional Privacy Frameworks and Cross-Border Data Flows: How ASEAN and APEC Can Protect Data and Drive Innovation, 2018, https://www.gsma.com/publicpolicy/wp-content/uploads/2018/09/GSMA-Regional-Privacy-Frameworks-and-Cross-Border-Data-Flows_Full-Report_Sept-2018.pdf Pp. 12-16.

11 Aaditya Mattoo and Joshua Meltzer, International Data Flows and Privacy: The Conflict and Its Resolution, 2018, <http://documents.worldbank.org/curated/en/751621525705087132/pdf/WPS8431.pdf> Pp. 16-21.

12 Ibid. Pp. 21-24.

13 Congressional Research Service, Data Flows, Online Privacy, and Trade Policy, 2019, <https://crsreports.congress.gov/product/pdf/R/R45584> Pp. 6.

14 European Union Law, Regulation (EU) 2016/679 of the European Parliament and of the Council, 2016, <https://eur-lex.europa.eu/eli/reg/2016/679/oj>

15 EU-GDPR, The EU General Data Protection Regulation (GDPR), <https://eugdpr.org/>

16 European Commission, GDPR in Numbers, 2019, https://ec.europa.eu/commission/sites/beta-political/files/190125_gdpr_infographics_v4.pdf

pressed their complaints regarding telemarketing, promotional e-mails and video surveillance/CCTV. Furthermore, GDPR has led to significant enforcement outcomes. Among these, DPAs have been able to start some 255 investigations, out of which 200 have been on the basis of individual complaints. Enforcing the rules has also been materialized by the imposition of fines, e.g., EUR 50 million imposed by France to Google for lack of consent on Ads, and the adaptation of mandated national laws in the EU Member States—23 member states have adopted the required national regulation while five are still pending to do so. Lastly, awareness of the rules from the GDPR has received higher attention in the media in relative terms.¹⁷

Application

Is the GDPR a sound instrument to model multilateral regulatory frameworks on CBDFs? There has been a candid debate on whether the GDPR could be a plausible instrument to shape a multilateral approach governing free movements of data, consumer protection and data privacy. Aaditya Mattoo and Joshua Meltzer (2018), among other authors, have presented cases against CBDFs multilateral framework proposals based on the GDPR model.¹⁸ On the other hand, authors such as Consumer International (2019) have recently stated to be in favor of CBDFs.¹⁹ Whereas the positions against GDPR primarily focus on the instrument's potentially adverse economic impacts from a doing-business point of view, e.g., possible reductions on export data transfer services from developing countries to developed countries, those in favor of GDPR highlight its balance in managing economic benefits from CBDFs, data privacy and customer protection regulations for both companies and customer, ultimately benefiting the latter to a larger extent.

On the basis of the debate around GDPR, I would argue that GDPR could be a stepping stone in building solid foundations for a multilateral framework on CBDFs, data privacy and consumer protection. The supporting points of my in-favor positions for the GDPR lie in two key broad elements contained in its legal body: (a) precise rules on personal data collection, transference, process and storage; and (b) legally-binding conditions.

GDPR's Precise Rules on Data Management

According to *PrivacyPolicies.com*, the GDPR contains at least six categories of articles stating precise rules on the way of how firms collect, transfer, process and store data from their customer while granting EU citizens certain rights and protection concerning their personal infor-

mation.²⁰ These six categories and their corresponding articles are as follows:

Rights of Individuals:

- Art. 6 – Lawfulness of processing
- Art. 15 – Right of access by the data subject
- Recital 59 – Procedures for the exercise of the rights of the data subjects
- Art. 16 – Right to rectification
- Art. 18 – Right to restriction of processing
- Art. 20 – Right to data portability
- Art. 21 – Right to object

Rights to Be Informed:

- Recital 58 – The principle of transparency

Right to Erasure (“Right to be Forgotten”):

- Art. 17 – Right to erasure (‘right to be forgotten’)

Data Protection Officer:

- Recital 97 – Data protection officer

Obligations for Data Processors:

- Art. 28 – Processor

Data Protection Impact Assessment:

- Recital 85 – Notification obligation of breaches to the supervisory authority

GDPR's legally-binding Conditions

The GDPR contains two key articles stressing out legally-binding conditions by which the rules and stipulations of its legal body govern the subjected parties. These articles are as follows:

- Art. 28 – Processor.
- Art. 47 – Binding corporate rules

Conclusions

In Sum, the GDPR's specific rules on data management and legally-binding conditions set out solid foundations that may guide cornerstone principles and enforcement mechanisms on CBDFs, data privacy and consumer protection under multilateral basis. From allowing individual rights on data processing consent, access to information, and erasure to dictating obligations for data processors, such as the appointment of Data Protection Officers and the implementation of data protection impact assessments, the GDPR aims at empowering citizens data privacy while harmonizing and organizing cross-countries CBDFs management. While the GDPR has been disregarded as a sound model for multilateral regulatory frameworks on CBDFs, it has demonstrated consistent, positive outcomes in terms of compliance, enforcement and awareness across countries in the EU region, building up in its supportive case to a CBDFs global approach.

¹⁷ Ibid.

¹⁸ Aaditya Mattoo and Joshua Meltzer, *International Data Flows and Privacy: the Conflict and Its Resolution*, 2018, <https://academic.oup.com/jiel/article/21/4/769/5227421>

¹⁹ Consumers International, *GDPR: Will It Be the Global Standard for Data Protection*, 2019, <https://www.consumersinternational.org/news-resources/blog/posts/gdpr-will-it-be-the-global-standard-for-data-protection>

²⁰ Privacy Policies, *6 Key Articles of the GDPR*, 2019, <https://www.privacypolicies.com/blog/gdpr-key-articles/>; EU-GDPR, *GDPR Key Changes*, <https://eugdpr.org/the-regulation/>

Decades In The Making: The EU-Mercosur Agreement

Guilherme Thudium, Luana M. Geiger, Marc Castillo, Sírio Sapper

Abstract

The signing of the Mercosur-EU trade agreement in 2019 at the G20 summit has truly expanded the global reach of the South American trade bloc as a multilateral player and represents the single largest trade deal ever pulled off by both the European Union and Mercosur. The purpose of this paper is to briefly analyze the specifics of the agreement, as well as the motivations that led to its signing after a 20 year period of on-and-off negotiations. We also try to contextualize this agreement with other FTAs that the EU has pursued in the Americas over the past decade, such as the TTIP, CETA, and the EU-Mexico Trade Agreement. We argue that these new mega-regional agreements, although rooted in win-win scenarios economically speaking, are vying to set up new rules of international trade which sometimes bypass the WTO.

Introduction¹

Accounting for almost 800 million people and a quarter of the world's GDP, the European Union (EU) and Mercosur sealed a powerful free trade agreement in 2019 covering goods, services, investments and government procurement, breaking the stalemate of a 20-year on-and-off negotiation process. The EU-Mercosur agreement is seen as a historical moment in the midst of international trade tensions and represents the largest single deal that both trade blocs have ever concluded.

For Mercosur, the agreement means that the trade bloc is now entering the world of modern and ambitious preferential trade agreements (PTAs)², a reality that the EU is more familiar with. This paper assumes that the EU-Mercosur trade agreement is part of the further deepening of a mega-regional trade agenda which is responsible for the expansion of the economic landscape and the formation of new rules of trade, operationalized through mega-regional agreements such as the EU-Mercosur trade agreement, that sometimes bypass the World Trade Organization (WTO). As a result, modern mega-regional agreements have a great influence over the international trading system and the shaping of the global order.³

The coexistence of multilateralism and regionalism in the formation of the rules of trade has entered a stage of conflict, or what American political scientist Robert Keo-

hane calls "counter-multilateralism".⁴ This phenomenon occurs when states and/or non-state actors shift their focus from one existing multilateral institution, creating an alternative way. Other examples of significant mega-regional trade agreements that the EU has pursued over the past years in the Americas are the Transatlantic Trade and Investment Partnership (TTIP) with the US, the Comprehensive Economic and Trade Agreement (CETA) with Canada, and the EU-Mexico Trade Agreement. At the same time, Mercosur has also concluded negotiations in substance with the European Free Trade Association (EFTA) in August, 2019.⁵ While there exists a notion of anti-globalism at present that can be interpreted as a form of "counter-multilateralism" there exists a tendency towards multilateralism through trade blocks. This new multilateralism exudes regionalism as both the EU and Mercosur are regional powers both of which are in a way supporting the mantle of globalism by purporting trade and the sentiment that even though the world may be appearing more antagonistic there is an underlying approach that the world is flat.

However, the deal is not yet sealed. The two blocs need to finalize the legal text of the mega-regional EU-Mercosur agreement, which will then be submitted to the European Parliament for ratification. The purpose of this paper is to provide a brief historical background to the agreement since the formal start of negotiations in 1999, as well as to highlight some of its features and complexities.

Evolution of the Trade Talks

During most of the 20th century, European interest in Latin America has been scant. Since the turn of the century, however, the EU started to regard Brazil as a possible leader in South America capable of containing Hugo Chávez's influence and offsetting Bolivarianism by striking a balance between economic growth and social inclusion.⁶ In 1999,

1 Guilherme Thudium, PhD Candidate in Strategic and International Studies at the Universidade Federal do Rio Grande do Sul (UFRGS), Brazil.

Luana M. Geiger, PhD Candidate in Political Science at the Universidade Federal do Rio Grande do Sul (UFRGS), Brazil.

Marc Castillo, Master in Latin American Hemispheric Studies from The George Washington University, United States.

Sírio Sapper, Bachelor of Laws from the Universidade Federal of Rio Grande do Sul (UFRGS), Brazil.

2 Rios, Sandra Polônio and Pedro da Motta Veiga. 2019. Does the Mercosur Trade Deal Mean Brazil Will Finally Open Up? July 16, 2019, <https://www.americasquarterly.org/content/does-mercosur-trade-deal-mean-brazil-will-finally-open>

3 Trubek, D., Morosini, F. and Michelle Rattton Sanchez Badin. 2017. Brazil in the Shadow of Mega-Regional Trade and Investment Standards: beyond the grand debate, pragmatic responses, University of Wisconsin, Legal Studies Research Paper Series, n. 1401.

4 Keohane, R. 2016. O. Counter-multilateralism. In: Morin, J., Novotná, T., Ponjaert, F. and Mario Telò. The Politics of Transatlantic Trade Negotiations: TTIP in a globalized world. New York: Routledge.

5 <https://www.efta.int/Free-Trade/news/EFTA-Mercosur-negotiations-concluded-substance-514526>

6 Saraiva, Miriam Gomes. "The Brazil-European Union Strategic Partnership, from Lula to Dilma Rousseff: a Shift of Focus." Re-

the year Chávez rose to power in Venezuela, the first EU-Latin America summit, held in Rio de Janeiro, established a strategic partnership between both regions. The common perception among European policymakers at that time was that the EU shared common values with Brazil when it came to the defense of multilateralism in global politics, political stability, the maintenance of democratic regimes and the fight against poverty in the region.

The premise of a Latin American block reaching out beyond Washington's influence is *nouveaux* and rather daring. Latin America has long appeared to form an unquestionable part of Washington's zone of influence, but even though the U.S. is the main trading partner of the region as a whole, Mercosur does nearly half as much trade with the EU.⁷ Concurrently, EU exports to Mercosur have more than doubled between 2005 and 2015.⁸ Washington's influence over Latin America appears to be waning as Latin countries are reaching out toward both East and West either through China or Europe.

According to the directors of the Center for Studies in Integration and Development Sandra Polónio Rios and Pedro da Motta Veiga, "while the EU is open to trade but protective mostly of its agricultural products (exactly the sector where Mercosur can boast its comparative advantage), Mercosur brings together some of the most closed markets for manufactured goods." Several factors made the agreement possible, especially political ones. Regarding the European side Rios and Veiga state that, "the impending end of the European Commission's term in office and its desire to counter rising protectionism in the United States played an important role". The European Commission, therefore, wants to establish the agreement as a legacy for the future, since it represents the largest trade agreement ever signed by the EU. At the same time, the trade agreement will increase European pressure on the Brazilian government to abide by the dispositions of the 2015 Paris Agreement and improve the business environment in the country.

In this sense, the probability of ratification of the Mercosur-EU treaty depends also on intra-European political dynamics, especially in Berlin. It is important to highlight the protagonist role Germany is playing in the EU, not only by dealing with the recent crises that hit the continent, but also by leading the negotiations of free trade agreements. Due to its central economic and geopolitical position in Europe, an understanding of the German debate is essential for the future of the agreement, since Germany and its

policies will clearly influence the direction and general prospects of the project.

It's been said that Germany has finally become an "imperial power" in Europe⁹, something that the country historically failed to achieve through military force. Germany is the most populous nation in Europe, with over 82 million inhabitants, and the largest economy of the continent – the fifth of the world by purchasing power parity (PPP). From a geopolitical standpoint, it is inevitable that Berlin reinterprets its foreign policy by making it more suitable to its condition as a pivot catering both to the EU as well as to the needs of an economic power strongly dependent on international trade.

Germany has a massive current account surplus, now the largest in the world, and the EU-Mercosur agreement can be extremely beneficial for its economy. However, leaders from Germany and Brazil, the two most significant regional players in Europe and Mercosur, strongly disagree on topics such as climate change and environmental protection. Thus, the EU-Mercosur trade deal hinges on Germany's reaction to the controversial policies of Brazilian president, Jair Bolsonaro.¹⁰ This flashpoint between a European country's climate paradigms and the Bolsonaro administration is a normal point of contention that will likely complicate discussions but it will not ultimately prevent a successful outcome.

At the same time, other European countries may pose challenges to the agreement. For instance, France and Ireland have been skeptical about the trade deal since negotiations began in 1999, as it would strongly affect their agricultural industries.¹¹ The first political blow to the agreement came from Vienna: in September 2019, the Austrian parliament rejected the proposed trade pact, casting doubt over the future of the project. According to EU law, all 28 member states and their parliaments must agree to the trade deals negotiated by the European Commission.

Specifics of the negotiations

European-South American economic cooperation attempts occurred prior to the establishment of the EU monetary union. In 1994, influential Spanish politician Manuel Marín¹² suggested setting up a free trade area between Mercosur and its European counterparts for the first time. Marín was partially responsible for a kind of Copernican Revolution in EU-Mercosur relations. At that time, the relations between South America and Europe were more inclined towards social assistance programs. So the European Commission recommended a bold plan to boost European access to the region – which was initially criticized

vista Brasileira De Política Internacional 60, no. 1 (2017).

<https://doi.org/10.1590/0034-7329201600117>. Pg. 7.

7 The Economist. 2019. Latin America and Europe have much to gain from closer ties. The Economist, Jul 25th 2019. <https://www.economist.com/the-americas/2019/07/25/latin-america-and-europe-have-much-to-gain-from-closer-ties>

8 Antonio et al., "¿Hacia Un Nuevo Paradigma De Los Acuerdos De Asociación De La Unión Europea? La negociación Del Nuevo Acuerdo Con El MERCOSUR", 2018, <http://dx.doi.org/10.15581/010.34.921-968>. P. 956-958

9 BECK, Ulrich. 2013. German Europe. Cambridge: Polity Press.

10 Stuenkel, Oliver. 2019. Why the EU-Mercosur Deal Hinges on Germany's Reaction to Bolsonaro, September 10, 2019, <https://www.americasquarterly.org/content/why-eu-mercorsur-deal-hinges-germanys-reaction-bolsonaro>

11 Stuenkel, Oliver. 2019. Why the EU-Mercosur Deal Hinges on Germany's Reaction to Bolsonaro, September 10, 2019,

12 Marín was European Commissioner for External Relations from 1995 to 1999 and President of the European Commission (1999).

by lobbying groups, political authorities, and some sectors of the media in Europe.

After a pre-stage negotiation period (1994-1999), formal talks were held between 1999 and 2004, marking the first stage of negotiations. An exchange of offers took place in 2004, when both parties made available their market access overtures, but it disappointed both sides and trade talks were soon interrupted. As a result, the following six years were marked by a blockade in negotiations. Trade talks were then relaunched in 2010, and an agreement was finally reached during the 2019 G20 summit, which was held in Japan.

The prospective association agreement between Mercosur and the EU includes three pillars: political dialogue, cooperation and free trade. The trade agreement is made up of chapters and annexes on topics such as tariff reduction commitments, customs and trade facilitation, sanitary and phytosanitary measures, public procurement, technical barriers to trade, subsidies, competition, transparency, as well as intellectual property rights, dispute settlement and sustainable development. The text also has a political and cooperation chapter, covering several strategic areas, among them: science, technology and innovation, infrastructure, education, consumer rights, energy, defense, cybersecurity and the fight against terrorism.

The agreement will extensively liberalize trade in goods. Before the agreement, only 24% of Brazilian exports, in terms of tariff lines, entered tariff free in the EU. Following the agreement, 92% of Mercosur imports and 95% of tariff lines will enter tariff-free in the EU. Mercosur will liberalize 91% of its imports from the EU over a period of up to 10 years for most products (sensitive products will be allowed up to 15 years).^{13 14}

In 2018, the bi-regional trade flow between the EU and Mercosur surpassed US\$ 90 billion. Brazil exported over US\$ 42 billion to the EU, approximately 18% of the total exported by the country. The EU is also the largest foreign investor in Mercosur. In 2017, the EU investment stock in the South American bloc totaled US\$ 433 billion. Brazil is also the fourth largest foreign direct investment (FDI) destination of the EU outside any economic block

Regarding the agricultural sector, the EU represents the largest importer in the world, having imported US\$ 182 billion in 2018. Brazil, as its second largest supplier of agricultural products, will have its access conditions further improved. Approximately US\$ 14 billion in agricultural products, 32% of Brazil's export list, were exported to the EU - mainly animal food inputs, coffee, oilseeds, grains and meat. In this sector, the EU will liberalize 82% of trade volume and 77% of tariff lines, as well as allowing preferential access to the South American bloc. As part of the agreement Mercosur will liberalize 96% of trade volume and cut down 94% of tariff lines. Looking solely at the agricultural aspect of the agreement both sides can make substantial gains from each other.

13 http://www.itamaraty.gov.br/images/2019/2019_07_03_-_Resumo_Acordo_Mercosul_UE.pdf

14 <http://www.itamaraty.gov.br/pt-BR/notas-a-imprensa/20626-texto-do-acordo-mercosul-uniao-europeia>

In the industrial sector, the EU will eliminate 100% of its tariffs within 10 years - 80% of them at the agreement's onset. Mercosur will consequently liberalize 91% of volume trade and tariff lines. The agreement recognizes states' rights regarding regulation to achieve legitimate public policy objectives: defines categories of technicians and business people who may temporarily engage in economic activity in the territory of the other bloc, and establishes principles on transparency in the adoption of regulations.¹⁵

The agreement will reduce the costs of import and export of goods, as well as lessen bureaucracy and increase transparency for the economic actors. The agreement also reaffirms a number of commitments, including combating anticompetitive practices such as the formation of cartels; the protection of working conditions and the environment; and expanding the available mechanisms for resolving trade disputes.

The EU-Mercosur trade agreement is supposed to be phased in over 15 years and establishes frameworks that go beyond the WTO. These criteria guarantee the commitment to dialogue prior to the adoption of regulations, the granting of deadlines for submission of comments and compliance with existing international standards in regulated matters. This outline also reassures regulatory impact assessments.

Mercosur In The Global Arena

Although it is a four member economic institution, Mercosur is unquestionably led by Argentina and Brazil. As long ago as the 1940s, north-american geopolitician Nicholas Spykman of Yale University identified both countries as part of an equidistant zone: "as far from New York as from Lisbon and as open to European as to north-american influence."¹⁶ The distance and nexus of the relationship between the two has given considerable potential to all of Mercosur's members. With the recent overtures made by Mercosur it can be lucidly recognized that the economic block is definitively looking outward and positioning itself to become a global participant, a distinct benefit to all the member nations.

Brazil and Argentina: friends and rivals

Mercosur was a conciliatory effort mobilized by former Presidents José Sarney, from Brazil, and Raúl Alfonsín, from Argentina. In one way or another, Brazil and Argentina have been friends and rivals over the course of their neighborly history and their respective roles in Mercosur reflects this, as does Mercosur's trajectory. Brazil-Argentine relations started as Portugal-Argentine relations. The European nation was the first one to recognize Argentine independence from Spain in 1821. Present day Argentina was known as the Provincias Unidas del Rio de la Plata until officially named Argentina in the Argentine Constitution of 1826. Antônio Manuel Correa da Câmara conceiva-

15 http://www.itamaraty.gov.br/images/2019/2019_07_03_-_Resumo_Acordo_Mercosul_UE.pdf

16 "Latin America and Europe have much to gain from closer ties", *The Economist*, July 25, 2019.

bly the first foreign diplomatic authority to be assigned to the new sovereign nation. Similarly it has been argued that Argentina was the first country to recognize Brazil as an independent State.

There are those who argue that either the United States or Benin was the first country to recognize Brazil.¹⁷ However, the official Brazilian government narrative leans towards Argentina, due to the fact that the Argentine Foreign Affairs Minister Bernardino Rivadavia expressly documented it in June of 1823. The initial friendliness was quickly substituted by rivalry. The Cisplatina region, which is present day Uruguay, was declared independent from Brazil by the revolutionaries in the Uruguayan city of La Florida, which sided with Argentina. Diplomatic relations between the two South American giants were then broken off and the Cisplatine War commenced in 1825. As a result of this clash between Brazil and Argentina, Uruguay was spawned as a buffer state.

The mid-twentieth century was a key-period for both the development of both nations' development. In 1930, both countries faced coups d'états: Brazilian landowner and politician Getúlio Vargas led a civil revolution, ousting president-elect Júlio Prestes and closing the Café com leite ("Coffee with milk") politics era in October. One month before in Argentina, Lieutenant General Uriburu replaced Hipólito Yrigoyen through a military putsch, applauded by a young Juan Perón, inaugurated what is known as the década infame in Argentina.

Mercosur's destiny will be similarly determined by concerted political platforms: a decompassing relation between Brazilian and Argentine chiefs of state leads to a shaky Mercosur - not necessarily the end of it, but most likely its stagnation. . However, ideology is not the sole underlying motif concerning Brazilian-Argentine relations. Sometimes there can be political proximity, but a circumstantial gap. That is the case of mid-1970's latino dictatorships. From 1976 to 1979, Brazil and Argentina were both ruled by military regimes. Naturally, each one had its own agenda: whereas Brazil was on track with its frank positivist roots, Argentina was fresh out of a coup d'état against Isabel Perón.

The late 70's was an unsettling period in Brazilian-Argentine relations. Videla blocked a tunnel within the Argentine-Chilean border, preventing Brazilian trucks to pass. In retaliation, Brazil closed its borders to Argentine trucks.¹⁸ Brazilian diplomat Alessandro Warley Candéas considers the 1970s Brazilian Miracle instigated a sense of rivalry in los hermanos, who were profoundly immersed in a never-ending economic rollercoaster.

¹⁷ Randig, Rodrigo Wiese. Argentina, primeiro país a reconhecer a independência do Brasil. Cadernos do CHDD, Fundação Alexandre de Gusmão, Year 16, Number 31, Second Semester of 2017, p. 5. Available at: [\[http://www.itamaraty.gov.br/images/ficha_pais/artigo-argentina.pdf\]](http://www.itamaraty.gov.br/images/ficha_pais/artigo-argentina.pdf)

¹⁸ Candéas, Alessandro Werley. *Relações Brasil-Argentina, uma análise de avanços e recuos*. Rev. bras. polit. int. [online]. 2005, vol.48, n.1, p. 22. Available at: [\[http://www.scielo.br/pdf/rbpi/v48n1/v48n1a07.pdf\]](http://www.scielo.br/pdf/rbpi/v48n1/v48n1a07.pdf)

Two hundred years after their respective national births, the constant back and forth swing between friendship and rivalry continues. The new millennium dawned and Mercosur became a regional economic bunker for four the nations south of the Equator. Certainly, the idea was to forge a counterweight to US and European Union economic domination.¹⁹ The leitmotif being strengthening bilateral and regional ties as a means of establishing a Buenos Aires consensus. A means to foster this economic creativity was furthering an interamerican Import Substitution Industrialization model and promoting deeper ties within Mercosur's structure.

However, after Jair Bolsonaro's election in 2018, there is a stark shift regarding Brazil's role in Mercosur. During the campaign trail, Paulo Guedes stated that "Mercosur is not a priority" any longer. Eventually, Mr. Guedes himself mitigated his own words. The Chicago economist later manifested that Mercosur could be a vehicle for liberalization. At first, the idea was generally well received. The results were perspicuous: a Macri-Bolsonaro unsteady alliance and the Mercosur-EU agreement. Mercosur quickly recovered from a turbulent 2018 and seemed to regain steam in 2019 in light of the EU-Mercosur agreement. However, as the friendship-rivalry effect continues and elections in Argentina ushered in Peronist sympathizers, the relationship between Mercosur's top two countries once again became tempestuous.

The reason this time concerns Argentine elections: Macri was defeated by the Fernández-Kirchner joint ticket. Guedes and Bolsonaro made clear that a Kirchner return to the Casa Rosada would not be welcomed in Brasília.

"Yo soy yo y mis circunstancias", Ortega y Gasset's celebrated aphorism, applies perfectly to the current Mercosur stand-off/crossroads. On one hand, ideological divergence may be a lethal threat to the block. On the other hand, any given circumstance may alter Argentina's modus operandi concerning Mercosur free-trade present-day orientation: a Frente Amplio defeat in Uruguay, a surprising change of moods regarding current Argentinian leadership; a sudden change of events in the Bolsonaro administration. It could be anything. However, this is not new and should not be taken at a calamitous face value, but rather looked upon as the occasional melle something akin to a sibling rivalry, among two nations that intertwined with each other.

Praxis of Mercosur In The Global Arena

The recent trade agreement between the European Union and Mercosur has finally brought the stagnant South American trade block to a higher international realm. Unstable internal politics of the member nations prevented a further coherent external reach-out until now. These recent moments in Mercosur's history when Argentina and Brazil are somewhat politically aligned has clearly assisted the trade block in establishing a more progressive foreign policy, however, there exists a new strain as leftist politi-

¹⁹ Presidents of Brazil and Argentina Work to Strengthen Mercosur and Latin American Ties," *NotiSur - South American Political and Economic Affairs*, October 24, 2003.

cian Alberto Fernandez recently won the Argentine presidency.

The signing of the free-trade agreement with the European Union has made Mercosur more of a world player. The imperfect customs union has been known for its restricted access and detrimental internal political machinations. Previous free trade agreements with Lebanon, Palestine, and Israel were viewed as largely inconsequential.

Although Brazil's current foreign policy players may not be completely enamored by Mercosur, the Common Market of the South still serves a purpose as being an important vehicle for Brazilian foreign policy. Unlike many western nations, Brazil's foreign policy has historically been operationalized through the use of soft power in the forms of humanitarian and peace missions. Given the lack of economic dearth of Paraguay and Uruguay and the seemingly consistent economic tumbles of Argentina, no other country of the pact is better able to lead and assert its vision for the block and at the same time use Mercosur as its own foreign policy outlet other than Brazil. Venezuela attempted to use Mercosur as a vehicle to promote itself and its warped foreign policy but it was subsequently suspended from the economic block due to its failure in following democratic principles. Mercosur both directly and indirectly serves one of Brazil's foreign policy objectives of being a regional power in South America whilst attempting to become a burgeoning world power.

The EU-Mercosur trade pact not only gives more credence to the economic block on the world stage, but also enhances Brazil's rapport as an up-and-coming world power. The current Brazilian administration is advancing a hardline free-market expansion economic policy with reductions in import tariffs and making the country more open to international trade. One of the prime objectives of the Bolsonaro administration is a more "freer" and open economy that is able to compete and trade with developing nations. Mercosur's "step up" in the global arena is undoubtedly a Brazilian foreign policy achievement, achieved not only by the current Bolsonaro administration but a it is a concerted culmination effort by past Brazilian administrations of the last 20 years

The trade deal has also raised the credibility of the member countries internationally. There has even been talks of a possible Brazil-U.S. Free Trade agreement. The agreement raises the four-member economic block as a potent player in international economic relations vice being viewed as a largely unorthodox economic anomaly without direction. In a way the signing of this agreement is bringing Mercosur countries closer to the neoliberal order and giving the members especially Brazil an opportunity to attain OECD membership.

The politics of Latin American regionalism, Brazilian regional hegemony and Argentine hegemony play out on the world stage through Mercosur as an outlet as much as they are espoused by each member country of the trade block. As the Brazilian international relations scholar Jean Santos Lima attests, Latin America is a remarkable example of how the concept of regions is not geographically determined but shaped and reshaped by interactions among

various regional actors, subject to international influences.²⁰ The economic alliance between the EU and Mercosur provides a sort of anchor in an increasingly multipolar world for Mercosur. Actors such as the United States, China, and Russia have long attempted to persuade the region whether it be due to Latin America being in the same hemisphere, the Cold War, or the hunt for resources coupled with power expansion as is the case with China. Through this economic agreement, Mercosur has firmly established itself outside the "world powers construct" of China, Russia, and the United States while making its own case for multipolarity through joining with the EU to promote an alternative path to individual world powers hegemony. The agreement also provides a unique and purposeful path for the foreign policies of both Brazil and Argentina who not only have a strong cultural lexus with Europe but have been frustrated by world power domination.

Mercosur has been a mainstay in South American international relations since its beginning in the early 90s. Aside from the political amalgam that make the trade pact unique, the common external tariff was something that gave the block a unpropitious feel. Other alliances or trade blocks in the regions such as ALBA (Bolivarian Alliance for the Peoples of Our America) and UNASUR (Union of South American Nations) have had a less than notable showing due in part to being either a political ploy as in the former or as being seen as having unclear aims as in the case of the later. Mercosur's staying power is likely derived from the peculiar asymmetry of it being both political, economic, and introspective—until now. By signing the free-trade agreement with the EU, Mercosur is superseding other regional blocks and leading the way for South America in the global power paradigm. As President Nixon once said, "Where Brazil goes South America follows."

It is unquestionable that the move by Mercosur to achieve an economic trade pact with the EU is extremely beneficial to each country. As the dominant regional power, Brazil expects Mercosur to improve its bargaining power vis-a-vis the major powers, particularly the United States.²¹

Paraguay and Uruguay have been eager participants in the expansion of Mercosur. Paraguay's lack of access to the sea and Uruguay's small economy give both countries a natural impetus to be a part of Mercosur and any global out-reach that may be attained through expansion is welcome. Both countries have been enthusiastic regarding the possibilities of opening up; President Cortes of Paraguay has requested Mercosur countries be granted more independence to look for new markets and negotiate agreements.

Mercosur's junior members have also become observers of the Pacific Alliance, another sign of their desperation to

20 Lima, Jean Santos. "Latin America's Decentred Economic Regionalism: From the FTAA to the Pacific Alliance." *Contexto Internacional* 40, no. 2 (March 2018): 339–59. Pg. 339. <https://doi.org/10.1590/s0102-8529.2018400200001>.

21 Caichiolo, Carlos Ricardo. "The Mercosur Experience and Theories of Regional Integration." *Contexto Internacional* 39, no. 1 (2017): 117–34. <https://doi.org/10.1590/s0102-8529.2017390100006>.

expand outside the block. The two minor members of the block have also attempted to negotiate bilateral economic agreements outside Mercosur, particularly with the United States but due to the external common tariff of Mercosur ran into an impasse. The timing for outward expansion is not only apt for the larger economies of Mercosur but it is something the block's junior members have been advocating for some time.

Though the world may appear to be in a post-globalized world as large global powers are pronouncing their hegemony something unique can be said in the way of emerging powers and other countries that clamor for the international stage. Even without the United States the Trans-Pacific Partnership came into being as the Comprehensive and Progressive Agreement for Trans-Pacific Partnership as 13 countries agreed to sign making it the third largest free trade zone in the world. Hence, as world powers compete so do trade blocks. Mercosur with somewhat of an urgency wishes to stay relevant internationally as trade blocks consolidate as a way to gain access in the global arena. As perhaps the most prolific trade block in the Southern Hemisphere Mercosur needs to stay significant especially as Brazil would be the only major economy that does not participate in nor benefit from major international agreements.²² For all the diatribes and complexities of Mercosur one affirmation is that it has ended a century and a half of geopolitical dispute between Brazil and Argentina, contributing to peace, prosperity and the consolidation of democracy in the Southern Cone.

Final Remarks

The signing of the Mercosur-EU trade agreement has truly expanded the global reach of the South American trade block as a multilateral player and represents the single largest trade deal ever pulled off by both the European Union and Mercosur. From the EU's perspective, the agreement reinforces its development model amidst a global protectionist wave and is part of a broader European reassessment of the Latin American region as a whole.

Anabel González from the Peterson Institute for International Economics pointed out that from a geopolitical standpoint the EU-Mercosur agreement serves both parties well as they navigate turbulent global trade waters.²³ In a world increasingly shaped by the economic rivalry between the United States and China, the countries that make up both regional integration processes must seek to strengthen partnerships with third parties to better navigate this new geopolitical landscape. Thus, the international trade context was key: the dispute between Washington and Beijing marginalized Europe and South America, encouraging their cooperation.

The Mercosur-EU trade agreement is also part of a broader network of mega-regional FTAs that the EU has been pursuing over the past years, and establishes disciplines that go well beyond the WTO. However, the agreement has no immediate effect and must be ratified by the member-countries' national parliaments of both trade blocks before it can enter into force, a substantial endeavor that will unfold over the several couple of years.

The challenges this agreement has borne in the EU reflect internal EU political schisms as individual countries vote against this agreement due to environmental concerns or due to farmers' protests. These issues are evident through the recent rejection of the EU-Mercosur accord by both the Netherlands and Austria during the first half of 2020. In June of 2020 the Eurasia group analyzed that the treaty was "being put in the freezer", citing environmental concerns regarding Brazil's Amazon region. Concerns over climate appear to be the main impediment to full blown ratification, however, with Portugal and Argentina having assumed the presidency of their respective blocks in early 2021 both countries have resolved to overcome any issues that may hinder its advancement.

Mercosur has been perpetually forward-leaning regarding its intention of finalizing this hallmark treaty, despite the current political differences among Mercosur member nations as can be recently seen by the doubts expressed by Argentine President Alberto Fernandez concerning the negotiations. However, President Fernandez's foreign minister, Felipe Solá, declared that Argentina would not obstruct the advancement of the treaty. Nevertheless the treaty has enough forward momentum that barring a cataclysmic situation this juxtaposition between two major trade blocks will overcome the minor obstacles that stand in their way. In a moment of global introspection resulting from increased nationalist sentiments, discord over climate change, and a global pandemic these two potent trade blocks will come together to be a formidable economic force.

²² Caichiolo, Carlos Ricardo. "The Mercosur Experience and Theories of Regional Integration." *Contexto Internacional* 39, no. 1 (2017): 117–34. <https://doi.org/10.1590/s0102-8529.2017390100006>, pg 132.

²³<https://www.piie.com/blogs/trade-investment-policy-watch/eu-mercousur-trade-accord-sends-signal-worlds-protectionists>