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## SYMPOSIUM ON GLOBAL HEALTH AT A CROSSROADS PART I

### TRADE AS A GLOBAL HEALTH LAW SPACE AMID A CRISIS IN MULTILATERALISM: A CRITICAL LOOK AT THE EU-MERCOSUR AGREEMENT

*Luciano Bottini Filbo,\* Deborah Gleeson,\*\* and Pedro A. Villarreal\*\*\**

#### *Introduction*

The current trend of growing state disengagement from global governance institutions—seen as a threat to the World Health Organization—is not unfamiliar to the World Trade Organization (WTO). Over the past two decades, multilateral trade negotiation channels have increasingly given way to more selective partnerships, built around preferential alliances and strategic markets outside established global platforms. These alliances have taken shape through Regional Trade Agreements (RTAs)—treaties negotiated outside the WTO umbrella between two or more countries that facilitate trade and economic integration between them.<sup>1</sup> Between 2015 and 2022, the number of RTAs in force rose from 290 to 385, both through major blocs—already formalized in large-scale regional trade integration, such as the European Union—and through bilateral arrangements between individual states or regional markets.<sup>2</sup> Examples include, among others, the Comprehensive and Progressive Agreement for Trans-Pacific Partnership, recently expanded to twelve countries with the accession of the UK, and the new UK-India free trade agreement.

Against this backdrop, trade deals may have direct implications for global health policies, despite signs of multilateralism's decline. RTAs may still enable policy innovation—as the inclusion of sustainable food system provisions in some previous EU agreements has demonstrated.<sup>3</sup> Such agreements continue to be, in themselves, integral to global health. Their provisions shape intellectual property (IP) rules on patents and other types of exclusivity for pharmaceuticals that regulate access to medicines, determine supply chain openness for products, including both health products and unhealthy commodities, and affect the policy space available to governments to regulate for public health (e.g., through product marketing and packaging policies).<sup>4</sup> They can provide

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<sup>1</sup> Consistent with WTO practice, we use the term “Regional Trade Agreements” to include bilateral agreements along with larger plurilateral agreements negotiated outside of the WTO.

<sup>2</sup> Rohini Acharya & Thakur Parajuli, *The Evolution of Preferential Trade Under Regional Trade Agreements: Has Anything Changed?* 6 (WTO Staff Working Paper ERSD-2025-03, Feb. 2025).

<sup>3</sup> Dori Patay et al., *Sustainable Food System Chapters in Trade and Investment Agreements: Lessons on Policy Innovation*, 16 *GLOBAL POL'Y* 615 (2025).

<sup>4</sup> DEBORAH GLEESON & RONALD LABONTÉ, *TRADE AGREEMENTS AND PUBLIC HEALTH* (2020).

protections for investors that chill governmental efforts to protect the environment and public health; on the other hand, they can also include environmental and health protections.<sup>5</sup>

WTO agreements have received closer attention from global health law scholars than RTAs, and the potential of these economic instruments to advance health-related policies—such as IP and scientific and technological cooperation—remains underexplored. This essay addresses that gap. To demonstrate why global health law scholars must engage with RTAs, the agreement between the European Union (EU) and the Southern Common Market (Mercosur—a customs union among Argentina, Bolivia, Brazil, Paraguay, and Uruguay) will be considered as an alternative space for global health issues.

The trade component of the EU-Mercosur Agreement was finalized in December 2024, after twenty-five years of political negotiations. The trade component must now be accepted by the European Council, with the remaining part on investment requiring ratification by all twenty-seven member states.<sup>6</sup> The EU-Mercosur Agreement aims to expand an economic exchange worth 25 percent of the global GDP (\$22 trillion).<sup>7</sup> This development is all the more remarkable in the current political context, considering the rising backlash against rules-based trade and investment, including the contestation of existing trade agreements by the United States.

Among the different novelties the EU-Mercosur Agreement would offer, there are several clauses of potential value to global health. The text sets out policies on IP rights, sustainability, and the implementation of climate change measures under the Paris Agreement. More salient for global health law, it also promotes cooperation on antimicrobial resistance, with some emphasis on the One Health approach, which recognizes the interconnection between human, animal, and environmental health, as well as incorporating special rules to protect government health procurement. Below, we examine these novelties more closely and discuss whether they could herald new trends in the relationship between trade agreements and global health.

### *Shift in IP Policy*

The IP Chapter of the EU-Mercosur agreement<sup>8</sup> represents a deviation from the general trend, over past decades, of stronger IP protections included in U.S. and EU deals.<sup>9</sup> It does not expand IP rights for pharmaceuticals beyond those enshrined in the WTO's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). This marks a break from the worrying practice of the proliferation of “TRIPS-Plus” IP provisions in trade agreements, widely discussed and criticized in the literature.<sup>10</sup> In fact, Sub-Section 5 on patents contains only a single Article (13.40) requiring each party to make best efforts to accede to the Patent Cooperation Treaty. It does not include requirements to allow secondary patents (e.g., for new uses or methods of using existing drugs), regulatory data exclusivity, or patent term extensions included in many other EU

<sup>5</sup> *Id.*

<sup>6</sup> European Commission Press Release, [Commission Proposes Mercosur and Mexico Agreements for Signature and Conclusion](#) (Sept. 2, 2025).

<sup>7</sup> FRANCESCO DI LODOVICO, [UNLOCKING THE ECONOMIC AND GEOPOLITICAL POTENTIAL OF THE EU–MERCOSUR TRADE DEAL](#) (FGV Europe, 2025).

<sup>8</sup> European Union & Mercosur, *Chapter 13: Intellectual Property Rights*, in EU–MERCOSUR TRADE-RELATED TEXTS (2024).

<sup>9</sup> Deborah Gleeson et al., *Analyzing the Impact of Trade and Investment Agreements on Pharmaceutical Policy: Provisions, Pathways and Potential Impacts*, 15 GLOBALIZATION & HEALTH (Suppl. 1), No. 78 (2019).

<sup>10</sup> Raymundo Valdés & Maegan McMann, *Intellectual Property Provisions in Regional Trade Agreements: Revision and Update* (World Trade Organization, Staff Working Paper ERSD-2014-14, June 2014).

agreements—all of which hinder generic market entry.<sup>11</sup> The EU–Mercosur Agreement does contain provisions on trade secrets, but these do not expand beyond the baseline obligations under TRIPS.

Overall, these very minimal IP provisions contrast significantly with previous EU trade agreements. While the deals the EU has negotiated have exhibited a higher degree of variation in the strength of their IP provisions than those negotiated by the United States, it is unusual for an EU deal to contain no TRIPS-Plus provisions at all.<sup>12</sup> For example, EU trade deals with Vietnam signed in 2019 and with Chile and New Zealand in 2023 each contain TRIPS-Plus IP provisions relevant to pharmaceuticals, such as patent term extensions (included in the EU–Vietnam and EU–Chile Agreements) and data exclusivity (all three Agreements).<sup>13</sup> Similarly, the draft text of the EU–Mexico Agreement includes the possibility of a five-year extension to the twenty-year duration of patent protection in case of “unreasonable delays” in the marketing authorization of a product.<sup>14</sup>

### *Efforts Toward Sustainability*

The negotiations for the EU–Mercosur agreement made relatively significant progress in adopting provisions related to sustainability and environmental protection, issues directly relevant to global health. The text contains an entire chapter on Trade and Sustainable Development (Chapter 18), which establishes a framework for cooperation in this area.<sup>15</sup>

The preamble notes that “the COVID-19 pandemic revealed multiple vulnerabilities in our societies, including concerns regarding the resilience of supply chains, particularly in national health systems.” Nevertheless, the sustainability provisions offer little detail on how such commitments will be operationalized in the health sector or health-related trade. The focus remains largely on enhancing sustainability in value chains for mining, renewable energy, mobility, and biofuels. However, the text also leaves open the possibility of cooperation in “interregional value chains” in areas that offer an indirect contribution to the energy transition, such as the production of goods and services for healthcare.

The sustainability focus may be explained by the concerted efforts of stakeholders and public opinion pressure being more heavily focused on environmental concerns, such as with the Amazon deforestation.<sup>16</sup> The fact that these trade negotiations were significantly shaped by demands to include climate change and environmental commitments demonstrates the potential for broader global health norms—such as the enforcement of the International Health Regulations or the Pandemic Agreement—to potentially be incorporated into trade agreements.

One example of such regime interaction with potential global health application is the Paris Agreement and trade deals. State policies addressing climate change are becoming increasingly intertwined in EU external action. For example, the EU–Mercosur instrument makes direct reference to the Paris Agreement in Chapter 18 on Trade and Sustainable Development, thereby contributing to the advancement of climate policies.<sup>17</sup> In December

<sup>11</sup> Belinda Tenni et al., *What Is the Impact of Intellectual Property Rules on Access to Medicines? A Systematic Review*, 18 GLOBALIZATION & HEALTH, No. 40 (2022).

<sup>12</sup> Dmytro Skrynka, *Fragmentation of TRIPS-Plus Provisions in Bilateral Trade Agreements of the European Union (2019–2024): A Case Study*, 24 J. INT'L TRADE L. & POL'Y 250 (2025).

<sup>13</sup> *Id.*

<sup>14</sup> *European Union–Mexico Agreement*, Ch. 41 (Intellectual Property) (2019).

<sup>15</sup> *EU–Mercosur Association Agreement*, Ch. 18: Trade and Sustainable Development (2025).

<sup>16</sup> James Harrison & Sophia Paulini, *Reinventing Trade, Environment and Development Interlinkages: Lessons from the EU–Mercosur Association Agreement*, 27 J. INT'L ECON. L. 723, 727–28 (2025).

<sup>17</sup> *EU–Mercosur Association Agreement*, *supra* note 15, Art. 18.6.

2024, the EU announced that the Paris Agreement would be designated as an “essential element” of the EU–Mercosur Partnership Agreement. Under EU treaty practice, if an “essential element” (like democracy, human rights, or the Paris Agreement) is seriously breached, the EU may suspend the agreement, in whole or in part. However, in the final text published in September 2025, the “essential element” clause (Article 23.6, para. 2) of the EU–Mercosur agreement appears in less explicit terms and is embedded within a softer enforcement mechanism.

Nonetheless, there is still a measure of positive accountability. For instance, in the chapter on trade and sustainable development, notably including environmental issues,<sup>18</sup> the parties are authorized to request consultations with a party in case they disagree with its measures (or lack thereof). Should these consultations fail, parties may then request constituting a panel of experts, which will issue a report with recommendations. A Subcommittee on Trade and Sustainable Development,<sup>19</sup> composed of representatives of each party to the Agreement, will monitor the implementation of recommendations. Lastly, the Subcommittee may, in turn, submit the matter to a Trade Committee, which is empowered to adopt decisions binding upon the parties.<sup>20</sup> For environmentalists, this may lack the necessary clout, as on the one hand, the chapter on trade and sustainable development is excluded from the “regular” judicial dispute settlement provisions available for other parts of the agreement,<sup>21</sup> and on the other hand it is unclear to what extent the committee and subcommittee in question can impose their decisions upon non-complying parties. This appears to be a feature not a bug globally; as neither the World Health Organization (WHO) nor the WTO provide similar enforcement mechanisms to advance a climate change agenda. Although the reporting and dispute settlement provisions in the EU–Mercosur Agreement are not perfect, they may serve as an example of how instruments traditionally associated with global health, such as the International Health Regulations, can be integrated into regional trade agreements.

### *Health Procurement Protection*

Although sustainability provisions were higher on the agenda, one of the agreement’s more understated yet innovative achievements is the inclusion of measures to support local health systems through special procurement guarantees. Brazil succeeded in including what local media dubbed the “SUS clause”—a reference to the Sistema Único de Saúde (SUS), the national public health system. This provision, added to Brazil’s annex to the Government Procurement Chapter, excludes the SUS from trade liberalization commitments.<sup>22</sup> While the agreement generally opens EU and Mercosur government procurement markets to one another by requiring transparent, competitive, and open tendering procedures, Brazil secured an exemption for health procurement. This means that the government may offer special procurement conditions for domestic suppliers, consistent with its internationally recognized programs for local vaccines and drugs production.

Brazil celebrated this exclusion as a diplomatic victory, noting “the vulnerabilities revealed during the COVID-19 pandemic, which reinforced the need for the country to be a producer of health inputs.”<sup>23</sup> Making direct reference to the constitutional right to health, the then Minister of Health, Nísia Trindade, declared that the measure constituted an act of health system sovereignty. She explained that President Lula’s vision was for

<sup>18</sup> *Id.* Art. 18.16.

<sup>19</sup> *Id.* Art. 22.3.

<sup>20</sup> *Id.* Art. 22.2(6).

<sup>21</sup> *Id.* Art. 18.15(5).

<sup>22</sup> *Id.*, Annex 12C: Brazil’s Coverage on Government Procurement.

<sup>23</sup> Agência Brasil, [Capítulo Sobre Compras Governamentais No Acordo Mercosul e União Europeia Garante Política Que Vem Sendo Desenvolvida No MGI](#) (2024).

Brazilians not to remain merely “consumers,” but to place confidence in the country’s capacity “to produce and innovate in health.”<sup>24</sup>

Public procurement in the field of health will remain on the agenda of future trade agreements. In the United Kingdom, for example, concerns about trade liberalization were amplified after the country left the EU. The British Parliament is now debating a bill to prevent the inclusion of National Health System (NHS) procurement, delivery, or commissioning in obligations in future trade agreements.<sup>25</sup>

### *One Health and Antimicrobial Resistance*

The EU-Mercosur agreement is, to date, the first RTA to refer to One Health in the binding text. Namely, the agreement creates a new institutional setup by means of “dialogues” for incorporating the One Health approach.<sup>26</sup> These dialogues would take the form of an expert subcommittee tasked with exchanging information on animal welfare and antimicrobial resistance. While referring to One Health expressly only once as part of the “promotion of multidisciplinary approaches to combat antimicrobial resistance,” the description of the nexus between human and animal health and the environment is a clear incorporation of its main premises.

The subcommittee’s mandate set out in Chapter 7 would be, in general terms, to offer a formal space for exchanging information on trade-related issues of animal welfare and antimicrobial resistance. The establishment of an open and transparent exchange of information on these matters should not be taken for granted, particularly considering the current threat of erosion of multilateral cooperation.<sup>27</sup>

Conversely, how these policies are effectively tackled in the EU-Mercosur agreement show some uncertainties as well. The chapter on dialogues concerning One Health and antimicrobial resistance reaffirms the parties’ right to regulate—a standard feature of EU trade agreements designed to reassure both governments and critics that each member state retains its authority to adopt domestic laws and regulations in the public interest. This authority could be exercised by, for example, adopting new measures affecting foreign investors to protect public health and the environment. One example of such measures could be future statutory limitations on the purchase and use of antimicrobial drugs marketed by foreign companies from countries within the EU-Mercosur Agreement.

On the one hand, this ensures that the agreement does not impose any burdensome requirements on any of the parties. On the other hand, it makes it clear that there will be no new standards for the protection of animal welfare upon the entry into force of the agreement. Considering the risk that agricultural practices pose for future zoonotic outbreaks, this approach of “business as usual” hints at a missed opportunity.

### *Conclusion*

The recent EU-Mercosur Agreement presents what appears to be a radical shift in the EU’s practice of including TRIPS-Plus intellectual property provisions relevant to pharmaceuticals as a standard feature in its trade agreements. Unlike recent agreements with Vietnam, Chile, and New Zealand, it does not require parties to go beyond the TRIPS Agreement by providing patent term extensions and exclusivity for regulatory data.

<sup>24</sup> Nísia Trindade Lima (@nisia\_trindade), *O importante acordo entre a União Europeia e o Mercosul manteve o poder de compra do SUS para priorizar a produção e a inovação no país*, INSTAGRAM (May 2020) (last visited Sept. 9, 2025).

<sup>25</sup> Trade Agreements (Exclusion of National Health Services) Bill, 2024–26 Parl. Session (as introduced Oct. 22, 2024).

<sup>26</sup> EU–Mercosur Association Agreement, *supra* note 15, Ch. 7: Dialogues on Issues Related to the Agri-Food Chain.

<sup>27</sup> Amir Khorram-Manesh et al., *Repercussions of a U.S. Withdrawal from WHO Will Severely Impact Future Global Goals and Performance*, 12 HUMANITIES & SOC. SCI. COMMUN 1, 7 (2025).

While not representing a shift in terms of national protection of IP or compliance with WTO obligations, it appears to be a significant shift in terms of an outcome the EU has been prepared to accept for an RTA.

It also includes several other chapters and provisions that signal that health-focused innovation in regional trade agreements is not only possible, but already happening—reinforcing the findings of Dori Patay and colleagues based on a study of other EU trade agreements.<sup>28</sup> It will be important for global health lawyers and advocates to monitor and study these developments, and to consider how innovations that occur in some agreements, perhaps enabled by the particular negotiating context, can be more widely diffused. Just as the Paris Agreement has been reinforced —albeit without a strong compliance model—the prospective EU-Mercosur agreement offers some hope that trade agreements can be cross-fertilized with more comprehensive global health provisions.

<sup>28</sup> Patay et al., *supra* note 3.