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THE INCORPORATION OF ENVIRONMENTAL VALUES IN EUROPEAN UNION AS WELL AS IN CHINA AND US: SHALL MERCOSUL START THE RACE WITH DELAY REGARDING A MORE ENVIRONMENTALLY SUSTAINABLE GLOBALISED ECONOMY?

¹Bruno Ribeiro Marques, ²Grace Ladeira Garbaccio and ³Liziane Paixão Silva Oliveira

¹External Public Auditor of TCE-MT assigned to the Department of Engineering Works and Services. Professor of Obligations Law in Cuiabá Institute of Education and Culture. PhD candidate in Law and public policies in UniCeub – Master in administration: Strategy and Studies of Organizations - Federal University of Paraná-. Specialist in Controllorship and Finance and Production Engineering – PUC-PR –. Specialist in Law, External Control and Public Administration - FGV-. Holds bachelor's degrees in Civil Engineering from UNICAMP and in Law in the Institute of Cuiabá of Teaching and Culture; ²Doctor of Law in the University of Limoges–France (UNILIM)–with a recognized title by the Federal University of Santa Catarina (UFSC). Master in Law in UNILIM. Professor of the Stricto Sensu Program of the Academic Master in Law and the Master Professional Program in Public Administration in IDP (Institute of Public Law School). Areas of Research: compliance and environmental practices, Model n. 49, SGAS 607 - Asa Sul, Brasília - DF, 70200-670 Brazil; ³PhD in Law in University of Paul Cezanne, Aix-Marseille–France–Master in Law from University of Brasília. Holds bachelor's degree in Law from Tiradentes University. She is currently an *ad hoc* reviewer of the Foundation for Support on Research and Technological Innovation of the State of Sergipe. Member of the editorial board of Tridents University. Volunteer researcher in Global Comparative law and governance, innovation and sustainability. Professor of the UniCeub University, SGAS block, n. 613/614, L2 Sul Street-Asa Sul neighbourhood –Brasília–DF–Zip–Code:70200-730– Brazil.

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*Corresponding author: Bruno Ribeiro Marques

ABSTRACT

Environmental development has been a debate among academic and governmental actors. However, only recently has the theme gained importance due to the ambitious goals imposed by the green agreement of the EU. Instead, until recently, not much effort has been demonstrated towards a more sustainably globalized economy. This scenario seems to have gradually changed due to new sustainable values incorporated into demands derived from more environmentally conscious and globalized consumers, especially among those from developed economies. Apart from that, what already has Mercosul done in this field still unclear. Hence, this study focuses on what might be posed as the most challenging measures adopted by the member of Mercosul to attend to these recent growths regarding environmentally sustainable globalized demands. The research was done through exploratory analysis using critical discussion and Bruce Bueno de Mesquita model – game Theory Analyses - methodology over two Brazilian parks and the actions adopted by governmental authorities to preserve their biodiversity. The results show several gaps in human resources and in the infrastructure required to fully ensure biodiversity preservation, reflecting on difficulties regarding future EU's environmental requirements for an eventual bi-lateral free-trade agreement between these two economic blocks.

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INTRODUCTION

Environmental concerns related to the actions required from developed countries to provide a long-term sustainably globalized economy are not recent. In fact, since the Eco-92 meeting, in Rio, apart from few countries such as the US, the unsustainability of the so posed economic model has been almost worldwide unanimously accepted. Nonetheless, apart from recognizing the problems, Copenhagen's conference had shown that neither EU nor China had put much effort into achieving the goals proposed in the Kyoto

Protocol. The forum has also demonstrated that urgent measures had to be applied to provide effectiveness to the objectives offered. The failure to achieve the objectives suggested by the EU related to its decrease of CO₂ emissions had posed EU leadership towards an environmentally sustainably globalized economy into perspective. It might also provide eventual credibility to US refusal in adopting the measures suggested. Above all EU members, Germany was concerned about realistic measures that have to be urgently adopted so that the whole Kyoto Protocol shall not fall into total incredibility. The alternative, especially from Germany and France,

did not take much time to be presented. Consequently, the recent EU green deal was published on 11/12/2019, which had increased the targets suggested and had prearranged billions of euros to provide its complete success and whose achievements will be tightly measured by the European Commission (The EU executive organism). German and France seemed to have learned from their previous failures. Therefore, an eventual second one was unacceptably to occur, so sacrifices from all its 27 members shall be made, along with the meanings and the resources to ensure its complete success. As most academic authors point out, EU proactive measures have been accompanied by several unilateral ones adopted by China towards a more sustainable economy. Even the US perspective has gradually changed towards a total word commitment, especially considering the recent victory of Joe Biden to the US presidency and his obligations to the EU's proposals related to the Kyoto Protocol. Apart from these initiatives, as climate changes affect all countries, much effort has been demanded from other potential significant polluters such as India and Mercosul. Moreover, considering EU as a market consisted of 780 million people, that added to China - a 1,4 billion people market - and US - a 329 million people market - these economies all combined shall represent the majority part of the global consumer market as well as the majority part of the world economic wealth. Despite these initiatives, it remains unclear whether Mercosul will respond to these current environmental values that have significantly increased. That is precisely the objective of this article. This study proposes some realistic further responses considering the actual scenario of Mercosul economic block and its particularities. The analysis initiates with the most recent reviews, papers, theses, and articles published about the EU, Mercosul, and China's environmental measures to attempt these objectives. The second part provides the reader the particularities within these two economic blocks and the efforts and challenges that have so far been revealed related to a further environmentally unified and globalized economy, especially between the two economic blocs. The last part provides a study on two Brazilian parks and the measures adopted to ensure the nation's biodiversity's safety. The findings are revealed in the next chapter, along with the local environmental policy and the measures adopted by local authorities and their relations to the increasing demands for environmentally sustainable products worldwide. In the end, the conclusions about the eventual achievement of the EU's further environmental request from Brazilian authorities related to the way the country is dealing with its biodiversity is demonstrated.

The positions of china and eu regarding environmental perspectives: the recent studies: As Sánchez (2020, pp. 78-81) recent studies demonstrate, the actual European Parliament Decision (published on November 11 of 2019) can be seen as a total turnaround related to the previous European policy in the environmental field that shall allocate no less than a billion euros during the next decade on the entire European economy to provide a more sustainably globalized and unified European Union. It can be seen as a massive project that shall mobilize all 27-actual members of the EU. The measures include transformations in several sectors with specific enhances over the way Europe must provide sustainable energy - a field tightly linked to climate changes. Therefore, it shall involve a much higher perspective than previous projects, which will mobilize all sectors within the EU's economy. Hence, investments will be made in transport, recyclable products, sustainable services, and EU's providers in favor of a total environmentally sustainable (with a zero CO₂ emotion) integrated economy until the deadline: 2050. This approach results from several transformations within the EU's industry that have already been adopted among diverse EU members since the last Rio-92 ECO global forum (Bruijn and Norberg-Bohm, 2005, pp 37-47). As Beinart and Hughes (2007,

pp 59-237) studies demonstrate, the history of the British Empire process of colorization cannot be essentially distinguished from those of Spain or Portugal regarding environmental perspectives, as a range of devastation scenarios are seen from Africa to Malaysia and even in Canada or New Zealand. Despite the extractive process adopted, this traditional use of natural resources has no longer proved to be compatible with the rising values of the 21st century. Also, as Bayley and Tracey (2008, pp. 10-15) show, Easter Island (or *Rapa Nui*) might be widely known for its vast and unique statues; however, the island may also provide another cruel but realistic perspective: the island has no tree left as a result of a devastating process of extraction native resources. Thus, it can be seen as an actual but relatively simple sample of the limits that nature might impose on its proper capability to renew its belongings. Among academic research, there has been some skepticism regarding the NGOs' influential capability to ensure that natural resources shall not be extracted beyond their ability to self-renew. Especially whenever it is considered that actual International Investment Laws seem not to protect more than just the investors' proprieties (Miles, 2013, pp. 382-389). The most recent studies demonstrate that environmentally sustainable values have gradually been incorporated into current society agendas from which the academic field shall not be seen as an exception. For Instance, the University of Stanford has been adopting several measures to provide a more conscious use of the native resource, from which the reasonable use of recycling products as well as water and energy savings have to be highlighted (Matson, Clark and Anderson, 2016, pp. 200-248). Consequently, the reasonable use of natural resources seems to be an undeniable tendency, especially whenever it considers the recent studies that demonstrate a relationship between the growth of some cancers and citizens' environment.

Moreover, the EU has put severe barriers for western European Countries for their eventual entrance into the economic Block. For Instance, recent studies demonstrate that the access of Bulgaria, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia, and Slovenia to the EU might require no less than 120 billion euros in investments for property adequacy to more than 30 environmental directives (Andanova, 2004, pp 7.). This demand for several sustainable adequacies of products has been charged not only within the EU but also from EU suppliers. As Tselichtchev's studies demonstrate (Tselichtchev, 2012, pp. 164), massive investments have been made over Chinese Zes for a more sustainable and lower CO₂ emissions economy. For Instance, Tianjin Zone canalready be pointed to as an example of leadership in the use of osTurbin and solar manufacturers. Besides, apart from China's image as one of the highest polluters worldwide, recent Chinese goals have been unilaterally imposing by its government so that until 2030 all CO₂ emissions shall be within acceptable standards. As recent studies demonstrate, the majority of its investors have been coming from Japan. Still, multiple bi-lateral agreements with the US and EU for combined efforts and technological exchanges have been signed related to CO₂ emissions, more sustainable use of products, and acceptable water use. Although some academic studies might have skepticism regarding China's authentic commitments over a further sustainable economy, it remains clear that much of the efforts made have an intrinsic relationship to the EU's demands for more sustainable products, and China is willing to attempt these growing demands. Hence, its adequacy for the EU's directives should be related to the EU consumers' new needs. Also, recent quantitative studies demonstrate a high level of convergence for political adequacy among China and the EU, which means that a further standardization for more sustainable products between Asia and the EU should have been seen as an undeniable tendency (Honlzing, Knill and Arts, 2008, pp. 227-232). Although some trends for convergence among countries might be seen as a

tendency, recent studies demonstrate that environmental compliance needs to be continuously reinforced by governmental and non-governmental institutions. Otherwise, it risks not to be sufficiently efficient. Thus, governmental authorities might require constant vigilance so that enterprises' practices should not become makeup made by investors to merely gain market place (Razzaque, 2013, pp. 31-57). In addition, Manuela Porcu and Dario Colombo (Colombo and Porcu, 2014, pp. 64-78) have made three different studies in Italy regarding enterprises' environmental policies and their efficiency related to EU directives. The study was made over the national, state, and local levels. The authors used critical analyses that demonstrate that some dysregulation at the local level regarding environmental exigences (in the case of Decree-Law n. 69 of 21 June 2013) has resulted in more flexible exigences concerning the previous one, which, instead, was much more intolerant concerning environmentally damageable practices. They also use critical analyses to observe that the invertors of the construction of the coal-fired power station of Vado Ligure (a 10.000 habitants city in Italy) have profoundly denied any further environmental or healthy damage to citizens, despite the scientific and empirical researches that tightly link air pollution from coal-fired stations to multiple cancer recurrence. As these studies demonstrate, apart from the increased level of environmental concerns and transparency among societies, along the years, there still have difficulties in ensuring that the market, by itself, maybe sufficient to provide sustainable products, as several cases of making up enterprises environmental images have been shown in the academic literature and apart of any effective engagement from the private sector. Apart from several directives in the EU and several mentions to sustainability development within TFUE¹ - art. 191 (2) – so far, the European Supreme Court has frequently denied its full applicability.

Furthermore, besides the precaution and prevention principles legislative forecast, the European Court has been reluctant to admit segregation among EU's products based only on those, particularly, after the judgment of *van Gend & Loos v Netherlands Inland Revenue Administration* (1963). There have been pointed several causes for this positioning of the European Supreme Court. Firstly, as Kränmer and Orlando (2018, pp. 587 -895) demonstrate, the European Union's legislative system can be seen as a mix of common law and civil law. Consequently, the European Court's interpretation for a case will need to be observed by the main parts within the suits and shall then ought to be conceived as an obligatory precedent for similar topics, which means that it is going to be compulsory for all further EU judgments. The logic of the Supreme Court's cautiousness for not to apply the precaution principle indiscriminately has a purpose for it not to be argued in future cases, especially when an EU member's legislation might have more severe delimitations than those from TFUE. The idea is not to decrease the rage of eventual higher restrictive legislations. So, the Court's position has been seen as a subsidiary. Hence, the TFUE principles should only be applied to States that might not have a stricter environmental regulation. However, that is just part of the causes that lead to the European Court's reluctance in not fully applying TFUE's ecological principles. Casado (2015, pp. 219-221) also shows that this principle will inevitably conflict with the prohibition of discrimination among members and products inside EU memberships. Moreover, the focus of non-discrimination among EU member services and products has not only been advocated in the case of *Van Gend & Loos vs. Netherlands Inland Revenue Administration*. Still, it recently has gained legislative reinforcement with the publication of the Directive 2006/123.² As a result, the principles previewed by the

191.2 TFUE (prevention and precautions) have been even more restricted with the Directive posed. The EU's legislative system determines that EU's member might regulate the EU disposal of an eventual directive in 2 years, over which it will inevitably become obligatory for all 27 EU members. Consequently, the jurisprudence and doctrine have been working to establish objective criteria that might provide some lighting over the conflict among precaution and non-discriminatory principles. Therefore, the EU's Court, strictly influenced by German doctrine, has determined that discrimination among products must be taken into account the idea of proportionality, as well as that discrimination imposed by a particular EU member on a specific product shall not be different from those that this same member imposes on its own companies. In other words, discrimination has to deal with a specific product's industrial origin, so it must not segregate EU members' products. The discriminatory application derived from the precaution principle would only be considered plausible as it can prove to be an indispensable way to decrease population danger. Moreover, any segregation among products should be applied indistinctly from all companies, no matter from which country it might have been provided. It also requires an absolute inexistence of a less invasive measure that might achieve the same objective. As it is demonstrated by Casado (2015, p. 213-215), in the judgment of the case *Consiglio dei Ministri v. Regione Sardegna*, even local regulation over future constructions that might require a minimum distance from buildings had to be considered as disproportional, even if the same criteria are imposed over both Italian and non-Italian structures.

The idea that had prevailed is that apart from not segregating Italian companies from other EU countries, it might demonstrate an implausible distinguish between older buildings (that did not have to observe a minimum distance among buildings) and new ones, which inevitably resulted in a declaration of the total disproportionality of the measure adopted, even if the reasons for such an action might be compatible to the precaution and prevention principles. The precedent was also reaffirmed in the judgment of the *European Communities v. the Kingdom of Spain*. The Court's understanding was that merely retail establishments could not provide sufficient information that might allow Spain's government to establish neither difference taxation for products nor should enable it to require any licenses from suppliers. These cases demonstrate that apart from several EU directives and several environmental principles previewed in TFUE, their fully applicable restrictions have been restricted used so as not to provide unjustified discrimination among products from EU members. Therefore, whenever has the EU Supreme Court to weigh either principle has to prevail, the non-discrimination one seemed to have overcome the others. In conclusion, some indoctrinators have pointed out that precaution and prevention principles were to be seen as merely soft law, considering, above all, the EU Supreme Court's reluctance to apply them entirely. However, as Paixão and Bertoldi (2012, pp. 6276) demonstrate, they must be seen as possessing legal effectiveness. Overall, they ought to be seen as a way to interpret the EU legislative disposals. For Instance, apart from the European Court's reluctance to apply these principles entirely, whenever a particular security measure might improve EU citizen's safety, the adoption of it has to be considered as obligatory, even without indisputable scientific proof of its efficiency, the precaution-prevention principles then, may sometimes have been relativized, but rather, had not lost their total legal strength yet.

In other words, whenever it comes to uncertainty, the precaution principle and preventive principle had full applicability altogether. So, despite its relativization in specific discussions, in which it might confront another legislative disposal, such as non-discrimination, in the majority of cases, the environmental

¹ TFUE: Function Treatment of European Union.

² Directive 2006/123/EC of 12 December 2006 on Services in the Internal Market [2006] OJ L376/36.

forecasts written in TFUE ought to be seen as having plenty of applicability. Furthermore, whereas EU jurisprudence in giving full applicability to TFUE's environmental principles has contributed to the EU's achievement failures regarding Kyoto protocol goals, there have also been other reasons for it. As Avionics (2010, pp. 341-360) shows, Underdal's negotiation theory can better highlight some exploration for its losses. Above all, it is presented that leadership may also require more extraordinary sacrifices and demands from the leader. So, at the Copenhagen meeting, the absence of proof engagement among EU members in achieving the Kyoto protocol's goals had been followed by China. As a result, neither China nor the EU has achieved its goals, as China has so far seen no commitment taken by the EU leadership. This perspective has been gradually changing, though. For instance, recent studies demonstrate higher engagement from either China and the EU towards a more sustainable globalized economy. Among all the papers, Belis and Schunz (2013, pp. 190-200) demonstrate that the relationship between EU and China can be divided into three main periods: the signature of the Kyoto Protocol (1997), the Copenhagen Accord (2005), and Durban Platform (2011). As demonstrated in these studies, after the failures in Kyoto's goals by the EU, further proactive actions from both China and the EU towards a more imbricated commitment have been taken into consideration. As a result, apart from severing negligence among both sides until the Copenhagen meeting, the problem seems to have been taken into consideration more seriously. As shown, China's willingness to sacrifice is tightly linked to European commitment to the same, which has recently gained strength with the new European green agreement and the duties suggested, resulting in an irreversible tendency. However, as China (and the even US, overall, after Biden's victory) commitment towards a more sustainable globalized economy appears to be a relatively homogeneous tendency, there are still doubts about whether Mercosul will be able to attend to this new kind of consumers' expectations. The theme is analyzed in the next chapter.

EU and Mercosul main similarities and differences regarding environmental policies: As demonstrated in the previous topics, merely the existence of higher restrictive law might not ensure environmental synchronism as frequently has the EU Supreme Court denied its applicability, especially whenever it conflicts with the non-discriminatory perspective that may also need to be taken into account. Therefore, only after waging these two principles shall be determined whether or not must the most restrictive legislation be fully applied. Things are different from products apart from the EU block, as in this field, there has been a high level of standardization taxes; the idea is that customs fees may not favor the entrance of a product through one specific country. Nevertheless, whereas China and the US seem to be gradually adopting more sustainable products to provide less for higher conscious customer's demands. The question of whether Mercosul is being prepared for this turnaround in customers' needs, still unclear. As Salvador and Glasson demonstrate (2000, pp. 191-225), despite having the most environmentally restrictive legislation among all Member of Mercosul, the bureaucratic process of Brazil in approving Environmental Impact Assessments for environmental damageable projects is considered as one of the highest weakness within the Block, especially, whenever compared to those from UK or EU.

Regarding a further standardization on the environmental legislation within Mercosul members, it is being shown that the theme has already been raised, overall, in the Frame-Accord that occurred in 2001 as a result of the imposed Decision n 01/92 made by its deliberative organism (D'Esp, 2016, p. 284). However, apart from the agreement, not much effort has been put into practice (Velho, 2012, pp. 104). Like the EU, Mercosul has a

deliberative and executive organism; however, apart from recognizing the necessity of a further standardization, not many results have been shown. There is also another question. Whereas the EU has a deadline for its Directive to gain applicability, Mercosul's deliberations shall not be demandable until all members have incorporated the agreement into their particular legislative system. Another thing that is being pointed out as a weakness within the economic Block is how its member must solve further legislative divergences. The recent agreements have previewed that an *ad hoc* court shall be conceived to solve different legislative interpretation among its members, but their consolidation remains unclear. As a result, a lack of divergences within Mercosul's jurisprudence has been observed. For instance, regarding the so-called tires war, the *ad hoc* court had firstly judged similar cases with total variations. Hence, while the primary judgment analyzed the cases of Brazil v. Uruguay and Argentina v. Uruguay with real disparity, the appealing Court has reformed its preliminary decision towards a further standardization of decisions.

Nevertheless, the final decision has resulted in several losses regarding a more conceive and effective environmental policy. The definitive statement declared that Brazil or Argentina's further restrictions had to be designed as illegal and incompatible with Mercosul's central ideal of a free-trade market. After the refusal from both Brazil and Argentina to allow reformed tires from the EU to enter into their consumer markets through Uruguay, the final statement has declared both measures unacceptable. Apart from that, the *ad hoc* court is still not compulsory for Mercosul's members to solve further divergences, but instead, remains as just an alternative from eventual debate into WTO.³ As a result, much of the legal conflicts Mercosul members have not been posted in *ad hoc* court as previewed, but rather, in several other jurisdictions such as WTO (Moraes, Moraes, and Matos, 2012, pp. 91-101). So, the authors converge that the *ad hoc* way of solving legislative problems among its members had not only to be obligatory – as it already is in the EU Supreme Court – but should also have a way to make its precedents compulsory and more harmonic into Mercosul's members. Hence, the divergence in jurisprudence is a way to perpetuate uncertainty. Moreover, the authors point out that the deliberations of Mercosul should have a deadline just like EU directives, after which it ought to be considered automatically applicable. Finally, as Gomes and Junior demonstrate (2018, pp. 614-642), only in Brazil, more than 14 environmental label programs have been identified, such as ISO 14020:2020, ISO 14021:1999, ISO 14024:1999, ABNT, Cerflor, IBD, LIFE, among many others. It remains clear that apart from recognizing the necessity of more standardized legislation regarding the environmental area in Mercosul's rulings, the problem has to be taken with more engagement and particularly after the new EU green accord and further demand that might emerge from it. Additionally, more deep arrangements have to be made into jurisprudences to make them more harmonic and compulsory among Mercosul's members such as those from EU ones.

The predictors game and the cases studied: The environmental debate in Brazil remains a field in which the competencies are shared among Federal Union and States. As a result, it is possible to be seen in this country as National and several state ones. This study was done in two State Parks – Cristalino and Serra do Ricardo Franco – in the Amazon biome. Both Parks belong to the Mato Grosso States. The results can be seen through the website: https://www.tce.mt.gov.br/arquivos/downloads/00057106/TCENT%20_%20Auditoria%20Ambiental%20-%20digital3.pdf. The findings include several gaps far beyond the minimum required.

³WTO: World Trade Organization.

For Instance, in 2012, no more than R\$ 300.000,00 has been destined to the conservative areas, representing less than 3% of the budget forecasted. Besides, until 07/2012, no more than 8% of the investment previewed has been applied. Apart from the legislative forecast, only ten governmental professionals have been designed to take care of the 14 conservation areas, which means less than 1/10 of what is usually conceived as a minimum in developed countries such as Canada or the USA. Furthermore, nine from 14 Conservative Areas did not even have a management plan, and eight from 14 did not have a deliberative council, despite the obligation imposed in the normative forecast. The visit to both Parks has shown several gaps between human resources, infrastructure, and vigilance far beyond the minimum desirable in developed economies. It was also possible to point some abandonment from the public sector regarding state parks. Moreover, compared to the Bolian Park, which shaded the same area just on the other side of the river, the findings demonstrate severe devastation levels.

Mesquita's model (2010) is based on game theory analysis. It uses game theory to explain much of the efforts made within society. According to the CIA, his method has been sufficiently accurate in explaining 90% of all political crises worldwide. The idea of the model is that self-interests infuriate every human action, so, according to him, no sacrifice might be made if a person does not see any further benefit. His model may well explain China's reputation to the Kyoto protocol proposals as it has not seen any advantage yet. After Copenhagen, China's perception of a more outstanding EU commitment towards a more sustainable unified economy made it change its status quo not to lose other potential markets in Europe. Regarding Mercosul's environmental position, this model may well explain why so far the Block has not put much effort into it: its members just not have seen any advantage in it, just like China did not have until Copenhagen. Apart from that, after the real commitment from the EU due to the goals proposed in the new green accord recently published, my demand for more proactive actions from Mercosul and a higher level of commitment. Otherwise, the economic Block may not have several potential opportunities worldwide. According to his model, the measure towards a different perspective and apart from had been undeniable.

CONCLUSION

This study demonstrates several gaps between the new perspective adopted by the EU and those from Mercosul. It also indicates that neither China nor the EU had put much effort into achieving the goals proposed until Copenhagen. However, the EU's real commitment towards a more sustainable and unified Union made China review its perspective not to lose other markets. Concerning Mercosul, the study shows several divergences in its jurisprudence and not genuine commitment towards more harmonic legislation. It has demonstrated that, like Europe, several changes must be made to provide the legislative forecast more predictable and harmonic, with particular emphasis on a deadline to its legislative disposals just like Europe already uses it concerning its directives. Moreover, its member's obligation to solve further divergences in a specific court has several demands to be solved in WTO, decreasing the importance of the *ad hoc* Court proposed. The study in the two-state parks has corroborated the previous studies by demonstrating the minimum acceptable gap to manage a state park and forecast at the regional level. In conclusion, if the environmental scenario has so far not demanded much effort from Mercosul, with the recent EU green accord published, it is clear that it remains no longer a matter of choice. Instead, it is a question of attending a higher exigence for further and more environmental extendable markets, which China has long

understood. That is also something that its Mercosul leadership has long ignored, but they cannot afford anymore.

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