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A More Cooperative EU Policy towards MERCOSUR? The Case of Foreign Direct Investment (1980-2000)

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Abstract

In the light of the negotiations of the bi-regional framework agreement between the European Union and MERCOSUR signed in 1995, this paper inquires whether the European Union foreign policy towards MERCOSUR has become more cooperative in the last decades, and offers an explanation to this question based in a case-study regarding foreign direct investment.

Keywords: regional integration, inter-regional relations, international cooperation, European Union foreign policy, MERCOSUR

Resumo

À luz das negociações do tratado quadro birregional entre a União Europeia e o Mercosul assinado em 1995, este artigo explora em que medida a política externa da União Europeia relativamente ao Mercosul se tem tornado mais cooperativa nas últimas décadas, e fornece uma explicação baseada num estudo de caso que envolve o investimento estrangeiro directo.

Palavras-chave: integração regional, relações inter-regionais, cooperação internacional, política externa da União Europeia, Mercosul

Introduction

An analysis of the recent literature about the relationship between the European Union (EU)[1] and the Southern Cone States (SCSs)[2] suggests that a *rapprochement* between these two regions is taking place since the mid-to-end of the 1980s (Dias, 1999; CEPAL 1999; IRELA 1997, 1999a, 1999b; Ayuso, 1996; Camerana, 1995; Correia, 1996; Dauster, 1996; Di Biase, 1996; Freres et al, 1992; Galli, 1995; Grabendorf, 1999; Gratius, 2002; Guzman, 1981; Marin, 1996; Matutes, 1999; Mix, 1996; Petersen, 1983; Bodemer, 2001; Picerno 1996; Purcell, 1995; Roett, 1994; Ramjas, 1996; Saboia, 1993; Vasconcelos, 1993). Several cooperation agreements were signed on a bilateral basis, as with Argentina in 1990, Uruguay in 1991, and Brazil and Paraguay in 1992, and two on a bi-regional basis with Mercosur: the Inter-Institutional Cooperation Agreement of 1992, and the Inter-Regional Cooperation Agreement of 1995. A process of negotiation for the conclusion of a third "Inter-Regional Association Agreement" with Mercosur started in 1999.

While the EU is today one of the main economic partners of the SCSs, the inverse is not true; neither have these states been a political priority in the EU foreign policy towards developing countries, unlike the states of Central and Eastern Europe, South Mediterranean, and the states of Africa, the Caribbean and the Pacific signatories of the Lome/Cotonou Conventions. The relations between the two regions can therefore be defined as highly asymmetrical. Especially in light of this asymmetric characteristic, if the bi-regional relationship did change towards a rapprochement in the last decades, it is to be expected that the EU foreign policy has became more cooperative as well. This chapter analyses therefore the recent developments regarding the bi-regional relationship from the vantage point of the EU foreign policy behaviour.

In particular, it addresses the question of whether the EU foreign policy behaviour has become more cooperative since the mid-to-end 1980s. Cooperation is defined as long patterns of behaviour, not as isolated actors or events, specifically, as a process of policy coordination in which actors adjust their behaviour to the actual or anticipated preferences of others, resulting in policies which are regarded by the partner as facilitating realization its objectives (Keohane, 1984: 51-52). The level of cooperation was assessed in two periods of time, 1980-1985 and 1995-2000, according to two main indicators: the cooperation programmes under the EU development policy, and the characteristics of the commitments regarding FDI in the bilateral and bi-regional agreements. The level of cooperation was then classified in a scale from null to high, and compared.

[1] The term EU in this paper refers to the three European Communities (the European Economic Community (EEC), renamed European Community (EC) by the Treaty of Maastricht; the European Coal and Steel Community (ECSC) and the European Atomic Energy Community (EURATOM)), and its member-states within the framework of the European Political Cooperation (EPC) and the Common Foreign and Security Policy (CFSP) even, therefore, before the creation of the EU by the Treaty of Maastricht signed in 7-2-92 and in force since 1-11-93.

[2] The term *Southern Cone States* refers the countries that became members of the Southern Common Market (MERCOSUR) created in 1991, i.e. Argentina, Brazil, Paraguay and Uruguay. The definition excludes therefore Chile and Bolivia, although these are included in the geographical definition of Latin America's southern cone, and are associate members of Mercosur.

The relevance of the case study of FDI comes from the fact that it became the major source of capital inflows in the period in consideration, and is appointed to be – potentially- the best form foreign capital in order to promote economic growth, of main concern on the part of the SCSs.[3] The advantages of FDI over portfolio capital are subjected to controversy, regarding both its pure economic grounds, and the political meaning of foreign control of economic activities. In most Latin American countries, until the early 1980s, there was a political distrust towards FDI and multinationals, but it lost pre-eminence, not by coincidence, with the advent of the crisis of their external debts, which was financed by portfolio capital.[4] Regarding the economic grounds, the alleged advantages of direct investments are its longer term maturation and lower volatility, its immediate transformation into investment (not linking to consumption or speculative purposes), and the fact that it facilitates the transfer of technology, therefore contributing, in theory, not only to the accumulation of capital but to the increase efficiency of the economic system of production as well.[5]

The traditional economic factors appointed as determinants of FDI location are macroeconomic stability, size of domestic market, possession of natural resources, and the presence of cheap labour. While these factors remain relevant, they are of diminishing importance, particularly for the most dynamic and technologically advanced industries. The new determinants of location reflect the domestic FDI and regulatory regimes, existence of favourable infrastructure and synergy derived from the presence of other firms in the same industry or which offer complementary products and services. Regarding the new determinants of FDI, developing countries, among them the SCSs, are in clear disadvantage vis-à-vis developed countries. The necessity of attracting FDI above the level provided by private flows has led these countries to engage in policies to remove or liberalize the rules regulating the entrance and conditions of permanence of FDI (UNCTAD, 1999).

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[3] Foreign direct investment (FDI) occurs when an investor based in one country (the home country) acquires an asset in another country (the host country) *with the intent to manage that asset*. The management dimension is what distinguishes FDI from portfolio investment in foreign stocks, bonds and other financial instruments. In most instances, both the investor and the asset it manages abroad are business firms. In such cases, the investor is typically referred to as the "parent firm" and the asset as the "affiliate" or "subsidiary". There are three main categories of FDI: a) Equity capital, which is the value of the MNC's investment in shares of an enterprise in a foreign country. An equity capital stake of 10 per cent or more of the ordinary shares or voting power in an incorporated enterprise, or its equivalent in an unincorporated enterprise, is normally considered as a threshold for the control of assets. This category includes both *mergers and acquisitions* and *"greenfield*" investments (the creation of new facilities); b) Reinvested earnings, which are the MNC's shares of affiliate earnings not distributed as dividends or remitted to the MNC. Such retained profits by affiliates are assumed to be reinvested in the affiliate. This can represent up to 60 per cent of outward FDI in countries such as the United States and the United Kingdom; and c)Other capital, which refers to short or long-term borrowing and lending of funds between the MNC and the affiliate (IMF, 1993: 93-103).

[4] The political distrust is alleged to be based in the past imperialist, neoimperialist and "gun boat diplomacy" policies practiced by the US and European countries, in which MNCs were an instrument of dominance of national governments in detriment of political and economic interests of developing countries. On that see for instance Graham, 2000, pp.167-173. For a good recent edited volume about Latin America external debt crisis see KAS 1999 with papers by Eliana Cardoso, Reinaldo Goncalves and Paulo Nogueira Batista Jr. among others.

[5] For the debate and the economic grounds of FDI advantages in general and vis-à-vis portfolio investments to promote economic development see: UNCTAD, 1999; OECD, 1990; Gomes-Casseres and Yoffie, 1993; Lim, 2001.

Despite the liberalization and promotion of FDI in the SCSs, economic growth rates did not follow capital inflows as expected.[6] The empirical evidence from the 1990s has therefore qualified the thesis of the almost unconditional benefits from FDI to development; it became recognized that FDI is not monolithic, and its benefits vary from one sector and country to another. Whether positive or negative aspects of FDI prevail depends on the policies set in place by the host country, the investing company's code of conduct, the financial institutions that support it, and the international policy context. In other words, not only quantity of FDI matters but its quality as well, which is determined by many factors. Host governments have developed therefore policies aiming at improving the quality of FDI, the first wave of which became known as second generation of FDI, and the second, third generation of promotion policies, the liberalization process and the strengthening standards of treatment for foreign investors being considered the first generation of such policies.

In its second generation, governmental policies about FDI addressed issues such as the marketing of countries as locations for FDI and the setting up of national investment promotion agencies (IPAs). In 1995, a *World Association of Investment Promotion Agencies* (WAIPA) was created to promote cooperation among IPAs.[7] The third generation FDI promotion policies is more complex and aim at targeting foreign investors at the level of industries and firms to meet their specific location needs at the activity and cluster level, in light of a country's developmental priorities. For developing countries, the formation of the so-called 'backward linkages' with foreign affiliates, i.e. a network of domestic suppliers, has a central importance since it contributes to the upgrading of domestic enterprises technological capabilities and embed foreign affiliates more firmly in their economies. Host governments can play a central role in providing information and supporting local firms to meet minimum requirements (UNCTAD, 2001b: 22).

In the enterprise of host countries, such as the SCSs, to improve the developmental impact of FDI, international cooperation is of vital importance. The question of whether the EU foreign policy has become more cooperative regarding FDI is therefore highly relevant. This chapter proceeds by introducing the main recent aspects of the international cooperation regarding FDI, the EU FDI "regime", the commitments regarding FDI in the bilateral and bi-regional agreements with the SCSs, and than the EU foreign policy initiatives regarding FDI in the context of the EU development policy. It concludes with the assessment of the level of cooperation of the EU foreign policy behaviour towards the SCSs in the two periods of observation in order to provide an answer as to whether it increased from 1980 to 2000.

International Cooperation regarding FDI

The development of international rules about FDI at the *multilateral level* started after the Second War in the context of the establishment of the Bretton Woods System. Before that, FDI was regulated predominantly by national law with a restrictive bias,

[6] For more details and empirical examples see OECD 1990, 1993, 1996, 1998; UNCTAD 2001a, 2001b, 2001c, 2002; Uthoff and Titelman 1998; Barbosa 1993; Barry 1999.

[7] For details about IPAs in Brazil, Paraguay and Uruguay see www.investebrasil.org.br, www.proparaguay.gov.py and www.uruguayxxi.gub.uy respectively, for about WAIPA see www.waipa.org

and a few bilateral initiatives. The *Havana Charter* for the establishment of the International Trade Organization (ITO) contained provisions about investment in its Art.11 & 12, but not the General Agreement on Tariffs and Trade (GATT), signed in 1947. The question of investment was revised in the context of the 1955 GATT review conference, undertaken when it became clear that the Havana Charter would not enter into. The *Resolution on International Investment for Economic Development* signed at the Conference recognized that an increased flow of capital into countries in need of investment from abroad and, in particular, into developing countries would facilitate the objectives of the General Agreement, and urged contracting parties to participate in negotiations directed to the conclusion of bilateral and multilateral agreements of FDI related issues, but had only an recommendatory status.

In the Tokyo Round negotiations in the 1970s, rules on subsidies, technical standards and government procurement were negotiated and although their focus was on the impact upon trade in goods, the rules are also relevant to the competitive conditions which foreign investors face (WTO, 1996: 35; Barreto Filho, 1999: 94-98). A more directly relevant development in the GATT regarding FDI came during the Uruguay Round, concluded in 1994. The Ministerial Declaration that launched the negotiations in 1986 included a request to the examination of the restrictive and distorting effects of investment measures upon trade. After difficult negotiations which polarized developed and developing countries, an agreement was reached about *Trade Related Investment Measures* (TRIMs) with a compromise between the prohibition of performance requirements of investments related to trade in goods (Art.1) (as advanced by developed countries) and the concession of special treatment to developing countries regarding the concession of national treatment (Art.4) and the periods of implementation of the new rules (Art.5).[8]

Although less directly, the *General Agreement on Trade in Services* (GATs), also had an impact upon FDI, maybe even bigger in the long-term than TRIMs given the growing importance and volume of trade in services. GATT rules only put obligations on governments in respect of the treatment of foreign goods, they were not concerned with the treatment of foreign persons, legal or natural operating in their territories, the central issue for FDI. GATs however, when putting obligations in respect to the treatment of services, recognizes that the supply of many services to a market is difficult or impossible without the physical presence of the service supplier. Trade in services is therefore closely linked to FDI in what foreign firms offering service products oft need a commercial presence in that country, a topic dealt under rules about FDI establishment and permanence. In GATs, signatory countries must offer to foreign firms MNF treatment, the right of market entry (Art.16) and national treatment (Art.17), the latter thou not as a general principle but in scheduled sectors.

Two other agreements finalized with the Uruguay Round also refer to FDI. The first is the *Trade Related Aspects of Intellectual Property* (TRIPs), since the definition of investment can expressly include intellectual property. With its provisions on minimum standards, domestic enforcement procedures and dispute settlement, the agreement is directly relevant to the legal environment affecting FDI. The second is the *Agreement on Subsidies and Countervailing Measures* (ASCM). Although it refers to trade in

[8] The TRIMs agreement covers two types of performance requirements; local content requirements and trade balancing requirements (Graham, 2000: 61).

goods, which by definition occurs only after the investment have been made and is, therefore, not easily applied to FDI, the agreement prohibits incentives such as grants, subsidized credits, taxes exemptions, preferential access to governments contracts, monopoly position and closure of the market for further entry.[9]

The *Organization for Economic Cooperation and Development* (OECD) has also developed international rules regarding international investments. In the early 1990s, it engaged in a major enterprise to create a wider agreement about FDI, assuming that the existence of a broader range of issues would facilitate negotiations by increasing the probability of each party to get something they liked. After three years of preparations, negotiations were launched in 1995 for the conclusion of a *Multilateral Agreement on Investment (MAI)*. The main features of the proposed agreement would be the application of national treatment and MNF to establishment and subsequent treatment of investment, the creation of certain standards for investor protection regarding expropriation and compensations, the prohibition of performance requirements, and the establishment of a dispute settlement procedure for governments and private investors regarding violations under the MAI. It did not address investment incentives such as subsidies, and would have had a broad list of general exceptions and country specific reservations; according to specialists, it would have actually only codified the *status quo* of the practice of FDI regulation in OECD member-states, not advancing much in terms of liberalization. Still the negotiations failed and were suspended in late 1998 (Graham, 2000: 2-3; Young, 2000: 108-109; Walter, 2000).

The main reasons appointed for the failure of MAI were the disagreements among the negotiating parties, deadlocked among others by the lack of involvement of higher political officials and the withdrew of French government, as well as the external opposition especially from the movement anti-globalization. Despite some specific problems, it seems that in the background of the disagreements and the opposition was the lack of clear and solid information about the costs and benefits of the agreement and of each particular provision. FDI became a polemic issue based in a very superficial knowledge base, both about technical issues and domestic demands. To address this problem the OECD refocused its efforts in the dissemination of information about FDI with initiatives such as the *OECD Global Forum on International Investment* advanced by the Center for Co-operation with Non-Members. If a new round of negotiations is to be launched in the future, the expectations are that it would be done within the WTO and not the OECD, including the developing countries.[10]

The EU "regime" for FDI towards third parties

The EU does not have a single regime for FDI towards third parties, which remains under the competence of the member-states. Instead, it has separate legislation regarding the three main aspects of FDI: movement of capital, right of establishment

[9] About FDI the Uruguay Round see WTO, 1996, pp.35-40 & Barreto Filho 1999, Ch.9

[10] Although Japan, South Korea and specially the European Commission had manifested their preference to use the WTO/GATT as a forum rather than OECD already early 1990s, the consensus was that it would be easier to negotiate first among developed countries which had more similar demands and then expand it to developing countries, what in light of the failure of MAI turned out to be quite ironic. On the side of the development countries some indicated their interest in participation in multilateral FDI agreements, such as Argentina, Chile and to a lesser extent Brazil, and some not, such as India (Graham, 2000: 174, 190-191).

and regime post establishment, with different divisions of competence between the community and member-states for each case.

Movement of capital, regarding both FDI among member-states and with third parties is regulated by Cap.4 of the EC Treaty, which establishes the competencies of member-states and the Community. The Community used its competence in a limited manner, but with the Maastricht Treaty, the Community competence was expanded. Art.56/TEU prohibits the restrictions of movements of capital between member-states and third parties, but is weakened by Art.57/TEU, which allows the member-states to preserve certain restrictions present on 31-12-1993 and Art.58/TEU, which allows them to introduce new ones for reasons of fiscal control, public order, public security, administrative information or prudential supervision. The TEU also establishes that the Community has a non-exclusive competence in general matters about movement of capitals (Art.57/TEU), but which is however exclusive regarding measures that represent a reversion in the liberalization of the movement of capitals. Art.60/TEU creates a special regime regarding sanctions, by which the Community can act, but if it does not, the member-states can do it individually under certain restrictions. In sum, regarding the external competence of the EU in the case of movement of capital, it is possible to say that: a) in cases of liberalization, given that the Community competence as non-exclusive, the member-states retain their competence as long as the Community dos not exercises it; b) in cases of stand-still, the member-states retain their competence if referring to measures dealt in Art.58/TEU, and the Community has exclusive competence if referring to reversion in liberalization; c) member-states remain with competence regarding most specific aspects of movement of capital, subjected to reserves on the part of the Community in its non-exclusive competence (Torrent, 1998: 85-87).

The second aspect of the EU legislation regarding FDI, the right of establishment, is covered by Ch.2 of the EC Treaty but only regarding flows among member-states. The Community can in theory exercise external competence derived from its internal responsibilities (implied competence) but that has not been the case so far regarding the right of establishment. The right of establishment remains in practice therefore under the competence of member-states (Torrent, 1998: 88-90, 108-110).

The third aspect of the EU legislation about FDI, the regime post-establishment (treatment of foreign firms), is covered by different dispositions regarding each economic sector, such as transports, regime of enterprises, etc, both for other member-states and third parties firms. Regarding the conclusion of bilateral agreements with third parties, the Community can accept commitments about treatment of firms under Art.310/TEU referring to association agreements. In the case not covered by this article, such as the multilateral negotiations under WTO, the competence for each case must be analyzed individually (Torrent, 1998: 90-93).

As a result from this rather complex combination of competence, when the EU engages in multilateral negotiations regarding FDI, such it was the case during the negotiations for the GATs and TRIMs and the failed negotiations for the MAI, or in agreements with 3rd parties containing FDI related matters, the Community and the member-states negotiate each the parts of the agreement under their competence. Although member-states negotiate individually in their own name, they do it in the intergovernmental forum of the EU, i.e. the Council, and other institutions from the EU

system, mostly the Commission, manage the concluded agreements. This practice has established the so-called the "4th pillar" in the EU policy-making system (Torrent, 1998: 111-112, 146-147).

It can be stated therefore that the competence over FDI issues in the EU remains to a large extent with the member-states, which are free to conclude *Bilateral Investment Treaties (BITs)* with 3rd parties. The commitments covered in the BITs may include the scope and definition of investment (which in most cases includes tangible and intangible assets, direct as well as portfolio investments and existing as well as new investments), the admission of investments, national and most-favoured-nation treatment, fair and equitable treatment, guarantees and compensation in respect to expropriation and compensation for war and civil disturbances, guarantees of free transfer of funds and repatriation of capital and profits, subrogation on insurance claims, mechanisms for the settlement of disputes state to state and investor to state. In addition some BITs include provisions regarding transparency of national laws, performance requirements, entry and residence of foreign personnel, general exceptions, etc. (UNCTAD, 2000).

Table 1
BITs signed between the SCSs and EU member states until 01-01-2000
(year of signature/entry into force)

	Argentina	Brazil	Paraguay	Uruguay
Austria	1992/95	-	1993/99	-
Belgium/Luxemburg	1990/94	1999/-	1992/-	1991/-
Denmark	1992/95	1995/-	1993/-	-
France	1991/93	1995/-	1978/80	1993/97
Finland	1993/96	1995/-	-	-
Germany	1991/93	1995/-	1993/98	1987/90
Greece	1999/-	-	-	-
Italy	1990/93	1995/-	1999/-	1990/98
Ireland	-	-	-	-
Netherlands	1992/94	1998/-	1992/94	1988/91
Portugal	1994/96	1994/-	1999/2001	-
Spain	1991/92	-	1993/96	1992/94
Sweden	1991/92	-	-	-
UK	1990/93	1994/-	1981/92	1991/97

Source: Adapted from UNCTAD 2000, Bilateral Investment Treaties

Latin American countries did not start signing BITS until the late 1980s, but reached a total of 300 until 2000. Argentina is signatory of 53 BITS, being the first one signed in 1993. Brazil of 14, the first have being signed in 1994, Paraguay 23, 20 of each after 1993, and Uruguay 24, of each 18 after 1990 (for the ones signed with EU member states see table 1). These numbers however hide some peculiarities. In the case of Brazil, for instance, none of these agreements entered into force because they face opposition from the Congress to be ratified. It is alleged that these agreement were signed under pressure to Brazil to attract investments but that they are against the Constitution, in what they concede advantages to foreign firms better than to nationals,

such as allowing controversies to be solved by private arbiters abroad, or misappropriations to be paid in cash instead of government bonds.[11]

Bilateral and bi-regional agreements between the EU and SCSs

The *bilateral agreements between the EU and individual SCSs* were signed by the EEC/EC, which did not have the competence to negotiate FDI provisions (or Euratom, but these are not included given the peculiarities of foreign policy regarding atomic energy). The first and second-generation agreements do not contain any reference to cooperation either.[12] It is worth mentioning that in the EEC-Argentina of 1971, Argentina states its desire for an increase of the European investments, as a means to contribute to its economic development as a unilateral declaration (nr.9). The third generation agreements mention the intention to promote cooperation regarding FDI, such as: Art.6 of EEC-Argentina of 1990: "the contracting parties agree to cooperate in particular to encourage joint ventures, especially to diversification of Argentine exports and the assimilation of technology…"; Art.3.2 of EEC-Brazil of 1982: "as means to (promote economic cooperation), the contracting parties shall endeavour *inter alia* to facilitate and promote by appropriate means: (a) broad and harmonious cooperation between their respective industries, in particular in the form of joint ventures; (…)(f) favourable conditions for the expansion of investment on a basis of advantage for both parties"; Art.7(b) of EEC-Uruguay of 1992: "(the contracting parties agree) to improve the favourable climate for mutual investment between the Community member-states and Uruguay, particularly through agreements for the promotion and protection of such investment based on the principles of non-discrimination and reciprocity". Texts in the other treaties are quite similar.

The *bi-regional agreement between EU and Mercosur* of 1992 does not contain any commitment about FDI (it was signed by the EC), nor mentions cooperation in that regard given that its major objective was to promote technical assistance to the integration process. The agreement of 1995 was signed by both the EC and member-states, and could contain FDI commitments (in the 4th pillar format, such as it was the case of the agreements with CEEs) but it does not. It does foresee cooperation in Arts.11 & 12; Art.12-2b (emphasis added) explicitly states that specific commitments should be done at the bilateral basis among EU and Mercosur member-states; Art.11 reads as follows: "(cooperation in business) shall focus in particular on:(1a) increasing the flow of trade, investment, industrial cooperation projects and the transfer of technology…(1c) identifying barriers to industrial cooperation between the Parties and eliminating such barriers using measures which promote compliance with competition rules and foster the tailoring of those rules to the needs of the market, giving due attention to the involvement and consultation of operators,(1d) stimulating cooperation between the Parties' economic operators, especially small and medium-sized

[11] See Estado de Sao Paulo, 27-12-2002.

[12] What characterize First Generation Agreements are their conventional bilateral and technical structure and their reference to possible reciprocal cooperation. In practical terms, however, these treaties only extended the Most Favoured Nation (MFN) status to its signatories. The 2nd generation agreements reaffirmed MNF clause and declared the intention to increase commercial and economic cooperation. The 3rd generation agreements are broader in scope and include political conditionalities regarding democracy, environment and human rights by means of the so-called democracy clause, and can be renegotiated with total flexibility as stated in the so-called 'evolutive clause'. See for instance Lamothe, 1996; Calderón, 1996; García, 1996; CEPAL, 1999; COM(95) 216.

enterprises;..(3b) suitable initiatives to back cooperation between small and medium-sized enterprises, such as the promotion of joint ventures, the establishment of information networks, encouraging the opening of trade offices, the transfer of specialist know-how, subcontracting, applied research, licensing and franchising, (3c) promoting initiatives to increase cooperation between Mercosur economic operators and European associations, with the aim of establishing dialogue between networks". Art.12 addresses the promotion of investment and states that: "1.Within the bounds of their spheres of competence, the Parties shall promote an attractive and stable climate for greater mutually beneficial investment; 2. Such cooperation shall encompass measures including the following: (a) promoting regular exchanges of information, the identification and dissemination of information on legislation and investment opportunities; (b) promoting the development of a legal environment which is conducive to investment between the Parties, particularly, where applicable, *through the conclusion between interested Community Member States and Mercosur Party States of bilateral agreements for the promotion and protection of investment and bilateral agreements to prevent double taxation;* (c) promoting joint ventures, particularly between small and medium-sized enterprises." The association agreement under negotiation since 1999 is not yet concluded and was not included in the analysis.

Table 2
FDI provisions in the main EU-SCSs agreements (year of signature and signatory on the EU side)

	In force in 1980 (1st generation)	2nd generation	3rd generation
Argentina	1971 (EEC) - nothing	-	1990 (EEC) no commit; coop Art.4 (1&2), Art.6
Brazil	1973 (EEC) - nothing	1980 (EEC) - no commit, coop Art.3(2a,2f)	1992 (EEC) no commit; coop Art 3(1d,1e, 3b), Art.8,Art.9,Art.10(1)
Paraguay	-	-	1992 (EEC) no commit; coop Art 2(3c), Art.5(1),Art.7
Uruguay	1973 - nothing	-	1991 (EEC) no commit; coop Art.3 (1d,1e,3b,3c,3e) Art.5(1); Art.7
Mercosur *	-	-	a-1992 (ECs) nothing b-1995 (EC+MS) no commit., coop Art.11; Art.12 c-(2005?)under negotiation(EC+MS)

Source: compiled by author
*The Agreement of 1992 was signed by Mercosur, the one of 1995 by Mercosur and its member-states and the under negotiation should be signed by Mercosur and its member-states as well.

EU development policy programmes regarding FDI

It was only with the Maastricht Treaty that the development cooperation gained a specific legislation, under Articles 177 to 181/TEU. The main goal of its development policy is defined as to foster the sustainable economic and social development of the developing countries, in particularly the most disadvantaged among them; their smooth and gradual integration into the world economy; and their campaign against poverty. It

should also contribute to the consolidation of democracy and the rule of law and to the respect of human rights and fundamental freedoms. Other primary legal basis regarding the development policy (which were used a basis for development cooperation before the TEU) are the articles referring to the conclusion of international agreements with 3rd countries which may contain development cooperation instruments such as: Art.133/TEU, which regards the common commercial policy and therefore the tariffarian concessions under the SGP[13]; Art. 300/TEU, which is the basis of international cooperation agreements; Art.308/TEU, which allows the Community to develop financial and technical aid; and Art.310/TEU, which regards the conclusion of international association agreements.

Historically, the scope of the EU development policy has been broadened from targeting only the member-states former colonies to all the development countries in general, with a special emphasis on the CEEs since the 1990s. However, the traditional instruments of development cooperation, i.e. aid and trade concessions have been reserved to the poorest countries, while new instruments involving the private sector have been used with the most advanced developing countries. The latter approach has been clearly the one taken towards Latin American countries, among them the SCSs, as stated for instance in the Regulation 443/92, which addresses the cooperation with Asia and Latin America countries (ALA). In this regulation the EU distinguishes what it denominates "development cooperation" from "economic cooperation". While the former focus purely on the recipient and the EU acts more as a donor of resources, directly or indirectly, through instruments such as the SGP, Stabex and Sysmim, and the target country is a relatively passive recipient; in economic cooperation the EU tries to act more as a partner, in which not only the target country has a bigger role but also business corporations and associations as well. The specific objectives of economic cooperation with Latin American (and Asian) countries based on the wording of the Regulation are creating an environment more favourable to investment and development and enhancing the role of businessmen, technology and know-how from all member-states (Nordic Consulting Groups A/S, 2001).

The evolution of EU development cooperation can be seen in the following table, in which it can be observed that the proportion of aid to the CEEs and NIS rose from about nothing to 18, 4 and 12, 1% respectively over the period of 1986 to 1998. This increase was practically all compensated by the decrease of aid to the ACP which diminished from 44, 7 to 33,1%. Total aid to Latin America had a minor decrease from 6,3 to 5,6%, even if the total amount of euros increased from 160 to 485 million.

This total amount of aid is allocated through a diverse range of instruments, among them the programmes addressing the promotion of FDI, which are seen in details below.[14]

[13] The System of Generalized Preferences (SGP) is a system of tariff concessions aimed to incentive the exports of LDCs. It was created under the auspices of the UNCTAD in 1968. Since it is in contradiction with the principle of most-favored nation treatment, the GATT/WTO members had to formally recognize it, what was done in 1971 by means of the so-called 'enabling clause.' The European Community was the first developed country to apply it, in this same year. The original EU SGP was renewed a number of times to adapt to the new multilateral rules and reclassify the countries. See for instance EC, 2003; CEPAL, 1999, pp.25-26 and Trebilcock & Howse, 1999, Ch.14.

[14] The programmes ALIS and ATLAS have aspects involving FDI but are not included in the analysis since they started after 2000.

Table 3
Regional Distribution of EC External Cooperation (commitments in % total)

Region	1986	1990	1995	1998
ACP	44,7	41,9	35,4	33,1
South Africa	0,3	0,9	1,7	1,5
Asia	5,5	9,8	9,5	7,2
Latin America	6,3	6,8	6,6	5,6
Med & Mid.East	15,7	11,9	11,8	15,9
CEEs	-	21,0	19,7	18,4
NIS	0	0,2	11,2	12,1
Unallocable	27,6	7,7	4,1	6,2

Source: Cox, 1999, p.4.

European Investment Bank (EIB) - EIB's main task is to grant medium- and long-term loans and guarantees for investment projects within the EU. However, it also assists non-member countries whose development the Union wishes to foster, participating in implementing the Union's development aid and cooperation policies. The Bank's operations take the form of loans on own resources, generally accompanied by interest subsidies financed by the EC budget. It may also manage under mandate, risk capital finance provided from budgetary resources. The major part of the financing goes to large projects with guarantees (where the minimum EIB contribution is 20 million EURO), but it also provides long-term risk-capital finance for smaller projects through on-lending lines with local banks. The final contribution to individual investments or projects often consists of participating loans on a cost plus basis with guarantees. The EIB is progressively moving away from global on lending to providing support to investment funds. It selects as partners those banks or other financial institutions that can deal in equity and equity-linked products, and channels its finance through partner institutions.

The EIB received a mandate to operate in Latin America in 1993.[15] Its financing projects in Mercosur member states from 1996 to 2000 can be seen in the following tables.

[15] See EIB Homepage, and for the mandate the online paper: Financing in Asia & LA at www.eib.eu.int/pub/divers/ala_en.pdf

Table 4
EIB financing projects in Mercosur member-states

Year	Country	Project	Beneficiary	Loan (million €)
1994	Argentina	Modernisation of distribution network of natural gas	Gas Natural Ban	46.0
1995	Argentina	water	Aguas Argentinas	70,0
1995	Argentina	water	Ailinco	6,0
1995	Paraguay	water	Asuncion Sewerage	17,0
1996	Argentina	roads in Mercosur network	Argentina Rep	45.0
1997	Brazil	construction of cement works	Cia Minas Oeste de Cimento	32.5
1997	Brazil	construction of optical fibre plant	Pirelli Cabos SA	22.0
1997	Uruguay	eucalyptus plantation	Eufores SA	10.0
1998	Argentina	water supply services	Aguas Cordobesas SA	36.8
1998	Brazil	motor vehicle factory	Mercedes Benz do Brasil SA	70.0
1998	Brazil	gas pipeline with Bolivia	Transp Bras Gaseoduto Bolivia-Br SA	55.0
1999	Brazil	finance of small ventures	ABN Amro Bank & BBA	59.0
1999	Brazil	mobile telephone network	Celular CRT SA	57.7
1999	Brazil	tyre factory	Pirelli Pneus SA	37.0
2000	Argentina	construction of gas pipeline	Metrogas SA	51.7
2000	Argentina	conversion of gas power station into combined cycle plant	Pluspetrol Energy SA	57.8
2000	Argentina	water supply and sewerage networks	Servicios de Aguas de Missiones SA	20.4
2000	Argentina	glass container production	Rayen Cura SA	17.1
2000	Brazil	mobile telephone network	Telebahia celular SA	40.0
2000	Brazil	mobile telephone network	Telesergipecelular SA	15.0
2000	Brazil	mobile telephone network	Telpecelular SA	58.5
2000	Brazil	motor vehicle factory	Volkswagen do Brasil LTDA	91.5
2001	Argentina	Construction of eletric central	Central Dock Sud	77,3
2001	Argentina	Fabrication of biote de vitesse	Volkswagen Argentina	46,6
2001	Brazil	energy	Light Power Distribution	33,6
2001	Brazil	energy	Comgas	46,8
2001	Brazil	industry	Vega do Sul Galvanisation	58,0
2001	Brazil	forestry	Veracel Forestry	32,7
2002	Brazil	energy	Coelce Power Distribution	54,6

Source: EIB Homepage http://eib.eu.int/loans/cbcneuoo.html

Table 5
EIB loans to EU non-member states (million EURO)

Year	Total	Cone Sur Countries	%
2000	5.389,0	351,9	6,53
1999	4.035,0	154,4	3,83
1998	4.410,0	161,8	3,67
1997	3.244,0	64,5	1,99
1996	2.294,0	45,0	1,96
1995	-	93,0	-
1994	-	46,0	-
1993	-	0	0

Source: EIB Homepage http://eib.eu.int/loans/cbcneuoo.html
(- indicates information not found)

European Community Investment Partners (ECIP) - The ECIP program was conceived in 1988 at the initiative of the Commission with the support of the European Parliament to encourage the creation of joint ventures among small and medium enterprises (SMEs) in Asia, Latin America and Mediterranean countries, as an attempt to improve the developmental quality of private FDI. It was extended to South Africa, and also inspired the creation of the JOP program for the Phare and Tacis countries. It was the first program launched by the Commission to specifically support FDI in 3rd countries, and was originally established as a pilot project, defined on the basis of Article 205 of the Treaty of Rome (concerning implementation of the EC budget – Art.274/TEC), and of cooperation agreements with the developing countries. The European Parliament provided the necessary credits from within its margin of maneuver (Non-Obligatory Spending). The pilot project ran for three years (1988-1991), and in 1992 was given a formal legal and budgetary basis with the Regulation EEC 319/92 of 3 Feb 1992. The latter was modified by the Regulation EEC 213/96 of 29 Jan 1996. The program was considered a success and was extended twice, for the periods of 1992-94 and 1995-99. However, since 1996 it became progressively more bureaucratic and heavier due to its "labour intensive" characteristic and the insufficient number of staff available to work in it. Therefore, instead of renewing the program again in 1999, the Commission demanded only a 2 years extension in order to finance the costs of the management of the closure and the winding down of the existing portfolio of projects (COM, 1999: 726). Although recognizing the success of the program, the Commission alleged, based in their own reports and independent evaluations, that further assessment was needed in order to redefine its overall policy priorities, and optimize the synergy with the other investment promotion and financing programmes of the EU.[16]

The principal characteristics of ECIP were: a) replying exclusively to initiatives coming from enterprises (demand-driven); not granting quotas to particular regions or industry sectors; conceding five types of financing: Facility 1 - grants up to 100.000 EUR towards the identification of potential joint venture partners; Facility 2 - interest free loans of up to 250.000 EUR towards feasibility studies or pilot projects; Facility 3 - equity (holding or loans) of up to 1 million EUR in joint ventures; Facility 4 - interest free loans or grants of up to 250.000 EUR towards training costs in joint ventures; Facility 1B - grants of up to 200.000 EUR for the preparation of BOO/BOOT schemes; b) accessibility to the enterprises via a network of financial institutions (development and commercial banks). The Commission used to provide advances to the ECIP financial institutions who in turn, and after the green light from the Commission, attributed these funds to the final beneficiaries; c) covering all the phases of the putting into place of a joint-venture: partner search; feasibility studies by the enterprise (interest-free advances reimbursable by the enterprise in case of success, or converted into grant in case of non-success); capital participation in the equity capital of the joint-venture; grants for small and medium enterprises, and interest-free reimbursable advances for larger enterprises, to finance training in the case of technology transfer (COM, 1999/439: 3, 10).

Program of Business Cooperation and Promotion of Investments (AL-Invest) - The AL-Invest project became operational in 1995 after a two-year pilot phase, and was

[16] See the commissions' Progress Reports in COM (1998)752 for the years from 1995 to 1997, COM (2000)135 for 1998 and COM (2000) 439 for 1999. For independent evaluations see Touche Ross 1990; SEMA Group 1994; and Deloitte & Touche 1999.

renewed in 2000 for four years. The main objective of the program is to facilitate the contact between European and Latin American businesses; it does not, as the ECIP program, limit the risk involved or provide financial instruments or support for identified common projects.

The Program operates with the following mechanisms: a) a network of *Eurocentres* - Latin American organizations, called 'economic operators', chosen by the Commission as focal points for the rest of the interested companies, which form a network working in contact with the Commission delegations, and are responsible for the promotion and organization of activities of the program by providing support in the search for business partners, furthering partnership opportunities, etc.; b) a network of *Coopecos* - European organizations, such as Chambers of Commerce, Federation of Industries, Development Agencies, Consultant Companies, that support industrial cooperation and investment promotion in Latin America by informing business, increasing awareness of cooperation opportunities, putting them in contact with corresponding Latin American networks, etc; c) sectorial meetings - events proposed and organized by a group of economic operators and co-financed by the Commission. The events are usually held during specialist trade fairs, and the participating companies receive a program of face-to-face meetings ('agendas') specially arranged for them according to their profiles and products; d) TIPS System - information on-line service; e) the services of a Secretariat, based in Brussels.

The Commission manages al-Invest with input from an Advisory Committee as well as a Technical Secretariat for provision of services. A Board under the Assistant Director General consisting of 3 representatives from DG RelExt and 3 from DG Enterprise make all the decisions. From 1996 to 1999, the program organized 156 Sectorial Meetings, in which more than 13.000 European and Latin American companies participated. Until April 2000, 210 commercial accords were registered (summing 89.3 million EURO), and 42 investment accords (summing 43.3 million EURO).

Business Cooperation Network (BC Net) & Business Cooperation Centre (BCC) - Although these initiatives were mainly designed to facilitate the cooperation among European firms by offering a matching service, firms from 3rd countries could also participate in their database. The BCC was created as early as in 1973 and the BC-Net in 1988, and both programmes were part of the European Commission Multi-Annual Program to help and support enterprises, particularly small and medium (SMEs). The DG Enterprise managed them until 2000 when, following two negative evaluations and with a repositioning of the Commission's activities more towards policy and regulation development and less in direct actions management, they were closed down.

They were very similar, the main differences being that while BCC was designed as a scheme offering a "one to many" services, in which the local intermediary contacted by the SME would routinely look for a match, but also in parallel the profile would be disseminated by all other intermediaries who had access to the internet database, BC-Net was designed as a "one to one" scheme in which the operation was charged a fee, could be confidential and only the contacted intermediary would receive the information and look for matches. In practice, under BCC the intermediaries were more

disseminators of information and under BC-Net they got actively engaged in assisting firms to move forward in their negotiations.[17]

The SCSs intermediaries in the database were; from Argentina: Del Rio – Business Consultants, DEVNET Argentina, Fundación de Empresas – Eurocentro Córdoba, Eurocentro de Cooperación Empresarial Câmara Argentina de Comercio, Euroinvest, Eurocentro Mendoza, Internacional y Culto Argentina Cancilleria Argentina, Bolsa de Comercio de Mar del Plata; from Brazil: Indi, Governo do Rio Grande do Sul, América 2000 Consultoria e Representacao LTDA, Italian-Brazilian Chamber of Commerce of Minas, Federacao das Indústrias do Estado de Santa Catariana, Charneski & Associados S/C, Federacao das Indústrias do Estado do Rio de Janeiro, Federacao das Indústrias do Estado de Pernambuco; Paraguay: Bolsa de Subcontratacion del Paraguay – Eurocentro Paraguay; Uruguay: DEVNET Uruguay, Camara de Industrias del Uruguay. Information about the number of matches effectuated by these intermediaries was not available.[18]

Synergy/ALURE - The EU has developed two cooperation programmes in the field energy in Latin America, both under the management of DG Energy and Transport. The first, Synergy, was created in 1980 to finance projects to help developing countries of Asia, Africa and Latin America to define, formulate and implement their energy policy, especially after the privatization of energy firms. It developed 14 projects in Latin America. Synergy was financed as a form of aid assistance, and did not involve FDI. ALURE however, created in 1996, was designed within a framework of redirection of focus from aid to economic cooperation, i.e. involving mutual gains, and exclusively to Latin America. The three declared objectives are to "improve the services of Latin American utilities, preferably in the growth sub-sectors of electricity and natural gas and to promote business relations with European firms linked to the sector such as utilities, financial operators and industrial firms, in particular small business; to contribute, where necessary, to the adaptation of legal and institutional frameworks; to promote sustainable economic and social development with relevant schemes". The initial phase of the program (ALURE I), lasted for two years (1996-1997) and had a portfolio of 13 projects, with an EC contribution of 7 million euros, and the second phase of the program (ALURE II) lasted a period of five years (1998- 2002) with a budget of 25 million euros. However, it was decided that ALURE will not be renewed, and Synergy also closed down in 2000. The main reasons appointed for the suspension of both programmes are the political disagreements regarding the future objectives of the programmes and the general reprioritization for the cooperation with Latin America to the issue areas of information society, human rights and poverty alleviation.[19]

[17] See Technopolis, 2000 & Homepage DG Enterprise.

[18] The database still exists and is administrated by the Eurocenters (see Al-Invest); see http://europa.eu.int/comm/enterprise/networks/eic/eic.html

[19] The suspension of the programmes was criticised in a Report from the DG for Research of the European Parliament, which emphasised that the development of the energy sector is strategic among others to attain the "new" objectives of alleviate poverty and promote a information society (by the means of the programme ALIS, initiated in 2002. The report recommended the Parliament to try to create a new energy programme (EP, 2001: 22-24).

Conclusion

As mentioned earlier, the indicators selected to analyze the level of cooperation of the EU foreign policy behaviour are the number and budget of the cooperation programmes under the EU development policy, and the characteristics of the commitments regarding FDI in the agreements between the EU and the SCSs. Regarding FDI commitments, it was seen that they remain under the competence of member-states outside the EU system. Even if they had been negotiated by the Council and managed by the Commission it would have been an example of "fourth pillar" development and not of EU initiatives. The only agreement that could have fit into this case was the one of 1995 with Mercosur, but it did not contain any provision on FDI, only reference to cooperation (unlike the agreements with the CEEs and former Soviet States). The agreements with Argentina, Brazil, Paraguay, Uruguay and Mercosur of 1992 were signed by the EEC/EC, who could not have negotiated such provisions. The informal political influence of the EU, independently of its formal competence, could be considered as favouring a cooperative approach with developing countries in general, given the position of the Commission in the discussions during the failed negotiations of the MAI, and about the possible opening of negotiation of a multilateral agreement of FDI within the WTO. Although there is evidence that the Commission supported the inclusion of provisions favourable to the developing countries, it has been argued that the reasons for that were less due to a cooperative initiative, than to the interest in making a coalition which could favour the expansion of the competence of the EC vis-à-vis the member-states (Graham, 2000: 186; Torrent, 1998: 121).

Regarding the programmes concerning FDI under the EU development policy, the main empirical findings are summarized in table 6. Although information about the specific operations and the budget allocated to the SCSs was not available for all programmes, it can be seen that most programmes were created in late 80s, beginning of 90s; only BCC existed before, and it was not a program specially designed to Latin America. It can be estimated, therefore, that the total of budget allocation to cooperation regarding FDI in the EU development policy towards the SCSs increased from 1980-85 to 1995-2000.

Table 6
Number and budget of programmes addressing FDI in the EU development policy

Program	1980-1985	1995-2000
EIB loans	null (mandate to operate in LA was accorded in 1993)	% of the total loans to non-member states increased continuously from 1,96 in 1996 to 6,33 in 2000
ECIP	null (created in 1988)	precise budget not available (but above null)
Al-Invest	null (created in 1992)	facilitated 42 investment accords with SCS from 1996 to 2000
BCNet	null (created in 1988)	precise budget not available (but above null)
BCC/BRE	precise budget not available	precise budget not available
Alure	null (created in 1996)	precise budget not available (but above null)

To conclude, with base in the empirical information described so far, it can be argued that the level of cooperation of the EU foreign policy behaviour towards the SCSs increased from 1980-1985 to 1995-2000 for the case study of FDI. Although specific commitments regarding FDI provisions in bilateral agreements were outside the competence of the EU, its informal political position seems to have favoured developing countries, and it did create programmes in its development policy addressing FDI that aimed at improving the developmental quality of European investments in the SCSs. This conclusion, however, must be qualified by the fact that the reasons behind this informal support are not so clear, and that the effective impact of the EU programmes is relatively insignificant when in context of the total amount of European FDI outflows to the SCSs. Moreover, although after the period analyzed in the chapter most of the programmes were closed down, only Al-Invest seems to remain, a program that despite its value does not offer the possibility of concessions of loans as the ECIP did. Therefore, the increase of cooperation, although existent, seems to be symbolic rather than substantial.

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