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Trade and co-operation in the EU-MERCOSUL free trade agreement

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**TRADE AND CO-OPERATION IN THE EU-MERCOSUL FREE TRADE
AGREEMENT[#]**

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EXECUTIVE SUMMARY

This report discusses a few selected co-operation ideas, considered important for the EU-Mercosul Agreement. We explore four sectoral themes: phyto-sanitary and agricultural co-operation; foreign direct investment; telecommunications and information technology; and cultural co-operation. We also launch a more strategic option, indirectly contained in the EU agenda: mechanisms for dispute settlement co-operation in the WTO. Up to our knowledge this is an innovation.

As a theoretical framework for analysing co-operation efforts, we use the view of regional integration agreements (RIAs) as an impure public good, and the idea of the “trade and co-operation nexus” (T+C), involving systematic co-operation in both trade-related and non-trade areas.

The complexity of nowadays RIAs forces negotiators to look for help in specialised groups of society, directly concerned with the particular issues at stake; large segments of the country remaining unaware of the potential benefits that could accrue to all. The result is that *nonexcludability* of the integration, as a public good, is impaired. Once this happens, *nonrivalness* in “consumption” of the integration may easily become vapid, as many people do not know how to participate in its benefits. *Nonrivalness* can also be impaired due to the different timings required for each benefit to become reality, what may trigger a competition among the well informed on the sequence of implementing the agreement’s measures.

One way of minimising these effects is a comprehensive (T+C), that will engage other groups beyond the negotiators and trade-related actors, increasing the awareness and understanding of the integration, while boosting its purely trade aspects.

Co-operation also shares a political economy dimension with the trade negotiations. The choice of the favoured areas may be viewed as the outcome of interactions among domestic “co-operation lobbies”, and the joint acceptance of the final agenda can be seen under the light of an external interaction of these forces.

Without denying this view, we take it as a second-order consideration, which might be useful in certain instances.

Few and well focussed projects seem the optimal starting point for building a successful (T+C) nexus.

Phyto-sanitary measures and agriculture

Problems have been marring the reasonably good reputation enjoyed by Mercosul's meat exports to the EU. The first is the serious epidemics that attacked different Uruguayan herds. Secondly, questions regarding the EU bovine meat traceability requirements were raised for the Brazilian produce. Though the latter has not been used as a trade restriction yet, the EU authorities have signalled that fulfilling such requirements are an important condition for supplying the EU market. Co-operation in the definition and application of the sanitary measures and, in the particular case of traceability, *on the proper checking and measurement techniques*, will ease tensions in both sides and pave the way to a fuller and more open trade in agriculture between them.

Attitudes towards GMOs in the US and the EU are considered to oppose each other, the former being seen as open to transgenics and the latter as strongly resistant to their introduction. Mercosul, as a whole, would broadly be placed between these two poles, with Argentina leaning closer to the US approach and Brazil being nowadays one or two steps ahead of the EU standing. The EU has tough regulations on labelling and traceability of products that, somewhere in the production chain, used GMOs. These regulations are due to become stricter after new requirements to be issued by next November. In the Brazilian case, transgenic soybeans are the major target, given the country's position as a main soya exporter and the diversified use of this crop in other agricultural and animal produce. At present, many issues are at stake, including the minimum percentage of transgenics that would make labelling mandatory. Given Mercosul's intermediate position, and the initial stage of regulatory and safety measures for a wider use in a main exporter like Brazil, co-operation in GMOs policy is an important area where the more convergence is achieved, the higher are the gains for both partners.

Investment and related issues

The four Mercosul countries share a greater identity with the EU – rather than with the US or other developed nations – in their international position regarding foreign investment. This common view could act as a starting point for a fruitful co-operation scheme.

The Colonia Protocol, dealing with investment rules for Mercosul, lies semi-abandoned, and not even in the EU one finds a fully harmonised situation. The two blocs could then develop a serious co-operation programme with the limited objective of having a single, bloc-to-bloc policy on FDI. This would be an incentive for Mercosul pushing forward its own set of common rules, while both blocs would try to design basic criteria applicable to all member countries.

EU's FDI in Mercosul is mainly a business of five members – the UK, Germany, France, Spain and Portugal -, the other actors having a more limited and less diversified presence. On the other hand, Mercosul FDI in the EU is basically located in Portugal and Spain. A specific-to-general approach, in which rules and procedures would be first polished with the main agents and then submitted to the corresponding general bodies, could bear interesting fruits in a short time horizon.

Telecommunications and information technology

The first co-operation nexus in this context is migration from second (2G) to third generation (3G) of cell phones networks, a process highly dependent on the structure and technology of the existing 2G network. The new 3G environments will achieve nearly total convergence among fixed and mobile voice services, data and image transmission, Internet and multimedia services. This means a prospectively huge enterprise in both blocs, specially in Mercosul where telecoms penetration lags behind the EU. Co-operation here means the possibility of very significant gains in the medium to long-run. The point of departure is in the EU's favour, as establishment of the 2G network has not been completed yet in Mercosul. In Brazil, half of the existing cell-phones networks use the phased out TDMA (Time Division Multiple Access) technology and are still being replaced by the two competitive (US or EU) standards.

The second area is digital TV. Again, though the EU has already defined its standard, the DBV, things have not been settled in Mercosul yet. Argentina already

opted for the other competing standard. If Brazil adopts the DBV, or a hybrid form, there will be significant scope for technical co-operation.

A third issue is Internet access and penetration. Both in Mercosul as in the EU, there are clear signs that Internet traffic will progressively dominate telecommunications flows. This will have a great impact, demanding more *peering-backbone* connections, in which a peripheral internet user is directly connected to an internet backbone. No Mercosul country has such a connection nowadays, what amounts to higher internet costs to all its members, as backbones are located either in the US or the EU. Co-operation in order to implement such cost-reducing measure, as well as on the issues of taxation and use of broadband connections is clearly needed.

Culture

Co-operation funds in the framework of the agreement could be directed at three objectives. The first would be a common definition of a cultural firm, which would enjoy specific privileges in both regional spaces, being able to particular concessions and, sometimes, identical working and performing conditions. The concessions would mean greater flexibility and easiness in its mobility and activities throughout the two blocs, while the identical conditions would open the possibility to enjoy the same grants, facilities and liberties given to the local firms. This is a bold proposition which would demand further study from both sides.

The second proposal deals with the audiovisual services, where there exist identities in both sides of the Atlantic and the two blocs are competitive with respect to each other. Mercosul movies are well accepted in the EU, the same applying, in principle, to the EU ones; both however lack powerful distribution channels. It may be hard to believe that, given the enormous pressure the US industry makes on Brussels for total liberalisation of this sector, the EU would be able to make a special opening to Mercosul. However, the point here is not on GATS plus rules for Mercosul, but on co-operation aiming at improving distribution channels and increasing penetration in both regions. Truly, between a GATS commitment and local regulations there is margin for manoeuvre; a margin that, without harming the non-discrimination clause, can be used to the benefit of a partner.

The third project relates to property rights. In this area, not only counterfeiting is a problem, but due and fast appropriation of rights, in the multiple instances they generate revenue in the cultural world, is also problematic. Co-operation would mean

to streamline procedures in both sides, so that rights and royalties would be quickly collected and remitted, at the same time that enforcement would receive special attention.

Dispute settlement co-operation in the WTO

Considerable time and energy would be saved if, within a co-operation framework, both blocs created a previous consultation system for any potential dispute at the WTO. The system would perform a preliminary analysis of the juridical foundations of the complaint, trying to reach a friendly solution. In this effort, both parties would make an evaluation of the costs and benefits of engaging in a WTO panel, in contrast to the gains in a quick, internal solution. Advice on the best legal ways to conduct the case would also be provided.

The proposal encompasses the dispute settlement procedure discussed in the ongoing negotiations. This one relates only to the disputes that could emerge in the framework of the agreement, while *the co-operation envisaged deals with all potential WTO cases*. It would also be a privileged source of information, with the blocs exchanging views and strategies even when they are only one of the two main parties.

Finally, better guidance would be provided on the choice of a domestic commercial defence case versus a WTO panel. This is a point where reciprocal ignorance - by EU exporters on the Mercosul members defence systems and, from Mercosul, on the elaborate EU foreign trade legislation - accounts for a considerable waste of time and resources in solving cases which do not necessarily justify a panel.

Implementation of the idea is not difficult as the basic cell would be the body created for the Agreement, which – in the co-operation project – would receive supplementary funds for performing its enlarged activities.

In spite of their diversity, all projects *can be viewed* as trade-enhancing, and so, as economic co-operation. This has a practical importance because economic co-operation has not been closed in the negotiations yet and, if needed, all the proposals can be put under this umbrella.

Most projects have a true regional perspective, as opposed to a country basis. This will demand a higher cohesion from Mercosul in order to design consistent

regional co-operation programmes. As a side effect, co-operation will also help deepening the integration.

All initiatives outlined could make for a diversified and engaging agenda, ultimately broadening the perception and impact of the Agreement. However, other possibilities still remain. One relates to structural adjustment co-operation. Though the Agreement creates a good occasion to tackle the structural adjustment issue under the co-operation heading, it seems completely far-fetched to count on EU money for this. The difficulties caused by the shifts in the EU programme, from the Iberian/Mediterranean members to the enlargement countries, and the increasing demands the latter continue to make, show that there is no room for an extra-territorial, Southern Cone initiative in this field. Mercosul must face the regional funds problem, but must also tackle it with its own resources and creativity. Of course, it would be foolish not to use the immense experience the EU has with adjustment questions, when designing Mercosul's measures. If, by chance, a clear project in this area is identified, with mutual benefits, then nothing should stop it to figure in a next co-operation round.

1. Introduction.

Since the 1996 EU-Mercosul Framework Agreement, the Commission has emphasised the co-operation aspects of any trade relations, something that gained importance in the present negotiations for the Free Trade Agreement.

Co-operation, for the EC – and, particularly, for its External Relations Directorate General -, encompasses a very broad array of issues, going beyond the strict economic sphere. Sustainability of democratic regimes is one of them, considered as a key area and background to other relations and agreements. Even within the economic and trade context, the number of questions and projects may easily be too high, as they can relate to manufactures, services or agriculture, as well as investment and macro-economic issues, not to mention the closely related fields of education and culture.

In the Sixth Meeting of the EU-Mercosul bi-regional negotiations committee, held in Brussels in October 2001, the Subgroup on Economic Co-operation “*agreed on joint draft texts in the fields of Scientific and Technological Co-operation, Energy, Transport, Telecommunications, Information Technology and Information Society*”, as reported in its Final Conclusions; agriculture and environment being also in the agenda.

All this makes a clear point in favour of dedicating more attention to co-operation issues and opportunities within the EU-Mercosul context. Moreover, as well known, trade negotiations are progressively becoming the tip of an iceberg, containing a complex network of activities and instances which involve, complement and make possible the actual trade flows. A fact that also generates the need for more co-operation among the future members/partners.

It would be impossible to cover here the variety of issues under the large umbrella of trade and co-operation. This report aims at shedding new light on, or stressing, a few selected themes, considered important for the Agreement. After a general framing of the trade and co-operation nexus and the feasibility of the broad co-operation agenda the EU likes to implement, we analyse, in separate sections, four sectoral issues: phyto-sanitary and agricultural co-

operation ; foreign direct investment ; telecommunications and information technology ; and cultural co-operation (trade related aspects of).

The four chosen issues have several implications. The first and third ones perhaps do not need any intellectual support, their importance being nearly evident. Co-operation on investment has progressively received attention, and involves multiple actions, ranging from the set of “business facilitation practices” to specific themes, as streamlining of legislation and protocols in both sides and the question of remittances. This not to mention the creation of a level playing field regarding right of establishment, something that has been somewhat off balance in favour of the EU. The cultural side has important connections with relevant trade aspects, particularly the question of intellectual property rights, beyond constituting a *point d’honneur* for many EU members, notably France.

In section 4 we launch a new idea. A more strategic option, indirectly contained in the EU agenda: mechanisms for dispute settlement co-operation in the WTO; something that could positively enhance a harmonious link between a regional integration agreement and the multilateral stance.

In section 5, a broader view is recast, introducing a few other specific points where synergies may occur between the two partners. The discussion contributes to a deeper analysis of the proposal, framing it under different categories. Of course, many other areas remain outside it. A key one relates to the well-known question of structural adjustment. The EU has an enormous experience in this area, while Mercosur will, sooner than soon, be required to have a regional – as opposed to a national – position on this. The Agreement creates a good occasion to tackle the structural adjustment issue, and connected ideas, under the co-operation heading. This debate joins all the previous findings in the closure of the report, in section 6.

2. General analysis of the trade and co-operation idea - A critical view of the EU co-operation agenda in the bi-regional negotiations.

2.1 A theoretical framework for analysing co-operation efforts in regional integrations.

According to certain international relations theories, co-operation among nations is an outgrowth of individual desires, capacities and choices. In the context of regional integration agreements (RIAs), Devlin (2002) is perhaps the first attempt to establish a logical basis to analyse the co-operation dimension. Drawing on Sandler (1992), he sees regional integrations as an impure public good, and co-operation beyond the trade sphere may help in getting them closer to a pure, non-exclusive (true) public good. He introduces the idea of the “trade and co-operation nexus” (T+C), involving systematic co-operation in both trade-related and non-trade areas, and thoroughly analyses the intensity of the (T+C) in different existing preferential agreements. Particular attention is given to the EU cases, notably the EU-Mercosul negotiations.

Economists have long tried to introduce the public goods concept in the discussion of the international political-economic system. Kindleberger (1973) used it to develop his version of hegemonic theory, though its later contributors preferred instead to draw from Olson (1965)'s¹. The idea of impure public goods is also not new, and can be found, for instance, in the developments of club theory by Buchanan (1965) and others, in the mid-sixties.

Economic theory tells us that the basic characteristics of a public good are *nonrivalness* – when the good is consumed by one individual, another person is not pre-empted from consuming it at the same time, or rather, rationing of the good is *not desirable* – and *nonexcludability* – preventing others from sharing in the benefits of the good's consumption is not possible, or rather, rationing of the good is *not feasible*².

¹ We are neither going to touch nor discuss the ideas of hegemonic theory here. Those interested in the subject – which is regaining attention thanks to the present world situation - can find perceptive reviews in Gowa (1993) and Keohane (1984).

² See, for instance, Stiglitz (1988).

Dwelling on Devlin's idea, we would add that the nowadays complexity of RIAs has greatly contributed to blur the perception of the above characteristics in a given agreement. Indeed, the complexity almost forces the main negotiators – diplomats, in many countries – to look for help in specialised groups of society, or class organisations directly concerned with the particular issue at stake, naturally excluding large segments of the country that remain unaware of, or do not understand, the potential benefits that could accrue to all. The result is that, at least psychologically, *nonexcludability* is impaired. Once this happens, *nonrivalness* may easily become vapid, as many people do not know how to participate in the benefits of the integration. *Nonrivalness* can also be impaired due to the different timings required for each benefit to become reality (see, for instance, Flôres (1996)), what may trigger a competition among the interested and well informed on the sequence of implementing the agreement's measures.

When the ideal characteristics do not entirely apply, one has an impure public good, i.e., one in which . The arguments in the previous paragraph show that modern RIAs can many times indeed qualify as *rather impure* public goods. Apparently, there exist only two ways of minimising these effects, turning the regional integration into a "better", or less impure, public good.

The first is a larger participation of the civil society in the debates on the agreement, in order to (ideally) include the whole country in the process of tailoring the integration (public) good. This has been taking place somehow, though sometimes the excessive politicisation of the debate creates another problems, one being the polarisation of arguments into marked ideological corners. Undoubtedly, a new challenge to the modern RIAs negotiators and builders is going to be how to open the debate to society's vast majority without letting it stall in a few yes-or-no emotional positions.

The second is a comprehensive (T+C), that will engage other groups beyond the negotiators and trade-related actors, increasing the awareness and understanding of the integration, while boosting its purely trade aspects. This may substantially enlarge the number of people concerned with the integration,

at the same time that a different dimension of the process is conveyed. At the side of the inevitable tit-for-tat of trade and market access negotiations, a sense of common goals and achievements may be created.

Without being a panacea, co-operation does seem to be an important tool for oiling modern RIAs. Notwithstanding, it shares a political economy dimension with the trade negotiations. Clearly, the choice of the favoured areas, and related projects, may also be viewed as the outcome of interactions among domestic “co-operation lobbies”, or of optimising different political co-operation functions³, and the joint acceptance of the co-operation agenda can – at least in principle – be seen under the light of a now external interaction of these forces. Without denying this view, we take it as a second-order consideration, which might be useful in certain instances. Fundamentally, it does not invalidate the role just outlined for co-operation, in the sense of enlarging the perception *of* and the involvement *in* the integration process.

2.2. A critical view of the EU co-operation efforts.

The EU seems to have been long sensible to the powerful role of a (T+C), having sometimes started solely with co-operation measures that eventually evolved into a (T+C) in their third or fourth generation agreements⁴. Usually, once an agreement in the (T+C) spirit is signed, the Commission issues a country (or group of countries) paper, detailing the co-operation initiatives and the budget for funding them from the EU side. Though in previous negotiations, like the one with Mexico, interim or partial agreements were being signed along the negotiation process, the Mercosul-EU negotiations follow the *single undertaking* principle, all dimensions of the agreement being closed at the same time.

In spite of their undeniably pioneering aspect, the EU co-operation efforts have not been free of criticism. The first relates to the well-known

³ Depending on which political-economy-of-trade model the reader prefers.

“Brussels-bureaucracy”, which many times considerably slowed down initiatives received with great enthusiasm when first proposed. The second, a criticism common to perhaps all co-operation projects, is that part of the funds revert to EU firms and consultancies, co-operation almost serving as a way to generate revenues to different EU providers. Finally, most co-operation programmes are too ambitious, dealing with too many areas/projects. Devlin (2002) correctly, and cautiously, states that co-operation projects should not be too numerous, at the risk of a poor implementation of too many initiatives, producing a final negligible impact. The combined result of these shortcomings is that for some people EU co-operation is just rhetoric; a coherent and beautiful rhetoric – given its emphasis on democratic and human values –, but nothing much beyond this.

Few and well focussed projects seem the optimal starting point for building a successful (T+C) nexus. In this paper we have been faithful to this idea. The five dimensions discussed in the next two sections work in a perspective not too far from the (T+C) role outlined above, though more restrict. They exploit two of the important purposes of a (T+C). First, as already mentioned, facilitate and boost the actual trade flows; second, help in creating *an enabling environment for more trade and economic relations*. That is why classical, as well as key, EU co-operation measures in the socio-political dimension – like building or strengthening of democratic institutions, or poverty alleviation – are not discussed here. That is why also, especially within the latter purpose, the discussion of “Mechanisms for dispute settlement co-operation in the WTO” has been introduced in the study. Up to our knowledge this is an innovation; nobody in the two sides seems to have thought of creating ways to follow up the broad EU-Mercosul *contentieux*, with the simultaneous purpose of keeping a constructive dialogue high and avoiding tit-for-tat measures that hinder trade and business opportunities.

⁴ Devlin (2002) also makes a good survey of this process with each (developing country) EU partner.

The four co-operation areas we single out in section 3 may give origin to both country or bloc co-operation initiatives, as will be summarised later. Nearly all of them share the side effect of an improvement on standards and quality in general, enhancing the competitiveness of the economies involved. Co-operation on dispute settlement is clearly at a bloc, or regional, level and may provide an original way to improve relations between the two common markets.

3. Sector-specific co-operations and their possible impacts within a trade and development framework.

3.1. Phyto-sanitary measures and agriculture.

The Uruguay Round Agreement on the Application of Sanitary and Phyto-sanitary Measures (SPSM) opened the road to the protectionist use of internal food safety regulations against competitive foreign suppliers. The Agreement was reasonably careful in relating, in its Annex A, international standards and recommendations for food safety to those in the Codex Alimentarius Commission, and, for animal health and zoonoses, to those of the International Office of Epizootics. Unfortunately, as with other GATT/WTO devices – notably the antidumping code -, the well-intentioned articles soon acquired a double-edge meaning, being used for good as well as bad purposes. Moreover, all the proceedings involved in its Annex C – Control, Inspection and Approval Procedures may easily be performed faster or slower, according to the purposes of the (potential) importer.

The EU has a strict internal food safety policy – usually rigorously applied to its domestic producers -, what makes it easier and more palatable the protectionist use of the SPSM. In the Mercosul, Brazil, for instance, has been very restrained in the use of the Agreement, the only complaint against him

having originated, ironically, from the EU, regarding its seed-potato exports⁵. However, the Agreement may pose problems if closer trade relations take place between the two blocs. In order to avoid this we identify an important co-operation line in all aspects related to meat and animal products in general.

Though Mercosul enjoyed a reasonably good reputation in its meat exports to the EU, which still can give it a competitive edge over new entrants like Poland - that, were not for lying reasonably far from fitting into the EU requirements, could damage its market share -, problems have been marring this reputation. The first is the serious epidemics that attacked different Uruguayan herds. Secondly, there have been problems in Brazil regarding the EU traceability requirements for bovine meat. Though the latter has not been used as a trade restriction yet, the EU authorities have signalled that fulfilling such requirements are an important condition to supplying the EU market. Co-operation in the definition and application of the sanitary measures and, in the particular case of traceability, *on the proper checking and measurement techniques*, is perhaps the best way to ease tensions in both sides and pave the road to a fuller and more open trade in agriculture between them.

Another area concerns co-operation in the genetically modified organisms (GMOs) issue. Traditionally, attitudes towards GMOs in the US and the EU are considered to oppose each other, the former being seen as open to transgenics and the latter as strongly resistant to their introduction⁶. Reality is more complex though ; not only unanimity with respect to GMOs does not exist in the US, as the EU is progressively admitting some GMOs. Mercosul, as a whole, would broadly be placed between these two poles, with Argentina leaning closer to the US approach – 95 per cent of its soya output comes from transgenic seeds - and Brazil being nowadays one or two steps ahead of the EU standing. The EU has tough regulations on labelling and traceability of products that, somewhere in the production chain, have used GMOs. These

⁵ These exports amounted to around US\$ 1 million, and the complaint was recently settled in the April, 2003 meeting of the (WTO) Committee on Sanitary and Phyto-Sanitary Measures.

⁶ For those interested in acquiring a deeper knowledge on this theme, Chrispeels and Sadava (2003), specially chapters 18 and 20, is a good modern reference.

regulations are due to become stricter after new requirements to be issued by next November. In the Brazilian case, transgenic soybeans are the major target, given the country's position as a main soya exporter and the diversified use of this crop in other agricultural and animal produce. At present, many issues are at stake, including the minimum percentage of transgenics that would make labelling mandatory. This is crucial because the lower the percentage level, the higher the costs of labelling for the producer. Given Mercosul's intermediate position in this hot subject, and the initial stage of regulatory and safety measures for a wider use in a main exporter like Brazil, co-operation in GMOs policy is an important area where the more convergence is achieved, the higher are the gains for both partners, either in their reciprocal trade or in a common external GMOs policy.

3.2. Investment and related issues.

Foreign direct investment (FDI) is a recurrent theme in Mercosul. All members want to attract as much FDI as possible and, in the past, relations have not been smooth in this field, as internal competition for FDI has in a few times evolved into nearly conflicting situations. FDI discussions involve different dimensions, ranging from the relatively vague idea of a level playing field to specifics like remittances policies. Notwithstanding, Mercosul countries share a greater identity with the EU – rather than with the US or other developed nations – in their international position regarding foreign investment. This common view could act as a starting point for a fruitful co-operation scheme.

The Colonia Protocol, dealing with investment rules for the common market, lies semi-abandoned, in a vivid example of the difficulties surrounding the theme. Given that not even in the EU one can consider to face a fully harmonised situation, the two blocs could develop a serious co-operation programme with the limited objective of having a single, bloc-to-bloc policy on FDI. This would be a wonderful incentive for Mercosul pushing forward its

own set of common rules, while both blocs would try to design basic criteria applicable to all member countries.

Advancing the proposal is not a too difficult effort, and could give way to a rich set of case studies. Indeed, EU FDI in Mercosul is mainly a business of five members – the UK, Germany, France, Spain and Portugal -, the other actors – like the Netherlands or Sweden – having a more limited and less diversified presence. On the other hand, Mercosul FDI in the EU is basically located in Portugal and Spain. A specific-to-general approach, in which rules and procedures would be first polished with the main agents – under the light of concrete questions presently at stake - and then submitted to the corresponding general bodies, could bear interesting fruits in a short time horizon. The EU experience – in this case, most in its failures than in its successes – would be of extreme value, creating an area of actual interchange and effective building up of both common markets.

3.3. Telecommunications and information technology⁷.

Telecommunications is a domain where a deep interplay not only among the goods and services sectors, but also the connected rules, protocols and standards takes place. It is impossible to discuss trade in telecom services without a view on the related impact in the telecom and information technology equipment trade *and* on the constraints imposed by specific standards and other global technical definitions. Moreover, it is the sector where regulation has moved farther, posing complex problems whose solution may again considerably affect the goods and services trade, as well as foreign direct investment in the sector.

The EU-Mercosul negotiations in telecoms adopted as a starting point the annex to the 4th GATS Protocol known as Reference Document on Basic Telecommunications Services. This was an important gesture as, at the WTO,

while the EU adopted the Reference Document, Argentina is the only Mercosul country to have done the same. Brazil, Mercosul's biggest telecoms market, presented, in April 2001, a proposal on the adoption of the Reference Document. However, it met opposition from Japan, Hong-Kong, the US and the EU itself, particularly due to restrictions on foreign ownership of telecom firms. So, while convergence seems to be likely within the EU-Mercosul agreement, at Geneva the impasse continues.

Two crucial areas stand out as key co-operation nexuses in this context. The first is migration from second (2G) to third generation (3G) of cell phones networks, a process highly dependent on the structure and technology of the existing 2G network. This is because the basic universal standard for 3G technologies – the IMT-2000 defined by the International Telecommunications Union (ITU) – is, as often happens, broad enough to accommodate different specific technologies. The new 3G environments, beyond allowing the much expected *global roaming* facility, will achieve nearly total convergence among fixed and mobile voice services, data and image transmission, Internet and multimedia services. This means a prospectively huge enterprise in both blocs, specially in Mercosul where telecoms penetration lags behind the EU (see Exhibit 1).

Co-operation here means serious business, with the possibility of very significant gains in the medium to long-run. The point of departure is in the EU's favour as establishment of the 2G network has not been completed yet in Mercosul. In Brazil, for instance, a much heated debate is taking place as Vésper, the local representative of the US firm Qualcomm, wants to extend an acquired right to exploit cell-phone services in the 1.8 GHz band to the 1.9 GHz band. The latter has in principle been assigned by the Brazilian regulator to 3G services, and use of it by Vésper would place the firm's cell-phone technology, the CDMA (Code Division Multiple Access), in a vantage point as regards the competing GSM (Global Standard Mobile) technology for 3G

⁷ This subsection draws partially on Viana (2003). Those interested in acquiring a better knowledge of the technical concepts and procedures here mentioned should consult a specific

migration⁸. The whole affair is twice more strategic because, ironically, half of the existing cell-phones networks are neither GSM nor CDMA, using rather the phased out TDMA (Time Division Multiple Access) technology and are in the process of being replaced by the two competitive standards.

Exhibit 1. Telecoms penetration in Mercosul and the EU ; a few indicators - 2001.

	EU	Mercosul
Telephones* : fixed	55.4	17.7
mobile	72.4	13.9
Internet users*	31.4	3.9
Personal computers*	30.0	5.1
Households with TV**	147.0	47.6

* per 100 people ; ** absolute number (in millions).

Source : International Telecommunications Union.

The GSM technology, present in 193 countries, is dominant in the EU. This actual example shows how co-operation in this area might have significant trade spillovers. Moreover, even after having decided how migration to the 3G environment will be performed, there remains scope for co-operation on the various stages of the process.

The second area is digital TV, an innovation that, though nowadays less overemphasised as *the* technical revolution in multimedia reception, will still have a profound impact on future developments in information (and entertainment) transmission. Again, though the EU has already defined its standard, the DBV (also adopted by Australia, New Zealand, India and Singapore), things have not been settled in Mercosul yet. Argentina already opted for the competing ATSC standard (adopted by Canada, South Korea,

(though not too technical) work like Horrocks and Scarr (1994), for instance.

⁸ It is of course completely outside our purpose – and entirely senseless – to state a position or judgement on the issue. Vésper claims that its decision is backed by Resolutions issued by ANATEL, the national telecoms regulator.

Taiwan and the US). If Brazil adopts the DBV, or a hybrid form, there will be significant motives for technical co-operation in this area.

A third issue, perhaps as relevant as the two previous ones, is Internet access and penetration. Both in Mercosul as in the EU, there are clear signs that Internet traffic will progressively dominate telecommunications flows. This will have a great impact on the structure of the equipments industry and the costs of the service providers. To overcome or attenuate this impact, more *peering-backbone* connections, in which a peripheral internet user is directly connected to an internet backbone (provided flows in both sides of the connection are approximately equal), will be needed. No Mercosul country has such a connection nowadays, what amounts to higher internet costs to all its members, as backbones are located either in the US or the EU. Co-operation in order to implement such cost-reducing measure, as well as on the issues of taxation and use of broadband connections is clearly needed.

In the telecoms galaxy, there are many other areas where co-operation makes sense. Examples could cover information gateways entry and utilisation rights ; spectrum, numbering, naming and addressing management ; pricing and cost accounting policies ; open systems and networks interconnection, or customers and universal service requirements⁹. Given the purposes of this paper, we think however the three cases above illustrate why telecoms qualify as a key co-operation area.

Finally, it is worth reminding that, contrary to the US, where telecoms (internal) deregulation dates at least since the famous Modification of Final Judgement by Judge Greene, blowing up ATT's monopoly in 1982, the EU, like Mercosul, started the process quite recently, facing nowadays problems which are similar to those of Mercosul. Co-operation, even in a broad way, on the difficult economic, technical and institutional questions which lie in the fuzzy border separating the telecoms and competition regulators can make a lot of sense, beyond being fruitful for both regions.

3.4. Culture.

Culture and education are the most important co-operation subjects to assure a long term, stable and ever closer relationship between two groups of nations. The problems created by the successive EU enlargements, since the one following the *Delors's Initiative*, and the tragic way in which fragmentation took place in the Balkans have attracted the attention of RIA researchers to the former Austro-Hungarian empire. Though still being a puzzle to some, there is nowadays a certain consensus that only the addition of the common threads – and the ensuing uniform and detailed, though massive, administrative procedures, going many times down to district level – forged by a particular branch of German culture, flexible enough to accommodate key Slav and Magyar influences, can explain the incredible survival and unity, over its last few decades, of a power already in shambles¹⁰.

Cultural links, and the galaxy of common (or similar) habits, things, patterns, rules and attitudes derived from them, constitute a solid way of gluing nations together. No wonder the continuing fight between the US film and entertainment industry and its EU counterparts: much more than an economic issue is at stake. At the same time, an encompassing integration as the one the EU desires with Mercosul can only be achieved through the strengthening of cultural and educational links.

It is in education, rather than in culture in general, that the EU co-operation initiatives have perhaps been more successful. In Mercosul, and in the whole of Latin America as well, out of the seven special projects administered by the EuropeAid Co-operation Office of the EU, two aim at the

⁹ Many of these terms may sound rather technical to the reader: they are. In a digital technology environment, numbering – i.e., user identification –, for instance, became a crucial issue, raising specific and complex problems.

¹⁰ The literature on the Habsburg, Austro-Hungarian empire is enormous and, of course, much has nothing to do with the issues in this paper. Classical, and not very difficult or massive, works like Blanning (1994) and Taylor (1948, 1954) can however be of value. Conybeare and Sandler (1990) is also interesting, and less far from our theme.

interchange of students, academic staff, building up common research projects and the development of joint degrees (see Exhibit 2). In other aspects of culture, particularly the entertainment industry, the presence is more limited, though, for instance, in the movie sector, joint ventures among Mercosul and EU groups (specially those in Latin countries) are signalling a promising future.

Exhibit 2. The main EU co-operation programmes in Latin America - 2002.

Programme	Area – main purpose
AL-INVEST	Investment – encourage small and medium sized EU and LA firms seeking co-operation
ALFA	Education – promotion of higher education
URBAL	Urbanism – establish direct and lasting links between EU and LA cities
ALURE	Energy – encourage an optimal and most rational use of energy
ATLAS	Business – economic co-operation through a network of Chambers of Industry and Commerce
@LIS	Information Technology – promote the benefits of IT and bridge the gap of the digital divide
Alβan	Education – reinforcement of the EU-LA co-operation in higher education; training in the EU for LA professionals.

Source : European Commission – DG External Relations.

Including all possibilities of co-operation in this vast area would be to reproduce, in a smaller scale, the same mistake usually attached to the global EU initiatives: too many projects, almost sure candidates to inefficient management. As in agriculture or telecoms, we have a more targeted proposal.

Irrespectively of the existing – and welcome new ones – projects, co-operation funds in the framework of the agreement could be directed at three objectives. The first would be reaching a common definition of a cultural firm, which would enjoy specific privileges in both regional spaces, being able to particular concessions in the other bloc and, sometimes, identical working and performing conditions. The concessions would mean greater flexibility and easiness in its mobility and activities throughout the two blocs, while the identical conditions would open the possibility – at the discretion of the local sponsoring authorities, like, for instance, festival organisers – for the firm to enjoy the same grants, facilities and liberties given to the local ones. This is a bold proposition which would demand further study, but undoubtedly represents a step forward in a closer cultural co-operation. Eventually, both sides could create a (modest) joint fund to support travelling and activities abroad of these firms.

The second proposal deals with the audiovisual services, where inevitably there exist identities in both sides of the Atlantic and, in spite of a greater lack of capital in the Mercosul side, the two blocs are competitive with respect to each other. Mercosul movies are well accepted in the EU, the same applying, in principle, to the EU ones ; both however lack powerful distribution channels. Outlets should not be restricted to the classical theatre or projection room, DVDs, videos and the TV – where specially Brazilian soap-operas have a market still to explore – being very important alternatives. Again, it may be hard to believe that, given the enormous and systematic pressure that the US industry makes on Brussels for total liberalisation of this sector, the EU would be able to make a special opening to Mercosul. However, the point here is not on GATS plus rules for Mercosul – a subject to be discussed in the trade in services negotiations -, but on co-operation between the two sectors aiming at improving distribution channels and increasing penetration in each other region. Truly, between a GATS commitment and local regulations – for instance, regarding the hours per-week allowed to non-EU soap operas and movies in a regional TV channel – there is margin for manoeuvre ; a margin

that, without harming the non-discrimination clause, can be used to the benefit of a partner.

The third project relates to property rights. The cultural industry is one of the sectors where more problems related to intellectual property rights occur. In this area, not only counterfeiting – of CDs, DVDs and similar media – is a problem, but due and fast appropriation of rights, in the multiple instances they generate revenue in the cultural world, is also problematic. Co-operation would mean a project to streamline procedures in both sides, so that rights and royalties would be quickly collected and remitted, at the same time that enforcement would receive special attention.

4. Dispute settlement co-operation in the WTO.

Annex 2 of the Uruguay Round, Understanding on Rules and Procedures Governing the Settlement of Disputes, represented a major departure from the existing (GATT's) mechanism to solve disputes among contracting parties. In particular, two organisms, the Dispute Settlement Body (DSB) and the Appellate Body (AB), were created within the WTO, with the sole purpose of administering the rules and proceedings in the Understanding and, in the case of the Appellate Body, functioning as a last recourse (see, for instance, Palmeter and Mavroidis (1999)).

It is not the goal of this section to discuss the encompassing impact of the Understanding and the pros and cons associated with the increased weight of juridical content and procedures in the WTO dispute settlement mechanism. Sticking to undeniable facts, the first finding is that the frequency of use of the DSB and its panels surprised even the more optimistic defenders of the Understanding. Secondly, panels have up to now behaved in a quite neutral mode, being fair to say that no evidence of bias in favour of a particular member – specially the more powerful ones, as some feared – can be raised. It is within this context of a very active DSB that our proposal comes.

From January 1997 to March 2001, out of all the panels *concluded* at the DSB (or the AB) there were 14 involving the EU and at least one Mercosul member. In only two of these, both blocs/members figured as third parties, in the remaining twelve, at least one Mercosul member or the EU figured either as complainant or accused (see Exhibit 3). These panels covered a variety of WTO agreements and, as usual, it cost about 12 to 18 months to reach a final decision.

The amount of time spent until reaching a decision and the uncertainty on whether the losing side will implement the conclusion are main shortcomings of resorting to the DSB. In case the decision is not implemented, or even when immediately applied, the question of sanctions is a further problem. Even when enforcement is feasible – what is not always evident -, sanctions many times backfire, with the winner also losing part of its trade welfare. Moreover, specially in Mercosul countries where legal assistance on

Exhibit 3. Concluded panels at the DSB (or AB) where both the EU and at least one Mercosul member took part – January, 1997 to March, 2001.

	Number of cases
As complainant and accused	3
As complainant, accused and third party	1
As either complainant or accused and third party	8
Both as third party	2
TOTAL	14

trade/WTO law is not very developed, individual exporters, when in trouble, don't know what is the best option: using the DSB at Geneva or appealing to the domestic commercial defence system, in a local court. Finally, as panels engage directly in the case, without the help of a preliminary analysis of the juridical aspect of the problem, it is not uncommon to find panels stalled in a

controversial matter, involving different, conflicting international treaties or commitments.

Considerable time and energy would be saved if, within a co-operation framework, a previous consultation system for any potential dispute at the WTO were created. The system would perform a preliminary analysis of the juridical foundations of the complaint, trying to reach a friendly solution. In this effort, both parties would make an evaluation of the costs and benefits of engaging in a WTO panel, in contrast to the gains in a quick, internal (to both) solution. Advice on the best legal ways to conduct the case would also be provided.

Such co-operation requires the establishment of a permanent group or committee responsible for the tasks outlined above; the group being consulted whenever a potential conflict aroused. The proposal then encompasses the dispute settlement procedure discussed in the ongoing negotiations. This one relates only to the disputes that could emerge in the framework of the agreement, while *the co-operation envisaged deals with all potential WTO cases*, going beyond those inside the agreement flows. Moreover, as Exhibit 3 shows, many times one bloc is involved in the case, while the other enters only as a third partner. The co-operation mechanism would also be a privileged source of information, with the blocs exchanging views and strategies even when they are only one of the two main parties.

Finally, better guidance would be provided on the choice of a domestic commercial defence case versus a WTO panel. This is a crucial point where a lot of misunderstanding is present. Reciprocal ignorance, by EU exporters on the Mercosul members defence systems and, from Mercosul, on the (voluminous and) elaborate EU foreign trade legislation, accounts for a considerable waste of time and resources in solving cases which do not necessarily justify a panel, though causing damage to either the exporter or the domestic competitors.

Implementation of the idea is not difficult as the basic cell would be the body created for the agreement, which – in the co-operation project – would

receive supplementary funds for performing its enlarged activities. We estimate a considerable gain in time from such co-operation mechanism.

5. Application to the EU-Mercosul present negotiations.

We outlined in the previous sections a moderate portfolio of co-operation initiatives. The five dimensions briefly discussed make for a manageable though significant group. In this section we move back to a global view in order to have a finer judgement of the proposal. An initial point to be remarked is that the several ideas/projects can be classified according to different criteria. Exhibit 4, which will guide the present analysis, shows that the overall result is a high diversity of project types.

The first criterium concerns who are the actors of the co-operation ? The nations or individual economic agents and social groups ? As in many trade relations, both can be true. The projects allow for varied forms of interaction ; while in a common food safety policy regarding transgenics, as in a common statute for cultural industries, governmental involvement will be deep – though not exclusive -, in the telecoms projects individual firms and providers will probably have a much more prominent role. This begs the question whether, in certain cases, one is really dealing with the co-operation instance or with a fairly crude facilitation measure, that will clearly benefit a specific group of firms/providers in one or both sides. In other words, the political economy dimension of co-operation crudely emerges¹¹. This distinction is sometimes hard to identify, but we do not think it to be a criterium to reject a co-operation effort.

The locus where to trace the dividing line should be whether the co-operation project drastically limits or excludes other alternatives – as in the case of a competing standard – or, on the contrary, it improves competition among alternatives, while helping in better qualifying the decision making

¹¹ See the comment at the end of section 2.1.

process. Looking at the column "Restricts ?" in Exhibit 4 we see that this possibility exists for five out of the ten projects, being greater in two of them. Such a situation is, to a certain extent, inevitable when dealing with fundamental technical or juridical matters (all the five projects are in this class). Of course, taking the blunt example of the 3G standard in telecom, once the decision has been taken, there is no point in blocking a co-operation initiative that will eventually contribute to a better implementation of the choice already made.

In spite of their diversity in other dimensions, all projects *can be viewed* as trade-enhancing (column 4, Exhibit 4), and so, as economic co-operation. This has a practical importance because economic co-operation, contrary to either financial and technical or social and cultural, has not been closed in the negotiations yet and, if needed (and wanted), all the proposals can be put under this umbrella.

Most projects have a true regional perspective, as opposed to a country basis. This will demand a higher cohesion from Mercosul in order to design consistent regional co-operation programmes. As a side effect, co-operation will also help deepening the integration, this being the last classificatory dimension ("Needs homework ?"). Perhaps the best example in this case is the investment protocol, and the related harmonisation measures.

There also synergies and inter-relationships among the ten projects. Though the telecom ones (4 to 6) bear a technical character, they can produce externalities for two of the cultural ones, namely 7 and 8. Project 3 can impact at least the whole set from 4 to 9, the latter also impacting 3. The dispute settlement co-operation in project 10 may boost the benefits accruing from all the other projects. As expected, due to their very specific character, the agricultural proposals stand more aside of the others. Nevertheless, they are important building blocks in the task of approximating the EU and Mercosul sectors.

Thus, the proposal passes through varied checks and seems to touch different areas that can be reached only through cooperation, making for a quite

Exhibit 4. The proposed projects classified into several dimensions.

<i>PROJECTS</i>	Actors ?	Restricts ?	Trade-enhancing ?	National or regional?	Needs homework ?
1. Sanitary & safety	States	No	Yes	Regional	Maybe (M)
2. GMOs policy	States	May	Yes	National/regional	Yes (M+EU)
3. Rules harm. (FDI)	States	No/may	Yes	National/regional	Yes (M+EU)
4. 3G migration	1. Firms, 2. States	No/may	Yes	National	No
5. Digital TV.	1. Firms, 2. States	May	Yes	National	No
6. Internet links	Firms	No	Yes	National/regional	Maybe (M+EU)
7. Cultural firm	States	No	Yes	National/regional	Maybe (M+EU)
8. Audiovisual	Firms+States	No/may	Yes	National/regional	Maybe (?)
9. I. property rights	States	No	Yes	Regional	No
10. Disp. settlement	States	No	Yes	Regional	Yes (M+EU)

representative agenda for achieving the public good objective mentioned in section 2.1.

6. Closure.

The co-operation initiatives outlined could make for a diversified and engaging agenda, ultimately broadening the perception and impact of the Agreement. Classical areas of emphasis for the EU, like political co-operation and strengthening of democratic institutions, have been deliberately left out. However, other possibilities still remain. A key one relates to structural adjustment. The EU has an enormous experience in this area, while Mercosul must, sooner than soon, have a regional – as opposed to a national – position on this.

Before the Argentinean crisis, some authorities in Brazil had raised the idea of extending BNDES services to a Mercosul-basis, at least for selected sectors. Though the proposal met mixed reactions within the country, it is slowly gaining a wider support. At the same time, many policy makers in Mercosul would like to see in a EU-Mercosul co-operation agenda a huge “structural adjustment project”, with possibly a percentage of funds coming from the Brussels coffers. Though the Agreement creates a good occasion to tackle the structural adjustment issue under the co-operation heading, we find it completely far-fetched – actually a waste of time and energy – to count on EU money for Mercosul structural adjustment problems. A superficial analysis of the difficulties caused by the shifts in the EU structural funds programme, from the Iberian/Mediterranean members to the enlargement countries, and of the increasing demands the latter continue to make, shows that there is no room for an extra-territorial, Southern Cone initiative in this field. Undoubtedly, Mercosul must face the regional funds problem, but must also tackle it with its own resources and creativity.

The above case offers a good example to close this paper. Indeed, two points are worth reminding when analysing a (T+C) like the one proposed. First, the co-operation agenda should be clear, compact and as precise as possible. Its projects can (and should) be varied, touching different dimensions within the regional space and sensitising agents at different levels. But clarity of objectives is mandatory, to allow for accountable country papers, in which targets can be matched to efforts and costs. Nevertheless, a second point brings to mind that big issues outside the agenda not necessarily should be avoided in a global, more general stance. It would be foolish not to use the immense experience the EU has been having with structural adjustment questions, when designing Mercosul's measures in this field. But this can be done in a global co-operative mood, without specific commitments. If, by chance, a clear project on the subject is identified, with mutual benefits, then nothing should stop it to figure in a next co-operation agenda.

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