

ARTÍCULOS Y NOTAS DE PRENSA

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Perspectives on the completion of the pending agreements between the European Union, Mercosur and the Andean Community

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I. Introduction.

This paper refers to the current outlook, at the beginning of 2009, regarding the completion of the bi-regional agreements that the European Community (EU) is negotiating with Mercosur and the Andean Community of Nations (ACN).

Both bi-regional negotiations are characterized by a state of uncertainty in relation to their future evolution. This fact is even more accentuated in the case of the negotiations with Mercosur.

First we shall examine the course of events until the present day, the current state of affairs and the future outlook for each one of the negotiations. We will also take into consideration that these negotiations are taking place concurrently with those of the Doha Round. Even when there is no formal relation between the bi-regional and the global multilateral negotiations, this fact has had implications for the respective negotiation strategies, particularly those involving the European Union and Mercosur, as a consequence of the relative importance that the issue of agricultural and agro-industrial products has reached in this case.

Next, the respective negotiations will be evaluated first within the framework of the rules agreed by the Latin American Integration Association (LAIA), taking into consideration the possible effects on the preferential agreements that are formalized between Mercosur or the Andean Community and any other countries or commercial blocks. Secondly, they will be analyzed in relation to the World Trade Organization (WTO) regulations, in particular due to the preferential effect that any commercial agreements would have if their scope reaches farther than those agreements involving the rest of the member countries.

As a conclusion of our analysis, we will make some considerations on the approach and methodology for the future development of bi-regional associations, placing the stress on those aspects that may contribute to the achievement of the desired strategic goals pursued in their creation.

These considerations will be analyzed from the perspective of the transformations that have taken place in the international context since the

inception of the corresponding negotiations, as well as from the broader outlook of the transatlantic economic and political relations between the regions involved. Additionally, they will be analyzed in view of the strategic relation of the European Union (EU) with Latin America and the Caribbean (LAC), especially taking into account the upcoming EU-LAC Summit to be held in Spain in 2010.

II. The bi-regional negotiations of the EU with Mercosur and the Andean Community: past course of events and current outlook. Relation with the Doha Round.

Formally, the bi-regional negotiations between the EU and Mercosur began in April 2000 [1]. As a precedent, it should be noted that a General Agreement of Inter-regional Cooperation had been previously signed in Madrid in 1995. This agreement, which has been ratified by all the parties, is still in effect. Visits <http://www.sice.oas.org/> and <http://eur-lex.europa.eu/>.

The negotiations for the agreement of strategic association contemplate in this case -as with the other agreements that the EU has formalized or is negotiating with countries in the region- three interrelated pillars: the political, the commercial, and that of cooperation.

Regarding the commercial pillar, as per the official information provided by the [European Commission](#), the agreement being negotiated is based on a region-by-region approach. Its aim is to be comprehensive and ambitious at the same time and to have a WTO-plus scope, meaning that it would move a step farther from the existing global multilateral agreements or those that are reached by the current Doha Round negotiations. It would take the shape of a free trade agreement, in accordance with Article XXIV of the GATT-1994. As stated by the official European information, no sector of the commercial liberalization would be excluded, even when the sensitivity of both parts involving products and sectors would be taken into consideration. The agreement should cover goods as well as services, investment and access to government purchases. In addition, it should guarantee an adequate protection of intellectual property, contemplate efficient competition policies, and include an agreement on sanitary and phyto-sanitary regulations and a mechanism for the resolution of commercial disagreements.

The official information available on the European side points out that sixteen negotiation rounds had taken place until 2008 [2]. However, since October 2004, the progress has only been on a technical level. In December 2007, a declaration was subscribed at a ministerial level expressing the political will to relaunch the negotiation (see the document in this site <http://ec.europa.eu/>).

One of the reasons that have been cited in an attempt to explain the difficulties to make any progress is the close link between the bi-regional negotiations and the WTO's Doha Round [3]. On this issue it has been noted that, if the future evolution of global multilateral negotiations became clearer, it would be feasible to relaunch and eventually conclude the bi-regional ones.

It is important to remember that there is no formal requirement establishing a

necessary relation between the bi-regional negotiation processes -neither in the case of Mercosur nor of the ACN- and the Doha Round. This is an issue which is related, in each specific case (particularly with agricultural products -their access to markets and subsidies-, market access for non-agricultural products and diverse types of services), with breakeven points that the different parties are trying to attain on each bi.-regional negotiating front and its relation with what can finally be articulated within the Doha Round -the idea of a "single pocket". In the case of the EU-Mercosur negotiation, it has even been suggested, by a group of experts from both regions, that the negotiation process be split into two separate stages in order to examine the need to correlate its evolution with that of the Doha Round [4].

However, at the beginning of 2009, the future of the Doha Round negotiations remains uncertain after the consecutive failures of July and December of 2008. The current global crisis and its impact on protectionist tendencies could, nevertheless, motivate a formal relaunch of the EU-Mercosur bi-regional negotiations this year regardless of how much progress is made by the Doha Round. The idea of unfolding them into two phases, which was mentioned in the preceding paragraph, would apparently still hold up.

To complete the current scenario, we should keep in mind that Decision n°32 adopted by the Common Market Council in the year 2000 (<http://www.mercosur.int/>), establishes the commitment of Mercosur member countries to jointly negotiate agreements of a commercial nature with third countries or groups of countries outside the zone when any preferential tariffs are granted. This regulation is in force and is applied in the negotiations between the EU and Mercosur only in reference to preferential tariffs. This means that it is not applicable in the case of issues that are not related to tariffs or which are not of a preferential nature. This differentiation is important for the outline of scenarios on the possible future evolution of the negotiations between the EU and Mercosur or, eventually, at a bilateral level with Mercosur member countries, a hypothesis that could not be completely ruled out.

At the same time the negotiations between the EU and the Andean Community [5] were launched in June 2007, on the occasion of the CAN Summit held in Tarija (Bolivia) (<http://ec.europa.eu/>) and initiated later in September of the same year, in Bogota (<http://www.comunidadandina.org/>). They were preceded by the Rome Declaration on Political Dialogue of June 30, 1996 (<http://www.comunidadandina.org/>) and by a Political Dialogue and Cooperation Agreement on December 15, 2003 (<http://www.comunidadandina.org/>).

It should be noted that Andean countries benefit from a preferential access to the EU for those products included in the framework of the Generalized System of Preferences (GSP) effective since July 1st, 2005 through the modality of the Special Incentive Arrangement for Sustainable Development and Good Governance (GSP+), (<http://ec.europa.eu/> y <http://www.comunidadandina.org/>).

In the same manner we should emphasize that, even when the ACN is a customs union (<http://www.comunidadandina.org/>), Decision 598 adopted

on July 11, 2004 (<http://www.comunidadandina.org/>) grants freedom for ACN member countries to exceptionally negotiate trade agreements with a third country or group of countries. Article 1 of this regulation explicitly establishes that "the Member Countries can conduct preferentially community or joint negotiations, and exceptionally individual negotiations for trade agreements with third countries or group of countries". Article 2 adds "If it is not possible to conduct community negotiations for whatsoever reasons, the Member Countries can negotiate bilaterally with third countries. In such event, the participating Member Countries should: a) Preserve the Andean legal system in the relations between the Andean Community Member Countries; b) Take into account the commercial sensitivities of the other Andean countries in the trade liberalization offers; c) Maintain within a transparency and solidarity framework an adequate exchange of information and consultations during the course of the negotiations. Later, Article 5 establishes that "Upon concluding the negotiations, the principle of the Most Favored Nation should be applied as provided for in the Andean legal system". Article 6 contemplates that "The purpose of the trade negotiations authorized through this Decision can be the establishment of free trade areas and may refer to topics other than the liberalization in the trade of goods". Additionally, articles 3 and 4 enact the obligation to inform of the commencement of negotiations, to keep the Andean Community informed of their evolution and to notify the Commission prior to the signing of the corresponding agreement.

Two ACN member countries have concluded (or are still negotiating) bi-lateral trade agreements within the framework of this Decision. It is the case of Peru with the US and several countries of the APEC and the LAIA realms (<http://www.mincetur.gob.pe/>) and of Colombia, also with the US (this last agreement is not yet in full force) (<http://www.mincomercio.gov.co/>).

For their part, ACN member countries concluded on November 30, 2005, an agreement of economic complementation (ACE 58) with Mercosur member countries which contemplates differentiated tax-reduction programs for the signing countries (<http://www.mincetur.gob.pe/>).

In January of 2009, the Council of the European Union modified the negotiating mandate for the agreement with the CAN, thus opening up the possibility of undertaking bi-lateral trade negotiations (Council of the European Union. Press release, meeting 2918 of the Council, Brussels, January 19, 2009, 5471 (Presse 13) on <http://www.consilium.europa.eu/newsroom>). . The new negotiating stage was initiated in Bogota in February 2009.

According to the press information available at the moment of this analysis (February 15, 2009) the current focus would be on reaching an agreement regarding the pillars of political dialogue and the block-to-block cooperation modality.

A bi-lateral trade negotiation with all the countries that express their will to negotiate a comprehensive agreement with the EU, compatible with the WTO regulations, would be introduced within this common framework.

Finally, there would be an attempt to articulate the bi-lateral processes and

those of political dialogue and cooperation in one single Agreement of Association between the Andean Community and the European Union.

Differentiations would be admitted in these commercial negotiations in order to acknowledge the asymmetries in development and the particular sensibilities of each party.

In regards to the link between these bi-regional negotiations and those of the Doha Round, as was already mentioned regarding the case of Mercosur, they will be reflected in the manner in which the breakeven points of the interests of each of the parties are articulated in relation to the different chapters of the negotiating agenda. The WTO-plus scope of what is agreed will depend then on the moment in which the bi-regional commercial negotiation is finalized, whether this takes place before or after the conclusion of the present Doha Round [6].

III. Bi-regional negotiations and WTO and LAIA regulations.

An important aspect to consider is that of the respective bi-regional negotiations in view of the commitments taken on by the parts within the scope of the LAIA and the WTO.

In short, the question that needs to be answered is the following: what kind of conditioning arises from the LAIA and the WTO regulations in relation to the commercial pillar of the bi-regional negotiations between the EU and Mercosur and the ACN respectively?

In the case of the WTO, the limitations arise from the GATT and the GATS. In both cases they are related with the exceptions to the most favored nation general clause that expresses the non-discrimination principles (article I of the GATT and article II of the GATS) and which are especially contemplated by articles XXIV of the GATT and V and V-bis from the GATS [7].

In the measure that the format chosen to fulfill the preferential trade relations at the bi-regional level is that of a free trade zone, it will be essential to meet all the requirements that are stipulated for such instrument in the abovementioned article XXIV of the GATT, particularly in paragraphs 5-b) and 8-b) and in article V of the GATS, especially paragraphs 1, 2, 3-b and 4.

When dealing with negotiations between two processes of economic integration, it is relevant to consider the differences established by the GATT between a free trade zone and a customs union. In the first case there is no common external tariff. The negotiation with a free trade zone could be materialized by the EU -which constitutes a customs union, with an external common tariff and shared commercial policies- and the other block -one with no common external tariff nor, necessarily, with common policies- through a network of bi-lateral free-trade agreements signed individually with each member country of the block. It could also be carried out as a general common agreement with the free trade zone, but including bilateral lists with each individual country that forms part of it.

In the case of an agreement between the EU and a customs union, it would be relevant to examine how this figure has been implemented in the other

block -in Mercosur or in the ACN in our case-. GATT regulations are, in this sense, quite flexible. These do not necessarily match the theoretical definitions of a customs union, nor the modality materialized by the Treaty of Rome of 1957.

In fact, the main regulation to consider on this regard, in order to assess the scope of the corresponding customs union, is that of article XXIV, paragraph 8-a-i and ii, which states that "a) A customs union shall be understood to mean the substitution of a single customs territory for two or more customs territories, so that : i) duties and other restrictive regulations of commerce...are eliminated with respect to substantially all the trade between the constituent territories of the union or at least with respect to substantially all the trade in products originating in such territories; and that, ii) substantially the same duties and other regulations of commerce are applied by each of the members of the union to the trade of territories not included in the union. (Italicized by the author).

From this definition we gather that, in order to be considered a customs union, it is not necessary that all the exchanges between the "constituent territories" are free from tariffs or other restrictions. It could even be the case that only the trade of products originating in the customs union is. Neither is it required that the duties and other trade regulations be the same. What is stated is that they have to be substantially the same. However, there is no definition as to what should be interpreted by "substantially".

It is then possible from the perspective of the WTO rules, that a bi-regional free trade agreement -even one between two "customs unions"- could include partial differences, meaning multiple-speeds and eventually variable geometries, particularly if they can facilitate the participation of less developed countries belonging to any one of the blocks.

Thus, the room for maneuver that may be achieved on each case will depend more on the regulations of the block with which the EU is entering the association -in this case, the ACN or Mercosur- and on economic considerations -that take into account for example special situations, sector sensibilities or differences in the level of development- than on WTO rules. This is even more evident in the case of services, in view of the explicit acceptance of differentiations in favor of developing countries that arise from article V-3-a.

The previous considerations suggest an even wider room for maneuver for EU negotiations in the case of the ACN and Mercosur than what would be left if a theoretical definition of customs unions were to be applied -usually corresponding to a variation of the "perfect or complete customs union"- or if such definition were to be based on the European Union's own model.

In the case of LAIA, it should be noted that both Mercosur and ACN countries are member countries. It would be relevant in this case to examine the relation between the bi-regional negotiations with the EU and the obligations assumed by the member countries of both integration processes within the scope of the LAIA.

It is a well known fact that the creation of the LAIA changed the outlook with which the idea of a Latin American integration had been developing

until then. In fact the Treaty of Montevideo of 1960, which established the Latin American Free Trade Association (LAFTA), contemplated the creation of a free trade zone -in the sense of article XXIV of the GATT- between its eleven member countries. In practice, it was not possible to achieve such goal.

Hence, through the Treaty of Montevideo of 1980 (TM80), which created the LAIA (<http://www.aladi.org/>), a fundamental change of focus was introduced. In Article 1 it was established that "...the Contracting Parties pursue the integration process leading to promote the harmonious and balanced socio-economic development of the region (...). The long-term objective of such process shall be the gradual and progressive establishment of a Latin American common market". The method to reach such objective is mentioned in Article 4 and consists of setting up "...an area of economic preferences, comprising a regional tariff preference, regional scope agreements, and partial scope agreements."

For the purposes of our analysis, there are two main regulations of the TM80 that should be taken into consideration in relation to the bi-regional negotiations. These are articles 44 and 48.

Article 44 determines that "Any advantages, favorable treatments, franchises, immunities and privileges which member countries apply to products originating from or bound to any other member country or non-member country, pursuant to decisions or agreements not foreseen in the present Treaty or the Cartagena Agreement, shall be immediately and unconditionally extended to the other member countries."

This most-favored-nation clause implies that any preference that Mercosur or ACN member countries grant to EU countries should be automatically extended to the rest of LAIA countries (which currently include Cuba).

However, it should be noted that, on June 13 1994, the Protocol on the Interpretation of Article 44 of the TM80 was signed at the First Extraordinary Meeting of the Council of Ministers of the LAIA (<http://www.aladi.org/>). This protocol foresees a procedure by which the member countries that form part of the agreements that are mentioned in the same article -which includes those celebrated with third countries- may request, before the Commission of Representatives, a temporary waiver of the obligations established by Article 44 by presenting the arguments to support it.

This Protocol was negotiated in order to contemplate the situation created by the addition of Mexico to the North American free trade area (NAFTA).

According to the information published on LAIA's official webpage, up until now only seven countries, out of the required minimum of eight, have submitted the corresponding ratification instrument. These countries are Mexico, Paraguay, Ecuador, Chile, Argentina, Venezuela and Colombia. Therefore, the Protocol is not formally in effect yet (<http://www.aladi.org/>).

Two other resolutions were approved for the transition period until the Protocol came into force. These are Resolution 43 (I-E) (<http://www.aladi.org/>) and Resolution 44 (I-E) (<http://www.aladi.org/>).

Fourteen years have elapsed since the signing of the Protocol of Interpretation of Article 44 without it ever having become formally effective. Eventually some legal questions could be raised regarding the validity of the effect of the abovementioned resolutions in relation to a legal regulation of the TM80 that is drafted in a version of the most-favored-nation clause of an unconditional and automatic nature.

However, the political considerations which led to the approval of the Protocol make it hard to imagine a scenario in which a LAIA member could call upon the full enforcement of Article 44 without the interpreted version. The question whether an eventual summoning of said clause in its original version could be a possibility within the legal jurisdiction of a member country remains unanswered.

On the other hand, Article 48 establishes that "Within the territory of other member countries, capitals originating from member countries shall have the right to a treatment not less favorable than that granted to capitals coming from any other non-member country, notwithstanding the provisions set out in agreements which might be concluded on this matter by member countries under the terms of the present Treaty."

The abovementioned Protocol of Interpretation does not include this article. This means that any advantage that a LAIA member country might give to a third country would be automatically and unconditionally extended to the rest of the member countries.

IV. The validity of the bi-regional strategic idea in the new international context.

The world in which both the transatlantic relations between the EU and the LAC and the bi-regional negotiations -dealt with in this work- are taking place has undergone deep changes during the last years. As from the beginning of 2009, these transformations have become more evident and have even accelerated as a result of the global crisis, which is currently affecting world trade.

There is a general consensus in that we are experiencing a period of transformation and uncertainty in the evolution of the global context where both regional integration spaces are inserted [8]. The international system has become more heterogeneous, complex and unpredictable, and multipolarity has accentuated in the plane of international trade.

Some of these changes have had a greater impact on transatlantic relations, and especially on the bi-regional negotiation processes with Mercosur and the ACN. In the case of Mercosur, if we take into account that the initial impulse for the negotiations can be traced back to the first decade of the '90s and that the formalized negotiation process only began in 2000, the changes that have occurred are quite substantial.

Three of these changes are the most meaningful in relation to our analysis. They are:

- the emergence of new protagonists in the global economic competition with its ensuing influence over the rule-making process which affects

it, especially coming from the global multilateral ambit of the WTO. Clearly, this is the case of China. But it is the case of Russia as well -a country which will be joining the WTO soon and which has a key role for the EU, particularly in the energy sector-, or of the countries of Eastern Europe, India and other emerging economies such as the case of South Africa and Brazil in South America [9];

- the transformations that can be observed in regional spaces -both in the case of the current EU as well as in the case of Mercosur and the ACN- prompted by the new economic and political realities and which have a strong incidence in the modalities of development of the respective integration processes. The increase in the number of member countries in the case of the EU, and also of Mercosur [10], or the decrease in the case of the ACN as a consequence of the withdrawal of Venezuela and, in particular, the importance that the issue of energy has acquired, are introducing changes in the priorities of the integration agendas, in the architecture of the respective processes and even in the power relations with third countries and between the participating countries, and
- the development of the Doha Round within the scope of the WTO, initiated in 2001, and which has had a clear incidence on the agenda of bi-regional negotiations between the Mercosur and the EU, as a consequence especially of the agricultural issue [11].

Two other factors also seem to have influenced the development of the bi-regional relations and, in particular, the evolution of the negotiating process based on the idea of a strategic association.

One of these factors is the failure of the hemispheric negotiations of the Free Trade Area of the Americas (FTAA). Beyond official declarations, it seems clear that the conditioned reaction to the strategy of the US for the development of its own network of free trade agreements in the Americas has had a significant role in the trade negotiations of Brussels. The agreements celebrated with Mexico and Chile, with Central America and the Dominican Republic (CAFTA-RD) and those already mentioned with Peru and Colombia (not yet in effect), are but a few examples. At the moment of finishing this paper, there was no indication that the idea of a hemispheric preferential negotiation would be revisited by President Obama at the next Summit of the Americas, to be held in April, in Puerto España, Trinidad and Tobago. In turn, it would be feasible to expect initiatives aimed at strengthening the strategic relations with countries of the region, such as Brazil, and in the energy sector. However, this would not necessarily imply preferential relations in the sense of what is established by the regulations of the GATT-WTO system.

The other factor is the European perception on the growing difficulties of the Mercosur and the ACN. In the case of Mercosur, the inability to perfect the Customs Union (in particular in relation to the double imposition of the external tariff and to the approval of the Customs Code) and the uncertainties, even legal ones, resulting from the addition of Venezuela as a full member, contribute to emphasize the problems of efficiency, identity and legitimacy of this integration process [12]. The incorporation of

Venezuela has not been formally completed, given that the Affiliation Protocol has yet to be ratified by all the original members. Likewise, Venezuela must incorporate Mercosur's legal patrimony as well as adapt its foreign commercial policy to the external common tariff and to the trade liberalization program. In the case of the ACN, the differences have become more evident since the withdrawal of Venezuela, related with the free trade agreement negotiations between Colombia and Peru and the US, and have accentuated in relation with the negotiating strategy with the EU.

If we combine these two factors with the abovementioned changes in the world context, and we consider their impact on the corresponding priorities of each regional integration space and their reciprocal relations, we can understand the relative decline of the negotiation incentive that has been evinced during recent times, in particular between the EU and Mercosur. The priorities resulting from the global crisis and its impact on the EU may also have an effect on the development of pending negotiations. It is still difficult to foresee if this will be a positive or a negative one.

However, a relative validity of the main objectives that led to propose the current bi-regional negotiations may be observed at the same time, first in the case of Mercosur and, more recently, in the case of the ACN -or, eventually of its member countries.

There are three original objectives that seem to have preserved their validity.

These are:

- the strengthening of a multipolar and efficient multilateralism as a condition for the governance of a global international system in which we find, at the same time, tendencies towards unilateral behaviors -more recently in terms of protectionist reflexes to the consequences of the severe global economic crisis- and the growing presence of forces that drive towards fragmentation and conflict -which historically have led to war [13]-;
- the reaffirmation of the idea of consensuated integration processes between sovereign nations that share a common regional space as a contribution to safeguard the prevalence of peace, political stability and democracy in the corresponding regions, as well as to achieve a more balanced global system in which reasonable governance conditions prevail, and
- the creation of a favorable environment for the increase in trade and investments -especially through the development of production and distribution networks- among regional integration spaces with shared values and interests, but which have not yet fully profited from the potential of their reciprocal relations.

After the evolution that the international system has experienced since September 11, 2001, including the current or potential conflicts in Iraq, Iran, North Korea, Afghanistan and Middle East -among others- and the outburst of the current global economic crisis, the demands for balance and rationality at a regional and global level have increased in the two regions that are being analyzed in this work.

Vast sectors of the leadership and of the public opinion on both sides of the Atlantic are aware of the frailty of the current international reality and of how easy it would be to move backwards in the progress achieved by the respective integration processes, beyond their evident differences and degrees of development.

The greatest challenge for Latin America today, and for other regions of the world including Europe, is to find the means to build a regional space which is open to the world in which the centripetal forces overrule the centrifuge ones and which accommodates multiple diversities. This task presents a great challenge that will require a strong strategic vision and political leadership .

Furthermore, it will also demand a significant protagonism from the civil society as well as a great dose of creativity in the integration methodologies and techniques used. In addition, it will call for prudence and political vision on the side of the major external protagonists with current or potential interests in the LAC, mainly the US, the EU and some of its member countries, and China, among other emerging nations.

At the same time, it is necessary to keep in mind three relevant characteristics that prevail in the current developments of the strategic idea of integration between Latin American countries. These are the multiplicity of ambits for the global and regional action of the different countries; the crisis and the attempts at renewal of the institutionalized layouts -particularly in Mercosur and the ACN-, and the strong accent on the political and, even at times, the ideological dimensions.

In part, these characteristics reflect the impact on the region of the abovementioned dynamics of change that has been unleashed in the last years in the global international system in terms of protagonists, agendas and factors that determine the international and internal security of countries.

These transformations have provided every country -or at least those which are ready to take advantage of them-, including the LAC countries, with multiple non-excluding options, especially in relation to foreign trade, international investments and sources of technical progress. In this light, the old classifications North-South and South-South in international economic relations are apparently being overcome in their validity for the diagnostic and the action of each country and of its businesses at the global international plane.

V. Contributions to the approaches and methodologies for the future development of the bi-regional strategic idea.

After making some introductory considerations of a conceptual nature and discussing the differences between transatlantic relations and bi-regional negotiations, we will present several considerations referring to the future possible developments aimed at deepening the strategic association between Mercosur, the ACN and the EU, respectively, analyzing them within the broader framework of the preparation for the upcoming EU-LAC Summit of 2010.

1. Preliminary considerations

Certain introductory considerations of a conceptual nature might facilitate our analysis:

- To begin with, it should be noted that the voluntary construction of a cooperation and integration space between a group of sovereign countries, devised to have permanence in time, originates in the strategic decisions of those associated countries.

It is a construct that implies a long-term vision as well as shared values and interests. The motivations can be diverse and may even change as the agreed association develops. However, there is always a strong political imprint, that is, a link with the relations of power. The explicit objectives are normally expressed through the multiple dimensions of the relations of the associated countries. One of such dimensions, often times the most evident one, is related to economic goals, either of trade and investment or of a broader economic and social development, productive transformation and systemic competition.

- In the second place, it is convenient to bear in mind that two strategic objectives appear as dominant when dealing with nations that share a regional geographic space. This arises from the rich experience of the European integration as well as from the more limited integrations of the Mercosur and the ACN. The first strategic goal is the governance of the corresponding regional space in order to preserve peace and political stability within and among the integrated nations. The second aim is to promote decisions for productive investment -which generate employment- in relation with the amplified market. The sum of both objectives is what would enable the integrated countries to have the aspiration of strengthening their international protagonism, as well as their negotiation power and, at the same time, the ability to compete with their goods and services in world markets.
- Thirdly, experience shows that there is not a single model on how a group of countries may carry out a process of integration and multinational cooperation. There are precedents that may or may not be taken into account. There are even best practices that may derive from the observation of formulas and models that have been successful among other countries, especially in situations with a certain similarity. The integration methods that are used may also be influenced by the legal conditions derived from international agreements subscribed by the member countries, either at the global multilateral level -the WTO-, the regional plane -the LAIA-, or with third countries with which there are, for example, preferential commercial agreements. At present time, the main legal limitation is the one determined by the GATT-WTO system -at least for those countries which are not members-. As discussed before, it is a restriction that lends itself to multiple results and interpretations.

Considerations such as these also apply to the association between two regional geographic spaces. It is the case of the strategic association that has been promoted and, in a sense, developed between the current EU and the LAC. These are two regional spaces with multiple connections and whose origins date back in time. They also possess different degrees of organization

and economic development.

Unlike the European one, the LAC regional geographical space is characterized by its fragmentation, its diversity and its low degree of organization [14]. This is evinced in the periodic bi-regional Summits. In them, Europe presents itself as a unit and, in many issues, does so through one single voice. LAC, in turn, has multiple expressions which reflect all kinds of diversities. Unlike what happens with Europe today, a single institutional ambit which corresponds to the whole regional geographic space does not exist in the case of the LAC [15].

The LAC is a region with multiple sub-regions and different levels of organization. Four of these sub-regions stand out: they are the Common Market of the South (Mercosur), the Andean Community of Nations (ACN), the Central American Integration System (SICA) and the Caribbean Community (CARICOM). These coexist -and even associate- with some other countries of the region that have opted to preserve a greater freedom of action in their strategies for international insertion -especially in the commercial plane-. Such is the case of Chile and, in a certain way, of Mexico (which at the same time is part of the North American Free Trade Agreement (NAFTA)).

The idea of the formalization of a strategic association conceived as the central axis of the relation between two regions began to take shape at the beginning of the '90s with the biennial Summit system, on the one hand, and, on the other hand, with a network of agreements of association, some of which were finalized and are still effective and others which are in the negotiation process.

2. Two differentiated levels: relations and bi-regional negotiations.

At times, a strong trend to place the focus on the negotiations to conclude bi-regional strategic association agreements has been observed in the relations between the processes of integration of the Mercosur and the CAN with the EU. At the same time, but not necessarily in a connected way, the cooperation programs between the EU and both regions have continued to develop.

However, a difference should be made between the broader ambit of the transatlantic relations between regional integration spaces -which go beyond the government level and impact every dimension of the interactions between regions which share the common trait of being institutionalized multinational spaces-, and that of bi-regional negotiations to conclude strategic association agreements -which are essentially government-related [16].

Transatlantic relations are nurtured by all kinds of interactions -not just economic ones- that emerge from the multiple communicating vessels that exist between two regional spaces that have undertaken voluntary integration processes and which have significant differences and common traits at the same time. A thorough understanding of such interactions is essential in order to determine realistic courses of action that lead to the deepening of the bi-regional relation.

These are transatlantic relations that are expressed and supported, above all, by the compact web of interests and, to a certain extent, by factual solidarities -in the sense of Jean Monnet's founding expression- that have developed over the years -centuries in fact- between the countries of the regional European space and those which form part of the Mercosur and ACN sub-regions. Migratory, investment and commercial flows have nurtured, through time, an interdependence between the countries on both sides of the Atlantic that has become strong and rich in nuances. This has resulted in common interests and values which transcend the political and economic ambits and penetrate deep into the cultural plane.

They are, thus, transatlantic relations which have a historical root. It would be extremely difficult, not to say impossible, that they stop developing in the future, almost independently from the will of the multiple protagonists involved.

In turn, bi-regional negotiations are the result of the assessment made at one point by both regional institutional spaces of the convenience of threading a strategic association based on three pillars: the political, that of cooperation and the commercial, through a free trade zone in the sense defined by Article XXIV of the GATT-1994.

Indeed, this was an assessment that took into account the rich history of the mutual relation, particularly expressed through concrete economic interests both at the commercial as well as at the investment level. Moreover, it took into account the perception of a global international system which had initiated, since the Cold War, an accelerated process of transformation.

One of the factors that had an effect on the beginning of the path towards bi-regional negotiations was, among others, the initiative taken by the government of President George Bush, in June 1990, for the development of a free trade space "from Alaska to Tierra del Fuego". Such initiative later translated into the objective of negotiating a Free Trade Area of the Americas (FTAA), which was formally approved by the countries of the Western Hemisphere at the Miami Summit of 1994.

For what was at the time the European Community, this initiative constituted one of the main political and economic incentives to negotiate strategic association agreements with countries of the region. A free trade agreement was signed first with Mexico and, years later, with Chile.

It is within such a context that the formal inception of the bi-regional negotiations with Mercosur took place in 2000. However we can recognize their precedents in the steps that were taken since 1991 and whose main milestones are the visit of Mercosur's Foreign Affairs Ministers to Brussels in April of that year -an event imbued with symbolism which happened just days after the signing of the Treaty of Asuncion on March 26, 1991-; the meeting of Ministers in Guimaraes (Portugal) in April 1992; the signing, that same year, of an inter-institutional agreement and the formalization of the general agreement of bi-regional cooperation of Madrid, in 1995. Even before the formal negotiations were even mentioned, such actions were intended to signal the mutual interest of advancing the transatlantic relations between both regional integration spaces.

Negotiations should have been finalized by 1994, but this was not possible. As was mentioned before, the process of bi-regional negotiation has gone into a state of relative hibernation since then. It has experienced some activity, which has generally been unnoticeable for those who are not negotiators, and constant declarations about the political will of finalizing them, most of them with little impact on the respective public opinions. Concretely, these are negotiations which, since 1994, have suffered a severe crisis in their efficiency and, as a result, in their credibility.

It would be advisable not to reduce the future agenda of the reciprocal relations between these spaces of regional integration to the commercial negotiations. These represent just one of the possible dimensions of such relations but are not the only dimension and probably not even the most important one.

3. Considerations for future action.

The following are some considerations that may provide guidance for the roadmap for future action. These arise from the different aspects that were previously analyzed regarding the bi-regional negotiations between Mercosur and the ACN, respectively, and the EU:

- The creation of a strategic relation between the EU and the ACN through a network of bi-regional agreements with different modalities and coverage, including non-preferential ones, has become even more necessary in account of the recent evolution of the international context and the common interests of both regions, particularly that of strengthening an efficient multilateral system that reflects the current distribution of world power as a necessary condition for global governance.
- This construct requires to be viewed through a political prism, beyond the multidimensional character of the bi-regional relations and negotiations. The three pillars (political-cooperation-trade) must be closely linked under a political leadership in accordance with the desired long-term strategic goals. Without detriment of the fact that this is an essential dimension, it does not seem advisable that the strategic bi-regional relations be guided solely by the preferential trade negotiations.
- It would seem convenient to visualize scenarios in which the transatlantic relations between the EU and the sub-regional geographic spaces of the Mercosur and the ACN are intensified, even without the conclusion of the bi-regional commercial negotiations, at least as they were originally planned. A distinction should be made at this point between the preferential agreements -in the sense of the WTO stipulations- and those courses of action and commitments that lack a preferential aspect. This distinction carries a strong potential for the future.
- The strengthening of transatlantic relations could be achieved irrespective of the fate of the respective bi-regional commercial negotiations and even of the Doha Round itself.

- There are relevant aspects of the respective regional agendas in which it will be possible to develop cooperation actions that not necessarily require the conclusion of negotiation processes such as the ones that have been initiated in the later years. These cooperation actions should focus on the development of a compact web of interactions between both regions, with an active participation of the different social sectors, including businessmen. The bi-regional social networks may generate, in turn, incentives to move forward in the formalization and deepening of preferential trade agreements.
- Without discarding other forms of cooperation, we could mention, as examples, different imaginable modalities of cooperation in relation to the global climatic change, to the development of alternative sources of energy, to productive integration, to joint technological development and to migrations. On this respect, there is a precedent in the extremely flexible approach favored in the bi-regional relation between the EU and Asia through the Asian-Europe Meeting (ASEM) and even with the US. These are issues that, in the case of Mercosur, fit into the agenda that ensues from the General Agreement of Madrid of 1995. Their character is not necessarily a preferential one in the sense of the WTO. This is made evident by the fact that some of these issues have been included in the agenda of the strategic association between the EU and Brazil, agreed at the Second Brazil-EU Summit held in Rio de Janeiro on December 22, 2008 (<http://www.mre.gov.br/>).
- The business sectors -that often reflect the interests of transnational companies acting in both regional integration spaces as is the case of the automotive industry, among others- have not always profited from the existing cooperation potential, neither within the bi-regional transatlantic axis nor in that of conjoint projection into other regional spaces, such as the particular case of Asia [17].
- It would seem that businessmen from both regions acting in association have not yet exhausted their force of influence to affect the actions that may be undertaken at the government level, including those related with the ongoing bi-regional negotiation processes [18].
- The inclusion of differentiated methods which contemplate multi-speed, variable geometries and sector integration mechanisms, combined with a reasonable degree of collective disciplines, will enable to reach bi-regional agreements that are functional for the different realities existing in both regions and within each one of them [19]. The ASEAN experience and that of the very same European integration provide actual examples of such methods [20].
- What was previously affirmed does not imply ignoring the fact that the conclusion in reasonable terms of the current bi-regional negotiations as they were originally proposed or, eventually, through a reformulation of their goals, format and methods, could favor the institutionalization and, thus, the stability of the relations among the

different spaces of regional integration.

- The bi-regional negotiations and the Doha Round have several points in common due to their respective agendas. Formally, they are not necessarily conditioned. If the Doha Round could not be completed in a reasonable period of time -an issue that was raised at the G20 Washington Summit last November- it would still be possible to articulate a balance between the interests of the different parts which takes into account the future evolution once the global multilateral negotiations are concluded [21].
- Both WTO and LAIA regulations offer sufficient room for the creation of preferential bi-regional agreements that introduce elements of differentiation and flexibility in their commitments. ACN regulations enable to reconcile general frameworks for bi-regional association with different modalities of flexibility in the preferential commercial agreements. In their present state, Mercosur regulations do not allow this. However, there are no restrictions which necessarily derive from the Treaty of Asuncion. The existing restriction refer solely to the preferential tariff arrangements.
- The triangular integration projects which benefit the less developed countries of the LAC, may constitute one of the key elements of a joint bi-regional strategy of solidary development that contemplates the existing economic asymmetries of the region. The EU has a vast experience in this subject that could be applied in its relations with the LAC countries.
- The preparatory stage of the next EU-LAC Summit, to be held in Spain in 2010, provides a valuable opportunity to assess the evolution of the bi-regional negotiations of the EU with Mercosur and with the CAN. An intense participation of the social and political sectors in the debate process of this preparatory stage might help capitalize from the accumulated experience, even from the least positive aspects, in order to contribute to the outline of a feasible roadmap that allows to move forward in the creation of a dense network of bi-regional agreements and actions, taking into account the strategic objectives that were originally delineated, as well as its adaptation to the new regional and global realities. In this preparatory stage, the regional Parliaments acting collaboratively could have an active role in the promotion of the necessary debates.

NOTAS

[1] From the vast existing bibliography on these bi-national negotiations we recommend, due to its relative up-to-datedness, as well as for its precision in relation to the development of the negotiations, the respective negotiating positions and the link with the Doha Round negotiations, the article by MOLLE Graciela, "Negociación Mercosur-Unión Europea", in Revista del CEI - Comercio Exterior e Integración", May 2008, nº 11, pages 95 to 119,

on <http://www.cei.gov.ar>. See also UNION EUROPEA-DELEGACIÓN DE LA COMISIÓN EUROPEA EN LA REPÚBLICA ARGENTINA-UNTREF-CEEOP, "El Mercosur y la Unión Europea", Buenos Aires 2004, as well as Trade SIA EU-Mercosur Partners, "Final Overview Trade SIA EU-Mercosur, Final Report", Consultation Draft, November 2008, on <http://www.sia-trade.org/mercosur> and the "Informe Mercosul - Período Segundo Semestre 2007, Primeiro Semestre 2008" INTAL-BID, Informe Mercosul n.º 13, November 2008, on <http://www.iadb.org/intal>, pages 142 and 143. Additionally, see PEÑA Félix, "Condiciones para una negociación comercial exitosa: Algunas consideraciones válidas para las negociaciones Mercosur-UE", monthly newsletter, September 2008, on <http://www.felixpena.com.ar>.

[2] See the article by Graciela Molle quoted on the previous footnote..

[3] For an analysis of the link between both negotiations in the perspective of the negotiating strategies of each one of the parts, see the article by Graciela Molle quoted above, especially pages 118 and 119.

[4] On this issue, see the proposal in the report by the group of experts of the Cátedra Mercosur de Sciences-Po Paris: VALLADÃO Alfredo (ed), "Concluding the EU-Mercosur Agreement. Feasible Scenarios", Chaire Mercosur de Sciences Po, Paris 2004, on <http://www.chairemercosur.sciences-po.fr/>.

[5] On the history and development of the initial stages of the negotiations between the EU and the ACN, see the article by FAIRLIE REINOSO Alan, "La Comunidad Andina de Naciones y la Unión Europea", in FRERES Christian and SANAHUJA José A. (coords.) "América Latina y la Unión Europea. Estrategias para una asociación necesaria", Icaria-Antrazyt, Barcelona 2006, pages 163 to 194, as well as FAIRLIE REINOSO Alan, "Bases para una negociación justa entre la Unión Europea y la Comunidad Andina", CAN-Consejo Consultivo Laboral Andino y Plades, Lima 2007. For a different perspective, see also GUTIERREZ José Antonio, "The Andean Community and the European Union: Crisis on the FTA negotiations?", in "Bilaterals.Org", on <http://www.bilaterals.org/>, Oct. 24, 2008.

[6] On this matter, refer to the considerations included in the book by Alan Fairlie Reinoso, mentioned in the previous footnote.

[7] On this issue, please review, among others, IRWIN Douglas A., MAVROIDIS Petros C., SYKES Alan O., "The Genesis of GATT", Cambridge University Press, New York 2008; SNAPE Richard, "History and Economics of GATT's Article XXIV" in ANDERSON Kym & BLACKHURST Richard (Eds), "Regional Integration and the Global Trading System", St.Martin's Press, New York 1993; MATHIS James H. "Regional Trade Agreements in the GATT7WTO", T.M.C.Asser Press, The Hague 2002; LACERDA PRAZERES Tatiana, "A OMC e os Blocos Regionais", Aduaneiras, São Paulo 2008.

[8] See, among others, ZAKARIA Fareed, "The Post-American World", W.W.Norton & Company, New York-London 2008 and GUILLEBAUD Jean-Claude, "Le Commencement d'un Monde. Vers une Modernité

Métisse", Éditions du Seuil, Paris 2008.

[9] On emerging countries and their influence in the new international scenario, see, ver JAFFRELOT Christophe (dir), "L'Enjeu Mondial. Les Pays Émergents", SciencesPo.Les Presses-L'Express, Paris 2008.

[10] The Caracas Protocol of July 4, 2006, which formalized the incorporation of Venezuela to the Mercosur is not yet in effect (<http://www.mercosur.int/>). The parliamentary approval of Brazil and Paraguay is still missing.

[11] See on this respect the article by Graciela Molle, quoted in footnote 1.

[12] On this issue, see PEÑA Félix, "¿Tiene futuro el Mercosur? Opciones problemáticas y frentes de acción posibles", monthly newsletter, December 2008, on <http://www.felixpena.com.ar>.

[13] On a historical perspective of the relation between trade, power and war, see FINDLAY Ronald and O'ROURKE Kevin H., "Power and Plenty. Trade, War and the World Economy in the Second Millennium", Princeton University Press, Princeton and Oxford 2007. See also BERNSTEIN William J, "A Splendid Exchange. How Trade Shaped the World", Atlantic Monthly Press, New York 2008.

[14] See on this subject, the articles included in "La integración fragmentada" in Revista Nueva Sociedad, nº 219, January-February 2009, published by Friedrich Ebert Stiftung, Buenos Aires 2009, on <http://www.nuso.org/>. See also MARTINEZ ALFONSO, Laneydi, PEÑA Lázaro, VAZQUEZ Mariana, "Anuario de la Integración Regional de América Latina y el Gran Caribe", nº 7, year 2008-2009, CEGRE-CIEI-CIEM-CRIES on <http://www.cries.org>.

[15] Neither the Latin American Economic System (SELA) nor the Rio Group fulfill this role. The recently created Union of South American Nations (UNASUR), even when it has the potential to have a Latin American scope, will not be able to fulfill this role either, at least for a considerable period of time.

[16] On the different dimensions of the relations EU-LAC, see FRERES Christian, SANAHUJA José A (coords), "América Latina y la Unión Europea. Estrategias para una asociación necesaria", Icaria-Antrazyt, Barcelona 2006, and also from the same authors, "Perspectivas de las Relaciones Unión Europea-América Latina. Hacia una Nueva Estrategia", Informe Final, Instituto Complutense de Estudios Internacionales-UE, Madrid, November 14, 2005. See also ALCANTARA Manuel, ORTIZ María Salvadora (Eds), "Relaciones entre América Latina y Europa: Balance y Perspectivas", Ediciones Universidad Salamanca-SEGIB, Salamanca 2008 and CIENFUEGOS Manuel, "Union Europea, América Latina y el Caribe. Preferencias, Actores y Obstáculos", in Revista Archivos del Presente, Year 12, nº 47, pages 52 to 55, Buenos Aires 2008.

[17] On this subject, see PEÑA Félix, "The future of an elusive partnership: What role could the business sector play in the development of the Mercosur-EU relations?", paper prepared for the Chaire Mercosur-

IADB-MEBF project and for the MEBF's VII Plenary Conference, Lisbon, October 8, 2007, on <http://www.felixpena.com.ar>.

[18] See the work mentioned in the previous footnote.

[19] See PEÑA Félix, "La flexibilidad en las negociaciones comerciales. Una cuestión que se ha actualizado en la OMC y en el Mercosur", on his monthly newsletter, Agosto 2008, on <http://www.felixpena.com.ar>.

[20] In the case of European inegration, see STUBB Alexander, "Negotiating Flexibility in the European Union. Ámsterdam, Nice and Beyond", Palgrave, New York 2002.

[21] See book mentioned in note 3.

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