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PREFÁCIO

Frente aos recentes acontecimentos históricos mundiais e, especialmente, ao fenômeno de multiplicação de jurisdições e organizações de cunho internacionais, a importância do desenvolvimento e pesquisa do Direito Internacional torna-se não apenas uma necessidade, porém, sobretudo, objeto do mais alto valor e interesse jurídico.

Seguindo este movimento de abrangência do Direito Internacional, a iniciativa pioneira de criação e publicação do I Anuário Brasileiro de Direito Internacional consagra a visão empreendedora do Centro de Direito Internacional - CEDIN em estabelecer um diálogo entre o meio acadêmico e a sociedade civil e, em uma perspectiva mais ampla, de potencializar, não somente no Brasil, mas eventualmente em toda a América Latina, o estudo amplo e aprofundado dos diferentes campos do Direito Internacional.

Lançado em diferentes línguas estrangeiras e a ser distribuído para as maiores e mais relevantes Universidades e núcleos acadêmicos internacionais, este periódico reverte-se, tanto pela qualidade dos autores e dos artigos nele contidos, como também pelo seu mais alto nível técnico e rigor científico, em uma obra de nível internacional. Pretende-se, portanto, a partir deste primeiro volume, estabelecer no país, em definitivo, uma publicação anual engajada na promoção e consolidação da visão latino-americana do Direito Internacional.
International Law and Integration: the Dilemmas of Mercosur and FTAA

(ALCA)

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This article is a synopsis of classes that the Center for International Law (CEDIN - Centro de Direito Internacional), at the Federal University of Minas Gerais (UFMG) invited me to teach to the students of the 1st Course on International Law, July 4-8, 2005, about the dilemmas faced by Mercosur and the ALCA. Analyzing successively the evolution of negotiations, both on the process of forming a free trade area of the Americas and on matters within the scope of Mercosur, my main purpose is to accentuate the differences in nature and goals of these two initiatives, going beyond the obvious fact that Mercosur is already a concrete reality, consolidated through almost fifteen years of integration among its four member countries, since the Asuncion Treaty of 1991, while the ALCA is, at this time, only an initiative for a free trade area. While Mercosur aims to accomplish a profound integration, transforming a customs union into a common market and strengthening all aspects related to economic integration, even through compensation funds, as approved last month in Asunción, the initiative to create the ALCA advances in very slow steps, not only due to the natural diversity of interests among the 34 countries involved in the process, but mainly due to the difficulty in achieving the fundamental and minimal essence of any free trade area, which is the willingness by all countries involved to carry out an effective market access negotiation, as I will discuss below.

Since the beginning of the ALCA negotiations, Brazil has acted to put its maximum effort into reaching a balanced agreement, aimed at promoting development. We should not assume beforehand that the ALCA initiative is, in and of itself, negative. We should certainly, as Brazil and the other Mercosur countries have been trying to do, improve the direction of the negotiation process, removing from it extraneous propositions and topics that favor only a few specific groups and governments and which, in fact, move away from achieving aims and targets in social and economic development. What inspires Brazil and its Mercosur partners is the goal of giving an eventual ALCA a focus that is clearly centered on development, with an emphasis on market access including, and especially, agricultural products obtaining access to markets in developed countries, where existing protection constitutes the greatest barrier to international trade.

It is not possible to assess what happens today in the ALCA negotiations without an analysis of the evolution of negotiations since they began, in December 1994, at the Miami Summit. I will present here an overview of the negotiations from the Miami Summit to the most recent developments, such as the Vice-Ministerial Meeting in Puebla, in February 2004, and the informal consultations following that meeting. Based on this evaluation of what happened throughout the whole negotiation process, I will examine the current stalemate, the differences and points of view that impede us to reach an agreement satisfactory to all countries involved in the process. At the end, I will present my assessment of where we are today and to where we might go in the ALCA process.

There are two main theses that, implicitly or explicitly, characterize this study of what has happened and what may happen in the ALCA negotiation process:

The first is that, for the past ten years we have had a devaluation of the original propositions agreed at the Summit of the Americas, in 1994, which established, among others, the goal of creating a free trade area of the Americas. We know, then, that the liberalization of markets would not be a panacea for all development problems of the countries in the region, hence we could also anticipate, at that time, an entire agenda that would transcend and complement the ALCA initiative. We could anticipate then the need to address such diverse and essential aspects as political and financial support for social development projects, strengthening education and health cooperation programs and the need to have financing for infrastructure projects in transportation, energy and communication. We had, one way or another, a broader and more complex view of all factors that could contribute to the development of a country and also of what should constitute a real Hemispheric integration, based on the economic and social prosperity of the countries as a whole.

What has occurred during the past ten years, since that moment when the initiative was launched, has been the virtual abandonment of the agenda items involving social progress, infrastructure and financial support that constituted a crucial part of the Declaration and Plan of Action agreed at the Miami Summit. As a result of a lack of political will and engagement by those countries that could contribute more to benefit others, that initial promise proved to be no more than

1 The acronym FTAA is the English version for ALCA. In this paper I will use the Portuguese and Spanish expressions for ALCA

2 Ambassador and Brazil Co-Chairman of the ALCA negotiations. The author is grateful to Conselheiro Vânia Rego Minas Coordiadora, who has been of great help in the lectures on Mercosur as well as in the portion of this paper on Mercosur and its institutions.
rhetoric. In reality, what has survived is a limited ALCA initiative that is isolated and disassociated from any broader conception, lacking a more comprehensive focus of how we could—and should—foster development in the Hemisphere.

The second hypothesis in this article is that the remaining initiative to create an ALCA, which in thesis could not even be conceived and survive in isolation, has been losing the attributes of its primary goals as time has passed. It has been changing itself into a proposition that is more and more unbalanced and, in many aspects, harmful not only to national development initiatives but also to its own central goal of free trade in the region. Under pressure from certain specific countries, the ALCA initiative has been outlined during previous years in a way that would exclude trade liberalization in essential sectors, such as agriculture, while also limiting the ability of governments to formulate and act in areas such as investment policies, intellectual property rights and public sector procurement. The very essence of a free trade agreement—which is trade liberalization in all sectors—has been evaded and what has been conceded is a ALCA intended to regulate aspects of economic operations that are not directly related to trade. Beyond abandoning the social aspects, financial support and infrastructure of the original initiative for hemispheric integration, as a result of straying away from the Declaration and 1994 Plan of Action, the initiative also lost the core of what should have been a genuine free trade area, that is, the main goal of dismantling customs tariffs and non-tariff barriers.

Imbalances in the ALCA Negotiations

The view that the ALCA negotiations suffer from some fundamental imbalances is now almost unanimous. Some of these imbalances are from the very structure of the hemispheric negotiations, while others are more related to the process itself, how it developed in the past and the arrangement of topics on the agenda of negotiations.

The more structural imbalances are related to the inevitable differences in a process that involves 34 countries with immense disparities in economic, social and political development, as well as their territorial sizes and populations. As one might expect, this is reflected in very distinct interests, priorities and expectations, which are quite difficult to reconcile. We have in our Hemisphere a wide range of diversity, ranging from the small islands of Saint Kitts and Nevis to nations of almost continental size, such as Brazil and Canada; ranging from the largest economy in the world; to some of the most impoverished, such as Haiti. No other trade integration initiative in history has involved such a heterogeneous set of countries as the ALCA negotiations. This fact illustrates the real magnitude of the difficulties and challenges inherent in the process.

Aside from this structural imbalance that we cannot avoid, since the beginning of the ALCA process there have been imbalances that have arisen more from circumstances related to the negotiating process itself. Two of those imbalances were the most significant: a) the then-existing disproportion between an agenda of very broad and paralyzed aspects and the scarceness of time to complete negotiations as previously scheduled, by January 2005; and b) the imbalance between an agenda that was ambitious in aspects such as the preparation of hemispheric rules in areas of no interest to countries like Brazil and its Mercosur partners and an agenda that was very restrictive in the areas of most immediate interest to us, such as agriculture and antidumping.

Both the disproportion and the paralysis resulting from it can be attributed to different causes. The main cause appears to be an inappropriate attitude on the part of some of the parties involved that combined a lack of realism in evaluating the difficult framework of negotiations and an excessive maximalist approach in pursuit of results that had already proven themselves to be impracticable. Since 1994, the evolution of international trade negotiations and the domestic context in almost all countries involved in the ALCA have revealed the existence of significant national sensitivities in many of the negotiating areas. What happened, despite resistance from some parties, was that these sensitivities had not been seriously addressed in the ALCA negotiating process. In other words, the specific difficulties that countries have in certain areas of the negotiations were not being translated into an effective restructuring of the ALCA negotiating architecture. This explains the stalemate and the paralysis that was to occur.

The best example of this attitude was the behavior of the United States of America, the country that launched the ALCA negotiations with the conviction of the Miami Summit. Since 1994, the evolution of U.S. trade policy has shown us that country’s difficulty in negotiating specific topics on the ALCA agenda. This difficulty is reflected in the oft-repeated American speech on the existence of so-called “systemic matters” that allegedly could only be addressed under the WTO, but not in a hemispheric framework, such as domestic support payments to agriculture and antidumping policies. At the Trade Negotiations Committee (TNC) meeting in Trinidad and Tobago, in September 2003, the American delegation even recognized explicitly that it is impossible for the U.S. to negotiate those two matters within the ALCA, using the argument that they are “global matters”.

It only takes a reading of the U.S. government’s limited constitutional authority over trade issues, under the "Trade Promotion Authority" to have an idea of the virtual veto power the U.S. exercises over negotiations on such matters as agriculture and antidumping. Under the GPA, any proposal to eliminate tariffs on “sensitive products” (almost 500 being agricultural products) must go through a
series of difficult steps in the U.S. Congress, in terms of winding its way through Congressional Committees and the preparation of impact studies, which in practice give the U.S. Congress a significant capacity to block progress, thus obstructing any regular negotiation of such matters. In the case of antidumping issues, the U.S. government is prohibited from negotiating any international agreement that "weakens" the country's legislation, that is to say, anything that imposes limits to the arbitrary power of national authorities in trade protection.

This fact demonstrates that even the country with the greatest economy in the Hemisphere and in the world and the one that was responsible for launching the idea of creating a free trade area of the Americas also had—and still has—profound national sensitivities, to the point of demanding the exclusion of some topics from the final ALCA package. The critical mistake here was the failure to recognize that these difficulties would lead to a re-arranging of the negotiations as a whole. By excluding these two key aspects from the round of negotiations, the United States broke the already fragile balance of gains and losses for the other countries and made a re-arranging of the negotiating process inevitable. The contradiction was that a country presented its national sensitivities and tried to exclude some matters from the negotiating round, while seeking to impede other countries from doing the same. Nevertheless, it sought to maintain a merely rhetorical support for a broad and ambitious agreement, which, by definition, was no longer possible from that point onwards.

There was no greater imbalance within the ALCA process than the contrast between the pressure that more developed countries applied towards establishing a set of regulations more comprehensive that those of the WTO in areas such as services, investments and intellectual property, in contrast with their refusal to accept regulations more comprehensive than those of the WTO in areas such as antidumping and agriculture. They sought—and continue to seek—an advanced ALCA in the so-called new aspects of the trade agenda—which for the most part have no genuine trade aspects—while at the same time they attempted to solidify barriers against agricultural products and also against those manufactured goods in which we had become more competitive, such as shoes, textiles and steel. They act as if the more developed countries, but not the poorer ones, deserved special and differentiated treatment.

Mercosur’s Proposals to Correct the Negotiating Path

Thus the ALCA agenda lacked both balance and proportion and this was what Mercosur’s proposals tried to restore to the process. With no re-arranging of its architecture to reflect the changes that had occurred after 1994, the ALCA initiative was seriously at risk—and today is still seriously at risk—of remaining merely on paper. The so-widely cited 7,000 brackets in the agreement, representing the "pending points" in the chapters negotiated among the 34 countries, would not have been very significant if they had hidden only minor differences, natural in any trade negotiating process. However, these brackets reflected huge differences among the countries, not related to marginal topics, but almost always constituting contradictory and incompatible views of the depth and scope of negotiations in each and every one of the main areas.

Upon taking office at the beginning of 2003, President Lula’s government found this situation of imbalance and stalemate in the ALCA negotiations. We faced a dilemma: countries like the U.S. refused to make any more significant concessions in the areas in which we had the greatest interest, such as agricultural trade and antidumping regulations, while they exerted pressure seeking advances in areas in which we had a so-called "defensive interest," such as services, investments, government procurement and intellectual property.

The most shocking example of this imbalance was the fact that in the first six months of 2003 all of the countries negotiating the ALCA had to present market access offers in five areas (tariffs on agricultural and industrial goods, commitments in services, investments and government procurement), without any commitments of subsidy reduction in agriculture, nor in the improvement of antidumping obligations. In other words, we had to present market opening offers in three areas of great sensitivity for Brazil (services, investments and government procurement) without any return in the two areas of most interest to us, reducing the subsidies that governments of more developed countries give to their agricultural sectors and the disciplining of antidumping use, which, arbitrarily applied as it is today, tends to annul any advantages we may obtain from tariff reduction or tariff elimination for our products. One need only examine the examples of barriers on our exports of steel products to the American market, and most recently, even shrimp exports, to have an idea of how tariff elimination could be useless without the disciplining of antidumping measures.

In these sensitive circumstances we had to find a solution that would permit the re-directing of the negotiations to re-establish a balance between advantages and costs for Brazil and its Mercosur partners. As the negotiations were developing, they seemed to point towards reaching an unbalanced agreement, contrary to the interests of Brazil and its neighboring countries. Furthermore, evasiveness and optimistic expectations that all will end well, or turn out to be satisfactory as time passes, could not convince anyone as scheduled deadlines drew nearer—and Brazil’s new government took office only two years before the previously established final deadline—the urgent need to re-balance the negotiating agenda became increasingly clear.
Facing the firm position of Brazil and Mercosur, and the arguments presented by them, the American negotiators themselves began to assume that it would not be possible to achieve a final agreement under those terms. This is why, during a visit to Brasilia in May 2003, the USTR Robert Zoellick presented to Brazilian Foreign Minister Celso Amorim a proposal to condense the ALCA agenda, which was called the “Baseline Agreement”.

At the Vice-Ministerial meeting in El Salvador, in July 2003, Mercosur presented its first proposal to negotiate the ALCA in “three tracks”. Although encountering great resistance from other countries, it was, at the same time, a response to the existing imbalance and a call to pragmatism, as would be demonstrated months later. Its great merit was to recognize that all countries, not only the Mercosur countries, not only the US and Canada, but all of them, had national sensitivities in particular areas of the negotiations, which needed to be taken into account when re-structuring the ALCA architecture. Its purpose was to anticipate that new regulation in matters of greater sensitivity for the parties involved could be discussed multilaterally, within WTO. The virtue of the Mercosur proposal was to acknowledge the reality expressed by the State Parties and to translate it into a negotiation architecture that would not disregard each country’s difficulties. Therefore, the idea of a “possible ALCA,” as opposed to the idea of an unbalanced ALCA, ambitious only in those aspects that interested the wealthy developed countries. We could not have had, in this case, more inspiration than the position advocated by the U.S., according to which agricultural subsidies and antidumping measures could only be negotiated within the WTO. Consequently, we proposed the same for those matters with which we had the most difficulties, such as the negotiation of new regulation of services, investments, intellectual property and government procurement.

The Brazilian resistance to negotiate hemispheric regulation in these areas was not simply a reaction to the American attitude. We had—and we have—an overriding interest in avoiding a Hemispheric disciplining of specific areas that would limit our ability to formulate and implement public policies in our interest. The Uruguay Round left us with the lesson, learned through the reality of the implementation of its agreements, that we cannot accept commitments that limit the liberty of each country to act in fundamental areas, as it was the case, for example, of patent policy and public health, affected by the TRIPS agreement, and the policy of incentives and offsets to the installation of foreign firms in the country, affected by the TRIMS agreement. As noted by Professor Denis Rodrik, of Harvard University, the multilateral trading system has often been used to channel rich countries’ demands that not only do not help the development process in poorer countries but also hurt it. The desire to regulate and to create Hemispheric regulation in areas such as services, investments, intellectual property and government procurement pointed in the same undesirable direction, and therefore we should avoid accepting commitments that could incur great future costs for us.

We do not refuse to negotiate “market access” agreements in areas such as services and investments. Mercosur even received and presented offers in both of these areas. What we vehemently refuse is to negotiate, in those sensitive sectors, new regulations that transcend national legislation and undermine our ability to promote national government policies.

Besides this pragmatic view that takes into account national sensitivities in specific topics, the Mercosur proposal also endorsed another important modality of negotiation already practiced in the ALCA process: the bilateral negotiation ÷+1, for Mercosur – to exchange market access offers. As is well-known, when presenting its initial offers, the United States decided to distinguish between groups of countries that would receive differentiated offers, giving Mercosur the least favorable tariff elimination set for market access in the country. What the Mercosur proposal did was to extend to other countries this same possibility of differentiating what to offer to one or another partner in the ALCA negotiations.

It did not—and does not—make any sense that Mercosur needed to offer to wealthy developed countries, such as the United States and Canada, precisely the same set of offers it offered to extend to less developed countries, such as our South American neighbors, with lower competitiveness and less export penetration. In just the same way that the U.S. government made distinctions between the poorer Caribbean, Central American and Andean countries, to the detriment of the Mercosur countries, it is also appropriate for us to offer smaller countries a tariff elimination timetable that is different from those offered to the United States or Canada.

The Success at the Miami Ministerial

Apart from representing a necessary adjustment in the negotiating agenda to re-balance losses and gains among the 34 countries, the Mercosur proposal, as noted above, was a call to pragmatism and to a more realistic approach to what was possible in the negotiation process. This was true because it was essential to find a formula that allowed us to un-block negotiations that were at a total stalemate, with deadlines approaching. What the many bracketed texts in the proposed agreement showed us was the enormous distance between countries in crucial areas. The Mercosur proposal, as a response to this stalemate, demonstrated...
that it was possible, with realism and a practical approach, to find inspiration in measures already adopted by the main countries, with the goal of reducing existing differences and reorganizing topics and the scope of negotiations.

Brazil and Mercosur acted in all of the Trade Negotiation Committee's meetings with the purpose of introducing the principle of flexibility into the ALCA negotiations. This was true in El Salvador, in July 2003; in Trinidad and Tobago, in September 2003; and in Miami, in November 2003. We advocated the principle that nothing should be restricted to, nor imposed on, any State. Each country would define, by mutual agreement, a minimum set of common obligations in various areas, applicable to all 34 countries, and those that may wish to go further, each in its own interest areas and with those parties they may wish to have, could do so with no restrictions or impositions.

That was the proposal that Minister Celso Amorim, with the support of his Mercosur partners, presented at the Virginia Mini-Ministerial and at the Miami Ministerial Meeting itself, in November 2003, the first ALCA meeting under the new Brazilian government. This was a simple and practical solution, that we should negotiate a nucleus of commitments that would safeguard each country's interests — itself a very complex task — and each country could seek, in its own priority areas, voluntarily, to establish what we call "plurilateral agreements" with other countries within the ALCA. Mercosur's idea to propose such "plurilateral agreements," on a voluntary basis, as was done, for example, under the Tokyo Round of the old GATT, was — and is — intended to add flexibility to the negotiating process, to accommodate national difficulties. We achieved this flexibility in Miami due, in large part, to the firm defense of Brazil's and Mercosur's interests. Miami culminated a course of action that had the goal of correcting the path of negotiations, as well as the redefining of the ALCA architecture, making it more pragmatic and feasible, since from then on it would not be based on unrealistic ambitions.

As a result of the Miami Ministerial, the Vice Ministers received a set of tasks to complete during the Puebla Vice-Ministerial meeting, in February 2004. The goal was to translate decisions taken by the Ministers into instructions to negotiators in all of the several areas involved. Two of them, in particular, were to continue to be tasks assigned to all countries, to allow the continuation of the negotiations: to develop the so-called "common and balanced set of rights and obligations applicable to all countries," mentioned above, and to define procedures for the negotiation of plurilateral agreements, such as the requirements for the participation of members and observers.

The topic that dominated the Puebla meeting, on which we had not yet reached agreement, was precisely the drawing up of a common set of rights and obligations for all countries. We did not reach a consensus, at least not as of this date, for two reasons. The first is the fact that to re-draw the ALCA architecture, in order to adapt it to what countries can effectively do — and not only in theory — is not an easy task. Taking that into consideration, since the suspension of the TNC, consultations have been made with several countries and informal meetings have been organized, a process that was affected, in the second half of 2004, by the U.S. presidential elections. The second reason is that, deep inside, some countries still resist adapting themselves to the spirit and text of the Miami Ministerial Declaration. Although we were not going anywhere before the Ministerial Meeting, drowned in brackets and in meetings with no advances, some negotiators still resist adapting themselves to new circumstances, to the natural idea that all countries, and not only few of them, must defend their interests and sensitivities.

The Current Stalemate, Ten Years Later

What prevents us from reaching an agreement? What are the points where differences remain, impeding advances? Among the many differences confronted by countries in the Hemisphere, two appear to be the most fundamental ones, which therefore constitute the main obstacles to the construction of a balanced ALCA, with the purpose of promoting economic and social development. Both of them express, in a symbolic way, the asymmetries of the negotiating process, and the gap that separates the priorities of the developed countries from those of the developing countries. These are agriculture and intellectual property.

One of them, agriculture, is the most ancient sector of international trade and is still the most subject to protectionist measures. It is the permanent taboo of the international trade agenda, an agenda that has been incorporating, during the last few decades, non-commercial topics of interest to developed countries without ever addressing agricultural issues, in which we see the worsening of the adoption of distorted policies. What happens in the ALCA negotiations faithfully reflects the trade negotiations of earlier decades, including the plurilateral ones: rich countries refuse to negotiate the reduction of subsidies and the reduction of the highly distorted trade mechanisms, which affect both poorer countries and those with efficient agriculture, such as Brazil and its Mercosur partners.

I should not need to reiterate here the scope of billions of dollars of subsidies granted to agriculture in the rich North American, European and Asian countries, with their devastating effects on income and livelihood prospects for poor populations in the world, in Latin America, Africa and Asia. Those subsidies affect us in three main ways: by impeding access to richer markets; by provoking unjust competition in third markets; and by reducing international prices of the main
has always tried to balance monopoly rights for patents with the necessary offsets, such as technology transfer and the social impact of patent applications. In return for any significant licensing—monopoly over commercial exploitation—there was a naturally corresponding obligation to provide offsets or other compensation that should result in some benefit for the country that protected foreign patents, such as technology access or, at least, some prevention for abuses of monopolistic power.

What has happened over the past two decades has been the accelerated rupture of this balance. The ideas of technology transfer and the socially responsible use of monopolistic patent rights have been abandoned. The result is obvious: many poor countries now have difficulty in providing minimum access to medicines to their populations, as proven, for example, by the particularly tragic context of the spread of AIDS on the African continent. The outrageous prices of medicines condemn whole populations to agony and increase the risk and velocity of contamination.

In this sense, they affect—and can affect even more in the future—the very solvency of States, less and less able to assume the costs of unsustainable public health and social welfare systems due to the incorrect appropriation of monopolistic rights by a few pharmaceutical conglomerates, as can be seen in the wealthy countries, to begin with the country that most strongly defends this kind of international agreement. The question of the difficulty of access to medicines gained such significance and urgency in the United States that it became one of the main topics in the presidential campaign of 2004.

There is increasing evidence—pointed out not only by international organizations such as the World Health Organization (WHO), but also by non-governmental institutions, such as the Oxfam—that bilateral trade agreements signed by the United States—except the one signed with Australia, which refused to incorporate new requirements on intellectual property—have strong negative impacts in the production capacity and commercialization of generic medicines in those countries that signed the agreements. In other words, the bilateral trade agreements proposed by the United States of America, as well as its intentions in the ALCA, tend to ruin already achieved social progress and to replace rights attained under the WHO, thus creating unjustified mechanisms of protection for some few groups.

As if it the already unfavorable status quo of developing countries and poor populations in the Hemisphere were not enough, most wealthy countries, in particular the United States, wish to strengthen restrictive disciplines in intellectual property through the introduction of new obligations regarding the terms of patents, confidentiality of information and compulsory licensing in the ALCA agreement, consistent with what has been done through bilateral agreements.


export products of poorer countries.

Although it is particularly dangerous to combine free trade with subsidies, as Mexican farmers could see when subsidized U.S. products entered their country as a result of NAFTA, wealthy Western Hemisphere countries, convining with narrower-minded domestic lobbies, have always resisted negotiating agricultural subsidies in the ALCA. Oddly enough, these same countries, today, give signs that they will also refuse the total elimination of customs tariffs, a basic aspect and defining element of a free trade area. They are beginning to signal their intention to apply exceptions and restrictive measures, such as quotas, rather than advancing under the previous commitment of tariff liberalization for all goods, industrial and agricultural. The fact that the WTO historically permitted the adoption of quotas in agricultural trade does not imply we will accept this same trade-distorting mechanism in the ALCA negotiations, since it is a process that should establish a free trade area. On the other hand, we cannot deny that these have been some advances we consider auspicious, although still quite preliminary, in recent WTO meetings in Geneva, in discussions on eliminating export subsidies and reducing domestic support for agricultural production. Only future negotiations may confirm—or fail to confirm—this trend.

The idea of general tariff elimination in the ALCA is an old and basic one in the negotiations. The attempt to exclude the agricultural sector, or part of it, from the elimination program illustrates that self-respect has been lost and rhetoric has prevailed in the trade area. The countries that most vehemently advocate the creation of a free trade area in the Hemisphere are precisely the ones that continue to envisage regulated agricultural trade, seeking to deny liberalization of a crucial sector for most of the 34 countries of the Hemisphere. Recent WTO condemnations of cotton and sugar subsidies demand from us additional caution in the ALCA, so as to not undo or minimize victories already conquered at the multilateral forum.

Adding to the refusal of any significant opening in the most ancient sector of international trade, developed countries, also under pressure from domestic lobbies that have great concentrations of power and a tendency toward oligopoly, have also been strongly pushing for the creation of new disciplines, in this Hemisphere, in a sector that is not exactly a trade issue, namely intellectual property.

The awkwardness of dealing with the topic of intellectual property in trade agreements derives from the fact that the complex and broad perspective that the issue always merited has now been completely abandoned. For Professor Jagdish Bhagwati, a free trader and one of the most respected experts in international trade, the incorporation of the topic into the trade agenda is itself illegitimate, "a cancer" in the multilateral system of trade, to use his words.

The historical treatment of the topic, within the scope of the Paris Convention,
These disciplines would constrain even more our ability to promote public health policies, such as local production of medicines and generics, already hurt in the WTO by the TRIPS agreement.

Such resistance to new obligations should not, however, be confused with connivance with intellectual property theft. Brazil has always supported enforcement actions against intellectual property theft of any kind, particularly because Brazil is, as most countries are, directly affected by its pernicious effects, as in the case of copyright violation of Brazilian popular music. We are willing to join any effort to efficiently combat this universal phenomenon. What we cannot accept is that, pretending to combat intellectual property theft, the ALCA is used to legitimize trade retaliation mechanisms against our exports, thus transforming a matter that demands cooperation and international coordination into one more excuse to impose trade barriers motivated by protectionist impulses. This would be harmful to the goal of promoting trade itself. This would also compromise, in advance, market access concessions on agricultural and industrial goods, since those concessions could be suspended at any time based on the excuse of an alleged inefficiency in applying intellectual property legislation.

Prospects For the Negotiation Process

This fundamental dichotomy between crystallizing the ubiquitous protectionism in agricultural trade and the search for strict regulation and new disciplines in intellectual property that could guarantee the technological supremacy of a few countries in high-technology sectors demonstrates the huge gap between countries’ respective interests in the ALCA negotiations and also explains the paralysis and stalemate that we currently face in the negotiation process.

This dichotomy also shows us, as I mentioned at the beginning of this article, that we have distanced ourselves from the original proposal for the creation of the ALCA. The 1994 Miami Summit had as its broadest goal the economic and social development of the Hemisphere; the creation of the free trade area was one of the instruments to achieve that goal, not a means to freeze differences or mask both market access or technology access barriers by poorer countries.

We are experiencing, in fact, a paradoxical moment in international economic relations. While at the WTO, in great part due to the catalyzing power of the G-20, we are seeing what could be the beginning of the dismantling of agricultural protectionism, in bilateral trade agreements and, indirectly, in the ALCA, we are seeing an opposite phenomenon, the corrosion of the few advances achieved in international fora. This situation reminds us of the importance of the balance of power in the negotiations. The disproportionately asymmetric bilateralism allows for the reversion of the most legitimate expectations of the relatively weaker less developed countries, leading them to accept regulations that do not represent a consensus within the framework of multilateral negotiations. The fact that these asymmetrical negotiations had been accepted based on a rhetoric favoring free trade and supporting economic development illustrates how the U.S. integration proposals became distant from the social demands and necessities of the populations.

Brazil and Mercosur have stressed that their priority in the ALCA is to negotiate market access. We are ready to negotiate a significant improvement in market access conditions both for goods and services. Therefore, we are being more faithful to the principles of free trade than other countries involved in the process, because free trade means, most of all, the elimination of tariff and non-tariff barriers and this is what Mercosur has emphasized as the essence and core of the Free Trade Area of the Americas.

However, we can not accept the illusion that in exchange for market access in wealthy countries we should accept disciplines and regulations that impede our ability to act in fundamental areas in our own countries. All countries will present offers in market access for goods and services and it is through weighing all of these offers that we must find the equilibrium between concessions and advantages for all of us. The United States cannot accept ambitious regulations in sensitive areas, and nor can we. There is no prejudice, reluctance or ideology in this position: disagreements in trade negotiations reflect national priorities and interests that are both distinctive and legitimate. What we cannot do is to sacrifice the instruments that promote development. As was said by Professor Ken Shadlen1, of the London School of Economics, referring critically to the recent negotiations of bilateral and regional agreements by countries like the United States, "the price to be paid to increase market access has been the abdication of those tools historically used to incorporate benefits, in terms of development and integration into the international economy." This is certainly not acceptable for countries such as ours.

Besides, we should bear in mind that bilateral trade agreements recently negotiated by the United States have shown it to be an illusion that greater concessions in establishing new regulations in areas such as services, investments, intellectual property and government procurement would produce gains in areas such as market access for agriculture. In general, countries that recently signed bilateral free trade agreements with the United States have not been able to obtain significant advantages in agricultural trade, even after having paid the price of having made important concessions in areas of obvious interest to the U.S. government.

The announcement of the exclusion of sugar and the scarce results in dairy products in the U.S.-Australia agreement—two of the topics most dear to Australians—proved that it is a mistake to presume that making greater concessions to Washington in sensitive areas will necessarily generate gains in market access. In the case of the agreement with the Central American countries (CAFTA), the USTR itself, the White House trade negotiating office, has issued a note on January 26, 2004, stating that the increase in market access for sugar by Central American countries within CAFTA (the bilateral agreement) will correspond, in the first year, to close to one (1) day of U.S. sugar production (...). The access will increase very slowly, over fifteen years, to reach about 1.7% of U.S. production and 1.6% of U.S. consumption in the fifteenth year. Imports of sugar declined from about 1/3 (one third) since the middle nineties. CAFTA would not reach, not even close, a point to make U.S. imports go back to that level. Tariffs on sugar will not be changed due to CAFTA. The U.S. over-quota tariff is prohibitive, at a level well above 100%, one of the highest U.S. import tariffs.

What the ALCA negotiation process lacks is not ambitious goals, but a grand view, especially by the developed countries. Latin America as a whole is going through an extremely delicate period, with higher poverty indices, increased unemployment rates, proliferation of drug trafficking and weakened political institutions. Agricultural protectionism in wealthy countries, or their attempts to impose inelastic and unbalanced disciplines in new areas, can only aggravate the state of economic, political and social fragility in the region. Only market opening in developed countries, as well as a constructive re-examination of the treatment of non-commercial matters, could help poorer countries in the Hemisphere to overcome this moment of crisis and advance towards the common goal of development.

The Brazilian government is not opposed to the ALCA. This is a myth that we must "un-create", since it only suits those who wish to distort facts and protect minor interests. What the Brazilian Government is trying to do is to redirect the ALCA process towards a balanced agreement while simultaneously eliminating from the initiative of this Hemispheric Free Trade Area those aspects that would be negative for the economic and social development of Brazil. There is no opposition to the United States. Neither based on principle, nor based on ideology. What we combat are those proposals made by protectionist and conservative forces in the U.S. and in other countries, mainly in agriculture and the intellectual property industries. These economic sectors are subject to criticism and opposition even from the more progressive streams of thought in the United States. What we intend, therefore, is to restore the ALCA initiative born at the Summit of the Americas, the main goals of which were to increase employment rates, promote economic development and improve social conditions. In other words, what we aspire to achieve is an ALCA that is fully compatible with the rhetoric that launched it. An ALCA that is in harmony with our country's social and economic development projects and that will not deepen distorted trade mechanisms and international regulations in general, especially those within WHO and WTO.

The development agenda cannot be ignored any longer. In recent decades, developing countries have accumulated a "fatigue" regarding the incorporation of new and strict regulations in areas of interest to developed countries, without effective offsets or compensation in market access to those same countries. A liability of incorporated regulations, with variable costs, was created without any significant increase in exports in those sectors in which poorer countries are more competitive, such as agriculture and low-tech manufactured goods, such as textiles and shoes.

Moreover, we cannot ignore the fact that, even in a process of effective integration, in which a dismantling of tariff and non-tariff barriers occurs, it will be necessary to create mechanisms and measures to support developing countries, especially the poorer countries of the Hemisphere. We cannot maintain the illusion that in this Hemisphere we will introduce compensation and adjustment mechanisms similar to those created within the European Union, with the goal of endorsing and making more equitable and fair the integration of economies and societies in distinct stages of development, as was the case of funds transferred from wealthier countries, such as Germany, England and France, to poorer countries, such as Spain, Portugal and Greece. It is important not to ignore, however, the fact that it will indeed be necessary to create instruments within the ALCA process to avoid the trauma of sudden competition between some of the wealthier and some of the poorer countries of the Americas, which is a Hemisphere characterized by social and economic heterogeneity that is much deeper than the Europe's.

A trade integration process between such distinct economies, and with an unprecedented degree of asymmetry, should necessarily anticipate a set of adjustment and compensation measures that could guarantee a minimum balance in taking advantage of the opportunities that accompany trade integration. In other words, there is an imperative, evidenced both at the Plenary Meetings and in the meetings of the ALCA Negotiating Groups, to find mechanisms in the trade and financial areas that would contribute to the preparation and adaptation of poorer countries to the process of integration with two of the wealthiest economies in the world. It is thus of the utmost importance that the developed countries of the Hemisphere have the necessary sensitivity to create and promote instruments, including financial ones, to benefit the poorer countries of the region.

We need caution and tranquillity to evaluate what Brazil and Mercosur will
be able to negotiate in the very complex context of the resumption of the ALCA negotiations. The Brazilian government continues to be firmly engaged in pursuing its goal that the ALCA negotiations be brought to completion according to the flexible architecture that all 34 countries agreed to establish in Miami. Some steps were taken on the path towards a balanced trade agreement, satisfactory to all countries: we reformulated the ALCA architecture by introducing the principle of flexibility; we established the principle of positive lists for market access negotiation in services and investments; we refused market access negotiation in government procurement, which would harm our ability to use State resources to foster national projects; and we limited the scope of negotiations on regulations regarding services, investments and government procurement, areas that should be conducted under WTO rules and/or under principles of transparency. There are, nonetheless, many tasks to complete in terms of consolidating the architecture of the agreement and the exchange and evaluation of offers. As we saw, crucial differences remain to be overcome, the first two among them being agriculture and intellectual property.

We cannot, however, lose sight of the essential. The formation of a free trade hemispheric area is not an end in itself, to be achieved at any cost and by all means. It is not acceptable to create an ALCA founded on propositions that flagrantly frustrate basic social goals, especially not ones in the area of public health. As in any other trade agreement negotiation in which Brazil has participated, the ALCA should be evaluated on its merits and costs, both economic and social, taking into consideration the interests of society as a whole and the goal of development in its broader sense. The appropriateness of the ALCA should be measured, therefore, through the contributions that a possible agreement could make, or fail to make, in terms of increased prosperity and a reduction of social and economic inequities in the Hemisphere.

Mercosur: 1.1. Mercosur – An Initiative of Great Magnitude

Mercosur unites Argentina, Brazil, Uruguay and Paraguay in an initiative that began with the signing of the Treaty of Asuncion on March 26, 1991, having as its primary goal the promotion of economic development for the Member States and the social well being of their populations.

It is fundamental that civil society should participate more and more in the discussions on Mercosur’s path, since it is more than a mere foreign policy initiative. To that end, it is necessary for government officials to be in harmony with the expectations and wishes of their citizens regarding this process. Mercosur constitutes, in fact, a State policy and represents, at present, one of the pillars of Brazil’s national development strategy, which is of interest to all of society.

In some respects, it is, essentially, an initiative of great political and economic magnitude that demands increasing collaboration and coordination of public policies in distinct sectors, both in trade and economic issues and in the political area.

This paper does not attempt to explain thoroughly the history and background of Mercosur, but only to remind, for the purpose of context, that the creation of this bloc occurred within the framework of efforts to restructure the World economy after World War II. That restructuring resulted in the adoption of various distinct mechanisms and cooperation initiatives among countries, both multilaterally, as in the case of the General Agreement on Tariff and Trade (known by the acronym GATT, which later gave rise to the current World Trade Organization) and the International Monetary Fund (IMF), as well as regional entities.

In the case of South America, we can cite as examples the creation of the Latin American Free Trade Association (ALALC), in 1960, which was later replaced by the Latin American Integration Association (ALADI), which is still active as an integration arena for its members.

Considering the weight of their differences—in terms of scope, institutional strength and concrete results—we can say that, in general, these cooperation schemes followed the same logic, having been conceived as tools to confront the inherent challenges of a world economy characterized by growing interdependency—generated by increases in flows of trade, investment and people—that, while creating countless opportunities, can also multiply problems and instability.

The Asuncion Treaty, in this context, can be understood as a “plan of joint action” to overcome difficulties produced by the growing vulnerability of the region in facing an unstable world economic situation, one that attempts to establish a new strategy in international trade integration for its members, fostering the pursuit of competitiveness, the maximization of comparative regional advantages and greater efficacy of national productive systems as instruments to promote social well being.

In this context, the creation of Mercosur was part of the same logic that, from the middle of the 20th century onwards, led to the formation of regional economic blocs such as the European Union, the Andean Community of Nations, NAFTA (the North American Free Trade Area, joining Mexico, Canada and the United States), and ASEAN (the Association of Southeast Asian Nations), among others.

The integration process that emerges from the trend of growing closeness between Brazil and Argentina (after the re-democratization of both countries by the end of the 1980s and the overcoming of bilateral political disputes)—to which we must add, in 1991, Paraguay and Uruguay—nonetheless presents some quite
unusual characteristics.

Mercosur resulted from the perception of its four founding members that a mere economic cooperation would be insufficient to accomplish the intended goals. It would be necessary to advance a step further and to create conditions that could guarantee a profound integration among the four partners, able to promote the development of the region on a fair and equitable basis.

Furthermore, it constituted, in a certain way, an innovative experiment, differentiating itself from the cooperation arrangements already adopted previously in South America.

The structure adopted by Mercosur necessarily involved the definition of a common initiative, no longer conceived based on exclusive individual perceptions, but rather conceived from a collaborative view of the group, which, in turn, meant the need for coordinated actions towards a common goal. Therefore, the liberty to adopt unilateral measures diminished considerably, since, in order to achieve common goals, most public policies adopted by its members needed to become matters for consultation and coordination with the others.

It is important to note that this strategic option—in favor of a profound integration—did not emerge from political voluntarism, but rather was based on the perception that challenges and problems faced by the four countries are common to all of them and demand politically coordinated responses. It is based in the perception that from both an economic and a political standpoint, there is much more to be gained than to be lost from a strengthening of economic and political ties.

From the economic perspective, the adoption of profound integration arrangements (by nature less volatile than other cooperation mechanisms, and also less susceptible to individual detaching measures) facilitates the consolidation of an effectively integrated economical environment—with gains in terms of economies of scale (through reduced production costs, given the larger market) plus the attraction of investments. This, in turn, leads to the more effective use of available resources and a better integration of the region in the world economy, for the benefit of society.

From the political perspective, deepening the integration process is associated with a higher degree of political closeness and greater regional stability, since it facilitates the spread of common values, promoting the consolidation of peace and democracy, as well as strengthening of the region's ability to negotiate on a variety of fronts.

Predicating the establishment of a Common Market based on the free circulation of factors of production, the adoption of common policies and the coordination of sectoral policies in different areas (macroeconomic, agriculture, industry, fiscal, monetary, foreign exchange, educational, environmental, scientific, energy, and others); the Asuncion Treaty enthroned an initiative of great political and economical scope that involves different sectors and transforms Mercosur into a fundamental model in the formulation of the great majority of public policies adopted by its States members.

1.2 Mercosur — A Dynamic Process, In Continuous Evolution

Another aspect that should be noted here is that Mercosur is a dynamic process in continuous evolution.

Although we initially saw a greater emphasis on trade and economic aspects of the initiative, in the context of implementing a trade liberalization program and molding a common customs policy, gradually, and not merely by chance, we have seen more of an emphasis on the political and social dimensions of Mercosur.

Structure of Mercosur

In this context, along with the technical forums that deal with questions more directly related to the economic realm—such as the Committee on Tariffs, Rules of Origin, Technical Regulations, and others—policy entities such as the Forum for Consultation and Political Consensus-Building (Fórum de Consulta e Concertação Política — FCCP) which coordinates positions on matters that range from candidacies in international forums on human rights to water policy in the Member States Parties), the Economic and Social Consultation Forum (FCES), the Social and Labor Commission and Meetings of Ministers of Education, Culture, Justice and Labor, to mention just a few examples, gained in both dynamism and density.

It is enough to simply look at the structure of Mercosur to note that there is a negotiating Forum for practically every sector of life in society in which Governments act. The number of Forums in Mercosur, furthermore, is today thought to be considerably greater than those conceived at the beginning of the process, demonstrating the dynamism and evolutionary nature of this integration process.

Mainly due to the specifics mentioned above, Mercosur today does not fit precisely into any category of integration process identified by doctrine that traditionally classifies integration schemes according to the scope and degree of existing or required economic cooperation.

In general, integration processes are schematically classified as follows:

1. Free Trade Zones:

   Require the elimination of obstacles to the circulation of goods, in special
taxation on imports among participating countries. In some cases, they can involve the elimination of obstacles to the circulation of services and capital. This is the case, for example, with the North American Free Trade Area (NAFTA), between the United States, Mexico and Canada.

II. Customs Unions:
Besides the elimination of obstacles to the circulation of factors of production, the adoption of a common tariff policy vis-a-vis third countries is also expected, complemented, in general, by common trade policy instruments necessary to the administration of a common tariff policy.

III. Common Markets
Besides the common trade policy, Member States advance in the coordination of sectoral policies, including even those related to the circulation of people. Establishing a Common Market demands, furthermore, a harmonization of legislation regarding areas that are fundamental to its strengthening. Typical examples include common rules on customs procedures, sanitary and phytosanitary controls, extra-zone trade remedy measures and granting of production incentives.

IV. Monetary Unions
They involve, besides the Common Market, the adoption of a common monetary policy and a common currency.

V. Political Unions
They involve, besides the Monetary Union, the harmonizing of foreign, security, immigration and interior policies and, even, the adoption of a Common Constitution. At this time, only the European Union is advancing towards the formation of a Political Union, although one that is highly concentrated in its economic aspects.

Mercosur, formally, aspires to be a Common Market. In fact, according to the 1st article of the Asuncion Treaty, Mercosur involves: a) free movement of goods, services and productive factors, through the elimination of tariff and non-tariff barriers to the circulation of these productive factors; b) establishing a common external tariff and adopting a common trade policy regarding third States or groups of States; c) coordination of macroeconomic and sectoral policies between the Member States in policies on international trade, agriculture, industry, fiscal and monetary affairs, foreign exchange, capital, services, customs, transport and communications, among other areas; and d) the commitment by Member States to harmonize their legislation in certain specific areas.

In practice, however, Mercosur can at this time be considered a free trade zone and a customs union in the process of consolidation, with subtle aspects of a common market and, in some respects, a political union, with the possibility of adopting a common currency already being envisaged.

In fact, at this time, with the exception of sugar and automotive goods, all products commercialized within Mercosur now benefit from the free trade program outlined in the Asuncion Treaty, since the adoption of tariff and non-tariff restrictions on the circulation of such goods is not allowed among Mercosur partners.

Furthermore, disciplines on services and circulation of workers were negotiated and several cooperation activities developed, involving coordination of policies, regulatory harmonization and the implementation of joint projects in various areas, including technical, sanitary and phytosanitary regulation, to facilitate free circulation within Mercosur.

The circulation within Mercosur, however, is still subject to border controls, generating costs that could be avoided with effective market integration between the four member countries.

In tariff policy matters, Mercosur has adopted, since 1994, a Common External Tariff ( CET) that, formally, encompasses the entire universe of products commercialized with third countries. About nine thousand tariff items are now listed in Mercosur’s common nomenclature, with ad valorem tariffs that range, in general, from 0% to 20%, according to the category of the product and the existence—or lack thereof—of production within the region. Furthermore, there is a series of customs and administrative procedures that were adopted to ensure greater uniformity in the application of the CET.

However, due to relative differences between the economies of the four partners, it has not yet been possible to completely eliminate the possible application, by a Member State, in exceptional circumstances provided for under common regulation, of differentiated tariffs for specific products. Each country is still authorized to maintain, though for a limited time, a national list of exceptions to the CET and special programs of unilateral imports. In the case of Paraguay and Uruguay, countries relatively less developed, the number of exceptions is greater and for a longer period than in the cases of Argentina and Brazil, where the elimination of exceptions is scheduled for January 1, 2006.

Furthermore, although disciplines in matters such as competition protection, government procurement, safeguards and other commercial policy instruments had already been negotiated and although the fact that Mercosur negotiates many
trade agreements as a bloc (such as the agreement signed with Andean countries in December 2003, and ongoing negotiations with the European Union, India, South Africa, among others), the level of unification of trade policies between the Mercosur Member States is still limited. The expectation is that these instruments will be actively operating by 2006, allowing for the consolidation of the Customs Union.

On the other hand, and although only fourteen years have passed since the Asuncion Treaty was signed, Mercosur had already harmonized a series of policies characteristic of a Common Market and, even, of a Political Union, in areas such as education, culture, justice, safety; combating drug trafficking and terrorism; social security and the length of service for retirement purposes; protection of consumer rights and the environment, just to name a few examples.

1.3 Mercosur – An Instrument of Social and Economic Development

Mercosur was conceived as an instrument to accelerate the process of economic development with social justice in its Member States.

Having this goal, and starting from the assumption that the formation of a wider economic area, through the integration of national markets, would allow for a more effective utilization of available resources, with the benefit of improving living conditions for their citizens, the Asuncion Treaty contains a series of elements pertaining to programs, based on the principles of flexibility, gradualism and reciprocity of rights and obligations (respecting, however, particular differences of timing, due to the asymmetric levels of relative development among its members).

Benefits resulted from the progressive commercial liberalization within Mercosur, promoted by the Asuncion Treaty (which established a program of linear and automatic progressive tariff elimination) were evident and almost immediate. The total value of trade transactions within the bloc, which in 1991 was around US$ 5 billion, reached almost US$ 20 billion in 1998, an increase of about 400% in seven years.

Although we could see a dip in the flow of regional trade due to the devaluation of the Real in 1999, as well as the recent crisis in Argentina and Uruguay, in 2004 regional trade again started to show signs of dynamism, growing considerably from 2003 levels. Today in-zone (i.e. within Mercosur) transactions correspond to a significant share of all trade transactions of the members country, a trend that is being consolidated as commitments in free circulation matters are deepened.

The growing elimination of obstacles to trade has the additional merit of consolidating the image of Mercosur as an integrated economic bloc, facilitating the attraction of direct foreign investments to the region, which represents a potential consumer market of about 210 million inhabitants, with a combined GDP of more than one trillion dollars.

Attracted by the demand resulting from the enlarged regional market, these investments have contributed considerably to the creation of new jobs in the labor market and to the improvement of regional development levels.

But the economic effects of Mercosur, in fact, go far beyond fostering in-zone trade and investment flows. Disciplines in force within the Bloc tend to act as catalysts of macroeconomic rationality, favoring the renovation of productive structures in the four Member States, with gains in terms of efficiency and competitiveness, as well as making possible, consequently, a better integration of regional products into international trade. Mercosur, thus, can serve as a platform of exports for regional producers, benefiting, in particular, small and medium businesses that can achieve their potential performance in international markets through their growing interactions with other businesses in the region.

Under this approach, Mercosur holds a Special Meeting on Trade Promotion that has tried both to promote contacts between businesses in the region and advertise the image of Mercosur abroad through the organization of joint trade missions and coordinating the participation of the Member States at fairs and trade events.

In terms of commercial and economic benefits, Mercosur also makes it possible to increase the particular weight of its members in trade negotiations with third countries, according to the principle of open regionalism.

Since establishing the Customs Union in 1995, the external agenda of Mercosur had been expanded considerably, covering a series of processes of negotiation and consultation with regional groups and countries, within and outside of the Hemisphere.

Free trade agreements were signed with Chile and Bolivia in 1996 and with Colombia, Ecuador, Peru and Venezuela in 2003. Tariff preference agreements were reached with India and South Africa, as initial stages in the formation of a Free Trade Area. Also, there are ongoing trade negotiations with the European Union, Mexico, Morocco, Cuba, SICA, CARICOM and Portuguese speaking countries, among others.

Mercosur is also involved in a series of cooperation mechanisms and mechanisms for consultation with a wide range of countries and groups of countries, such as:

a) Economic and Commercial Cooperation Mechanisms: Central American Common Market; European Free Trade Area (EFTA): USA (Rose Garden Agreement – 4 + 1); Canada.
b) Mechanisms for Consultation and Exchange of Information: China; South
Korea; Japan; CER (Australia – New Zealand Closer Economic Relations Trade Agreement); Russia: Commonwealth of Independent States
c) Mechanisms for Technical Cooperation: ECOWAS
d) Preliminary Informal Discussions: Israel and Thailand

This broad external agenda, added to the growing increase of Mercosur trade relations with third countries, demonstrates that the goal of developing the participation of the four country members in the global trade of goods and services, and also in the area of foreign investments, have been completely implemented within the scope of the Bloc.

The performance in the trade and economic area, however, is far from being the sole positive result of Mercosur. In its 14 years of existence, a series of measures that directly benefit citizens have been negotiated within the scope of the Bloc, strengthening the social and human dimensions of the integration process.

Today Mercosur contains, for example, a set of rules intended to facilitate the circulation of people within the Bloc. We can outline, among them:

- The creation of differentiated channels at Ports and Airports for Mercosur residents (Decree CMC n. 46/00);
- Elimination of limits for obtaining foreign currencies and traveler's checks related to tourism and travel services (Resolution GMC n. 43/92);
- Rules on circulation in border areas (Dec. CMC n. 18/99);
- Agreement on visa exemptions among Mercosur Member States (Decree CMC n. 48/00);
- Agreement on Residency for Nationals of Mercosur Countries (Decree CMC n. 28/02) – it establishes, for citizens of Mercosur Member States, a simplified procedure for obtaining a residence visa in the other Member State);
- Agreement on Migration Regulation (Decree CMC n. 28/92);
- Common Regulation on Traffic and Traffic Safety (Resolution GMC n. 8/82) – that establishes minimal requisites for the circulation of vehicles in the integrated area.

Rules were also adopted to guarantee to nationals of Mercosur Member States the right to receive consular assistance at Consular Offices of the other partners (Decree CMC n. 35/00 and 38/04)

Aiming to strengthen legal protections in the region and to guarantee respect to individual rights, a series of instruments in matters of legal and judicial cooperation was approved to ensure free access of Mercosur citizens to Courts in the four member states, also facilitating the recognition and the fulfillment of court orders (medidas instrutórias) in civil, labor, contract and even criminal law (Decisions CMC n. 5/92, 1/94, 2/96 and 6/97).

It is also worth mentioning the regulation adopted regarding recognition of university degree programs and diplomas, which allows the continuation of studies in a different member state (Decisions CMC n. 4/94; 7/95; 8/96; 9/96 and 4/99).

In the labor area, the Mercosur Social Security Agreement (Dec. CMC n. 18/97) assures the right to Social Security to workers that work or had worked in any member State, ensuring them and their families and co-workers the same rights, being subjected to the same obligations, as are the nationals of those States. The agreement also allows, for the purpose of retirement in a country, that workers will have their social security contribution period considered in any of the other Mercosur countries. It is also worth mentioning the Social and Labor Declaration, signed in December 1998, which established, at the regional level, principles and minimum guarantees for workers, such as non-discrimination, prohibition of child labor, occupational safety, entitlement to Social Security, among others. Besides these achievements, a working group was created in December 2004 to define a regional strategy to combat unemployment.

There are many other regulations such as these, which benefit citizens directly and that, aside from clearly demonstrating that the process of integration is not limited to measures to expand trade flows and to increase productivity, pointing towards establishing a fundamental integration between the societies of the member States, transforming Mercosur into a virtually irreversible process.

Mercosur – A Work Being Constructed

Despite its undeniable success, there is actually much to do to consolidate Mercosur as an instrument that is able to ensure better living conditions for the population of its member States.

In particular, there are several measures that still need to be adopted with the goal of consolidating the Customs Union and constituting the Common Market. Advancing towards achieving this goal, Mercosur Decision CMC no. 26/02 was approved in 2003, a work program that enumerates a series of concrete actions that should be adopted to achieve the goals of the Asuncion Treaty, in both the trade and economic area and in the social area.

On the trade and economic side, we can emphasize measures aimed at eliminating the remaining obstacles to the free circulation of productive factors and also the consolidation of the Customs Union (elimination of double payment of the CET; harmonization of customs procedures; elimination of unilateral application of special in zone regimes; implementation of common rules in matters such as trade protection; elimination of the application of in-zone antidumping...
duties, among others). Advances are also envisioned in matters of macroeconomic coordination, tax harmonization, adoption of disciplines on incentives: agricultural policies; disciplines on capital markets, productive integration, scientific and technological cooperation, and infrastructure, among others, targeting progress in the formation of an effective Common Market.

Emphasis should be put—as a current trade and economic challenge to Mercosur—on the definition of mechanisms to eliminate double payment of the CET and to solve the issue of distributing customs revenues, which will be of fundamental importance to stimulating the free circulation of goods and the integration of chains of production within Mercosur.

To that end, we have already CMC Decision no 54/04, establishing the granting of original character to extra-zone products that meet Mercosur's tariff policy and to which a CET of 0% or a 100% four-party tariff preference are applied. The CMC Decision 54/04 establishes, likewise, conditions for the preparation of a schedule for the elimination of double taxation in the CET for the remaining tariff universe. Mercosur is working, at the moment, on the regulation of the first and second articles of this Decision: the identification of products in trade agreements signed by Mercosur to which a CET of 0% or 100% tariff preference are applied.

Despite this positive momentum, which will contribute to many positive developments in the integration process, we cannot forget that the considerable existing asymmetries between the economies of Mercosur Member States have created demands to limit in-zone free trade, through the implementation of safeguards or the adoption of special measures to restrict imports of goods that could be negatively affecting production in other State Party. This circumstance demonstrates the need for Mercosur to consolidate itself as an initiative for common prosperity, enabling the viability of effective solutions to ensure the generation of equivalent benefits for all of its members.

To minimize these asymmetries, it was decided to advance in the implementation of Mercosur structural funds, resulting in the approval of two Decisions: CMC no. 45/04, establishing a High Level Group for the purpose of preparing a proposal for the creation of a Fund for Structural Convergence in Mercosur (FOCEM); and CMC no. 18/05, settling questions such as the total amount of the Fund, the distribution of resources, its structure and decision-making systems, as well as the decision by the High Level Group to present, by November 30, 2005, an initiative regulating the FOCEM.

On the social aspect of Mercosur, on the other hand, discussions were undertaken in matters such as allowing the free circulation of workers, combating unemployment and promoting respect for human rights. Ways to facilitate the participation of civil society in the integration process, as well as creation of a Mercosur Parliament are being studied, likewise, with the goal of strengthening its political dimension.

Also, Mercosur faces the need to resolve some deficiencies in the institutional area (particularly in terms of agility of the decision-making process, financing of the integration process and incorporation of rules), that tend to facilitate conducting the negotiation process and implementing commitments agreed upon within the scope of Mercosur.

The expectation on the implementation of this broad agenda—which is being discussed at this time in several Mercosur forums—is that it would allow, over the medium and long terms, the concrete implementation of commitments assumed in the framework of the Asuncion Treaty.

It is important to remember, however, that, despite its importance, Mercosur does not have the means to solve all the social problems that, unfortunately, afflict our countries. Although it can—and should—act as a catalyst for economic development with social justice, Mercosur encounters limitations in the ability and interest of the member States to undertake joint efforts to enhance their capacities and comparative advantages. Therefore, applying the principles of flexibility and gradualism, which have always guided the process of constructing Mercosur, decisions within the scope of Mercosur are adopted in accordance with, and thus reflecting, the achievable consensus which, many times, does not correspond to the initial expectations of all actors involved, generating frustration and criticisms of the effectiveness of the Bloc.

Such criticisms, although based on a legitimate concern with the apparent lack of advances in the process, often fail to take into consideration all the goals already achieved by Mercosur. Certainly, carrying out coordination within Mercosur is not easy, nor could it be otherwise.

Despite a strong general interest in strengthening the ties of integration—and the common perception, which remains untouched to date, that it is the key instrument to promote the economic development of its members—there are particular interests that are not necessarily convergent, as they reflect the peculiarities and the circumstances of each country involved in the process.

The dynamics of Mercosur and its effectiveness will thus depend upon the capacity of the member States to internalize the Mercosur dimension in the identification and also in the defense of their particular interests, as well as in the implementation of their public policies, always to benefit the societies they represent. To that end, it is of the utmost importance that civil society participates actively in discussions on the direction of the integration process, to assure its adequate implementation.
From the standpoint of I тамары, we can assure that such suggestions, as well as such demands, are always welcomed, as the positions defended in the context of Mercosur negotiations should, to have the necessary legitimacy, represent interests and expectations of the societies that form the Bloc, since, ultimately, the process of integration, to be effective, should have the format that representatives of civil society wish it to have.

After analyzing both the ALCA and Mercosur, it becomes clear that they are two very different kinds of integration processes. The most obvious difference is that, while Mercosur is already a concrete reality, although subject to development, the ALCA is an abstract project. Mercosur’s existence started with the signing of the Asuncion Treaty in 1991, and since then several other agreements between its members have been signed and come into force. The ALCA, on the other hand, is a negotiation process that is still far from being concluded.

As described earlier, ALCA negotiations are paralyzed because of impasses in two areas: market access negotiations and “WTO-plus” regulations. In market access, rich countries do not want to open their markets for agricultural products, while demanding others to provide them market access in new areas such as services, investments and government procurement. Besides that, developed countries insist in creating new and deep rules which would regulate areas of economic activity not directly related to trade, such as intellectual property and foreign investment, interfering with national legislations and limiting the ability of governments to formulate their own policies. This could affect areas as sensitive as public health, since the creation of new obligations regarding patents and compulsory licensing, as some countries proposed in the ALCA, would hinder the ability of developing countries, such as Brazil, to promote, for instance, local production of generic drugs.

Accepting the ALCA as proposed by the rich countries would imply the need to promote deep changes in developing countries’ domestic laws, especially in areas such as intellectual property, government procurement and protection to foreign investment. In the particular case of Brazil, the Constitution itself would have to be changed in order to accommodate proposals such as the one which gives private foreign investors the right to take to an international court their demands against a sovereign State. Brazil’s internationally recognized program of fighting AIDS by distributing free drugs would also be severely affected by the rise of costs which would follow the adoption of certain proposals in the area of intellectual property. The project of the ALCA evolved, therefore, from the formation of a simple free trade area to the establishment of a comprehensive set of hemispheric rules which would strictly regulate very specific areas of economic life in all countries of the Americas, leaving no space for public policies aimed at promoting development.

Integration within Mercosur, on the other hand, goes much beyond the simple creation of a free trade area or the institution of a set of economic rules. While the ALCA project is restricted to economic aspects, Mercosur also has very important political and social dimensions. It is a strategic alliance which brings more stability to the region and creates better opportunities for investment. There is increasing coordination of public policies in many areas, such as education, culture, safety, social security, environment, consumer rights, immigration, among others. And the fact that Mercosur speaks as a unity in external trade negotiations gives us more credibility and strength to defend our common interests. Brazil remains committed to the results of the Miami Ministerial Meeting of 2003, with the goal of reaching an ALCA agreement which is balanced and beneficial to all participants. But strengthening Mercosur is the main priority of Brazil’s foreign policy, and it will probably remain that way for a long time.

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