



European Union / Mercosur Negotiations

The Environment and Sustainable Development Dimension

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Executive Summary

Negotiations of an interregional agreement between Mercosur and the European Union have been proceeding steadily since 1999. They include political and economic cooperation as well as trade. Given this broad remit it is extraordinary that issues relevant to the environment and sustainable development have barely been included thus far. An agreement that does not adequately cover the environment and sustainable development will have little credibility, either as an expression of current priorities or as an instrument for future cooperation.

The relationship between Mercosur, plus Chile and Bolivia, and the European Union is of particular significance for environment and sustainable development. This is an agenda on which many of the countries concerned play an important role and one that requires their leadership at a time when the United States shows little inclination to accept its responsibilities in this area.

The existing EU/Mercosur negotiating agenda includes a number of items that are significant from the perspective of environment and sustainable development but this dimension has not been adequately considered thus far. These include co-operation on technical regulations and conformity assessment (that is the implementation of technical regulations), energy co-operation, transport, co-operation on the agricultural and rural sector, fisheries, and consumer protection.

As always, investment negotiations have major implications for the environment and sustainable development. Investment is the only tool that can reliably shift currently unsustainable economies towards more sustainable practices. At the same time, international investment agreements have proven themselves to be potential obstacles to the ability of governments to adopt measures that are needed to promote sustainability. The EU/Mercosur investment negotiations must be monitored from the perspective of the environment and sustainable development.

In addition, the agenda for environment and sustainable development includes three major areas of concern, which need to be integrated into the future EU/Mercosur process:

1. The development of international environmental governance

The need to strengthen the current system of international environmental governance is widely recognized, as are its essential elements. This is also vital for the trade regime and for other efforts to promote economic integration, such as the EU/Mercosur negotiations. The United Nations Environment Programme (UNEP) must obtain the necessary legal and financial means to provide focus and structure to international environmental governance. Steps must be undertaken to ensure greater coherence among the multilateral environmental agreements (MEAs), probably through a process of clustering. The work of UN organs in environmental matters must be better integrated. Whatever is decided at the World Summit on Sustainable Development (WSSD) will represent the beginning rather than the conclusion of a process. Continuous consultation between the countries of Mercosur and the European Union is essential for successful implementation of these decisions. This requires an active process of cooperation between environment negotiators.

2. Developing solutions to the Doha environment agenda

Following the lead of the European Union, and with critical support from Chile and Brazil, the WTO Ministerial in Doha adopted a Declaration that is remarkable for its environmental agenda. Several items are scheduled for negotiation (relationship with MEAs, TRIPS and the Convention on Biodiversity, fisheries). Further items are identified for consideration for future negotiations (market access issues, labeling). In addition, environmental issues are liable to arise in most of the other major items on the agenda (agriculture, services, investment, TRIPS). While Mercosur does not act as a unit in the WTO, the countries of Mercosur and the European Union will form the axis around which solutions can crystallize, a reality that an EU/Mercosur agreement must recognize in an appropriate manner. This requires an active interregional civil society process.

3. Promoting sustainable trade in commodities

The most important environmental challenge facing the international trading system is the development of sustainable systems of trade for commodities. Market access for certain agricultural products forms a priority in the EU/Mercosur process. That aspiration should be supported from the perspective of environment and sustainable development if measures are adopted that promise

to address the environmental consequences of commodity production during a period when production is expanding. These issues are by now increasingly well defined. The central challenge is to expand agriculture where its impacts can be managed—and then to manage them successfully. In EU/Mercosur trade, the most environmentally sensitive crops at the present time are soy, corn and beef. The expansion of these crops threatens to accelerate deforestation, eliminate critical wildlife habitat and reduce biodiversity in ways that are irreversible. Some of these impacts are directly related to production practices and levels of production. The attendant costs must be internalized into the product chain. Others are largely independent of the level and form of production, reflecting long term land use choices, yet still have significant economic impacts. In particular in relation to soy, corn, and beef, the EU/Mercosur negotiation can explore creative responses to the relationship between consumers and producers in the framework of markets that are increasingly open and international. In particular the EU experience with rural environmental measures suggests that payments will need to be made from importing countries to address non-productive impacts of agriculture in the rural environment of exporting countries.

A number of steps are urgently needed to integrate the environment and sustainable development agenda into the EU/Mercosur process.

- The Madrid Summit must give guidance to the negotiators to address the agenda of environment and sustainable development.
- A consultative process involving the environment authorities of the countries of Mercosur and the European Union must be established to accompany the negotiations.
- An interregional civil society process must be launched to promote creative solutions to the integration of environment and sustainable development into international economic decision making.
- The European Union must recognize its responsibility for the creation of sustainable commodity markets. Pilot projects utilizing internationally funded national environment funds can explore the prospects for open, international commodity markets that promote conservation in the rural environment.

1. Background and Status of EU/Mercosur Negotiations

Over the past decade, there has been a move towards greater regional cooperation within the Western Hemisphere, involving the North American Free Trade Agreement (NAFTA)¹, Mercosur², the Andean Community³, the Central American Common Market (CACM),⁴ and the Caribbean Community (Caricom)⁵. There are even signs that the historic difficulties in cooperation between Chile, Argentina, and Brazil may be susceptible to more constructive solutions, reflecting the underlying reality that each is the others' primary market.

This dramatic development has resulted in a range of responses from countries outside Latin America as they seek to adjust to the new reality in the region. In particular the U.S. and the European response are strikingly different.

Even before conclusion of the Uruguay Round in the GATT/WTO and completion of the North American Free Trade Agreement (NAFTA), the United States proposed negotiation of a Free Trade Area of the Americas (FTAA), largely disregarding regional integration efforts that were under way. At the same time, consideration was being given to Chilean accession to NAFTA, a proposal with little economic logic behind it. Chilean accession was effectively removed from the agenda when the US Administration was unable to obtain the necessary fast track authority. The FTAA process continues. It was initiated at the 1994 Miami Summit and has proceeded through a complex structure of summits, trade negotiations, and civil society activities⁶.

The response of the European Union took more time to crystallize. It is distinguished by viewing the regional integration process in Latin America as a positive development and

¹ <http://www.sice.oas.org/trade/nafta/naftatce.asp>

² <http://www.mercosul.org/>

³ <http://www.sice.oas.org/tradee.asp#Andean>

⁴ <http://www.sice.oas.org/tradee.asp#CACM>

⁵ <http://www.caricom.org/infoserv.htm>

⁶ http://www.ftaa-alca.org/alca_e.asp

seeking to build on it. In this approach, the EU/Mercosur negotiation has emerged as the most important long-term development.

The first step of the EU/Mercosur process was taken rapidly after the establishment of Mercosur in 1991⁷. The European Commission signed an Interinstitutional Agreement with Mercosur in 1992, which was followed by the EU-Mercosur Interregional Framework Co-operation Agreement that was signed in December 1995. These formed the basis of a continuing political dialog, which remains the underpinning of the EU/Mercosur relationship. Conclusions on political dialog were already reached in the first round of negotiations, in April 2000. A Summit of Heads of State and Government of the European Union and Mercosur held in Rio de Janeiro on 28 June 1999 decided to launch negotiations “aiming at bilateral, gradual and reciprocal trade liberalization, without excluding any sector and in accordance with WTO rules.”

The 1995 Agreement established a Cooperation Council. The EC Commission describes the subsequent preparatory work for the negotiations themselves as follows: “After three years of preparatory work between the Commission and the Mercosur governments, involving the preparation of a series of over 20 trade studies, three joint working groups, four rounds of meetings, a marathon session of meetings in Punta del Este in November 1997 and much expenditure on research and analysis, the Commission was able to put forward in July 1998 to EU Member States a proposal for a negotiating mandate (comparable to Fast Track Authority/Trade Promotion Authority in the US context), accompanied by an impact studying analysing the possible consequences of a liberalization of trade with Mercosur⁸.” Given this level of effort it is hard to understand how the environmental dimension of this undertaking could have been missed. The Cooperation Council now provides continuing political guidance to the process, which is conducted by a Biregional Negotiations Committee (BNC), and remains under the overall responsibility of the Heads of State and Government. Since late 1999, there have been regular meetings of the BNC in accordance with a schedule laid out by the Summit.

⁷ http://europa.eu.int/comm/external_relations/mercosur/intro/index.htm

⁸ http://europa.eu.int/comm/external_relations/mercosur/intro/index.htm

The emergence of regional cooperation agreements in Latin America reflects the simple fact that trade occurs first with neighbors. In this manner the countries of Latin America have been able to capture some of the most readily available benefits of trade liberalization in a pragmatic manner. The significance of the EU/Mercosur process lies in the strong historic ties between the two regions. Just as the neighboring countries are the most important potential markets, the EU is the most important long distance market for all the countries of Latin America, with the exception of Venezuela, which exports oil to the United States.

The various proposals that have been made generally involve more than just trade liberalization. The FTAA has a strong emphasis on democracy. The EU proposals involve both political and economic cooperation. Several regional agreements that have been concluded involve the creation of customs unions. They all address the prospect of some level of political integration. Over the past decade South America has been one of the most dynamic regions in terms of economic and political development.

2. Mercosur and the European Union

Mercosur and the European Union are both customs unions. They have many characteristics in common. The formal parallels are striking, with Mercosur drawing heavily on the European experience for its institutional dimension. In practice, however, the relationship between the Mercosur countries—plus Chile and Bolivia—has remained traditional with only modest impetus towards political integration. The Mercosur institutions have not developed in a manner that is comparable to the European Union.

Trade relations between the two regions are complex, reflecting a long shared history. There are many areas of complementarity. The European Union is a major importer of agricultural commodities. As the Mercosur market has grown it has also become more

attractive to European exports. Mercosur has been an important recipient of European investment⁹.

There are other factors that argue in favor of closer association. International relations in the post-Soviet era have become much more complex. The emergence of the United States as the only major power places a spotlight on issues where countries may have differences with the United States. In these areas, which include several issues of vital importance to the agenda of environment and sustainable development, there is a need to forge innovative international relationships that do not center on the United States. In this context the countries of the European Union and Mercosur are key players and have common interests that closer association may promote.

In light of the substantial and diversified relationships between the countries of the European Union and Mercosur it is extraordinary that the EU/Mercosur negotiations could have proceeded as far as they have without significant attention to environment and sustainable development. There is no lack of declarations from all parties and at all levels underlining the importance of sustainable development. A recent EU strategy sets out clear objectives for international environmental diplomacy¹⁰:

International environment objectives

- Promote the environmental dimension of sustainable development worldwide, stressing the need to de-couple economic growth from environmental degradation.
- Ensure mainstreaming of environment and sustainability considerations in all relevant policy areas at the international level.
- Confront global environmental problems through support for existing multilateral agreements (e.g. climate change, biodiversity, desertification, chemicals) and international processes (e.g. on forests).
- Address specific national/regional concerns for resource protection and equitable distribution, using country strategies and bilateral/regional agreements.
- Foster greater political and public environmental responsibility through political dialogue, institutional and civil society support.

⁹ The Commission undertook a broad study of EU-Mercosur trade, including a sensitivity analysis. A summary is available at http://europa.eu.int/comm/external_relations/mercosur

¹⁰ General Affairs Council, "Strategy on the Integration of Environmental Policy in the External Policies of the General Affairs Council" (11 March 2002).

An EU/Mercosur agreement that does not adequately cover environment and sustainable development will have little credibility, either as an expression of current priorities or as an instrument for future cooperation.

It is important to understand the reasons for the lack of attention to environment and sustainable development in the EU/Mercosur negotiations since this will impact on possible responses. The responsibility to raise these issues lies largely with the EU negotiators. The EU has made many and repeated declarations at international meetings, including the WTO, in support of environment and sustainable development. A failure to raise these issues in the EU/Mercosur context must be interpreted by the Mercosur countries as a conscious decision—even when this is not the case.

Presumably the distribution of administrative responsibility for the policy areas that may be affected by an agreement plays some role in the unexpected lack of attention to environmental affairs in the EU/Mercosur process.

- * Preparations for Doha were in the hands of trade negotiators from all the countries and conducted to a significant degree at the WTO in Geneva. Within the Commission DG Trade is responsible and the Article 133 Committee exercised oversight for the Council.
- * International environmental negotiations are handled differently by the various countries. In some instances they are entirely within the responsibility of ministries of foreign affairs. In the European Union they are shared between member states and the European Union and are conducted largely by the respective environmental agencies. Within the European Commission that is DG Environment.
- * The EU/Mercosur process is under the oversight of the Heads of State and Government and is conducted by the foreign affairs departments, in the EC DG Relex and its national counterparts. DG Relex has minimal environmental expertise.

There is obviously some difficulty in drawing these different processes together. While this is not untypical of environmental issues it is particularly pronounced in this instance, with unfortunate results.

The challenge facing the negotiators is to insert the missing pieces concerning environment and sustainable development in the ongoing process. This will require several steps:

- * An unambiguous mandate from the Madrid Summit to the negotiators to ensure that environment and sustainable development are properly integrated into the EU/Mercosur process. In addition Heads of State and Government can give Environment Ministers a mandate to help fashion the agenda through a linked process of consultation.
- * Steps in the negotiating process to break down such a mandate and fit it into the existing framework. It is to be expected that environment and sustainable development matters will require attention in all phases of the negotiation and some process needs to be created that provides integration of these elements. This can take the form of periodic formal review of progress. The nature of these issues implies a robust civil society process to accompany the formal negotiations.
- * Development of specific proposals designed to address the long-term relationship between the EU and Mercosur in the areas of environment and sustainable development. Examples are provided below.

Consistent with the EU objectives for international environmental diplomacy and with the policy stance of several Mercosur countries, there are three major areas of concern from the perspective of environment and sustainable development in the EU/Mercosur relationship that require attention.

- * The continuing process of building international environmental governance, now increasingly focussed on the World Summit for Sustainable Development,

strengthening of UNEP and the development of greater coherence among multilateral environmental agreements.

- * The post-Doha environmental agenda in the WTO. The agenda outlined by the Doha Ministerial Declaration is remarkably ambitious. It is important to recognize that the trade and environment agenda is spread all over the Doha Declaration. It would be a serious mistake to assume that it is limited to paragraphs 31 and 32, which are identified as dealing with this issue. The agenda is also mentioned at length in the preamble, in the text on fisheries, and in the section on TRIPS (where the Convention on Biological Diversity is explicitly identified). Issues concerning environment and sustainable development are bound to play a critical role in negotiations on development, other TRIPS issues, agriculture, services, and investment (if it is included). They have always been central to the discussion about openness and transparency.
- * Agricultural trade represents perhaps the most challenging dimension of the EU/Mercosur process. This is an area where major environmental concerns meet the pressures for market access from the Mercosur and the resistance to change rooted in the Common Agricultural Policy. This is an area where opportunities exist for creative new approaches to these complex issues. Indeed, without such new approaches there may be no viable resolution of the issues that are on the table.

There are several underlying reasons why the EU/Mercosur process is of particular importance from the perspective of environment and sustainable development.

- * The countries of the EU and Mercosur have played an important role in several major international environmental negotiations. In the climate regime, and in the biodiversity regime this group of countries represents one of the axes around which consensus must crystallize. In numerous international environmental negotiations, notably on climate, biodiversity, hazardous wastes, and the broader agenda of international environmental governance, the United States has not

played a constructive role. Under these circumstances countries that are seeking progress will have to learn to work together in innovative ways, defined not by their relationship to the United States but by their mutual interests and their commitment to international cooperation.

- * Similarly the countries of the EU and Mercosur were central actors in the environmental issues of the Doha process. It is not widely appreciated that the EU was the principal “demandeur” in Doha. For the first time a major international economic negotiation is being launched with limited U.S. involvement, other than a desire to protect certain aspects of its domestic trade policies. Under these circumstances the EU carries significant responsibility for the success of the Doha process and needs to learn to engage countries like those of Mercosur in a continuous and constructive process as a means to building the necessary international consensus.
- * The environmental dimension will be one of the most difficult aspects of the agriculture negotiations in the WTO. There are major areas of conflict in this area between the countries of the EU and Mercosur. It is again almost axiomatic that without finding common ground between these countries agreement on agricultural trade will not be possible. At the same time the more limited context of an EU/Mercosur process offers an opportunity to explore approaches to the agriculture agenda that reflect the needs of the countries concerned.

Taken together, all these factors create a significant opportunity for the negotiators in the EU/Mercosur process. In many respects their ability to accommodate this agenda for environment and sustainable development will be a litmus test of the strength and vitality of the EU/Mercosur process itself.

3. Environmental Governance in the European Union and Mercosur

The European Union has worked over the past thirty years to confront the environmental dimension of economic liberalization and to integrate the necessary environmental

disciplines into the emerging single market. The steps along this pathway are clearly marked by a series of Environmental Action Programmes that outline the evolution of EU priorities in this area, by continuous regulatory action that has produced more than 300 items of legislation over this period, and by the steady evolution of the environmental dimension in the EU Treaties. The major stages in the latter process are clearly marked:

- * inclusion of environmental provisions for the first time in the Single European Act;
- * strengthening and expansion of these provisions into a separate Title in the Maastricht Treaty;
- * introduction of “sustainable development” in the Treaty of Amsterdam as a binding goal of the European Union in Article 2 of the Treaty, which governs the entire constitutional structure of the European Union.

The EU experience is unique because the European Union represents a unique process of economic and political integration. It is supported by the remarkable institutional capabilities of the EU, which permit the steady elaboration of legal doctrines in a process characterized by diversity and a significant measure of openness. The Commission, the Council, the European Court of Justice and the European Parliament have at various times played a decisive role in this process. Nevertheless it is possible to view the EU experience in the arena of environment and sustainable development as paradigmatic. While the details are specific to the EU context the issues that must be addressed are universal and are liable to recur wherever economic liberalization is undertaken. All efforts aimed at economic integration must confront their environment and sustainable development dimension if they are to succeed; yet each process will have to do so in ways that reflect its own goals and in particular its institutional capabilities.

Several years ago, Mercosur recognized the need to establish a process to address the environmental dimension of its integration process. One of its regularly convened Working Groups deals with environmental matters, and a Framework Agreement on the Mercosur Environment was signed in June 2001. This creates the preconditions for more

substantive work in the environmental arena even though environmental policy and law are unequally developed in the four countries¹¹.

The existence of environmental provisions in the EU Treaties and the Mercosur Framework Agreement underline the need to devote significant attention to these issues in the EU/Mercosur process.

4. Elements of Interest from the Perspective of Sustainability in the Current EU/Mercosur Agenda

4.1. The Current EU/Mercosur Agenda

The EU/Mercosur agenda is remarkable for its lack of attention to issues relating to the environment and sustainability. The agenda is virtually devoid of specific attention to matters pertaining to environment or sustainable development.

The environment is mentioned as a matter for economic cooperation, and in that context it tends to be viewed as an issue of pollution control, with special emphasis on technology transfer. This focus tends to underestimate the extent to which Mercosur countries have already adopted relevant technologies and does not accurately reflect the practical obstacles to their more intense adoption, which are frequently rooted in regulatory hesitation on the part of some Mercosur countries. There is no reason to assume that this agenda will significantly contribute to the development of environmental practices in Mercosur countries or actually promote the adoption of more appropriate technologies. There is no indication concerning the substantive content of negotiations that may have taken place in this framework thus far. In practice little more than general declarations of intent to promote technology transfer are to be expected.

Most importantly, this agenda misses the true environmental agenda in the EU/Mercosur process. This relates to the position of the EU and Mercosur countries in relation to

¹¹ <http://www.fundacionecos.org/docs/XX%20CMC%20-%20Acuerdo%20Marco.htm>

international environmental governance, their role in the Doha trade negotiation process, and efforts to limit the environmental impacts of commodities trade. This is the heart of the EU/Mercosur agenda on environment and sustainable development.

The EU/Mercosur negotiation agenda is broken down into two parts: Negotiations on Co-operation and Negotiations on Trade Issues. The former is again broken down into three subgroups, on Economic Co-operation, Social and Cultural Co-operation, and Technical and Financial Co-operation. Inevitably there are several other items that cover matters relevant to the environment and sustainable development. These include co-operation on technical regulations and conformity assessment, energy co-operation, transport, co-operation on the agricultural and rural sector, fisheries, and consumer protection.

Independent, effective institutions for the development of technical regulations and to undertake conformity assessment are a matter of some significance for any country that wishes to participate in the lucrative segment of international trade that is defined by such standards. The need to meet certain standards can create obstacles to market access for those unable to do so—and it creates opportunities for rent capture for those who participate effectively in the process. In other words developing countries that do not, or cannot, participate in the development of technical regulations become standard takers, with standards defined in other jurisdictions with the participation of other market participants, more often than not competitors. On the other hand countries that have independent, effective institutions can develop domestic standards where appropriate. Almost more important by now is their ability to participate actively in the international standardization procedures that can play a determining role when it comes to market access, at least for the most profitable market segments.

An example of such processes that is particularly germane to the environmental agenda concerns the attribution of an “organic” designation to products that are traded internationally. At the present time, Argentina is the only non-OECD country to have an organic certification process that is recognized by the European Union. As a result Argentine producers of organic products can export to the EU using the “organic”

designation, which usually carries an economic benefit. Producers from other countries, including the other Mercosur countries, cannot use the designation and consequently cannot distinguish their products from those that have not been produced organically. Similar arrangements need to be made for sustainably produced timber or fisheries products.

The environment involves a large number of standards, and environmental standards are typically dynamic as more is learned about environmental conditions and the significance of certain factors. This is a reflection of the complexity of capturing natural systems within social and economic institutions and of the continuing uncertainty that characterizes our knowledge about the environment and attendant hazards. The result is that environmental standards are widely perceived as potential obstacles to market access, even when the need for them is recognized.

EU/Mercosur negotiations should focus on strengthening the capacity of existing institutions in the Mercosur region, ensuring adequate access to standard setting processes in the EU, and facilitating the development of acceptable certification processes for organic production. This could prove particularly important for beef trade once the European market becomes more accessible and consequently is capable of exerting pressure on practices in other countries.

Energy co-operation is a wide field with large environmental ramifications. The links to climate change are by now obvious, but the environmental impacts of energy production, transport and use are much wider. As technologies have been developed to control the environmental impact of many forms of industrial production, the issues surrounding energy production and use have tended to loom ever larger. They include pollution by sulphur dioxide and nitrogen oxides, as well as the emission of heavy metals and of certain persistent organic pollutants. As a consequence the environmental dimension should represent a central issue in energy co-operation.

EU/Mercosur negotiations should promote energy efficiency and the introduction of alternative energy sources, in particular in areas that are remote from the electricity grid.

Transport represents an issue of comparable environmental saliency. The transport sector contributes heavily to the emission of greenhouse gases and to local air pollution. Moreover the availability of local transport is frequently a determining factor in urbanization, contributing in turn to the patterns of land use. Cooperation between Mercosur and the European Union in matters of transport is clearly desirable, but it is important to ensure that the environmental dimension is properly integrated.

EU/Mercosur negotiations should promote mutual learning in the area of urban transport and ensuring increases in energy efficiency of all forms of transport. Investment in transport infrastructure—essentially roads, waterways and ports—is one of the driving forces of land degradation in some Mercosur countries and should not be further stimulated by an EU/Mercosur agreement in this area.

Co-operation in the agricultural and rural sector should involve the promotion of sustainable development in the rural environment. This is probably the most important environmental issue in the Mercosur region because of changes in agriculture that are occurring at least in part in response to changes in trade and their impact on forests, habitat, biodiversity and other parts of the natural environment (see below). There is, however, no indication that these are the issues that are liable to be raised in the EU/Mercosur process as currently conceived. Options for EU/Mercosur negotiation are discussed in greater detail below.

Fisheries have become an area of concern in the EU/Mercosur relationship owing to growing EU investment in fishing capacity in Mercosur countries. The need to control subsidies that create incentives to over fish limited fish stocks is by now widely recognized. Indeed, this issue is now on the agenda of the WTO, following the Doha Ministerial meeting. The offer of increased market access for fisheries products that the

EU has made does not address the issue of over-fishing and subsidies, some of which originate in the EU.

Consumer protection is related to environmental management concerns through a number of current issues. The need for consumer protection leads to the development of standards that frequently also impact on trade in ways that can be protectionist in effect. In this manner the issues surrounding the use of the precautionary principle enter the debate.

It is by now well established that trade negotiations have an inescapable environmental dimension. The Doha Declaration is rife with environmental implications, quite apart from the fact that it lists numerous environmental issues for possible negotiation. Indeed, in recent years the European Union has been one of the most active proponents of including environmental issues in trade negotiations and Brazil played a critical role in forging compromise on environmental matters in Doha. It is all the more puzzling that the EU/Mercosur trade negotiations do not mention its environmental dimension. Again this must presumably be attributed to the distribution of roles in the process and to the fact that the trade negotiation is a second-level activity in the EU/Mercosur process. Even though everybody recognizes its central importance, the trade agenda is a technical agenda, leaving broader issues of policy to the co-operation negotiations. These in turn do not adequately reflect recent developments in the trade context concerning the need to take into account the trade and environment linkage.

The overriding issue in the trade negotiations is *market access*, in particular for commodities. This implies an extensive environmental agenda that is both positive and negative. Exporters of commodities fear the imposition of environmental requirements pertaining to their process and production methods as little more than an additional barrier to market access, in particular if market conditions do not provide additional resources to cover additional expenses that may be associated with meeting such requirements. Those concerned with environment and sustainable development must recognize the seriousness of this issue and seek constructive solutions to address

environmental concerns in the commodity trade without creating additional barriers to market access.

The risk of protectionist capture of environmental issues is a matter that must also be addressed directly. Environmental criteria are frequently identified by representatives of developing countries as a general threat to market access. The risk of protectionist capture certainly exists—as it does for any other measure that has the ability to change the shape of markets, which is of course the very purpose of environmental measures. The only appropriate solution is to ensure that environmental measures are adopted in a manner that is legitimate and respects the requirements of a rules-based trading system. The fact that environmental (or other) measures impact on markets is not by itself evidence of protectionism. Policy measures are needed in the face of market and policy failures that lead to unacceptable environmental outcomes. These measures will impact on markets otherwise they would be purposeless. The issue is whether the environmental goal that is being pursued is appropriate and is being pursued in an appropriate manner. That issue can only be decided on the basis of continuous and effective cooperation in the area of the environment.

From an environmental perspective there are a number of crops that can, and even should be grown in the countries of Mercosur—provided that essential environmental concerns have been addressed. These include soy, corn and grass fed beef. These crops are sensitive in the trade context, not least because full liberalization of markets would be expected to yield dramatic shifts in the patterns of production, reflecting basic criteria of comparative advantage.

There are no reasons rooted in environment or sustainable development to oppose such a shift but it is necessary to recognize that it is also sensitive from an environmental perspective. Expansion of the agricultural frontier entails large environmental consequences, some of which may prove to be irreversible. These typically include deforestation, destruction of critical habitat and loss of biodiversity. In many instances it is possible to protect these essential environmental values, but this requires resources and

political will, and it has to happen when expansion occurs and must be supported subsequently with a continuing stream of activities. The EU/Mercosur debate should consequently focus on mechanisms to achieve that goal.

At the present time, oilseeds and animal feed products, in particular soy and derivatives (but not soy oil) enter the European market without tariff or any type of quantitative restriction. They are of course subject to the restrictions that have been placed on genetically modified organisms, and which enjoy widespread support in Europe. That makes this market an ideal candidate for beginning to consider the policies and procedures that might ensure that essential environmental concerns can be addressed in the rural environment of producing countries (see below).

By contrast beef imports face significant trade restrictions that will presumably be subject to negotiation. The EU study on the sensitivity of Mercosur imports does not explicitly identify the products that it has found to be sensitive. It is, however, highly likely that beef is among these products, both because of its central role in the Common Agricultural Policy and because it represents a product with fairly obvious potential for expansion.

From an environmental perspective the major concerns with soy and beef expansion are largely comparable: they concern the protection of critical ecosystems and of forest ecosystems in particular, the provision of wildlife habitat and the protection of biodiversity. In practice this also entails preservation of critical forest ecosystems. These are all factors that are not themselves factors of production. Hence measures to protect them can in principle be taken without distorting markets.

As always, *investment* negotiations have major implications for the environment and sustainable development. Investment is the economic tool by which the future structure of an economy is determined. Investment is the only tool that can reliably shift currently unsustainable economies towards more sustainable practices. At the same time, international investment agreements have proven themselves to be potential obstacles to the ability of governments to adopt measures that are needed to promote sustainability.

There is thus far no indication what direction EU/Mercosur investment negotiations are likely to take. Multilateral investment negotiations have not yet emerged from the shadow cast by the failure of the Multilateral Agreement on Investment (MAI), a process that was closely followed and largely approved of by Argentina, Brazil and Chile. It is widely recognized that an investment agreement modeled on the MAI is undesirable. This is reinforced by the issues that are emerging around the investment chapter of NAFTA, the model for the MAI¹². There is nothing in the EU/Mercosur process that provides guidance concerning the direction investment negotiations will take. Similarly the Doha Ministerial Declaration opens the door on investment negotiations without any such guidance. Yet these are matters of surpassing significance from the perspective of environment and sustainable development.

A complex web of bilateral investment agreements exists between the individual countries of the European Union and Mercosur. The European Union itself has only rarely been party to bilateral investment agreements. It is time to rethink the process of international investment agreements thoroughly. In particular the relationship between bilateral investment agreements and multilateral or interregional agreements needs to be articulated much more carefully and explicitly than has happened to date. That does not appear to be happening within the EU/Mercosur process.

In short, the current EU/Mercosur agenda contains numerous elements that could form an agenda for environment and sustainable development. There are no indications, however, that these elements are being addressed in a fashion that is environmentally sensitive. An assessment of the sustainability impacts of the EU/Mercosur process may highlight some of these issues—but it is liable to leave unanswered the question of how to integrate the environment at this juncture. Moreover the broader issues of political and economic cooperation in the field of the environment are not covered.

¹² Howard Mann and Konrad von Moltke, *NAFTA's Chapter 11 and the Environment. Addressing the Impacts of the Investor-State Process on the Environment (Working Paper)*. Winnipeg: International Institute for Sustainable Development, 1999. Also available at www.iisd1.ca/trade

4.2. *The Sustainability Assessment*

In accordance with its announced policy, the Commission is preparing to undertake a sustainability assessment of the EU/Mercosur negotiations. That is a welcome development and one that may help to identify some of the missing elements of the current agenda. In principle, however, a sustainability assessment is not designed to rectify a negotiating agenda that is inadequate, in particular when its shortcoming concern primarily political issues and missed opportunities. It is difficult to see what a sustainability assessment can contribute to negotiations that have already been under way for three years under an agenda that takes little or no account of the issues surrounding sustainability.

The decision to wait three years before launching a sustainability assessment is itself an indicator for the importance that had been attached to environment and sustainable development in launching the negotiations. Obviously no subsequent assessment can mitigate the consequences of a negotiating agenda that disregards sustainability from the outset.

The EU and Mercosur should cooperate in assessing the sustainable development dimension of the agreement they are negotiating, as they have done in the past with various trade analysis.

5. An EU/Mercosur Agenda for Environment and Sustainable Development

5.1. *The European Union and Mercosur in International Environmental Affairs*

There are numerous forces promoting a process of “globalization.” Economic forces are most often identified, and the analysis often stops there. Yet the need to manage complex environmental problems, itself a consequence of economic growth and technological change, by now represents a powerful independent force for “globalization.” The countries of the European Union and Mercosur play a critical role in the process of

promoting the development of environmental governance. Negotiations between the two regions that are to encompass political and economic cooperation as well as trade are incomplete without the dimension of international environmental governance.

Mercosur and the European Union do not have a specific bilateral environmental agenda such as one would expect from neighbors or countries in the same hemisphere.

Consequently they have no need to deal with transboundary water management or air pollution and the only species liable to migrate between their jurisdictions are marine species. Nevertheless they participate in the broader processes of international environmental governance and certainly share global environmental resources: the stratospheric ozone layer, the climate system, the marine environment, biodiversity. That defines an important agenda that needs to be part of the EU/Mercosur process.

There is by now widespread agreement that international environmental governance needs to be made more effective through an institutional strengthening of the United Nations Environment Programme (UNEP) and the major multilateral environmental agreements (MEAs). This is also vital for the trade regime and for other efforts to promote economic integration, such as the EU/Mercosur negotiations. Strong international environmental regimes are the line of first defense to avoid unnecessary conflicts between environmental management and economic policy. Environmental management is characterized by subsidiarity, that is the need to enable different levels of governance to work together effectively. At the international level this involves both regional and global as well as functionally defined regimes.

Throughout the past eighteen months there has been a process under the auspices of the Global Ministerial Environment Forum (GMEF) seeking to identify key measures that need to be adopted. The countries of Mercosur and the European Union have played a critical role in this process.

It is likely that the WSSD will act to strengthen international environmental governance, through UNEP, the MEAs and the Commission on Sustainable Development. Whatever

is decided at WSSD will need to be implemented over a period of years. It is not a matter of a one time reorganization. Rather the most likely outcome will be a process that involves UNEP, the MEAs, and a number of other UN organs. Such a process requires a steadying hand from the countries most concerned by the underlying issues. In practice the countries of the European Union and Mercosur will play a key role in this process, which must be supported by the EU/Mercosur negotiations over the coming years.

In addition to this broad approach to international environmental governance several MEAs are likely to face critical decisions in the coming years. This is notably the case for the Framework Convention on Climate Change and the Convention on Biodiversity (CBD).

Entry into force of the Kyoto Protocol is the most immediate issue confronting the climate regime. While it is well known that Russia and Japan must ratify the Protocol for it to enter into force, the countries of Europe and Latin America increasingly represent the core group of countries around which results will have to be achieved. In particular the Clean Development Mechanism creates both opportunities and challenges in the EU/Mercosur context, with the European Union exhibiting a strong interest in ensuring that the mechanism makes an effective contribution to mitigating climate change and the Mercosur countries among the most likely recipients of CDM funds.

The Convention on Biodiversity (CBD) continues to represent one of the greatest challenges to international environmental governance. The environmental values that it protects are largely intangible, yet its impacts are clear and potentially significant. Moreover, the CBD is one of the key fora, in which the issues surrounding the use of the precautionary principle will play out. These issues are of concern to both the European Union and the Mercosur countries, having formed one of the principal reasons for a delay in adopting the Mercosur Protocol on the Environment.

The institutional response to this agenda must clearly differ from the institutional response to the environmental agenda of the EU itself, of NAFTA, or of Mercosur. No

continuing organizational structure appears necessary. Yet the creation of a consultative forum for environmental policy makers from the European Union and the Mercosur countries is likely to form an important support for the broader process of cooperation and trade liberalization that is envisaged in the EU/Mercosur negotiations. This should be undertaken promptly.

5.2. *EU/Mercosur Negotiations and the WTO*

The Declaration adopted at the Doha WTO Ministerial Conference has launched a new phase in the development of the WTO. It envisages an ambitious program of negotiations, including a striking number of issues that are of significant concern from the perspective of environment and sustainable development.

The relationship between the Doha process and the EU/Mercosur negotiations is remarkably difficult to pinpoint, in part because of the difference in approach embodied in the two processes. The Doha process may mark a further expansion of the “trade” agenda into areas that involve much more intensive levels of economic and political cooperation. The “non-trade” aspects of agriculture include a range of domestic policies and practices that impact trade but represent an independent political and economic agenda that will need to be taken into account. The projected extension of the GATS will entail further negotiations about the domestic regulatory processes that create the framework for the delivery of services. The possible inclusion of investment and competition touches upon two areas of “behind-the-border” political and economic governance that have the ability to deeply affect the manner in which countries seek to pursue the goals of environmental protection and the promotion of greater sustainability. In practice, the Doha agenda far transcends a “trade” agenda, in the sense of dealing with trade in goods and border measures that may impede it.

The EU/Mercosur process goes in the opposite direction. It begins with an ambitious but not very developed agenda for political and economic cooperation and deals with trade issues separately. In this framework, trade negotiations are largely confined to more technical issues and the more traditional agenda of tariffs, non-tariff barriers, and market

access. In many ways the trade negotiations within the EU/Mercosur process is as a throwback to trade negotiations before the Uruguay Round. As a result issues that tend to be viewed in the Doha process as integral to the trade negotiation are treated in the EU/Mercosur process as issues apart. While this difference may appear trivial, in fact it results in two entirely different negotiating dynamics.

The Doha Ministerial Declaration is ambiguous, even by the standards of its predecessors launching previous Rounds of trade negotiation. Few issues can be viewed as certain but the overall agenda is potentially very ambitious, possibly including major new issues such as investment and competition and pushing existing agreements into new territory. The resulting process will be unlike any previous trade negotiations, involving many aspects of domestic economic policy in addition to the regular business of reducing tariffs, eliminating non-tariff barriers and seeking compromises that can satisfy widely divergent interests. The process of the Doha Ministerial meeting was also distinctive. Unlike previous trade rounds there was no obvious consensus between the United States and Europe or within the Quad countries concerning the agenda that was to be pursued—although the result clearly benefited from a high degree of mutual trust between the European Union and the United States. The final agenda reflected European priorities and input from developing countries to an unprecedented degree. This suggests that the negotiations are likely to unfold in a dynamic unlike that of previous trade negotiations, with compromises emerging from asymmetrical coalitions of countries rather than around a central bloc of powerful actors.

The European Union and the Mercosur countries form a key group of countries within this process. There is little question that agriculture will prove critical to success or failure of the Doha negotiations. The European Union and the Mercosur countries are key actors in this area, so that any agreement between these two groups of countries is liable to foreshadow the outcome of the Doha process—or lack of agreement will signal that the Doha process is at risk of failing.

Given the nature of negotiations following the Doha Ministerial it will be vital to ensure that any proposals that are developed are deeply rooted in the domestic processes of the countries concerned. This suggests that an interregional civil society process is needed within the EU/Mercosur framework. This can focus on the full agenda of negotiations, including aspects related to the WTO. It is highly desirable as a tool to promote the development of viable solutions to intractable issues, in particular the complex agenda for environment and sustainable development. Without such a process it will be difficult to develop the close and dynamic relations that are essential if the EU and Mercosur countries are to play a central role in the Doha Round.

The lack of congruence between the EU/Mercosur negotiations and the Doha process, reflected in the distribution of responsibilities in the various countries, is liable to render intergovernmental linkage of the inter-regional with the global agenda relatively complex. A civil society process can provide the necessary focus for this effort.

5.3. Advancing Sustainable Trade in Commodities

The most important challenge facing the European Union and Mercosur countries is to develop open international markets that promote conservation in the rural environment. This is a long term task but one that needs to be begun now. The EU/Mercosur negotiation offers a unique opportunity to initiate this process—because of the commitment of the countries concerned to environment and sustainable development and because trade between the two regions involves some of the most environmentally sensitive commodities in international trade. If this group of countries does not identify solutions it is unlikely that they will be found elsewhere.

The issues are by now increasingly well defined. The central challenge is to expand agriculture where its impacts can be managed—and then to manage them successfully. The most sensitive crops at the present time are soy, corn and beef, with soy and corn often grown in rotation. The expansion of these crops threatens to accelerate deforestation, eliminate critical wildlife habitat and reduce biodiversity in ways that are irreversible. Some of these impacts are directly related to production practices and levels

of production. The attendant costs must be internalized into the product chain. Others are largely independent of the level and form of production, reflecting long term land use choices, yet still have significant economic impacts.

The starting assumption for the development of sustainable trade in commodities is the existence of open international markets that are readily accessible to all producers. Some commodities are already traded on such markets. Others are still subject to extreme distortions, reflecting a long history of political responses to the changing patterns of production and consumption. Nevertheless the goal of open international markets has been identified and proposals to promote sustainability in commodity trade must be capable of functioning in such an environment.

The European Union has struggled for several decades to address the issues that arise in relation to conservation of the rural environment. This process is inseparable from the Common Agricultural Policy (CAP). The CAP by now reflects many convergent interests but at its core it represents a European response to the opening of agricultural markets that was a central feature of the process of European integration. In the process, economic and social compromises that often dated back more than a century were recalibrated at the European level. Any assessment of the CAP has been overlaid by the continued impact of some of its most severely distorting subsidies, in particular export subsidies that transfer some of its costs to third countries. Nevertheless some important lessons have been learned and it is critical to distinguish between these lessons and the continuing problems relating to the CAP.

The production of commodities has inescapable environmental consequences since the products themselves are extracted from the natural environment. This applies equally to agriculture, forestry, fisheries or extractive industries. Yet agriculture generally involves more extensive environmental modification to achieve its purposes, since a uniform crop is being produced from resources that are variable in terms of their essential environmental components.

The production of commodities occurs on the shifting boundary between environment and economy. Certain environmental factors are priced by functioning markets and can be integrated into the costs of production. Others have no market price but still involve costs. Agriculture, at least when practiced in the open environment, involves environmental inputs that are partially priced. While it may be possible to extend the reach of markets it appears unlikely, not to say impossible, that all relevant environmental factors will ever be priced by functioning markets. Nevertheless the conservation of essential public goods in the rural the rural environment entails costs, many of which are only incidentally linked to the productive functions. Examples involve wildlife habitat, biological diversity, and service functions associated with the environment. Sustainable commodities trade must ensure that the necessary resources are available to address these fundamental needs in the rural environment.

It is important to recognize that the conservation of the rural environment is a universal phenomenon. There is no difference between the European Union and the countries of Mercosur in this respect. Wherever agriculture is practiced there is a need to ensure that essential environmental values are protected.

The hybrid character of the problem of conservation in the rural environment implies hybrid solutions. Product chains do not provide the necessary resources to producers to address the needs of rural conservation. As these product chains have become more efficient the opportunities for producers to capture sufficient rents to deal with unforeseen circumstances or to cover costs that are not directly linked to production have been reduced. The very efficiency of commodity markets in eliminating rents has also eliminated the scope for addressing “externalities,” that is environmental factors that do not have prices determined by markets. This observation sounds paradoxical but in fact it is based on the efficient functioning of commodity markets that can not reflect all relevant costs. As long as markets were inefficient, resources might be found to address costs not reflected in market prices. Highly efficient markets eliminate such opportunities and consequently require some form of government action to rectify the inadequacies of markets in the face of the environmental impacts of agriculture.

The European response to this dilemma has been a structure of payments that are made available to producers through the CAP. These rural environment measures represent a modest portion of the CAP but have had a dramatic impact on the quality of the rural environment. This reflects the fact that the costs of conservation, while real, are modest relative to other costs in agricultural production.

The lessons learned within the European framework apply equally to international markets. There is no reason why rural environment payments are appropriate within Europe but not in markets that are more broadly international in character. The issue is where the necessary resources are generated and how they are to be disbursed. The fundamental principle must be that the consumer jurisdiction is responsible for generating the necessary resources, and that a disbursement structure must be created that is characterized by low transaction costs and properly reflects the interests of all the constituencies involved.

With respect to commodity imports into Europe this implies a system of payments linked to volumes and sources of commodities. These payments must not function as taxes or duties on the imported commodities since the result would be the creation of additional obstacles to market access and the disadvantaging of precisely those producers who are prepared to act in a responsible manner. The payments need to occur automatically and must be made to organizations that are capable of ensuring their disbursement in a manner that is fully accountable to all relevant constituencies.

A similar problem was encountered in managing resources deriving from the debt-for-nature process. In this instance, the resources for conservation involved the participation of actors in both developed and developing countries, in particular creditor banks, northern conservation organizations, international organizations, developed country governments, recipient country government agencies, recipient country central banks, and recipient country environmental organizations. The solution that was developed was the creation of national environment funds. These organizations were organized in

accordance with the laws of the recipient country with a precisely defined mandate. They were staffed by persons from the recipient country but their governance reflected the range of both domestic and foreign interests that were involved, giving due attention to the need to avoid a situation where foreign interests could exercise effective control over domestic environmental resources.

In the context of international commodity trade, the equivalent would be the creation of funds for the rural environment of producing countries, deriving resources from direct payments from importing jurisdictions and subject to a governance structure that permits accountability and transparency at the appropriate level.

6. Summary of Proposals

6.1. Integrate the environment and sustainable development issues in the current agenda

Environment and sustainable development issues are sprinkled throughout the existing agenda but have not been addressed directly. To ensure that they are adequately addressed it will be necessary to establish a mechanism that can track these issues throughout the process. While sustainability assessment of the negotiations is highly desirable, it needs to be accompanied by periodic reporting on how issues are being addressed. Such reports are necessary because the environment and sustainable development agenda is widely dispersed throughout the negotiation process.

6.2. Establish an EU/Mercosur consultative process on international environmental issues

Those responsible for international environmental negotiations have not been part of the EU/Mercosur negotiations. They need to be brought into the process. The most pragmatic manner in which to address this need is to schedule regular consultative meetings in connection with the meetings of the UNEP Governing Council or the Committee on Trade and Environment of the WTO—provided that such consultations involve both trade and environment officials in an appropriate manner.

6.3. Establish an EU/Mercosur interregional process for civil society consultation

The broad agenda of environment and sustainable development must be adequately anchored in civil society in both the European Union and the Mercosur countries. To achieve this goal a sustained civil society process is required, which will also prove beneficial for the broader Doha agenda. While the initiative for such a process can come from civil society itself, an indication of government support is presumably a necessary first step. Solutions must be found to meet the funding needs of civil society representatives from the Mercosur countries so as to enable them to participate actively in the process.

6.4. Create institutions for sustainable commodities trade, based on consumer responsibility and national environment funds

Sustainable trade in agricultural commodities requires institutions that ensure the management of environmental impacts that are not directly production related. Consumer countries must accept responsibility for such environmental impacts. National environment funds utilizing resources provided directly by consumer countries represent an option that needs to be explored in the EU/Mercosur process. The funding can be linked to volumes traded but must be structured so as not to have the effect of a tax on trade with a specific exporting country. The soy sector offers opportunities for undertaking pilot projects.