

MERCOSUR and the Free Trade Area of the Americas

Elbio Rosselli

Volume 27, Number 1, March 1996

URI: <https://id.erudit.org/iderudit/1035842ar>

DOI: <https://doi.org/10.7202/1035842ar>

[See table of contents](#)

Publisher(s)

Éditions Wilson & Lafleur, inc.

ISSN

0035-3086 (print)

2292-2512 (digital)

[Explore this journal](#)

Cite this article

Rosselli, E. (1996). MERCOSUR and the Free Trade Area of the Americas. *Revue générale de droit*, 27(1), 83–90. <https://doi.org/10.7202/1035842ar>

MERCOSUR and the Free Trade Area of the Americas¹

H.E. ELBIO ROSSELLI
Ambassador of Uruguay in Canada

I will begin by stating that I will not address the issue of regionalism versus multilateralism. Two reasons for this : first, the book has not been closed yet on whether regionalism is detrimental to, or — on the contrary — supportive of multilateralism; and second, a very clear reason, regionalism is here to stay. It has been here for quite sometime. Everybody is working on a regional basis. It is a reality that we have to address and the best way to address it is, as such, and perhaps trying to project in our regional approaches an overall view as to where all these regional elements are moving to, and which is the common end we are trying to arrive at.

In regard to that, I will try to put in perspective how MERCOSUR has come into being, what is happening within the region, the efforts that are being done for free trade in the Americas; and how all these elements may be fitting together. Although I may not succeed in doing this today, I will try to project a few thoughts of what I believe are the fundamental issues in this road we have begun to travel together.

I usually like to say — particularly when we are not all familiar with our respective histories — that things do not happen in a vacuum, and that this explosion that we now see of free trade areas, NAFTA, accession to NAFTA, MERCOSUR, Free Trade Area of the Americas. When did this all happen? Where were we when all this started?, because it seems as if this all exploded in the last few years. Well, that is not really the case. These things have been on the works for a long, long time and it is important to put them in perspective.

What is happening today reflects fundamental changes not only at the global scale, but also within the regions. They are fundamental historic alterations that have made possible now, for North and South America, to converge into this very dynamic process of the FTAA, as we call it the Free Trade Area of the Americas.

My analysis is made more from the perspective of trade policy — or of trade diplomacy — than from a legal one, and therefore, we have to take into account the fact that in trade policy for a long time, the principal partner in the North, the United States, followed the multilateral approach to trade through the GATT and with a certain distaste for the disciplines of regional integration set out in Article XXIV of the GATT. Article XXIV came into the GATT against the reluctance of the United States, in order to accommodate the political realities of existing preferential arrangements in Europe, in the context of the process reconstruction after World War II.

1. Corrected transcript of a lecture delivered from notes on September 26, 1995. The views expressed are the speaker's and should not be interpreted as representing those of the Government of Uruguay.

On the contrary, the idea of regional integration is something that belongs in Latin America, since early on in our process of independence. Bolívar, San Martín, Artigas, Martí, all the heroes of independence in Latin America always looked at schemes for regional union. Notwithstanding the fragmentation of Spanish colonial territories into several independent countries, a feeling persisted that we were all different parts of a larger whole, and the idea of Pan-Americanism — in a political as well as in an economic sense — has developed in the Americas since well over a hundred years ago.

More recently, in the area of economic integration, the most important efforts were taken at the time of the sixties with the ALALC (Latin American Free Trade Association, LAFTA in English) which later on converged into the ALADI (Latin American Integration Association, LAIA in English) a much more flexible, less ambitious organization which has allowed for the creation of a regime of exchange of preferences among groups of countries within Latin America, the so-called partial scope agreements, agreements of economic complementarity, etc.

However, one fundamental political change has occurred and has laid the foundations for the process developing today in the southern part of the Americas. This fundamental change has two faces : one is the return of Latin American governments to democracy; this is of paramount importance because in the past, the military governments of Latin America were very nationalistic, and nationalistic antagonisms were at the heart of the tensions in the history of Latin America of the last twenty-five, thirty years. The other one, and most important of all, is the substantive, dramatic change in the relationship between South America's two largest countries, Argentina and Brazil. These two countries, which shaped the history of South America over the last hundred years through a policy of confrontation, turned the page from confrontation to cooperation; thanks to the vision of their newly elected leaders, Presidents Alfonsín of Argentina, and Sarney of Brazil. In his presentation Dr. Durán Martínez mentioned the main instruments of this historic change : the Alfonsín-Sarney Declaration of Foz de Iguazú (November 1985); the Act for Argentine-Brasilian Integration (July 1986); the Act of Argentine-Brasilian Friendship, Democracy, Peace and Development (December 1986); the Treaty of Integration, Cooperation and Development (November 1988); and the Act of Buenos Aires (July 1990) establishing a Common Market. These instruments altered the political basis of our region, allowing then for the ambitious steps for economic integration to be taken on a much more positive view. As Dr. Durán Martínez has very well described — it is in this context that MERCOSUR happens. I am not going to venture into the details of the Treaty of Asunción establishing MERCOSUR, which have been more than well explained in the previous intervention.²

I would like to point out however that from its creation, MERCOSUR has been outward-looking, initially as a free-trade area, and then as a custom's union from 1st January 1995. By outward-looking I mean that the Treaty of Asunción incorporates in its text the idea that its establishment will not constitute an impediment for trade with third countries. Article 5 of the Treaty states that the common external tariff to be created will promote the external competitiveness of its members *vis-à-vis* the rest of the world. It is a way of saying that we are going to

2. A. DURÁN MARTÍNEZ, "L'Uruguay dans le cadre du MERCOSUR", (1996) 27 R.G.D. 69.

have a common external tariff but not a wall, as these tariffs will have to attain levels which will allow for the free exchange of goods to maintain and enhance the regional competitiveness.

But, at the same time, immediately after the Treaty of Asunción was signed, MERCOSUR started a process of reaching out into other areas of the world. With the United States, an agreement was signed in June 1991 — that is only three months after the Treaty of Asunción — in the context of president Bush's "Enterprise for the Americas Initiative", establishing a Trade and Investment Council between the U.S. and the four countries of the MERCOSUR. (The agreement is known in the MERCOSUR countries as the "4+1 Agreement", and in the U.S. as the "Rose Garden Agreement"). It was signed at a time when the Uruguay Round was undergoing serious difficulties after the Brussels meeting, and it was perceived as a forum for further debate of Uruguay Round issues and exploration between the parties.

Likewise, MERCOSUR, has entered into several agreements with the European Union in order to expand its very intense relations. One issue that has to be remembered is that the European Union is the MERCOSUR number one trading partner (the second is the other countries in Latin America, and third comes North America). So, the relations of MERCOSUR with the European Union are of fundamental importance and right now, the MERCOSUR is concluding negotiations on the establishment of an Interregional Framework Cooperation Agreement — which builds upon the 1992 Interinstitutional Cooperation Agreement —, with a view to the preparation of further trade liberalization between the two customs unions, an eventual free-trade area. The new agreement is to be signed in Madrid in the coming month of December.

At the same time, the MERCOSUR has been submitted for review in the WTO/GATT. It was presented initially to the GATT; it is now in the process of a review under the provisions of article XXIV of the GATT and we believe it is firmly a GATT-consistent agreement.

I did want to emphasize the nature of the European Union, Latin America and North America in that order, as trading partners of the MERCOSUR because this certainly is setting the broad parameters with which MERCOSUR views its relationships with the rest of the world.

Right now, there is a primary activity in MERCOSUR which is the realignment of the regional preferences between the MERCOSUR countries and all the members of the ALADI. Since 1980, each one of the four members of the MERCOSUR entered into a multiplicity of preferential agreements with different members of the Association. There are complementary agreements between Uruguay and Mexico; there are partial scope agreements between Argentina and Ecuador; there is a larger agreement of economic integration between Brazil and Venezuela. There is a web, there is a network, of different agreements into which different exchanges of regional preferences have been materialized.

As MERCOSUR adopted a common external tariff on 1st January 1995, it has become necessary to realign all these agreements in order to avoid the "perforation of the common external tariff" (in trade negotiators' jargon), meaning that, because of the bilateral preferences exchanged with so many of the countries of the region, the current common external tariff looks less like a tariff and more like a sieve punched full of holes at different levels depending which country, which product, etc.

So, I am driving at this point because it does have its significance in the way the MERCOSUR approaches the Free Trade Area of the Americas negotiation, because the magnitude of the trade within the region requires that MERCOSUR pay a lot of attention to the realignment of its scheme of preferences with its second largest trading partner.

Thus we arrive at the FTAA process, which has as immediate precedent President Bush's Initiative of the Americas Enterprise, and which took shape at the Miami Summit only nine months ago, in December 1994. The Summit of the Americas, one would have to keep in mind, is a very large and comprehensive process which goes into the realms of politics and trade. There is an enormously complex political agenda in the Summit of America's documents, and there is a specific trade agenda. I will not deal with the larger political agenda of the Summit of America. I will look into strictly the trade agenda of the Miami Summit.

I will emphasize that the Summit of the Americas was made possible by the return of all the governments represented at that meeting to democratic institutions. So, for us Latin Americans, the Summit of the Americas is an endeavour that we have taken in order to solidify the return of democratic rule and to improve the quality of life of all our populations. Therefore, all the elements of the Miami Summit are a means to that larger end. I say this because the FTAA is not a goal in itself, it is a mean to a much larger objective which is the political, economic and social stability of the continent.

Since President Bush referred to having a free trade area from Alaska to Tierra del Fuego, the question has been asked, how do we do it. In the late eighties, early nineties, a lot of debate has gone on in the region as to the different approaches. The Miami Conference retains a certain degree of ambiguity, from our perspective but, at the same time, sets the course and establishes the broader parameters by deciding to create the Free Trade Area of the Americas. This is a free-trade area, written into the language between quotation marks. It is conceptually and politically defined as the Free Trade Area of the Americas.

It does not say how we are going to get there. Miami does not establish that but it says we are going to finish the negotiations by 2005. So, we have the objective clearly defined, the date to finish the negotiations, but no road map as how to get there. However, the leaders (Miami lingo to refer to heads of state) did say — and I quote a bit selectively from the Declaration of Principles — that they resolved “to begin immediately to construct the FTAA in which barriers to trade will be progressively eliminated”. One element is thus spelled out : it is going to be a progressive process. “To conclude the negotiations not later than 2005”, therefore we have basically ten years to negotiate. “Concrete progress” should be made by the end of the century, meaning we have ten years but we have to show concrete progress in the next five. “We recognize the progress that has already been realized through unilateral undertakings [...]” — this is a phrase to support all the efforts each one of our countries has taken in the last decade in restructuring their economies — “[...] and the sub-regional trade agreements in our Hemisphere” — this is another recognition of the importance in this process. And, at the end it says that “we will build on the existent subregional and bilateral agreements in order to broaden and deepen hemispheric economic integration and to bring the agreements together”, but it does not say how we are going to achieve this.

So, those are the very large brush-strokes of the Miami Declaration. This is what we are going to do, these are the realities we will accept. The Plan of Action — which is the second document in Miami and expands on the “Declara-

tion Principles” — is a little bit more precise within a still large degree of vagueness. It sets the parameter of WTO — consistency as a fundamental goal to be achieved in all the subregional and bilateral agreements, and in this new free-trade area we have created. It establishes that we will have “high levels of discipline” for market openness. It specifies that the agreements shall be “balanced and comprehensive”: balanced, giving equity to the process; comprehensive, not leaving out any of the issues of modern free trade area negotiations, in other words, trade in goods and services, other issues (what we used to call ten years ago “new issues”) such as intellectual property, investment, government procurement, competition policy, etc. This process is going to be based on the trade agreements already existing in the continent, and the leaders directed their officials to hold meetings “under existing trade and investment fora”, and emphasis is made to seek the assistance of existing inter-american institutions such as the OAS, the inter-American Development Bank (IDB), the Economic Commission for the Latin America and the Caribbean (ECLAC), for the systematization of data and the study of economic integration arrangements in the Hemisphere.

The leaders in Miami established a series of flagposts — or initial targets — along the line, in the fashion of a number of actions and meetings to be carried out within a well defined program.

First was the initiation of work within the Special Committee on Trade of the OAS to look at the process of integration in the Americas. Second, a meeting in June 1995 of ministers responsible for trade — this was the Denver meeting — which would look at the preliminary state of work in the region and would address areas for immediate consideration. Third, another meeting of trade ministers in March 1996, to receive final reports by the member of the “existing fora” and the Special Committee on Trade of the OAS, and to define a timetable for the further work. This is basically all that was established in Miami in regard as to how we were to proceed with our work.

In my view, the Denver meeting was very important in the development of the FTAA. At Denver, Ministers agreed “to begin immediately a work program to prepare for the initiation of negotiations of the FTAA”. Denver does not launch the negotiations but it did launch the preparatory process for negotiations. The preparatory work is fundamental for the massive exchange of information that is required for addressing all the relevant issues.

As part of a compromise, seven working groups were established already at the Denver meeting, with the agreement to establish four more working groups at the Cartagena meeting in March 1996. The seven working groups established in Denver are: Market Access; Customs Procedures and Rules of Origin; Investment; Standards and Technical Barriers of Trade; Sanitary and Phytosanitary Measures; Subsidies, Antidumping and Countervailing Duties; and Smaller Economies — an important element raised mainly by Caribbean and Central American countries, but supported by many of other smaller economies in the continent. The groups to be established in Cartagena will be on Government Procurement; Intellectual Property Rights; Services; and Competition Policy.

Denver also establishes procedures for work, coordination, and consultations; it provides for meetings of vice-ministers to coordinate the work and review the progress of the working groups; and asks for technical support by the tripartite commission — which is integrated by the OAS, the IDB and the ECLAC. It also provides for something not envisaged in the Miami Declaration, which is a

third meeting of trade ministers into 1997, thus indirectly stretching the preparatory program until at least an undefined date in '97.

But most importantly, from my perspective, is the fact that Denver states very clearly that the free trade area will be balanced and comprehensive in scope, will cover all the areas included in the document of Miami, it will not raise barriers to other countries and *will represent a single undertaking comprising mutual rights and obligations.*

The idea of a single undertaking, which we are borrowing from the Uruguay Round negotiations of the GATT is of paramount political importance in this exercise, for it means that the agreement is going to be one and only one. There is no pick-and-choose, *à la carte* menu. Namely, you are going to be part of a free trade area with all the elements included. That is a quantum leap from Miami. Miami never got that far. It is a recognition here that this Free Trade Area of the Americas is going to be one whole commitment and this means, in practical terms for the negotiation, that you will not be able to come to a point and say: "O.K., we got this far on these areas, let's agree on this, let's leave the others for further agreement in the future". No, it is an all-or-nothing, approach which makes for a very far reaching and ambitious process.

Now, so far all this is process, I have not talked substance yet. But process is important when you are actually treading in uncharted waters. I would want to say a few more things in order to finalize.

To begin, this process is going to take time. It has taken time for the European Union, which has been almost forty years in the making. We are starting from a completely different situation as far as diverging degrees of development, and substantive differences in the economic situation of the individual countries of the hemisphere. Secondly, it is going to be a very complex set of negotiations with a very complex set of results. Including, on a strictly organizational point, as of today the FTAA process of the very first meetings sounds like "join the FTAA and travel the Americas" approach because all the different groups that we have created in Denver are meeting all over the continent: Buenos Aires, Kingston, Ottawa, San José, San Salvador, Mexico. I mean, it is scattered all over the continent. You may ask why this is important. First of all, there is the question of human resources; second, there is the dispersal of the negotiations which is something inconvenient, and we are going to add four more working groups in March next year. So, if we continue in this way, we will have logistical as well as technical difficulties. I can foresee that at a certain point in time the need will arise to converge on one or two capitals where we can all fly in and have necessary support for the conduct of negotiations, as well as secretarial and technical assistance.

From my perspective, the process as it stands today, needs to sediment, in the sense that we have begun only six months ago and have already exploded into a myriad of meetings. We are going to be having a second round of meetings most likely late November, we are heading into more meetings in January. This will have to calm down a bit before we can really start to see a lot more clearly the different alternatives.

At the same time, as with anything that happens in this continent, a lot will depend on what happens in the United States. Currently the United States has no "fast-track authority" for negotiations — although we have heard some encouraging news these days on what is going on in the intricate congressional negotiations in the United States, maybe we are seeing the light at the end of the tunnel —

and it is too early to tell whether fast-track authority will be granted to the United States authorities.

Then, there is the question of presidential elections in the United States in a year's time, and we all know what that means in terms of trade negotiations. It does get in the way. Therefore, the calendar that we are all looking at leads us to believe that the initiation of negotiations will have to await until after the U.S. elections, sometime in 1997.

If there is fast track authority granted, if the NAFTA negotiations for Chile's accession progress, and if Chile's accession negotiations end successfully within a reasonable short time, the likelihood of a NAFTA accession model for the FTAA will gain more credibility. As you know, for example, it is the view of Canada that NAFTA is a workable model, as it provides enough critical mass, and a high degree of obligations in matters of trade in goods and services, intellectual property, etc.

If no fast track is granted to the United States, it will mean that we will have ahead of us a good two years of work, for preparatory work, no active negotiations will be conducted. This will be good, it will give time for the different subregional groups to continue deepening their schemes of integration. We have to remember that there is more than MERCOSUR and NAFTA in the Americas today. You have the Andean Group, the Central America Common Market, the Caricom, the Group of 3. There are all sorts of regional sub-groupings going along in their own agenda, in their own rhythm. Respect for rhythm is very important. The question of the relations of MERCOSUR with the rest of the ALADI countries is important. Negotiations between MERCOSUR and Chile, negotiations between MERCOSUR and Bolivia will progress in these two years. They will progress whether or not we have fast track in the United States. But, obviously, we have to wait for the presidential elections of 1997 in the United States, this will give more impetus and it will accelerate the different processes in course at the subregional level. The progress of negotiations in the hemispheric context can not slow down the process of deepening of integration in each of the subregional groups. Chile's accession to NAFTA cannot wait because we are negotiating the FTAA. The MERCOSUR/Chile, the MERCOSUR/Bolivia or the intra-MERCOSUR negotiations in progress will not wait because we are having a FTAA negotiation. These will be simultaneous, parallel or convergent processes, and we are going to have to manage all these things at the same time.

In my view, it is still too early to tell which model for the FTAA we are going to be seeing. Some of us speak of a "convergence model" by which the different subregional groupings will deepen their economic integration and gradually move forward converging into a larger FTAA. There is the possibility of a different view, a unified negotiation, the "classical model" of a multilateral negotiation *à la* GATT: thirty-four individual partners as we are in the Americas today negotiating amongst them. Maybe it will be groups to groups, block to block, or blocks to individual countries, or a mixture of all these. It is still too early to say which of these approaches we are going to be using, but, one thing is clear, whatever we do, we will need political will and political guidance. A convergence model that some of us speak about will not happen on its own. Nothing will converge unless you make it converge. And negotiations — whether on a classical sense or block to block — will not succeed unless they are guided, or pushed, and unless the political will is there to go ahead.

My current thinking and my prediction is that the likely overall result of our exercise is going to be a web of sets of disciplines on trade which will be above the current levels of discipline of the WTO — that is almost a prerequisite — and will be somewhere short of NAFTA/MERCOSUR standards. NAFTA has a very large degree of obligations and disciplines in a number of areas, which will require that countries move into them gradually. MERCOSUR does the same. Just to begin with, a customs union is a very large degree of obligation and discipline in trade policy.

This is not going to be a linear FTAA, something clear-cut. We will have a complex set of convergent tariff reduction processes with all sorts of national tariff reduction schemes, different rhythms, different depths, different timings, scattered about a, as of yet, very difficult to predict, span of time. Even NAFTA has used fifteen years to converge on the discipline of agriculture, for example.

I believe that we should encourage the adoption of concrete trade facilitation measures to be implemented while still in the course of negotiations. Some of those measures may be in the areas of unifying and harmonizing certain custom procedures, eliminating some technical barriers of trade, and some sanitary or phytosanitary measures.

I believe that subregional groups and agreements will remain in place, even after we achieve the FTAA, NAFTA, MERCOSUR and other groups will maintain their full validity, for they will cover more areas of disciplines and obligations than the FTAA, and because they respond to very specific sub-regional needs and trends which will be impossible to capture in a plurilateral context such as that of the FTAA.

I do perceive significant scope for progress in investment all across the continent. There is the political will, there are the economic decisions, and there is the economic need for Latin America to sustain massive inflows of capital. I believe that hemispheric disciplines in regard to investment will be agreed upon.

And I also see quite significant scope for progress in matters of trade in services, although again like in the case of trade in goods, disciplines will be possible through a very complex webs of agreements.

I have well exceeded my time, and I thank you for this opportunity to express these personal views.

Elbio Rosselli
130 Albert Street, suite 1905
OTTAWA, Ontario K1P 5G4
Tel. : (613) 234-2727
Fax : (613) 233-4670
E-Mail : uruott@iosphere.net