



MERCOSUR/EUROPEAN UNION BUSINESS FORUM

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Acronyms used in this document

@LIS	Alliance for the information Society
3G	Third generation
3GPP	Third Generation Partnership Project
ACP	Africa Caribbean Pacific
ALADI	Latin American Integration Association (Asociación Latinoamericana de Integración)
ALCA	Área de Libre Comercio de las Américas (Free Trade Area of the Americas)
ANATEL	Agência Nacional de Telecomunicações (National Telecommunications Agency)
ANSI T1P1	American National Standards Institute, Technical Subcommittee on Wireless/Mobile Services and Systems
ARIB	Association of Radio Industries and Business of Japan
BNC	Bi-regional Negotiating Committee
BOT	Build Operate and Transfer
CEOE	Spanish Federation of Business Associations (Confederación Española de Organizaciones Empresariales)
CITEL	Comisión Interamericana de Telecomunicaciones (Inter.-American Telecommunications Comisión)
COFDM	Cross Orthogonal Frequency Division Modulation
COM-CITEL	Comité Permanente Ejecutivo de CITEL (CITEL's Permanent Executive Committee)
CWTS	China Wireless Telecommunications Standard Group
DVB	Digital Video Broadcasting
EBAS	European Business Assistance Scheme
ECA	EU Export Credit Agency
ECIP	European Community Investment Partners
EIB	European Investment Bank
ETSI	European Telecommunications Standards Institute
EU	European Union
FTA	Free Trade Area
FTAA	Free Trade Area of the Americas
GATS	General Agreement on Trade in Services
GDP	Gross Domestic Product
GHTF	Global Harmonization Task Force
GPRS	General Packet Radio Service

IADB	Inter American Development Bank
ICC	International Chamber of Commerce
IEC	International Electrotechnical Commission
ILO	International Labour Organisation
IMT-2000	International Mobile Telecommunication-2000
IPR	Intellectual Property Rights
ISO	International Organization for Standardization
ITU	International Telecommunications Union
MEBF	Mercosur/European Union Business Forum
Mercosur	Mercado Común del Sur (Southern Common Market)
MNE	Multinational Enterprises
OECD	Organisation for Economic Co-operation and Development
PC	Personal Computer
PCS	Personal Communication Services
PIN	Personal Identification Number
R&D	Research and Development
SME	Small and Medium Size Enterprises
TBT	Technical Barriers to Trade
TRIPS	Trade-Related Aspects of Intellectual Property Rights
TTA	Telecommunications Technology Association
TTC	Telecommunications Technology Committee
UMTS	Universal Mobile Telecommunications System
UN ECE WP 29	United Nations Economic Commission for Europe Working Party 29: World Forum for Harmonisation of Vehicle Regulations
US	United States
WAP	Wireless Application Protocol
WB	World Bank
WCO	World Customs Organisation
WRC2000	World Radio Communication Conference 2000
WTO	World Trade Organisation

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MADRID DECLARATION

DOCUMENT APPROVAL

During the III Plenary Conference held in Madrid on May 15 and 16, 2002, the Mercosur/European Union Business Forum has discussed and approved the political statement and the recommendations hereafter, aimed at increasing the commercial and investment flows between the two regions.

The result of the debate between the European Union and Mercosur business communities represented in the Conference was the endorsement of the recommendations and proposals included in this document, approved by the MEBF in

Madrid, May 16, 2002

Alfonso Cortina
MEBF-EU co-Chairman
President and CEO, Repsol YPF, Spain

Carlos Bulgheroni
MEBF-Mercosur co-Chairman
President, Bidas Corporation, Argentina

1.- POLITICAL STATEMENT

1.1.- Introduction

The Mercosur/European Union Business Forum (MEBF) is a business-driven process, which has been launched by the EU and Mercosur business communities of the in 1998. Its main aim is to promote and facilitate business relations between the EU and Mercosur. MEBF's structure is based on an ongoing and close co-operation between companies and business federations of different sectors from the two regions, which elaborate detailed joint recommendations.

The MEBF held a new plenary meeting in Madrid. The timing of this meeting has been chosen to be held immediately before the Madrid's II Summit of Heads of State and Government of the EU, Latin America and the Caribbean. By doing so MEBF expressly supports this political initiative which should result in closer links between both continents, especially between the EU and the Mercosur.

The business leaders, joined at the conference by top officials of the governments of Mercosur and EU member states, of the Presidency of the EU, the European Parliament and the European Commission especially invited, met for the fourth time since 1999, continuing the rich dialogue developed in Rio de Janeiro, Mainz and Buenos Aires, to assess progress and activities of MEBF and establish its priorities to further enhance trade and business relations between the two regions.

They also reaffirmed their determination to continue this dialogue in the future, with emphasis on presenting practical contributions to intensify the biregional economic relations and, especially, to build up an interregional space of free trade based on the principles and commitments assumed by both regions in the Agreement of Madrid of 1995 and in the Declaration of Rio de Janeiro of 1999. It is MEBF's purpose to enlarge the participation of the business community of the Mercosur and the EU in this mechanism of expression of common business interests, open also to interaction with businesspersons of other countries and economic blocs, interested in our regions.

On December 6 and 7, 2001, the "MEBF Business Facilitation Conference" had been held in Buenos Aires, with the participation of about 400 representatives of Mercosur and EU companies, business federations, high government officials and international organisations. The Conference approved the "Buenos Aires Statement on Business Facilitation" presented to the authorities of the Mercosur and the EU, with more than sixty recommendations in the areas of Customs and Custom Procedures; Standards, Technical Regulations and Conformity Assessment Procedures, and e-Commerce. The meeting also allowed an interesting dialogue on the status of the official negotiations Mercosur/European Union and on the possibilities for Private/Public co-operation in infrastructure financing in Mercosur.

Building on the work carried out in Buenos Aires as well as in the previous conferences of Rio de Janeiro and Mainz, the three MEBF Working Groups (Market Access, Investment, Privatisation and Financial Services; and Services and Business Development), as well as a Sectoral Group on Information Society, Electronic

Commerce and Telecommunications, analysed in Madrid the developments in the overall economic situation in both blocks and in bilateral relations. The main barriers that are limiting business growth were identified and joint proposals to the EU and Mercosur authorities were discussed, which are presented in this Declaration.

1.2.- The overall economic and political situation and the multilateral agenda

The European and Mercosur business community acknowledges that the process of increased economic and political links between all nations is growing, despite serious threats to the system such as the tragic September 11 events. The launching of the WTO Doha round is a good sign that governments are eager to put the means to further increase international trade and investment flows.

MEBF strongly supports the fulfilment of the agenda agreed upon in Doha last November. It will allow us to proceed in the liberalisation of world trade in all areas, taking particularly into account the interests of the developing countries. MEBF hopes that substantial progress is attained in the issues most important for the Mercosur and the EU business community. Further, it considers that Mercosur and the EU must intensify their efforts to work together with their other trade partners and WTO countries, to succeed in these multilateral trade negotiations, particularly in agriculture.

MEBF welcomes the negotiations for the creation of the FTAA, for it will enhance the possibilities for Mercosur countries to increase exports and competitiveness. However, European companies of MEBF are concerned about losing business opportunities, should American companies get trade preferences in Mercosur because of the FTAA. Also the enlargement of the EU may increase the supply of competitive agricultural products in the EU. Mercosur companies are worried that unless trade liberalisation between the EU and Mercosur occurs, they might lose positions in the EU market. In December 1995 in the EU Mercosur Framework Co-operation agreement liberalisation of bilateral trade was signed. Today, more than 6 years after the Madrid Agreement, the creation of a free trade area between the EU and Mercosur is not close to being reached. Therefore, MEBF considers that it should become a priority of both regions to rapidly conclude the negotiations for the bilateral Association Agreement.

The business community of the Mercosur and the EU requests that governments and international organisations make their best efforts to eliminate the restrictions to trade and investment flows, as well as to remove other factors that artificially distort the relative competitiveness in world trade. It also requests the creation of conditions of stability, predictability and transparency that are necessary for safe decisions of investment and to define business strategies.

It is also required that all countries intensify their efforts to create an international environment of co-operation favourable to the social legitimacy of democratic values, economic opening, social equity and sustainable economic growth.

The business community of Mercosur and EU in Madrid urges their governments and all businesspersons of both regions to deepen their commitments to improving the

conditions and quality of life, making this target a central axis of the interregional association under negotiation.

1.3.- The negotiation of the EU-Mercosur association agreement

The MEBF welcomes the efforts that are being made to create an interregional association based on a free trade area without the exclusion of any sector. However, MEBF is concerned about the little progress achieved up to now. It understands that this process must be accelerated and hopes that, after the seven meetings of the Biregional Negotiating Committee held in the last two years, substantial progress can be attained in a reasonable period. To this end the MEBF understands that the Summit of Madrid should establish a schedule with a time frame for the current negotiations. It should take into consideration the schedule of the WTO round.

Bilateral economic relations are very significant; the EU has become the main client, supplier and foreign investor of Mercosur. Total trade flows between both blocks have grown significantly in the last decade. EU exports have increased from € 5.8 billion in 1990 to € 23.7 billion in the year 2000, this represents an annual growth of more than 25%. Mercosur exports have grown more modestly from €14.4 billion to € 23.5 in said period; which makes a rate of increase of less than 4%. EU companies have made significant foreign direct investments in Mercosur; annual flows have been above € 20 billion many years. Total stock of EU investment there reached € 111.9 billion in the year 2000, which is equivalent to 7.2% of total EU FDI stock.

In the recent past, Mercosur has accumulated significant trade deficits with the EU; some years they have reached € 6 billion. Even though EU investment has facilitated the financing of said trade imbalance, the situation is not satisfactory. Persistent trade imbalances might be difficult to finance in periods of economic crisis; thus it is essential that both parts agree on measures to facilitate increases in bilateral trade that are sustainable in the medium to long term, such as the creation of a free trade area.

MEBF asks the European Commission to consider introducing the principle of asymmetry (counter-imbalance) in the outcome of the Regional Association Agreement. This principle, which has been introduced in the EU-South Africa Agreement, would take into account the large imbalance in bilateral trade relations and could facilitate the recovery of those countries in deep recession.

MEBF expects the outcome on the EU Mercosur Agreement to exceed those accomplished in other bi-regional agreements of the EU (e.g. South Africa, Mexico) in particular in the fields of services and investments. As stated in the Mandate, MEBF expects that the contents of the Association Agreement is not limited to trade in goods but it also covers other crucial areas for business such as services and investments.

The MEBF reasserts its support to the principles and objectives defined for biregional negotiations both in the Agreement of Madrid of 1995, and in the Declaration of Rio de Janeiro of 1999. In particular it wishes to insist on the principle of single undertaking as the only way to ensure a balance of interests once the results of the negotiations are put into practice.

The MEBF insists on the importance of making progress in all areas of the negotiation. It also insists on the need of reinforcing the commitments under Title III of the Madrid Agreement (as stated in the Mainz Declaration) by way of a working agenda designed to achieve the goals of economic co-operation included there. It also requests once more that special attention be given to the goal of increasing investment flows between both regions.

MEBF recognises that the EU has made a firm commitment to the strengthening of bilateral relations with Mercosur. However, the EU is also dealing with other important issues such as enlargement to the East, institutional reform and the Doha Round. MEBF is afraid that the negotiation of a Regional Association Agreement might lose momentum and political priority. MEBF encourages EU member state governments and the European Commission to maintain said commitment high in the political priorities and take action accordingly.

MEBF also welcomes the Mercosur member states' commitment to the creation of a free trade area with the EU. However there are other issues in the political agenda of Mercosur, such as economic crisis and co-ordination of economic policies, the Doha Round and the development of certain aspects of the Treaty of Asuncion that need considerable attention from Mercosur leaders. Thus, MEBF urges Mercosur authorities to make their utmost efforts to rapidly conclude the negotiations of the Association Agreement.

Unless rapid progress is made on certain issues of the bilateral negotiations (e.g. facilitating market access, technical co-operation, SME co-operation, etc.) momentum might be difficult to be maintained to tackle the most complex parts of the negotiations such as the liberalisation of trade in sensitive products and services. MEBF urges Mercosur and EU negotiators to regularly agree on specific measures to facilitate business development during the negotiation process, such as those suggested by the MEBF Business Facilitation Conference that took place in Buenos Aires on December 2001.

1.4.- The consolidation of the Mercosur and the opportunities for EU investment

The MEFB considers that the consolidation of Mercosur as a wide space for the free trade of goods and services, with clear and lasting rules, stable, predictable, transparent and open to all the regions of the world, will encourage direct investments in their countries.

The fact that Mercosur has been built up on the basis of principles of open regionalism and is taking an active part in trade negotiations with other countries and regions especially within the scope of ALADI and at a hemispheric scale through the FTAA, opens numerous opportunities and challenges for the European enterprises interested in operating in the region.

MEBF recommends that in spite of the recent economic problems faced by Mercosur countries, their governments should preserve the main guidelines of their modernisation processes and economic opening.

In particular, it encourages the EU companies operating in Mercosur to intensify their strategies to take advantage of the trade opportunities resulting from the opening of markets to trade both in the region and in other parts of the world, including the EU.

European companies have made large investments in Mercosur (providing capital, technology and managerial capacities) making a substantial contribution to the development of industrial and civilian infrastructures.

In spite of the EU being today the main source of foreign direct investment in Mercosur, it continues to be one of the most interesting areas for the internationalisation of European companies, especially of their Small and Medium Enterprises. MEBF considers that encouraging the alliance between such SMEs and those of Mercosur, should be a strategic priority of the interregional association through the proper use of instruments of industrial and financial co-operation with adequate funding and administration.

MEBF considers that the expansion of European foreign direct investment, especially oriented to exporting to other regions of the world, should be encouraged. Likewise, the presence of Mercosur companies in the EU should be stimulated even through the use of financial instruments that can be included in the biregional co-operation mechanisms.

MEBF sees democracy, social cohesion and fiscal stability as closely associated with sustainable economic growth and long term expansion of trade and investment flows in Mercosur countries. European companies that have invested in Mercosur (and those that will do so in the future) will benefit directly from the achievement of these conditions. In addition, these are the conditions that will facilitate progress in the negotiations to establish an interregional association based on shared political and economic values, on free trade within the principles and regulations of the World Trade Organisation and on economic, technical and financial co-operation.

1.5.- Transparency and participation

MEBF calls on the EU and Mercosur to launch, in a co-ordinated form, public opinion campaigns to inform EU and Mercosur companies, institutions and the general public about the benefits that the Bilateral Association Agreement will bring.

A transparent negotiation process may ensure that (i) protectionist approaches remain at check, (ii) negotiators may feel additional incentives to rapidly conclude, and (iii) inputs are received from non-traditional sources that might assist the negotiators. The present moment of the negotiations requires that more detailed information is given to MEBF (obviously maintaining the needed confidentiality levels that any negotiation must have) so that the business community is able to provide inputs for the negotiations.

MEBF also considers that transparency and information on the work being done through different institutional mechanisms set up for the development of biregional negotiations should be enhanced.

To the contributions already made during previous conferences, the MEBF adds now new specific recommendations related to the issues analysed by its working groups for the greater success and relevance of the negotiations. It expresses its recognition for the attention paid by the negotiators to the recommendations already presented, but also wishes to point out that many of MEBF's recommendations have not been implemented as of yet. The European Commission and the Governments of Mercosur are requested to consider speeding up the process of implementation of its proposals.

MEBF has decided to concentrate its work and recommendations in the near future on comments on the negotiations of the EU-Mercosur Regional Association Agreement. A rapid and comprehensive agreement is a vital tool for reaching the business co-operation potential of both regions. Thus, MEBF will closely follow the negotiations between the EU and Mercosur. It is MEBF intention to help facilitate these negotiations by giving practical input. But also to speed them up through encouraging EU and Mercosur member states to neglect protectionist measures and to pursue their biregional and multilateral liberalisation objectives.

Finally, MEBF wants to convey its warmest gratitude towards the CEOE for hosting this event.

2.- MARKET ACCESS

2.1.- Introduction

2.1.1.- *MEBF's commitment to the negotiations*

With the objective to improve the mutual market access for the economies of the EU and the Mercosur, the MEBF fully and actively supports the creation of a Mercosur/EU FTA as part of an Interregional Association Agreement, as the MEBF has expressed on many occasions in the past.

It is MEBF's intention to follow the negotiations with a view to help facilitate them by giving practical input and in order to ensure that they are conducted as transparently as possible. And furthermore, to speed them up by encouraging EU and Mercosur member states to remove protectionist measures and to pursue their bi-regional and multilateral liberalisation objectives.

The improvement of market access is an essential requirement for intensifying EU-Mercosur trade relations and ranks highly on the agenda of the trade issues negotiations conducted during the six meetings of the EU/Mercosur Bi-regional Negotiations Committee (BNC) so far.

This chapter provides detailed recommendations for the removal of tariff and especially non-tariff barriers to trade. The chapter is the result of intensive consultations within MEBF's Market Access Group during the last two years, comprising MEBF federations and companies from both continents. MEBF is confident that its recommendations – reflecting MEBF member's business experience - will bring substantial value added to the negotiations.

2.1.2.- *Background: trade relations between the EU and the Mercosur*

The creation of Mercosur and especially the imports liberalisation process undertaken by its members in the beginning of the 1990s significantly improved the potential for increased trade flows between the EU and the Mercosur. Bilateral economic relations have dramatically increased during the last decade. European exports have more than tripled and increased their market share.

Exports from Mercosur member countries to the EU have grown modestly and remain too concentrated in few product categories. In some of these product categories, however, they have been able to obtain significant market shares in the EU and globally.

European companies have made large investments in Mercosur (providing capital, technology and managerial capacities) making a substantial contribution to the development of industrial and civilian infrastructures. Even though the EU has become the first foreign investor, Mercosur still remains one of the most interesting areas for the internationalisation of EU companies, including SMEs.

The large bilateral trade imbalances that have been accumulated by Mercosur in the late 90's could be difficult to finance during periods of financial instability. MEBF has the view that EU foreign investors and exporters could negatively be affected if Mercosur does not reach a current account position which is sustainable in the long term.

The serious economic crisis that some Mercosur countries are facing should encourage the two regions to pursue a trade agreement that removes obstacles to trade, allowing both sides to benefit from their competitive advantages. The negotiations should also account for the differences between the levels of development, the macroeconomic scenarios and production structures in the Mercosur countries and those in the EU.

The completion of the Mercosur integration agenda, aiming to reach a customs union in which goods and services can freely move, will foster intra and extra region trade flows and provide predictability to European companies that invest in the region.

Therefore, MEBF believes that to reach the potential of trade relations it is necessary not only that tariff, non-tariff barriers, subsidies to bilateral trade and other measures that distort trade are eliminated, but also that the regulatory framework on both sides is stable, predictable, efficient and transparent. The aim of this framework should be to facilitate market access, promote the increase of trade flows in a sustainable way and foster an increasing flow of European direct investments in the Mercosur countries.

2.2.- Recommendations for Market Access negotiations in the Interregional Association Agreement

2.2.1.- General issues

[M1] **Principles and Objectives:** negotiations of the Interregional Association Agreement have already started with the following objectives and principles: (i) comprehensive negotiations covering all sectors and products, (ii) single undertaking, (iii) gradual, progressive and reciprocal trade liberalisation, (iv) aiming at promoting an increase in trade flows, and (v) in accordance with WTO principles. MEBF fully supports the negotiations and the agreed principles and objectives.

[M2] **Links with the WTO agenda:** The launching of a new multilateral trade negotiations round under the WTO was a very positive sign that the governments are committed to strengthen the international trade system and to foster the increase of trade and investment flows. However, it is important to realise that the comprehensive and complex agenda agreed in Doha has deep impacts on the regional trade negotiation process.

On this matter, the EU members of MEBF strongly support the view that subsidies to the agricultural sector should be considered in multilateral negotiations at WTO level.

On the other hand, the Mercosur members of MEBF emphasise that during 2001 EU and Mercosur exchanged liberalisation proposals, that were subject to some conditionalities. Among those presented by Mercosur was the phasing out of subsidies for agricultural products, since the removal of tariffs without the elimination of non-tariff barriers

and subsidies has very limited real impact on trade. So, it is crucial for the progress in the biregional negotiation agenda that this issue can be addressed within the field of the FTA agreement. If subsidies can only be negotiated in the multilateral framework, the biregional negotiation would have to be tied to the multilateral ones. The Mercosur members of MEBF believe that the EU and the Mercosur should take into consideration the links between the two agendas in order to guarantee a balanced agreement in the biregional negotiations.

The launching of the Doha round and the exchange of liberalisation proposals have changed the negotiations scenario. In particular, the Mercosur members of MEBF remark the decrease of real meaning of tariffs phasing out in the agribusiness sector if the non-tariff barriers to trade, and especially the subsidies, are not removed.

Noting the different opinions stated above, MEBF, however, emphasises the great importance of a solution to the agricultural issue. Therefore, MEBF encourages the EU and Mercosur negotiators to make every effort to achieve rapid progress on this matter.

[M3] **Time frame:** MEBF calls on Mercosur member countries, EU member countries and the European Commission to do their utmost efforts to make substantial progress in the negotiations, overcoming some important and substantial issues that are hampering the process. MEBF believes that both sides should set a time frame for the conclusion of the negotiations, but this should not jeopardise the achievement of a comprehensive agreement. This time frame should take into consideration the schedule of the WTO round.

[M4] **Standstill:** MEBF understands that no new barriers that distort trade should be created. This would express a sound commitment of both sides with the negotiations of a free trade area.

However, MEBF considers that the negotiations for the creation of an FTA, shall bring further progress in establishing commitments with the progressive elimination of tariffs, the phasing out of all export subsidies, and substantial reduction in domestic support and any similar measures that distort trade.

[M5] **Priority for the elimination of non-tariff barriers and measures that distort trade:** MEBF considers of utmost importance that the EU and Mercosur strengthen efforts to remove non-tariff barriers that are limiting the development of bilateral trade between both regions and to avoid the creation of new obstacles. The negotiators of the EU-Mercosur Association Agreement should make this a priority and establish the means to achieve this goal, such as making a comprehensive list in which all trade barriers are identified and a standstill clause agreed for NTB's.

In order to guarantee balanced conditions for competition in the biregional trade of agricultural products, the phasing out of tariffs should be preceded by the elimination of export subsidies and by the determination of disciplines in the fields of exports credits, food aid, domestic support measures and other measures that distort trade.

[M6] **Special and Differential Treatment:** The Doha agenda recognised the importance of the provisions for special and differential treatment in the WTO Agreements and calls for a “revision in these provisions with a view to strengthening them and making them more precise, effective and operational”. In order to reduce the gap in terms of economic development between EU and Mercosur member countries, MEBF recommends that the negotiations between the two blocs should provide mechanisms for special and differential treatment, including the possibility of asymmetrical trade liberalisation.

[M7] **Rules of origin:** MEBF recalls the crucial importance of rules of origin as a safeguard to industrial investment made by European/Mercosur companies. Negotiators of both sides should give sufficient attention to the negotiations of rules of origin, so as to avoid unbalanced solutions for the two partners. To this end, MEBF recommends that the negotiations for the definition of the rules of origin should maintain a straight link to those of tariff liberalisation.

[M8] **Business facilitation:** MEBF urges both sides to regularly agree and implement specific business facilitation measures during the negotiation process. Important recommendations regarding short, medium and long term business facilitation measures for improving market access have been identified by the MEBF and published in the Buenos Aires Declaration of December, 2001.

[M9] **Transparency:** transparency must be a distinctive component of the negotiating process, assuring the participation of the civil society. To this end MEBF recommends to both parties the establishment of a web page with specific and detailed information (obviously maintaining the needed confidentiality levels that any negotiation must have). A transparent negotiation process may ensure that inputs are received from non-traditional sources that might assist the negotiators.

[M10] **EU enlargement:** The EU is facing an enlargement process. Even prior to finalisation of the negotiations between the EU and Mercosur, this bloc can be made larger, aggregating new members with economic profiles reasonably different from its current members. Therefore, the FTA negotiations should take due account of the effect of this enlargement process on the biregional agreement.

[M11] **Mercosur integration:** The progressive consolidation of Mercosur, especially the removal of internal barriers to trade, is very important to foster the trade flows between the EU and Mercosur. MEBF strongly recommends further progress in the integration of Mercosur as set out in the Treaty of Asunción.

2.2.2.- *Tariff issues*

[M12] MEBF highly appreciates the efforts done by both parties in presenting tariff offers during the last year and encourages the negotiators to continue the process.

For dealing with the current phase of bilateral negotiations, MEBF presents the following recommendations:

[M13] MEBF considers a transition period of 10 years for the substantial part of the trade as appropriate. MEBF recommends that efforts should be made to rapidly liberalise, during the initial 5 years of the agreement, a list of products, which is yet to be defined. This list should be as wide as possible. In exceptional areas, however, longer periods for complete liberalization may be considered, taking into account the concept of asymmetrical reciprocity in the liberalisation schedules (periods and path), so as to account for the differences between the levels of development and production structures in the Mercosur countries vis-à-vis those of the EU.

[M14] MEBF considers that the entire tariff universe should be included in the negotiations.

[M15] All types of tariffs (ad valorem, specific and compound tariffs) should be transformed into ad valorem tariffs and submitted to liberalisation programs.

[M16] Tariff peaks should be reduced in a rapid path in order to eliminate the distortions caused by the high degree of protection granted to the products subject to this kind of instrument.

[M 17] In Mercosur member countries, some products with no domestic production are granted with very low tariffs. If during the transition period new projects are implemented to produce a limited and commonly agreed-upon list of such products, a temporary adjustment in their tariffs should be allowed up to then valid tariffs for products of the same chapter, with an automatic incorporation into the phasing out scheme.

2.2.3.- Non-tariff issues

2.2.3.1.- Import Regimes: licences, quotas and other

[M18] The MEBF recommends to Mercosur and to the EU that (i) the granting of import licences becomes automatic and non-discretionary, (ii) the administrative requirements are drastically simplified, (iii) import licensing and customs procedures are harmonised as well as customs documentation, and (iv) the application of temporary import or export restrictions is avoided.

[M19] During the transition period, the EU should increase the current tariff quotas until its complete liberalisation for the products that are subject to these quotas nowadays and should provide access to quotas for additional products that have their access to the EU markets hindered by tariffs and non-tariff barriers.

2.2.3.2.- Customs regimes and procedures

[M20] Based on its experience, MEBF proposed a set of short, medium and long term measures in the field of customs regimes and customs procedures related to intra-Mercosur as well as to biregional trade, as stated in the MEBF “Buenos Aires Statement on Business Facilitation”. Such recommendations are aimed at a radical simplification

of administrative requirements for imports, and a rapid modernization and simplification of customs procedures based on WCO, ICC and WTO standards.

[M21] The EU-Mercosur customs authorities should establish mechanisms of cooperation and should pay special attention to the streamlining of the existing bureaucratic customs procedures with a view to aid the implementation of business facilitation measures in this area.

2.2.3.3.- Non-tariff import taxation

[M22] The MEBF recommends to drastically simplify the structure of non-tariff import taxation and to reduce the rates. Improving transparency would greatly increase the trade flows between both areas. This will certainly benefit the final consumers through a reduction in prices of final and intermediate products.

[M23] Customs valuation should be harmonized and carried out in accordance with WTO Agreements.

2.2.3.4.- Standards, technical regulation, conformity assessment and certification

[M24] MEBF considers the full implementation of the prescriptions in the WTO Agreement on Technical Barriers to Trade with broadest usage of international standards (ISO, IEC, ITU) a significant contribution to furthering inter-regional and global trade. MEBF encourages all parties concerned to work towards this goal.

[M25] A specific negotiating forum for the theme “Technical Barriers” in the scope of the negotiation structure for the conformation of a Free Trade Area between the two blocs should be created. This forum should foresee the participation of private sector representatives. MEBF offers to co-ordinate such private sector participation.

[M26] Being aware of the substantial barriers to trade which diverging standards, technical regulations and conformity assessment procedures constitute, MEBF has proposed a set of short, medium and long term measures in this field to facilitate business. These are stated in the MEBF “Buenos Aires Statement on Business Facilitation”. MEBF strongly recommends their implementation. Recognizing that many of the measures proposed in its Buenos Aires Statement can be implemented without regard to the current status and progress of the interregional negotiations, MEBF strongly encourages the parties concerned and identified in the Declaration to aggressively and pragmatically implement such recommendations, independently from the negotiations for the Interregional Association Agreement.

2.2.3.5.- Sanitary and phytosanitary measures

[M27] MEBF recommends the acceleration of the bilateral negotiations in course regarding mutual recognition agreements for sanitary and phytosanitary measures and that progress is made toward a biregional agreement in that matter.

[M28] MEBF suggests the establishment of the procedures in order to warrant that sanitary and phytosanitary measures applied are congruent with the principles and obligations defined in the WTO SPS Agreement. Co-operation between European and Mercosur specialists in the definition of sanitary and phytosanitary regulations should be fostered. This co-operation should be extended to the time schedule for the adoption of the new regulations.

2.2.4.- Trade defence instruments

[M29] The antidumping instrument should not be used for protectionist purposes, but only to counteract unfair practices as established by the WTO. MEBF would welcome a more harmonised application of the trade defence mechanisms and recommends that the two blocs work together in the new multilateral round in these matters.

[M30] The Agreement should include specific safeguard clauses, taking into account WTO rules.

2.2.5.- Other issues

[M31] Entry prices and minimum prices for imported or exported goods should be eliminated in the biregional trade.

[M32] Consular documentation requirements should be simplified and not be used as an administrative barrier.

[M33] Domestic taxes should be applied on a basis of equal treatment between imported and domestic products.

[M34] All other restrictions not mentioned above should be avoided, such as labelling requirements or compulsory warehousing.

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ANNEX 1: IDENTIFICATION OF TRADE BARRIERS

This annex exhibits barriers, identified by either Mercosur or EU companies and federations, to trade with the other region. While great efforts were made to reach consensus on the text, it should be recognized that, in some cases, views expressed by either region are not fully supported by the other. This, however, does not diminish the value of this clause, as it provides significant insight into the current inter-regional trade situation and the perceived issues and it also gives the reasoning for MEBF recommendations found earlier in this document.

A.1.1.- Main trade barriers identified by Mercosur federations and companies in the EU

The following barriers to Mercosur exports have been identified by the Mercosur side of MEBF:

A.1.1.1.- *Tariff barriers*

- **Tariff Escalation.** The EU tariff structure reveals a strong progressiveness that results in a high effective protection for the products with higher aggregate value (e.g. fish, food, tobacco, textile, leather, paper and metals).
- **High tariffs.** Tariff peaks (above 28,3%) are applied to imports of products (e.g. tobacco, cigarettes, meat (beef and lamb), dairy products, wheat, corn, fruit juices, aminoacids, bath clothing) in which Mercosur countries have a potential to export. Some tariffs exceed 100% (e.g. sugar, beef, dairy products).
- **Specific tariffs** directly affect the most competitive Mercosur's exporters, since protection is much higher the lower the producer's price is (e.g. sugar, pieces and parts of chicken).
- **Compound tariffs**, ad-valorem plus specific, complicates customs declaration and discourages EU operators from importing products like orange juice, bovine meats, and chemical products as manitol, sorbitol, etc.

A.1.1.2.- *Non tariff barriers*

- **Non-automatic Licensing** - the emission of import license is not automatic in the case of imports subject to quantitative restrictions, safeguard measures or monitoring. Among products subject to non-automatic licensing are fishes, textiles, apparels, dairy products, alcoholic beverages and some iron and steel products.
- **Standards and technical regulations** – the main problem is the delay and the cost of certification process. The harmonisation process of standards and regulations of the EU has advanced significantly. However, a considerable number of standards, test procedures and non-harmonised certification procedures still persist among member countries. Only laboratories located in Europe and recognised by the EU have the right of certifying a product to be imported. Some

laboratories outside Europe can test the products, under contract with a recognised European laboratory. However, to obtain the final approval it is necessary to send the reports to the European laboratory, which will perform the final revision and will issue the conformity assessment certificate.

- **Labelling requirements**, specially “eco-labelling” and marking requirements in order to identify possibilities of reutilization and recycling of packages. Even though these do not restrict imports, they can represent a barrier to Mercosur exports because of increased costs, lengthy tests and certification processes.
- **Sanitary, Phytosanitary and Animal health measures** – the sanitary, phytosanitary and animal health regulations have been extremely rigorous, sometimes contradicting international rules. Recently, the EU has shown signals that it intends not only to keep, but also to intensify the establishment of excessive ruling in comparison to internationally accepted standards, notwithstanding multilateral international agreements.
- **Tariff Quotas** – the EU applies tariff quotas (quantitative limits of imports that benefit from reduced tariffs) for some imports of agricultural products and manufactures of agricultural origin. The products of greater interest of Mercosur that benefit from this mechanism are sugar; beef and poultry; fish; dairy products; cereals and oil seeds.
- **Other measures** - the modifications introduced to the Community’s General System of Preference, which established a scheme that removes the benefit for countries and sectors considered competitive, resulted in the graduation of some important items from the Mercosur countries’ export list (eg. dairy products, coffee, meat products, leather, paper, textiles and clothing).

A.1.1.3.- *Export subsidies and domestic support measures*

The EU system of support to production and exports of agricultural products encompasses mechanisms that generate distortions in the international markets. These instruments create unfair competition conditions, hindering the expansion and the development of trade between the two blocs. Besides, another important impact on trade of these mechanisms is the displacement of Mercosur exports in third markets.

- **Export Subsidies** - The export subsidies to agricultural products provided by EU in large scale generate important distortions in international trade, deviating competitive exports and artificially lowering international prices, with negative effects over the revenues of the exporting countries.
- **Domestic Support Measures** – The domestic support measures to the EU agricultural production generate an artificial increase in the European production, distorting the international trade of agricultural products, with important impacts over the conditions of regional competitiveness.

A.1.2.- Main trade barriers Identified by EU federations and companies in Mercosur

The following barriers to European exports have been identified by European side of MEBF:

A.1.2.1.- *Import tariffs and taxes*

- **Tariffs** – despite the improvements that Mercosur has made in its import tariffs system, tariffs for many product categories remain much higher than those applied by the EU. Additionally, all Mercosur countries still have exception lists to their “external common tariff” in which higher tariffs are applied. High import tariffs (particularly for capital goods and new economy products) do not encourage companies to invest.
- **Other expenses related to imports** - in many cases “special taxes and fees” are collected on imports. Such taxes and duties, collected at ports and during customs declaration have the consequence of considerably inflating prices. Some of them have been identified to infringe GATT rules and are being addressed under WTO Dispute Settlement Mechanisms.
- **Tax System** - indirect taxation is complex and abundant, with many different types at Federal, State and local level. Frequent changes create further uncertainty to local and EU operators, often impeding the establishment and continuation of business relations.
- **The tax base** on which tariff and other import taxes are calculated is frequently too high. Minimum import prices are fixed arbitrarily above the real price of many imported goods.

A.1.2.2.- *Non-tariff barriers*

- **Import and export regimes: licences, quotas, etc.** - the importor export regimes of the Mercosur member countries widely differ, hampering the potential economic benefits that a real common market could have not only for Mercosur countries themselves, but also for the development of trade between the latter and the EU.

Import licences are not anymore the main non-tariff barrier. However, to obtain an import licence (which is needed for many products) frequently involves various administration agencies and compulsory registration of importers. Such complex procedures cause useless delays and discourage many EU companies from exporting to Mercosur.

- **Customs procedures** - internal customs in Mercosur have not disappeared yet. Even though Mercosur intends to be a common market, there is not yet free transit of goods.

Custom procedures in some Mercosur countries can be complex, slow and unpredictable. Unnecessary paperwork including the compulsory presentation of many documents causes delays in customs clearance and significantly increases costs. Mercosur countries have not yet implemented a single import document.

Pre-shipment inspections carried out at departure ports by some Mercosur countries could increase and slow down bureaucratic practices, because procedures at arrival ports have not been simplified nor reduced.

- **Standards, technical regulation, conformity assessment, and certification** - Mercosur countries are far from harmonising their regulations on standards. The regulations vary widely among the countries and frequently deviate from international standards. The objectives, at the moment, are to reach common bases in some basic regulations, but the companies would not be exempt of the obligations of fulfilling each country's particular requirements in order to be able to reach these markets. This creates difficulties and generates additional costs and delays in the trade of goods among member countries as well as those coming from the EU.

In many cases Mercosur countries do not adopt international standards for product certification. Their participation in international sectoral discussion fora, such as the Global Harmonisation Task Force (GHTF) or UN ECE WP 29 is not very active.

- **Sanitary and phytosanitary measures** – compulsory registration with certain Administrative bodies and other practices result in very bureaucratic, slow and complex procedures, which has the effect of drastically limiting imports.
- **The use of trade defence instruments** - in some of the Mercosur countries, the use of antidumping measures against some EU exports are perceived by EU companies as protectionist. Time limits are not always respected; disclosure documents are not always handed over, etc.
- **Labelling procedures** - Certain labelling procedures are hampering the free circulation of goods. For some product categories (e.g. textiles) enforcement of labelling requirements is sometimes more strictly enforced for foreign than for domestic products.
- **Bureaucratic procedures** - since 1997 some Mercosur countries are increasing the requirements for consular documentation and rules of origin proof. This increases bureaucratic procedures for domestic importers and EU exporters.
- **Import payment** - Some Mercosur countries are regulating import payment and financing conditions to restrict imports. These measures limit the importer's cash flow, forcing the exporter to accept longer payment terms in order to be competitive with local manufacturers.

- **Compulsory warehousing** - Sometimes imported goods can be required to be warehoused in compulsory pre-custom deposits (which charge extravagant fees) until customs clearance.
- **Intellectual property protection** - Intellectual property protection, product registration and regulatory requirements, especially for pharmaceuticals and crop protection products sometimes do not induce companies to trade in these products.
- **Export restrictions** - Mercosur countries impose export restrictions on a number of raw materials. These restrictions make the domestic price for raw materials lower than international prices, thus allowing Mercosur industry to have an unfair competitive advantage over EU industries. Sometimes they even are subject to taxation when exported.

3. - INVESTMENT, PRIVATISATION AND FINANCIAL SERVICES

3.1. - General overview

The private sector from Mercosur and the European Union recognizes that their national governments have made of foreign investment a top priority in their national development policies.

It is of utmost importance to continue the privatisation and deregulation processes and the creation of a friendly environment for investments in both regions. These are essential components for reaching the best possible economic results in a free trade area.

In recent years, the economic links between Mercosur and the EU have increased mainly through large flows of foreign direct investment. EU position as the main foreign direct investor in Mercosur has been strengthened, with significant investments in services. Total stock of EU investment reached more than € 100 billion in 2000, which is equivalent to 7.2% of total EU FDI stock. It is noteworthy that several companies from Mercosur have also channelled strategic investments to Europe, establishing a two-way interdependent relationship in FDI between both regions.

Inter-regional negotiations should help in building up a framework that enhances macroeconomic stability and facilitates achieving a sustainable development path.

Inward investment in Mercosur has been driven to a large extent by the privatization and liberalization process. Investment in manufacturing has attracted a relatively small share of FDI flows to Mercosur. MEBF expects that foreign investment in manufacturing will also significantly increase as a consequence of the Mercosur/EU Association Agreement. Infrastructure projects should be highlighted as comprising enormous opportunities for cooperation between EU and Mercosur companies and governments.

Mercosur countries have faced, however, a sharp deterioration in their current accounts, which has been financed through foreign investment. These deficits are difficult to finance during periods of international financial instability. To reduce the vulnerability of the external accounts of the Mercosur member countries it is of fundamental importance to allow the return of a sustained economic growth path and to tranquilize investors.

[I35] A time frame should be set for the conclusion of a free trade area between the EU and Mercosur.

[I36] Mercosur countries should increase macroeconomic co-operation as a key factor in the emergence of a “virtuous” scenario in the sub-region.

[I37] The EU and Mercosur should act directly and indirectly – through multilateral financial institutions - to facilitate a rapid recovery of the economic situation in Mercosur countries.

3.2.- Investment issues

3.2.1.- *Pre-conditions*

The MEBF believes that to foster foreign and domestic investment a number of preconditions must be met. They are related to (i) political system and governance, (ii) economic conditions and (iii) social conditions.

3.2.1.1.- **Political system and governance**

- Political stability.
- The rule of law, including predictability and respect for foreign and domestic investor's rights.
- A fair and effective judicial system.
- Accountability and transparency of government administration.

3.2.1.2.- **Economic conditions**

- Macroeconomic stability.
- Adequate infrastructure, particularly transportation, telecommunications and energy systems, with appropriate environmental safeguards.
- A sound and efficient banking and financial system, which is able to provide financing at competitive rates for short, medium and long term projects.
- Elimination of monopolies and adoption of pro-competition policies.
- Markets open to international trade.
- Reasonable, predictable and business friendly tax policies with improved collection of taxes.
- Clear and transparent rules for free transfer of business income.
- A large and integrated market. The deepening of Mercosur will enhance the attraction for foreign investment not only coming from Europe but also from other parts of the world and intra-Mercosur as well.

3.2.1.3.- **Social conditions**

- Social peace and security.
- Educated workforce.

- Modern labour laws.
- Well developed system of professional and vocational training.

3.2.2.- *Multilateral and biregional agreements*

The business communities of both regions have shared the view that a multilateral agreement on foreign investment is needed to encourage foreign direct investment flows from and outside the regions. This agreement should have, among other, the following principles:

- Protection of assets and rights of foreign investors.
- Guarantee of national treatment for all investors and investments.
- Non-discriminatory access to government funds, civilian research and development programs.
- Free movement of capital for all transactions related to foreign investment.
- Free movement and right of establishment for the management of foreign companies.
- Non-discrimination in the tax system.

An adequate multilateral investment framework will reduce considerably the risk of investing abroad, specially for SME because without this framework they do not have the means to monitor frequent changes and adapt to them.

[I38] TRIMs is an important guideline for an investment framework. The MEBF urges EU and Mercosur countries to take into account TRIMs in the development and implementation of institutional investment rules. The MEBF also suggests EU and Mercosur governments to develop their best efforts to improve and update the TRIMs dispositions within the WTO Doha Round.

[I39] EU and Mercosur countries should actively encourage and promote the negotiation of a Multilateral Framework on Investment (MFI) at WTO, as agreed at the Doha Ministerial Conference.

[I40] The MEBF recommends to the EU and Mercosur authorities the inclusion of a chapter on foreign direct investment following the basic guidelines included in this paper, in the context of the on-going negotiations of a regional association agreement between the two regions.

3.2.3.- *Taxation*

Double taxation and the treatment of foreign earned income are creating many problems for investors. Mercosur and EU countries have signed a number of “investment protection” and “double taxation avoidance” agreements. Negotiations are currently taking place between some EU and Mercosur countries to sign new agreements. These efforts should be strengthened.

Both EU and Mercosur governments should modify their tax regimes to facilitate inward and outward foreign investment flows.

[I41] The MEBF suggests that EU and Mercosur countries push for biregional and multilateral negotiations on the treatment of foreign investment and for bilateral negotiations on double taxation avoidance agreements.

3.2.4.- *Liberalisation and privatisation*

The MEBF strongly supports the privatisation process that is taking place in the EU and Mercosur countries. MEBF recognises that this process has been very significant in some countries and that it lags far behind in others.

Public monopolies have been abolished for the provision of many services. However, the development of some business are dependent on the consolidation of a stable regulatory environment.

[I42] The MEBF urges the EU and the Mercosur countries to complete the liberalisation and privatisation process, permitting foreign access to the provision of services and goods on the basis of national treatment. All sectors should be opened to competition.

3.2.5. - *Investment in infrastructure*

Infrastructure needs (e.g. transport, telecommunication, energy, etc.) are huge in all Mercosur countries. The needs are so large that public funds are not and will not be sufficient to finance all the necessary investments. It is of utmost importance to find alternative sources for financing investment projects, such as private sector infrastructure companies and financial institutions.

Private companies of both regions are ready to take commercial risks to invest and manage infrastructure projects, provided that political risks are covered and an adequate regulatory framework is in place.

Investment in infrastructure makes up an important platform for cooperation between firms and countries. The ongoing Plan for Infrastructure Integration in South America, in which Mercosur plays a central role, encompasses more than Euro 180 billion worth of approved public investments in the next eight years, with funding from multilateral institutions, national governments and the private sector. It is the largest project of its kind in the world. MEBF strongly encourages Mercosur and EU governments to work together towards further publicity and cooperation regarding this Plan.

ECAs, many of which are government owned, are still too shy in covering BOT transactions in Mercosur countries. A more open and flexible approach by ECAs would facilitate the participation of private companies and its financing.

EU central banks play a very crucial role in facilitating the granting of long term credits by private banks to finance projects in Mercosur. The provisions for risk that central banks require directly influence the amount of resources available and their cost.

Multilateral banks (e.g. IADB, WB) are increasingly interested in co-financing private infrastructure projects. However, their involvement is far from satisfactory, because of slow procedures at the Banks and political priorities set by recipient countries. The IADB can use only 5% of its resources to make loans to the private sector. This 5% has been lent and the Bank needs the authorisation of the directors representing the member countries to increase this percentage to 10%.

[I43] The MEBF believes that Mercosur governments should facilitate, through the approval of adequate legislation, participation of private companies in the creation and management of all sorts of infrastructures. The EU should assist in the building of infrastructure (especially in cross-border projects) through facilitating financing from the EIB and grants from the Commission to carry out feasibility studies.

[I44] EU member governments should encourage their ECAs to increase their position in infrastructure and BOT projects in Mercosur. The European Commission should promote that the long term financing needs of such projects be taken into consideration in the common rules for the provision of political risk coverage.

[I45] Both EU and Mercosur governments should in a co-ordinated way encourage multilateral banks to increase co-financing of private infrastructure projects in Mercosur countries. The MEBF urges EU and Mercosur governments to instruct their directors at the IADB to support the increase of the resources that the private sector of Latin America is authorised to borrow from the Bank.

3.2.6.- Free movement of personnel

Free movement of personnel is too restricted in some EU and Mercosur countries. All countries should ensure that companies have the right to appoint non-residents as non-executive directors and that foreign management is permitted to work in local subsidiaries.

[I46] There is an urgent need for foreign managers and directors of companies to be permitted to carry out their jobs in the recipient countries. Bureaucratic practices should not slow down unnecessarily the granting of work and residence permits.

3.3.- Co-operation issues

3.3.1.- Co-operation between SME

The existence and abundance of healthy and dynamic SME are the basis for a sound economic and social development. They are the major agents for employment creation and export growth. The development and strengthening of SME in Mercosur countries is a major task of utmost importance. Many actions could be carried out to this end, among others: creating a favourable regulatory environment, simplification of administrative authorisations and procedures, improved training and funding, and developing a network of efficient service providers.

Many Mercosur SME have insufficient capital and technology to consolidate and grow. At the same time, many European SME are looking for international opportunities to develop businesses.

Mercosur SME have a very reduced presence in the European market, despite the abundance of market niches and growth potential. The support that Mercosur SME receive from export promotion institutions lags far behind the needs.

Mercosur governments are not making sufficient promotional efforts to attract inward investments from foreign SME. Contrary to what happens in the most successful countries in Asia, Europe and other parts of the world, Foreign Investment Promotion Agencies in Mercosur lack sufficient funding.

The EU programs, namely AL-invest and ECIP, to promote partnerships and, particularly, joint ventures between European SME and local companies should be properly funded in order to cope with the increase in good applicant projects. The objectives and instruments of ECIP [i.e. (i) assistance to carry out feasibility studies, (ii) co-financing of the investment and (iii) training of the joint venture staff] respond to a real need and are well designed. However its effectiveness has been far from satisfactory because of the lack of funds, long delays in payments, slow procedures and bureaucratic practices of the EU Commission.

The Mercosur EU Interregional Framework Cooperation Agreement, signed in Madrid in December 1995, places considerable priority to supporting SME and developing bilateral SME cooperation. Similarly the Mandate given by the EU Council to the European Commission for negotiating a Regional Association Agreement places much emphasis on these issues. However this objective has not been given priority in the bilateral cooperation plans that have recently been agreed.

The EU has designed ambitious technical assistance programs to enhance the development of local SME; (e.g. EBAS for ACP countries). Similarly the EU Commission is designing large and comprehensive technical assistance programs for fostering foreign investment by SME (e.g. Pro-invest for ACP countries). Mercosur countries are not entitled to participate in the above-mentioned programs, which have very large amounts of funds to be implemented.

[I47] Mercosur governments should make the necessary regulatory modifications to facilitate the creation and development of SME. Comprehensive programs to provide technical assistance, financing and training are needed. The EU Commission should accelerate its plans to provide technical assistance to Mercosur SME.

[I48] The MEBF recognizes the positive role that export and investment promotion agencies can play in enhancing trade and investment between both regions. Therefore, the MEBF urges governments to support and properly fund, when needed, their respective agencies and the EU Commission to design and implement programs to provide technical assistance to said agencies. Technical assistance programs must be designed and used in order to enhance and spread Mercosur exports, especially of SMEs, to the EU.

[I49] In order to give considerable importance in the co-operation field to SME, the MEBF urges the EU to reconsider its co-operation priorities. The EU Commission should continue the AL-Invest program and consider re-launching ECIP or a similar program avoiding past bureaucratic practices and making it an agile and efficient system to promote joint ventures between EU and Mercosur SME. Existing and new EU programs to foster SME should be opened to participation of Mercosur.

3.3.2. - Technical & educational co-operation

The EU sponsors many R&D projects carried out by member states. At the same time in Mercosur there are a considerable number of engineering, scientific personnel and institutions that have technical capacities and are willing to participate in multicountry R&D programs.

The exchange of students and professors between the EU and the Mercosur countries is not sufficient to cover the potential demand. The EU Commission has a vast number of programs to encourage said exchanges both intra-EU and for certain regions.

[I50] The MEBF welcomes the initiative of the EU to concentrate “economic co-operation” in scientific and technological development and in co-operation among SME.

[I51] The EU Commission should establish a mechanism for providing information about R&D programs to Mercosur institutions and should facilitate participation of said institutions in these programs.

[I52] The MEBF recommends that EU university exchange programs should be opened to Mercosur countries with at least the same rights as those granted to other countries with which the EU has association agreements.

3.4.- Government procurement

Government procurement is not always transparent. In many occasions foreign companies are not granted the same rights to compete because of “legal” and “de facto” local preferences.

In some countries, federal, state and local governments, as well as related agencies and government controlled companies, follow a “buy national” policy. This is a very serious factor limiting business developments of EU and Mercosur companies because of the

large size of the public sector. Non-price factors, such as local contents, are frequent in government purchases.

[I53] Government procurement should be an important part of the negotiations of the Interregional Association Agreement. The aim should be to obtain effective access to procurement markets on the basis of non-discrimination and national treatment and in accordance with WTO principles

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4.- SERVICES AND BUSINESS DEVELOPMENT

4.1.- Introduction

4.1.1.- *The importance of liberalising trade in services*

The liberalisation of trade in services between EU and Mercosur countries plays a key role in generating sustainable social and economic development models creating some important benefits for both blocks:

- A win-win situation would be generated through services liberalisation as it has been widely proved that more open economies outperform those with more restrictive policies.
- Foreign investment would be enhanced promoting overall economic efficiency and industry development.

4.1.2.- *Obstacles to trade in services*

The liberalisation of trade in services requires measures to grant foreign service providers unrestricted market access as well as non-discrimination against domestic service providers. Restrictions to trade in services are essentially due to regulatory requirements, which vary considerably between sectors.

The main obstacles that restrict trade in services are (inter alia):

- Limitation of the number of service providers (quotas, monopolies or exclusive providers)
- Local content requirements, normally through the requirement that the service is provided by residents or nationals.
- Prohibitions for foreign companies to provide services. Restrictions on the number of services provision operations or on the total value of services production (i.e. limitations on activity expansion).
- Limitations on input value for service providers.
- Limitations of foreign ownership (i.e. maximum share participation)
- Licensing and standards requirements, lack of transparent, objective and impartial mechanisms for recognising professional certifications.
- Price-based instruments, such as price controls set by governments and regulatory authorities.
- Economic necessity test based on the discretionary decision of the regulator to determine whether it is suitable that a new operator enters a certain market or

whether the services that the new operator is offering could be provided by national providers.

- Discriminatory access to interconnection/distribution, (e.g. telecommunications, energy). Access to existing distribution channels for an adequate return, is a necessary condition for service suppliers to operate. Some facilities might be provided in the line of real cost oriented basis, for guaranteeing a fair competition and development. Licences regulation should not discriminate genuine investments already done in the area.

To a certain extent, both EU and Mercosur member states maintain restrictions in some sectors on the provision of services by foreign companies.

4.1.3.- *Basis for the liberalisation of trade in services between EU and Mercosur*

- Development of transparent, non discriminatory and where possible harmonised regulatory frameworks.
- Adoption of a higher level of commitments within the GATS.

4.2.- Horizontal priority issues

The MEBF EU Working Group in Services and Business Development presents the following priority issues:

[S54] The MEBF supports the launching of the services negotiation process in the WTO and the roadmap drawn up to develop the request-offer phase in order to improve the commitments adopted by Member States.

[S55] Multilateral negotiations on services should address, together with new commitments on liberalisation of market access, the setting of trade disciplines, such as emergency safeguard measures and subsidies, that warrant the development and competition.

[S56] The MEBF supports comprehensive negotiations between the EU and Mercosur for the development of an Interregional Association Agreement. Those negotiations should not exclude a priori any services sector.

[S57] Transparent and stable regulatory frameworks to avoid uncertainty and unpredictable changes of law that deter foreign investment should be developed. Co-operation between national regulatory agencies and international organisations in regulatory and harmonisation aspects should be enhanced.

[S58] MEBF recognises the great importance of standards and conformity assessment for the services domain, in particular when an advanced level of liberalisation is reached. In this sense, MEBF refers to its recommendations as written in the Buenos Aires Statement on Business Facilitation.

[S59] Non discriminatory access for companies of one block to the market of the other block, promoting mutual benefits.

[S60] Common and market driven standards should be developed to satisfy user needs and avoid creating unwanted administrative, technical and in general non-tariff trade barriers. Co-operation between European and Mercosur standardisation organisations should be fostered with a view to strengthen the international standardisation system.

[S61] Co-operation with Multilateral Financing Institutions, such as the World Bank, the Inter-American Development Bank or the European Investment Bank, in the financing of projects for the development of infrastructures should be established.

[S62] A programme to improve business co-operation between European and Mercosur SMEs in the services field should be set up, supported by a special fund to finance high-tech and clean-tech strategic alliances at an early stage. This programme should cover joint technological research projects, the establishment of technology transfer and research and development networks and exchanges of human resources for training.

4.3.- Business development

4.3.1- *Intellectual property*

4.3.1.1.- **General issues**

Intellectual property rights is one of the crucial issues for business development within EU and Mercosur Member States. A proper balance between the EU and Mercosur interests should be achieved, considering the EU requirement of an adequate level of protection of IPRs against piracy and counterfeiting, and the Mercosur demand that technology transfer be fostered.

Full implementation of the provision of the TRIPS agreement is recognised by business communities of both blocks as the base to deal with the IPRs issue. Negotiations between the EU and Mercosur on IPRs shall be based on the level of protection provided by the TRIPS. Notwithstanding, according to the spirit of the TRIPS, considerations of the different level of development between the EU and Mercosur countries may lead to an asymmetrically timed implementation or the extension of the phasing-in periods on the Mercosur side.

[S63] With the purpose of increasing effective protection of intellectual property rights, EU and Mercosur governments should apply the provisions of the following treaties:

- The Paris Convention on the Protection of Industrial Property.
- The Berne Convention on the Protection of Literary and Artistic Works.
- The International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organisations (Convention of Rome).

- The WIPO treaties on digital business.

[S64] Co-operation mechanisms, such as a regional framework agreement on technical assistance between EU and Mercosur, to be developed on an individual basis, designed to guarantee full implementation of the TRIPS and facilitate its enforcement should be established.

Specific recommendations could be made on the issues of technology transfer and IPR protection:

4.3.1.2.- **Technology Transfer**

[S65] Technology transfer, through IPR licensing, should be promoted in an open, pro-competitive and non-discriminatory way for reasonable fees.

[S66] Incentives to enterprises and institutions should be developed to promote and encourage technology transfer in order to enable the creation of a sound and viable technological base.

4.3.1.3.- **IPR Protection**

[S67] National authorities should be granted the necessary power to fully apply existing regulations.

[S68] Effective action against piracy and counterfeiting together with effective judicial protection of intellectual property rights should be developed.

[S69] Co-operation mechanisms between EU and Mercosur countries should be established in order to make their regulations and its enforcement more in compliance with international standards.

[S70] Compensation and damages (penal and civil legislation) have to be reinforced to stimulate the non-infringement of intellectual property rights

[S71] Governmental authorities of European Union and Mercosur member States should refrain from enacting legislation that may reduce obligations already established in the TRIPS agreement.

THE SESSION CO-CHAIRMEN

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ANNEX 2: SECTORAL RECOMMENDATIONS ON INFORMATION SOCIETY/E-COMMERCE AND TELECOMMUNICATIONS

Information Society, Electronic Commerce and Telecommunications constitute the basis for building a system of deeper co-operation in the economic, social, cultural, educational and technological fields between the EU and Mercosur. Considering the key role of this sector in reaching a mutually advantageous partnership between the two blocks, we would like to present the following proposals for discussion within the MEBF.

A2.1.- Information society

There should be an international co-operation programme between the EU and Mercosur for global and balanced deployment of the Information Society. In this sense both regions could benefit from the @LIS programme (ALliance for the Information Society) that the Commission is launching to promote the development of the Information Society in the Latin American region. With an estimated budget of 85 million euros, this four year programme should be considered a first step in a sustainable effort to bridge the digital divide between Latin America and Europe. A follow-up project should be envisaged to ensure effective application of @LIS outcomes, specially the demonstration projects developed in the areas of e-government, e-inclusion, e-learning and e-health. @LIS could contribute to create the environment needed to ensure that both Mercosur and the EU share the benefits of the new economy and bridge the gap of the digital divide.

With this purpose, the following priority matters should be emphasised:

A2.1.1.- *Telecommunications*

Co-operation with International Financing Institutions, such as the Inter-American Development Bank, the World Bank or the European Investment Bank, in the financing of projects for the development of infrastructures should be established in order to promote a wider access and diffusion of the Information Society and Internet.

Co-operation between national regulatory agencies and international organisations in regulatory and harmonisation aspects should be enhanced, fostering dialogue and technical exchanges in the field of telecommunications regulation and expertise sharing on models of harmonised regional regulatory frameworks. A specific exchange programme within the Mercosur Telecommunications Regulation Authorities personnel should be developed.

A2.1.2.- *Education*

Co-operation between public and private sectors in the introduction of new information technologies in schools should be promoted, encouraging the development of content in Spanish and Portuguese.

A research network between Mercosur and EU Universities and educational centers should be established in order to foster knowledge sharing and technology transfer.

A2.1.3.- SMEs and Information Society

A programme to improve business co-operation between European and Mercosur SMEs in the field of Information Society should be set up, supported by a special fund for early stage financing of high-tech strategic alliances. The EIB through its European Investment Fund could support the establishment of this fund encouraging the development of innovative SMES co-operation projects. This programme should cover joint technological research projects and exchanges of human resources for training.

A2.1.4.- Dialogue on Information Society

The active dialogue in the field of Information Society should be continued. This can be achieved with initiatives such as the Sao Paulo Forum on Global Communications or the EU Mercosur Encounters on Telecommunications which foster co-operation between these and any new high level EU/LA fora on the subject and the MEBF.

A2.2.- Electronic Commerce

The MEBF very strongly supports the consideration of electronic commerce as a specific issue in the Mercosur/European Union negotiations. It is of the utmost importance to facilitate the growth of global e-commerce by providing an appropriate regulatory framework based in government/industry co-operation, properly co-ordinated at the international level.

The MEBF encourages Mercosur and European Union Member States to follow the recommendations on electronic commerce included in the Declaration launched after the Buenos Aires Conference held last December 2001.

Together with those e-commerce facilitation measures on fields such as consumer confidence, protection of intellectual property rights or policy co-operation, the MEBF would like to propose a set of complementary recommendations to foster the rapid growth of e-commerce in Mercosur and the EU.

A2.2.1.- Cyber Security

Growth of Internet use and consequently of electronic commerce is being threat by cyber attacks and ultimately by major acts of terrorism that have a negative impact in the functionality of the networks. Mercosur and EU Member States should foster greater private and public information sharing to effectively contribute to defend Internet users from these acts that could deter growth of on-line activity and damage e-commerce development.

In order to secure the normal functioning of the Internet and given the possibility of a terrorist attack targeting the physical Internet assets (backbone nodes and routers), Mercosur and EU Member States should consider the creation of new routers and nodes

in the Mercosur area that would help to ensure the normal functioning of the Internet traffic.

A2.2.2.- E-government

Governments can contribute to promote e-commerce growth by digitizing their internal and external operations. On the one hand Government to Business transactions would be fostered if an on-line public procurement/purchasing process is established. On the other hand, easy access to regulatory/legal measures affecting private companies would foster transparency and contribute to create the proper environment to attract IT investors. Finally, collection of taxes, duties and tariffs on-line would be facilitated, allowing companies to reduce costs when complying with this obligation.

Mercosur and EU Member States should co-operate with industry when developing e-Government projects to consider private needs and expertise and obtain the most efficient digital environment. e-Government projects should cover the whole range of services in central and local administrations, simplifying and harmonising procedures to avoid duplication, frequently found in the public sector. Methods and specifications used in transactions and procedures should meet a certain international standard.

A2.2.3.- m-commerce

In the general context of the predictions for the impressive development of electronic commerce in the near future, m-commerce is increasingly gaining consideration as the modality with the highest growth perspectives. Rates of mobile penetration and possibilities for wireless Internet based on continuous technological innovation are among the major arguments in favour of such expectations. EU and Mercosur Member States have the chance of cooperating in international mobile standardisation to develop the next generation mobile multimedia system that will provide their mobile users unparalleled possibilities for seamless access to new and innovative mobile services such as m-commerce.

EU and Mercosur Member States should support and foster industry-led initiatives oriented towards the development of mobile phone payment systems including issues such as liability, refunds pre-payments, consumer information and authentication and security.

A2.3.- Telecommunications

A2.3.1.- The nature of standardisation

Standardisation started out as voluntary agreements between manufacturers to limit the number of variants. This made it possible to combine products from several manufacturers and make longer production series possible, increasing the options and decreasing prices for the consumers. In order to reap such benefits standards must be open so that all interested parties can use the standards. This means not only that all IPR necessary for the standard is licensed in an open and non-discriminatory manner, but also that the licence fees are reasonable.

Even if standards decrease the number of variants this does not have to mean any reduction of competition. Standardisation will redirect competition from technical variants to services, price and performance.

European industry believes that telecom standardisation should be *open* so that all interested parties can participate in the development of the standards.

A2.3.2.- Standards must be market driven

The number of standards should be decided by the market actors, actively involved in the standardisation process, and not be prescribed in any government regulation. European industry believes that telecom standardisation should be *market driven* and satisfy user needs.

A2.3.3.- Harmonised standards benefit the end user

Roaming is one of the functions of a mobile telephone system that is most highly appreciated by users , (i.e. the possibility to use the same terminal in different countries or networks.) Standardisation makes this possible.

High manufacturing volume made possible by harmonised standards allows for an increased use of integrated application-specific electronic circuits and makes low prices possible, even for very complicated equipment. Complex terminals can be made smaller and use less energy.

European industry believes that *harmonised*, open and market driven telecom standards, including for APIs, give the end user the best combination of a large service offering, low prices and versatile terminals.

A2.3.4.- Use internationally accepted standards

The benefits of common standards are increased if internationally accepted and implemented standards are used. Operators should have the possibility to implement internationally accepted standards.

A2.3.5.- Availability of frequency spectrum for new generation mobile systems

The new generation mobile multimedia systems will supply the end user with a lot of new services ranging from slow data to high-speed multimedia. Additionally, they will offer higher spectrum efficiency for second generation services like voice telephony. Sufficient bandwidth needs to be made available for new generation mobile systems in order to ensure its viability.

A2.3.6.- Global Circulation of Mobile Terminals

A key element in the success of the coming mobile systems will be the ability for users to carry terminal equipment with them anywhere in the world without any hindrance or obstacles and use the terminals when transmission is authorised (global circulation). This will give advantages for operators and manufacturers in terms of the

global market generated, and for national administrations, since it will allow the national economies to reap the full benefits of new generation systems and allow the mobile multimedia sector to become an important part of the national market.

A2.3.7.- Strengthening co-operation on an institutional level

Strengthening co-operation on an institutional level, particularly with regard to certain technologies, is broadening the choice of internationally accepted standards for Latin America.

A co-operation agreement was signed in July 2001 between ETSI and CITELE. It covers the whole CITELE and not only Mercosur. Through this agreement Latin American organisations and companies can actively participate in and contribute to the work in ETSI.

A2.3.8.- The role of international financing institutes

The engagement of international financing institutes e.g. IDB, EIB, WB etc. to help finance joint EU/LA projects or minimise the risk for high investments of Latin American operators should be considered.