

MERCOSUR: History and aims

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On 26 March 1991 the Presidents of Argentina, Brazil, Paraguay and Uruguay met in Asunción and launched the negotiations which are expected to result in the establishment of the Common Market of the Southern Cone (MERCOSUR). Agreements to be reached in the near future will complement decisions that have already been taken and bring about a wider market as from 1 January 1995. MERCOSUR represents a historic opportunity for the Atlantic-rim countries of South America to pool and harness their vast potential for the greater prosperity of their inhabitants. These four nations have understood that a joining of forces and the synergy resulting from the ensuing union will give greater impetus to their economic development.

The Treaty of Asunción aims at establishing a single market among the four republics, based on the free movement of goods, services and factors of production; the establishment of a common external tariff and trade policy; the coordination of macro-economic and sectoral policies; and the harmonization of their respective legislations in order to strengthen the process of integration. The Treaty also calls for the gradual reduction of tariffs over eight consecutive six-month periods, with a view to eliminating all tariffs and non-tariff restrictions to internal trade by 31 December 1994.

From the outset, the Treaty was seen as a means for initiating a process of economic integration, rather than as a constitutional instrument for the common market. This is why it does not contain social clauses, or provisions for social integration. This omission has since been remedied through the establishment of a negotiating body for social and labour issues, as we shall see below. Another reason for the absence of a social chapter in this document is the fact that it grew out of a set of bilateral commercial agreements between Argentina and Brazil. First Uruguay, and then Paraguay, joined this process, leading to the signing of the Treaty in the latter's capital city.

Most observers consider that negotiations are progressing reasonably well and that deadlines are being met, although there have been difficulties,

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as is to be expected in any process of integration. Several of these difficulties have already been resolved.

The process is taking place against the general backdrop of economic liberalization, as evidenced by the fact that the signatory governments informed the GATT in April 1992 of their intention to keep their common external tariff below 35 per cent, contingent upon a successful conclusion of the Uruguay Round. They are now considering the possibility of reducing this tariff as from 1 January 1995.¹

For at least three years now, the entire region's political climate has been clearly marked by a trend towards integration. The four countries have chosen similar paths; to one extent or another all have espoused economic liberalization, the strengthening of democratization, the guarantee of trade union freedoms, and the retrenchment of the State.

The purpose of this article is to report on the social and labour aspects of this process of economic integration, through a prospective analysis focusing on a legal view of the world of work. We shall begin with a brief history and overview of the present situation in the Southern Cone, before discussing the internal organization of MERCOSUR and the major social and labour issues now under debate: the adoption of common standards (a charter of fundamental rights, freedom of movement, social security, etc.), employment problems, conditions of work, and the prospects for collective bargaining at community level.

The region: Its history and present situation

The four countries have an aggregate population of 200 million and a surface area of 11 million square kilometres. Although people of European extraction predominate, the societies of these countries are multiracial, given the Japanese and Korean immigrants in some areas of Brazil and Paraguay, and the people of African origin; in addition, the indigenous pre-Columbian population is still found in some areas. The territory of MERCOSUR spans vast regions with immense natural resources and great agricultural, livestock and forestry potential, together with a booming tourism sector and several vigorous industries. The great inland rivers are tributaries to the River Plate, along Uruguay's southern border; in geopolitical terms, this zone has always been the site of active trade.

The countries of the Southern Cone stand in contrast to other Latin American countries, in the sense that the early European colonizers did not find major pre-Columbian civilizations in this area. Other characteristic features result from shared ideas and interests, the great similarity between the Spanish and Portuguese languages, common religious roots, and the attachment to democratic traditions. While there are slight differences in the

¹ *Búsqueda*, Montevideo (Uruguay), No. 636, 30 Apr. 1992, p. 27.

various parts of the area, essentially the population of MERCOSUR is more homogeneous and definable than that of other areas engaged in a process of integration. Successive waves of immigrants have left their mark through their labour, and proved that rewards await those who put forth the effort. In a matter of a few short decades, immigrants were able to find avenues to wealth for themselves and their families, while at the same time they contributed to the prosperity of society as a whole.

The current situation is promising. Economic observers see a range of new possibilities for Latin America. Foreign capital investment in the area has been increasing in recent years and is expected to continue to grow. Prospects are also good for the enterprises which are doing well in the new international context; although the prices of raw materials and some obstacles to world trade are not favourable factors, the Latin American economies seem to have entered a new era, driven by efforts to transform and modernize the State.

At present, much progress has been made towards integration. Bilateral projects carried out in the past 20 years have laid the foundation for the current process. For example, bridges and hydroelectric dams have been built on border rivers in Uruguay and Paraná (Argentina). Other major projects now under way include the motorway which will link São Paulo (Brazil) and Buenos Aires (Argentina), passing through Uruguay. The construction of a major waterway network to provide access to the interior, using existing riverbeds, is planned.

All these projects will spur regional commerce, which has been growing rapidly in recent years.² To a great extent, a common market among these four countries already exists, given the production links of certain sectors, the various bilateral agreements, and their geographic proximity.³ The signatory States have understood that the enlargement of their internal market can have an enormous impact, and have recognized the need to capitalize on the synergistic effect of their union to compete in the international market-place.

MERCOSUR's negotiating structure

The Treaty, as has been pointed out, provides a means for negotiating the definitive features of a single market. Unlike the Treaty of Rome, which

² Brazil is Argentina's major trading partner. In 1992 its exports to Argentina amounted to US\$3,350 million, while its imports from Argentina amounted to some US\$1,590 million. This situation with the other States Parties is similar. In 1992 Brazilian exports to Uruguay totalled US\$517 million, while its imports from that country amounted to US\$343 million.

³ An excellent collection of information on these four countries may be found in the following work, published in Spanish and Portuguese: Fundação Instituto Brasileiro de Geografia e Estatística et al.: *MERCOSUR, Sinopse estatística. MERCOSUR, Sinopsis estadística*, Vol. 1 (Rio de Janeiro, IBGE, 1993).

set in motion the development of the European Economic Community (EEC), by defining its ultimate targets, the Treaty of Asunción takes a practical approach by establishing a series of basic ideas and objectives, and setting up several "subgroups" responsible for shaping the definitive agreements.

The highest decision-making body is the Council of the Common Market (CMC), composed of the Presidents of the four countries; their first meeting was held in Brasilia in December 1991. The Council adopts decisions. Next in the hierarchy is the Common Market Group (GMC), which approves resolutions and oversees the work of subgroups (SGT).

The Treaty initially established ten subgroups to deal with the following issues: trade, customs, technical standards, fiscal and monetary questions, transport, industry, agriculture, energy and macro-economic coordination. The subgroups are authorized to issue recommendations.

The standing orders of the Common Market Group were approved at the above-mentioned meeting of the Council. The most important of the 16 decisions adopted at that meeting was probably the one known as the Brasilia Protocol, or the "System for the settlement of controversies", which has now been ratified by the respective national parliaments and will apply to any differences which arise between the States Parties as regards the interpretation, application or non-compliance with the Treaty and subsequent decisions and resolutions. Chapter V of the Protocol includes a procedure for dealing with claims submitted by individuals with respect to sanctions or the application, by any State Party, of restrictive, discriminatory or unfair legal or administrative measures which violate the Treaty or the principles formulated by its various bodies.

The States Parties to the Treaty consciously sought to avoid burdening the new market with an excessive bureaucracy. Montevideo, the capital of Uruguay, is home to a small administrative secretariat which, for the time being, is responsible only for documentation and administrative support, not for technical support. There is no supranational structure along the lines of that of the EEC, and national administrations are therefore responsible for the coordination and preparation of negotiations. While this may be an advantage at this point, sooner or later it will prove to be a limitation.

In the meantime, steps are being taken to prepare for joint action at international level. The first of these was the "Rose Garden Treaty" with the United States, so called because of the place in Washington where it was signed on 19 June 1991 by the four republics of MERCOSUR and the Government of the United States. The Treaty calls for a "Trade and Investment Council" to be set up by the five Governments, responsible for gradually liberalizing markets between the signatory States, promoting trade and investments, and eliminating obstacles in these areas. Joint talks have also been held with the States parties to the North American Free Trade Agreement (Canada, Mexico and the United States).

Building up social provisions within MERCOSUR

The social partners in each country have reacted rapidly to the creation of MERCOSUR. Employers have been strong advocates of the process, and its social and labour aspects have figured prominently in the general debate.

The trade unions have been fairly supportive of the initiative. Attitudes range from enthusiastic participation to efforts to influence the process from within, by those who consider it inevitable. The various trade union confederations have already held several meetings to coordinate joint action. This favourable view of economic integration has been made possible by new attitudes within trade union circles, which reflect greater pragmatism and a greater willingness to negotiate.

The social partners all believe that the process of economic integration is in the interest of all parties, and in this respect it can be asserted that MERCOSUR will strengthen national unity.

In the first preambular paragraph of the Treaty, the States Parties declare that "the expansion of their domestic markets, through integration, is a vital requirement for accelerating their processes of economic development with social justice". Thanks to the interpretative function of the preambles of international treaties, it is clear that the aim is the acceleration of economic development, but not regardless of the process: social justice must also be ensured.⁴ The States Parties promptly ratified this objective at a meeting of Ministers of Labour held two months after the signing of the Treaty, concurrently with the first meeting of the four Presidents.

The Ministers of Labour, meeting on 8 May 1991 in Montevideo, signed a highly significant Declaration⁵ which emphasized the need for the process of integration to be accompanied by a real improvement and greater equality in the conditions of work between the participating countries. At the same time, they noted the possibility of signing a social instrument within the framework of the Treaty, and called for the creation of bodies responsible for social and labour issues.

⁴ This was highlighted by Héctor Gross Espiell, Chairman of the ILO Governing Body in 1970-71, who participated actively in the drafting of the Treaty in his capacity as Uruguayan Chancellor, in his remarks of 14 March 1991 to the Institute for Entrepreneurial Studies of Montevideo (IEEM).

⁵ The Ministers of Labour of Argentina, Brazil, Paraguay and Uruguay meeting in the city of Montevideo on 9 May 1991 agree to the following DECLARATION:

I. The Treaty of Asunción opens the door to significant progress for their respective countries and a successful result should therefore be sought in the current negotiations.

II. All social aspects of MERCOSUR need to be attended to and the various representatives should be helped in their tasks to ensure that the process of integration is accompanied by real improvement and relative equality in conditions of work in the countries signing the Treaty.

III. The establishment of subgroups whose task will be to further the study the various relevant issues.

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The Presidents of the four countries welcomed this proposal, and during the above-mentioned meeting in Brasilia in December 1991, the Common Market Group decided to set up a new subgroup, known as Subgroup 11. The corresponding resolution (11/91) is based on Article 13 of the Treaty of Asunción, which provides that the Common Market Group has the authority to set up whatever working groups are needed for it to perform its duties.

A tripartite body

The Labour Relations, Employment and Social Security Subgroup held its first meeting on 27 March 1992. From the outset, it invited the social partners from the various countries to participate in its work. This was possible because the standing orders of the Common Market Group envisage the participation of the private sector in the various subgroups, and the representatives of the private sector therefore attend the preparatory meetings of the various subgroups. In the specific case of Subgroup 11, the "private sector" is understood to refer to the representatives of both workers and employers; the Subgroup's decisions, however, are taken only by the representatives of the four member States.

Thus, representatives of the trade union confederations and employers' organizations attended the second meeting of Subgroup 11. The social partners do not participate as they do within the ILO – where they have the right to vote; in the context of MERCOSUR, their participation is more like that of workers' organizations in the EEC, where they express their opinions through the reports of the Economic and Social Council. The delegations are, however, appointed according to the same criteria as those applying to the delegations of member States attending the International Labour Conference.

At its second meeting, the Subgroup set up eight subcommittees, all of which are now active. They are responsible for: individual labour relations; collective labour relations; employment and migration for employment; vocational training; occupational safety and health; social security; specific sectors; and international principles and Conventions.

Tripartite representation in the preparatory stages leads to a simultaneous comparison of national positions with the different

Conclusion of footnote 5

IV. Envisage agreement on an instrument within the framework of the Treaty of Asunción to deal with the social questions which will inevitably arise from the implementation of the Common Market of the Southern Cone.

V. The countries involved will provide all the necessary cooperation for mutual information of their respective schemes covering employment, social security, vocational training, industrial relations and individual work relations.

VI. Follow-up to the agreements through other meetings similar to that held in this city of Montevideo on 8 and 9 May 1991 in which the authorities charged with social and labour matters participated. (Unofficial translation.)

perspectives of the various social partners.⁶ Three stages are involved in MERCOSUR's agenda for social questions: a diagnosis of the current situation,⁷ the design of policies and, lastly, the formulation of standards. The various activities carried out by Subgroup 11 fall under one of these three headings.

Subgroup 11 has already held nine meetings, most recently (at the time of writing) on 15 and 16 September 1993, in Montevideo. The eight subcommittees generally meet one week prior to the Subgroup to prepare their respective contributions. To date progress has been made, especially in areas such as the comparison of labour costs and in establishing common guaranteed minimum social provisions. The subgroup counts on great cooperation from the ILO's various technical departments.⁸ In the immediate future it is planned to study the question of migration.

Towards a set of common standards

MERCOSUR's labour law framework has begun to take shape. The establishment of a common labour market is a corollary to the integration of other productive factors. One major consideration is to ensure compatibility between social development and the establishment of a single market for human resources. The legal framework will be shaped primarily by community standards adopted by the relevant authorities.⁹

What should be the aim of such supranational standards? Most importantly, perhaps, they should ensure a common denominator as regards

⁶ For example, at the second meeting of Subgroup 11, Uruguay submitted a proposal which had previously been negotiated between the three parties composing its delegation. The Brazilian delegation proposed the creation of seven subcommittees, following the classical breakdown in the field. Subsequently, both proposals were merged and eight subcommittees were established; four of these took up their work immediately, focusing on the priorities established in the Uruguayan proposal.

⁷ These diagnoses involve not only a comparison of national legislations, but also a comparison of national realities. This means, for example, taking into account the efficiency of the respective labour inspection services, their capacity to cover the entire national territory, and to apply effective sanctions; furthermore, it presupposes some knowledge of the collective bargaining agendas.

⁸ The ILO's Office in Buenos Aires, CINTERFOR and various officials in the ILO's Regional Office for Latin America and the Caribbean have been involved in the Subgroup's work. Of particular interest is the report prepared by RELASUR (Relaciones Laborales en América Latina – Cono Sur): "Integración económica y relaciones laborales", in *Revista de RELASUR* (Montevideo), 1993, No. 1, p. 90.

⁹ See Santiago Pérez del Castillo: "Las posibilidades del MERCOSUR y nuestro desarrollo social", in *Revista Jurídica del Centro de Estudiantes de Derecho* (Montevideo), Vol. II, No. 5, 1991. See also: María Carmen Ferreira y Julio Ramos: *MERCOSUR, enfoque laboral* (Montevideo, Fundación de Cultura Universitaria, 1991).

essential rights¹⁰ as part of the instrument on basic rights mentioned in Part IV of the Declaration of Ministers of Labour. Some topics go beyond the scope of national competence, such as the principle of equality of rights between men and women, the rules on occupational safety and health,¹¹ and, of course, all matters concerning basic human and trade union rights.

Conventions and a charter of fundamental rights

The "core" of international standards is composed of the 14 ILO Conventions on basic human and social rights; they deal, essentially, with freedom of association, collective bargaining, protection against discrimination and protection against forced labour. Argentina and Uruguay have ratified ten of these Conventions, while Brazil and Paraguay have ratified seven. Six of these 14 Conventions already provide the basis for a common denominator, since they have been ratified by all four countries (namely, the Right of Association (Agriculture) Convention, 1921 (No. 11), the Forced Labour Convention, 1930 (No. 29), the Right to Organize and Collective Bargaining Convention, 1949 (No. 98), the Equal Remuneration Convention, 1951 (No. 100), the Abolition of Forced Labour Convention, 1957 (No. 105), and the Discrimination (Employment and Occupation) Convention, 1958 (No. 111)). Furthermore, Subgroup 11 has already approved and submitted a recommendation to the Common Market Group, calling on the four States Parties to ratify 33 specific ILO Conventions, including all basic Conventions, except for the Right of Association (Non-Metropolitan Territories) Convention, 1947 (No. 84), which is not applicable to the region.¹²

In addition to preparing this list, the International Principles and Conventions Subcommittee, which is one of the most dynamic sub-

¹⁰ How does one establish a common denominator? One way is to stipulate it in the charter document of the market, as was done in the case of the EEC. A second way is to approve an additional protocol. A third way is to adopt a charter of fundamental rights, as has been done in the European Union. Concerning the first of these alternatives, see Hector Bartolomei de la Cruz: "La carta social europea y la Organización Internacional del Trabajo: 25 años de colaboración ejemplar", in *Derecho Laboral* (Montevideo), Jan.-Mar. 1989, Vol. XXXII, No. 153, p. 36. Lastly, a minimum level of protection may be obtained by establishing a list of international labour Conventions which must be ratified by all member States of the Community.

¹¹ For example, there is no reason to lower standards as regards the protection of the conditions of work and the working environment. After all, what is at stake is a basic human value, life itself, and although it may be argued that other international Conventions are antiquated or rigid, and may even hinder development, this is not the case as regards international Conventions in this area. This issue is dealt with sparingly in collective agreements, as paradoxical as this may seem when one considers that the issue is directly linked to the adhesion and conscience of those most interested in compliance with the standards. Indeed, there is wide recognition of the importance of consensus and understanding on both sides regarding compliance with the rules; not only does this make economic sense, but it is fair, logical and prudent.

¹² Uruguay has ratified 97 ILO Conventions; Brazil, 73; Argentina, 67; and Paraguay, 35.

committees of Subgroup 11, has proposed to draft the above-mentioned Social Charter. The merits of drafting and approving a fundamental charter of labour rights and guarantees were recognized from the beginning, and the corresponding work is already under way. The trade union confederations have virtually completed their draft Charter of Basic Rights, and (at the time of writing) will submit it to the meeting of Subgroup 11 to be held in Buenos Aires from 6 to 10 December 1993.¹³ It remains to be seen whether there will be tripartite agreement on promulgating such a binding standard.

The harmonization of standards

Apart from basic rights, certain subjects inevitably require community-level regulation. For example, regulations are needed as regards internal migration, specifically in connection with the equivalence of occupational skills and the coordination of social security systems, for the purpose of ensuring the recognition of qualifying periods and paid-in contributions in the determination of entitlements.

A strategy is needed to harmonize national legislations. It is not a question of formulating a supranational community law which would replace national legislations, but of bringing national legislations closer together. The cooperation and assistance protocol, adopted in Las Leñas (Argentina), in June 1992, calls for the harmonization of their legislations.¹⁴ It does not, therefore, imply a unification of legislations.¹⁵ In the case of the EEC, Article 117 of the Treaty of Rome calls for the improvement of conditions of life and work through harmonization. Article 3 of the same Treaty refers to the approximation of legal, regulatory and administrative provisions (not only in the social sphere) as required for the proper functioning of the common market.

In addition to the definition of common regulations, each of the States Parties will have to formulate its own internal regulations with a view to meeting the challenge of the new situation and giving effect to the decisions adopted by community authorities. In other areas, however, distinctions may

¹³ The region's trade union confederations, meeting from 20 to 22 October 1993 in Buenos Aires, adopted a resolution requesting the Governments of MERCOSUR countries to support the formulation of this Charter, with technical assistance from the ILO, to apply the agreed Conventions, to allocate resources to monitor the social repercussions of the process of integration, and to promote tripartite collaboration. The meeting was attended by the seven most representative trade union confederations (CGT, CUT and Força Sindical from Brazil; CGT from Argentina; CUT from Chile, CUT from Paraguay, and PIT-CNT from Uruguay).

¹⁴ The harmonization of legislations would aim at eliminating the least acceptable differences, rather than establishing a common legislation; it would seek also to formulate standards to reduce "regulatory competition" in certain fields. It should be added that this Protocol does not have any specific social provisions; basically, it establishes time frames for the activities of the various subgroups.

¹⁵ The unification of social legislation, it seems, is neither easy nor advisable, given the differences in the systems of industrial relations of the various countries concerned.

remain; such a situation would be analogous to that which exists in federal States, each with its own labour laws.

It should also be recalled that standards are sometimes developed directly by the social partners in the framework of collective bargaining agreements. Will a unified system of industrial relations someday evolve for the MERCOSUR countries? This is the logical outcome if the proposed objectives are pursued and a single market is ultimately created; sooner or later, collective bargaining will have a community-wide scope. The matter has, in fact, already come up in meetings involving the various national trade union confederations organized in a similar way to those of the Workers' group at ILO meetings.

Freedom of movement

A common market implies the free movement of labour and capital within that market. The member States of MERCOSUR will have to accept the establishment of integrated labour markets, and look for ways to profit from this aspect as well.

Migration within the community will merely be an extension of ongoing population movements. It stands to reason that integrationist measures will give further impetus to the trends of recent years. Although the ultimate outcome will depend on the standards which are eventually adopted, it is unlikely that the recognition of the right to free movement will bring about fundamental changes in these trends.

The enormous influx of immigrants to the region which began in 1850 (German, Polish, Italian, Spanish, Japanese, etc.), dropped off significantly around 1930 owing to changes in the situation of the various countries of origin, and also, though to a lesser extent, because the internal legislations of Latin American countries were tightened. During this second major stage, some discrimination occurred as regards the origin of immigrants; European immigrants were preferred, but they ceased to arrive in the same large numbers, while the migratory flows of mostly poor and almost invariably unskilled Latin Americans from border areas continued unabated.

The risk inherent in the creation of MERCOSUR is the movement of workers who are simply looking for better conditions of life, paralleling the traditional rural-to-urban internal migration patterns. Although the region's regulations in this field cannot be described as permissive, reality has far outstripped legal restrictions. In Argentina, for example, amnesties have frequently been granted (once per decade, on average) in order to resolve the problem of foreigners without papers.¹⁶

Questions of population movements and the utilization of non-local labour have created great difficulties in other contexts; therefore, care must

¹⁶ The current Act is No. 22,439 of 1981, and its accompanying regulations of 1987.

be exercised in this area, and the free movement of persons must be established gradually. It should be preceded by studies on the current legislation of member States, on the history of that legislation, and on the migration phenomenon itself.¹⁷ It will then be necessary to analyse the possible impact of free movement within the community and to formulate a timetable and regulations for its implementation.

The guarantee of the right of free movement should perhaps be accompanied by safeguards similar to those established in the European Community, and based on a gradual implementation of this right. One possibility would be to begin by giving priority to the national employment market, which would give way to other community workers only when the position in question is not filled by a citizen of the country concerned within a predefined number of weeks. At a later stage it might be possible to eliminate the waiting period, and simply to establish provision for cases in which there is a surplus of national manpower in the geographical area or sector of activity concerned. The third and final stage would be full freedom of movement.¹⁸

It would also seem reasonable to require an employment contract as a precondition for relocation within the community. In other words, the right to movement should be subject to a real need for the worker in question.

The freedom of movement of workers and their families should be accompanied by provisions which ensure that they enjoy the same rights as the citizens of the host country. In addition, it should be accompanied by two other aspects unrelated to wage employment: first, the right to set up and undertake an occupational activity in any of the four member States – in other words, the possibility of setting up a business or going into self-employment in any of the countries of the community, as is the case in the EEC;¹⁹ secondly, the freedom to render services to individuals or enterprises domiciled in another member State.²⁰

Lastly, there is the matter of recognizing occupational certificates and skills. This represents a milestone on the road towards genuine freedom of movement within the single market. It will require a high degree of mutual confidence between the member States and comparability between levels of

¹⁷ The Fundación Mediterránea IEERAL has published a documented study by Silvia Montoya and Alejandro Torres: "Integración de los mercados laborales de Argentina y Brasil. Descripción de la estructura productiva, demográfica y social y de los movimientos migratorios internos e internacionales de Argentina y Brasil", in *El Mercado Común del Sur* (Buenos Aires, Centre for International Economics, Ministry of Foreign Relations and Culture, 1992). Other references include César Aguilar et al.: *Uruguayos en Argentina y Brasil: Movimientos de población entre los países del Plata* (Montevideo, International Organization for Migrations (IOM) and CEPAL, 1991); and several documents on Argentina, Paraguay and Uruguay in the series Gino D. Romagnoli (ed.): *Aspectos jurídicos e institucionales de las Migraciones* (Geneva, IOM, 1991).

¹⁸ There would logically be a need for a common policy on migration from third countries to the Community.

¹⁹ Treaty of Rome, Arts. 52-58.

²⁰ Treaty of Rome, Arts. 59-66.

training. Two of the various alternatives deserve special mention: the reciprocal recognition of certificates and degrees, with certain safeguard clauses; and the prior harmonization of training programmes and curricula. The first alternative would seem to be more practical.

Social security

Other regulations which must be harmonized at the community level include those concerning social security; these regulations should be based on common criteria (equality of treatment, administrative cooperation, and others) which ensure that entitlement will not be affected by changes in residence. Thus, residence requirements will not affect entitlement or the receipt of benefit; it will also be necessary to eliminate discrimination based on nationality.

The new regulations may be based on certain ILO international labour Conventions, and especially on the Ibero-American social security convention (a framework agreement signed in January 1978 which includes the above-mentioned criteria) and the bilateral agreements in this field (Uruguay has signed such agreements with the three other countries).²¹

Employment and working conditions

The level of employment may be affected by the immigration of workers from other countries who compete with the local labour force; by the closing of enterprises; by the shift of investment towards other locations in search of lower labour costs and, especially, lower social costs. Since MERCOSUR does not have a community fund to deal with these contingencies, the member States will have to endeavour to counter these negative consequences.²²

The safeguard clauses contained in Annex IV of the Treaty of Asunción refer in passing to this question. If imports of a given product have serious repercussions on a country's market, the importing country may request the Common Market Group to hold consultations with a view to finding a remedy to the problem. The existence of serious repercussions shall be determined by reference to several variables, including employment levels. This provision does not seek to protect employment in general. Employment is merely one of a number of factors to be considered in determining whether to adopt restrictive measures against the importation of a specific

²¹ See Juan Dieste's contribution in Américo Plá Rodríguez et al.: *La seguridad social en el Uruguay* (Montevideo, Fundación de Cultura Universitaria, 1991, 2nd edition), p. 457.

²² Uruguay has been overhauling its productive apparatus and experiencing a fall in the rate of unemployment. Consequently, developments which have caused job losses have been compensated by the appearance of new activities and the growth of pre-existing activities.

product. These measures are not to be confused with employment policy instruments at national level.

It will be necessary to analyse the effects of the common market on the various sectors of activity, and even on specific enterprises.²³ Several studies carried out in Uruguay indicate that a significant number of exporting sectors will survive and thrive in the new context, thanks in part to the fact that these sectors are already facing the stiffer competition of international markets.

In addition, an Act of 16 October 1992 created the National Employment Board in Uruguay, which should prove to be an ideal instrument for guiding and coordinating several existing elements, such as the Vocational Training Council, the current legal scheme for unemployment subsidies, and the Ministry of Labour's employment orientation projects. Some sectors have recently been calling for a more modern regulation of fixed-term employment contracts (this is not a flexibility issue).

Provision will have to be made for retraining and further assistance to unemployed workers through an active social policy.²⁴ In this sense, an essential role shall fall to a Labour Market Observation Centre, which shall undertake studies of the situation in each sector of activity and recommend the dynamic application of corrective measures. The Centre shall also serve to keep the public informed of ongoing trends, and to encourage employers to continue steering production towards more competitive sectors.

The basic principle is that the citizens of the four countries will have the right to work anywhere within the community, and employers will have the right to employ whomsoever they wish, provided they respect local standards and regulations. The corollary is that such standards should be consistent from one place to another, so as to prevent unfair asymmetries or market distortions.

Community-level collective bargaining

The negotiation of conditions of work at regional level may prove an effective way of overcoming the above-mentioned difficulties. However, a

²³ As regards the Uruguayan case, see Isaac Alfie: "El mercado laboral uruguayo y la integración regional", in *Estudios*, (Cordoba, Argentina), No. 59, July-Sep. 1991, p. 105; Carlos Pérez del Castillo: *Situación y perspectiva del sector exportador uruguayo* (Montevideo, CEPAL, 1992), a report prepared on the basis of a survey of exporters analysing the likely behaviour of the corresponding sectors in a regional common market; Luis Porto: *El MERCOSUR y la industria* (Montevideo, CEALS (Centre for Labour and Social Studies), 1991); and, Planning and Policy Office, Ministry of Agriculture and Fishing: *Resultados preliminares del trabajo de competitividad del sector agropecuario en el MERCOSUR* (Montevideo, 1991), mimeo.

²⁴ The importance of vocational training in this context is obvious, as evidenced by the case of Portugal, where the enormous need for vocational retraining was widely recognized when the country was admitted to the EEC. The corresponding subcommittee of Subgroup 11 has made considerable progress in this connection, thanks to the vitality of the corresponding institutions in Brazil and Argentina, and the assistance provided by the Inter-American Research and Documentation Centre on Vocational Training (CINTERFOR) in Montevideo.

collective agreement at community level should not seek to eliminate all differences in conditions of work from one place to another. If it is true at national level that wage levels prevailing in one part of the country may not be appropriate in another, that is all the more reason for allowing regional variations within the community.

Consequently, any collective bargaining between associations of trade unions and employers in MERCOSUR should be welcomed, provided it does not lead to rigidities in the labour market. This could be avoided with a proper articulation at different levels. Recent experience suggests that in many cases enterprise-level bargaining is to be preferred to branch-level bargaining; this can be extended to geographic differentiation. Thus, collective bargaining should take place at different levels and within different areas.

Collective bargaining at the community level is very interesting from a legal point of view. It seems to resolve two problems at once, by providing tailor-made solutions for each sector, and by eliminating unwanted differences and asymmetries. Collective agreements have always served to establish a floor, but they also help to establish a common standard. The same can happen at the level of MERCOSUR.²⁵

The problem of wage differentials between one location and another may perhaps be overcome by the above-mentioned approach. Wage differentials within a tolerable margin may be justified in any market, provided they do not represent instances of "social dumping". At any rate, the question of wage differentials is one of the major issues assigned by the Common Market Group to Subgroup 11.²⁶

Conclusions

The social impact of the expansion of the market goes beyond industrial relations: it affects basic perceptions in the region and may modify occupational behaviour and attitudes as regards the quality and type of work. Thus, such a change will undoubtedly have major repercussions.

MERCOSUR presents the social partners with a qualitative challenge – the challenge of overcoming a mentality of excessive reliance on state protection, which stifles initiative and entrepreneurship by confusing solidarity with immobility and fostering an excessive attachment to equality, to the comfort of not striving and of merely average achievement.

²⁵ Bargaining at community level has been criticized by Osvaldo Giordano and Silvia Montoya: "La integración y los mercados laborales: El caso argentino", in *Estudios* (Córdoba, Argentina, July-Sep. 1991). They argue that it can put sectors whose productivity and labour costs are not competitive at a disadvantage with respect to foreign producers.

²⁶ A preliminary comparison of direct labour costs in the member States has already been undertaken by the Argentine economic research institute FIEL: Juan Luis Bour (ed.): *Costos laborales en el MERCOSUR* (Buenos Aires, FIEL, 1993).

Developing countries, however, need exactly the opposite. They need to raise the esteem in which workers are held, and attach a higher value to the fruits of their labour.

MERCOSUR aims at releasing society's creative energies. It is one further step in the search not for material well-being, but towards what we might term an integral well-being arising from a social organization based on charity and tolerance, underpinned by the Christian values on which these countries were founded.

The challenge lies in opening the door to material progress through economic freedom, without overlooking social justice and the needs and contribution of production factors. To paraphrase Michel Cicurel, this is an excellent starting-point for empowering individuals, for rehabilitating private initiative and risk-taking, and for revaluing our most important resource – brain power and know-how.

The times call for facing the serious challenge of poverty through the promotion and growth of investment, with the full participation of society as a whole.

Until now, MERCOSUR has prompted intense political activity and boosted trade. Its final result will depend on the successful resolution of the differences which will naturally arise between the States Parties, and the steadfast pursuit of MERCOSUR's ambitious objectives.