

## ***INSTITUTIONS AND REGIONAL INTEGRATION: THE CASE OF MERCOSUR<sup>?</sup>***

***Roberto Bouzas and Hernán Soltz<sup>?</sup>***

The Common Market of the South (MERCOSUR) was created by a brief framework treaty signed in March 1991 that fits in twenty-five pages (the Treaty of Asunción, ToA). In just two dozen articles it stated objectives, principles and instruments; created governing organs; established the duration of the pact and defined adhesion and repudiation procedures. The treaty had five annexes establishing: a) an automatic and across-the-board trade liberalisation program, b) a general regime of rules of origin, c) procedures for intra-regional safeguards, d) a target date to enforce a dispute settlement mechanism, and e) ten working groups to advance the co-ordination of macroeconomic and sectoral policies. The matters ruled by these annexes would be in force during a “transition period” scheduled to conclude in December 31, 1994. Before the end of the “transition period” member states should agree on a permanent institutional structure, decision-making procedures and specific responsibilities for each organ.

In December 17, 1994 member countries signed the Additional Protocol on the Institutional Structure of MERCOSUR (the so-called Ouro Preto Protocol -OPP). The OPP, also a short document including 53 articles and one annex, introduced modest organisational innovations: it created new organs and allocated more detailed responsibilities, gave MERCOSUR international legal personality and set a mechanism to take decisions and implement agreements. The OPP also spelled the legal sources of MERCOSUR, refined the dispute settlement mechanism (DSM) and postponed the adoption of a definitive DSM until full convergence towards the common external tariff takes place in 2006.

In contrast to the detailed, rules-based approach of the North American Free Trade Agreement (that includes a total of 245 articles crammed in over 1,200 pages), the ToA and the OPP laid a broad and flexible framework to foster regional integration. They also differ from the Treaty of Rome in the detail of the commitments undertaken by the signatories, the nature of governing organs, the role given to an “autonomous” legal order and the procedures adopted for decision-making.

This paper examines the institutional record of MERCOSUR. The first section sums up its major institutional features, analysing the structure and role of organs, rules and DSM. The second section assesses the performance of MERCOSUR institutions, identifying both strengths and weaknesses. The third section provides an eclectic view of

---

<sup>?</sup> This article will be a chapter of a book edited by Victor Bulmer Thomas, University of London/ILAS-The Brookings Institution (forthcoming)

<sup>?</sup> Roberto Bouzas is Senior Research Fellow at the Latin American School of Social Sciences/Argentina and Independent Research Fellow of the National Council for Scientific and Technical Research. Hernán Soltz is Assistant Research Fellow at the Latin American School of Social Sciences/Argentina.

the factors that have shaped MERCOSUR's institutional approach. A final section makes some brief concluding remarks.

## ***1. An overview of MERCOSUR institutions***

### ***1.1 Organs***

The ToA created two collegiate and inter-governmental organs scheduled to operate on a periodic basis: the Common Market Council (CMC) and the Common Market Group (CMG). These organs were empowered to further develop rules and make room for institutional innovation and enhancement during the so-called "transition period". By December 31, 1994 member countries should have agreed on a definitive institutional structure, including a definition of organs, responsibilities and decision-making procedures.

The Common Market Council, the top political and decision-making authority responsible for moving towards the common market, would bring together the Ministers of the Economy and Foreign Relations. The CMC was given power to create, modify or eliminate organs and further develop rules and institutions. The CMC would meet periodically and it would be co-ordinated by a semi-annual rotating chair. The heads of state would take part in the meetings at least once a year. The explicit and active involvement of the Economy Ministers aimed to make sure that the process would go beyond a diplomatic exercise and to ensure the implementation of decisions, the bulk of which would fall under the competence of economic agencies.

The Common Market Group was comprised of four officials (and four deputies) from each member state Ministry of Foreign Relations, Ministry of the Economy and Central Bank. The CMG was a sort of executive in charge of enforcing CMC "decisions", undertaking and overseeing technical work required to further economic integration (including the co-ordination of macroeconomic and sector policies), issuing "resolutions" in its areas of competence and making recommendations to the CMC. To develop the required technical work the ToA established ten working groups (*Subgrupos de Trabajos*, SGTs) under the orbit of the CMG.<sup>1</sup>

In 1994 the OPP created a Trade Commission (MTC), a Joint Parliamentary Commission (JPC) and an Economic and Social Consultative Forum (ESCF). The OPP also expanded the responsibilities of the Administrative Secretary (AS) and defined more precisely the role and duties of each organ. Like the CMC and the CMG, the new organs (except the Administrative Secretary, that was given a small staff and budget) were collegiate and would meet periodically. The only new decision-making organ (the Trade Commission) was also inter-governmental.

---

<sup>1</sup> The ten original working groups were on: trade issues; customs issues; standards; trade-related monetary and fiscal policies; road transportation; maritime transportation; industrial and technology policies; energy policy; and co-ordination of macroeconomic policies. An eleventh group was later on established on labour relations, employment and social security affairs.

Apart from its previous duties the CMG was given responsibility to carry forward international negotiations under the guidelines set by the CMC and to participate in the operation of the DSM and the claims procedures (see section 1.3). Following approval of the OPP, the CMG restructured its operations into eleven working groups (SGTs), specialised meetings and *Ad-Hoc* Groups.<sup>2</sup> The new CMG guidelines required SGTs, specialised meetings and *Ad-hoc* Groups to submit negotiating proposals for the CMG to decide over priorities and a follow-up schedule.

Of the new organs only the Trade Commission was given decision-making powers (called “directives”). The MTC was comprised by eight officials from each member state (four permanent and four deputies). Its role would be to enforce common trade policies, administer intra-regional trade-related issues and run the new process of consultations. The MTC was also given a role at the initial stages of the DSM. Ten Technical Committees (TCs) operating under its orbit would be responsible for the technical negotiations required to design and enforce common trade policy instruments and to administer intra-regional trade affairs.<sup>3</sup>

The Joint Parliamentary Commission (JPC) and the Economic and Social Consultative Forum (ESCF) were exclusively counselling and advisory organs. The JPC would be comprised by eight Congressmen from each member state, chosen following the procedures set by each national legislature. Its duties would be to consider issues at the request of the CMC, make recommendations to the CMG and the CMC, oversee and request reports to other MERCOSUR organs and facilitate Congressional procedures needed to enforce decisions.

The Economic and Social Consultative Forum (ESCF) would represent non-governmental actors. Its maximum authority would be a Plenary bringing together delegates from the four “national sections”. The Plenary would meet at least twice a year to elaborate and put forward recommendations to decision-making organs (mainly the CMG). Each “national section” would be comprised by representatives from business, labour and other sectors of civil society. It would be represented by nine delegates, with an equal number drawn from business and labour.

At last, the OPP extended the role of the Administrative Secretary (AS) as compared to that defined by the ToA. The AS would provide operational support to all Mercosur

---

<sup>2</sup> The working groups (SGTs) created in 1995 were: SGT 1: Communications; SGT 2: Mining; SGT 3: Technical Regulations and Assessment of Conformity; SGT 4: Financial Issues; SGT 5: Transportation and Infrastructure; SGT 6: Environment; SGT 7: Industry; SGT 8 Agriculture; SGT 9:Energy; SGT 10: Labour, Employment and Social Security Issues. In 1996 an eleventh SGT on Health issues was created. Specialized meetings include those on Science and Technology, Social Communication, Women Affairs and Drugs. Ad-hoc groups were created on Institutional Issues, External Relations, Public Policies Affecting Competition, Government Procurement, Sugar and Services. Since the CMG can create, change or eliminate organs, structure has changed over time (for an updated list see chart 1). Trade-related issues were transferred to the Trade Commission and its Technical Committees.

<sup>3</sup> The ten Technical Committees were: Num 1: Tariffs, Nomenclature and Goods Classification; Num 2: Customs Issues; Num 3: Trade Rules and Disciplines; Num 4: Competition Distorting Public Policies; Num 5: Competition Defense; Num 6: Safeguards and Unfair Trade Practices; Num 7: Consumer Protection; Num 8: Non-Tariff Restrictions; Num 9: Automotive Sector, and Num 10: Textile Sector.

organs (and not exclusively to the CMG as established in Article 15 of the ToA), and it help with the logistics of the meetings of all MERCOSUR organs. Apart from that the AS would continue to be a depository of documentation, also in charge of publishing and disseminating regulations. The AS was the only organ to have a small budget (made up of member states' contributions) and a full-time staff.

## ***1.2 Rules***

The ToA established the principle of consensus as the sole decision-making procedure. The treaty also included provisions over the duration of the agreement and the mechanism to join and repudiate the pact.<sup>4</sup> The OPP made modest progress towards the definition of rules, particularly regarding the implementation of decisions, resolutions and directives. The OPP also defined the legal sources of MERCOSUR.

Regarding implementation, Articles 38 and 42 of the OPP committed member states to “adopt all measures necessary to ensure” the domestic enforcement of decisions, resolutions and directives (including “internalisation” when required). The OPP also defined these acts as “mandatory”. Article 40 established a procedure to ensure simultaneous implementation of norms in all member states through a notification mechanism ran by the Administrative Secretary. Finally, Article 41 stipulated the legal sources of MERCOSUR, namely: a) the ToA, its protocols and related instruments; b) the agreements reached in the context of the ToA and other related instruments; and c) the decisions, resolutions and directives issued by MERCOSUR competent organs.

## ***1.3 Dispute Settlement***

Less than a year after the ToA member states signed the Brasilia Protocol for Dispute Settlement (BPDS). The BPDS was regarded as a transitory arrangement to be used during the “transition period”, at the end of which definitive institutions and dispute settlement procedures should be in place. However, the OPP just extended the procedures of the BPDS and postponed the implementation of a permanent mechanism until full convergence towards the common external tariff in 2006. The OPP also defined the procedures to raise claims before the Trade Commission.

Dispute settlement in MERCOSUR includes three alternative procedures ranging from “self-help” (consultations and claims) to non-binding third-party adjudication (the BPDS). Consultations offer a mechanism to solve disputes through direct negotiations subject to pre-determined procedures and terms. The mechanism enables member states to exchange information through the request of explanations and clarifications, and to manage trade frictions that do not warrant launching a claim or “judiciary” procedures. Consultations can be initiated by member states on behalf of central and local administrations or the private sector.

---

<sup>4</sup> Two annexes to the ToA established a safeguards and a rules of origin regime to viorate during the “transition period”.

Claims are a sort of pre-judiciary mechanism to settle trade disputes. Its procedures were defined in an annex to the OPP. Claims on behalf of member states, legal or physical persons must be initiated by a “national section” and they must refer to trade-related matters falling under the authority of the Trade Commission (chart 2). If a claim is not settled in the MTC, it must be turned to a technical committee that must reach a conclusion in thirty days. The report of the committee is not binding and it may include more than one recommendation. If MTC fails to reach consensus the claim can be taken to the CMG, that has thirty additional days to settle the dispute.<sup>5</sup> If the claim fails to be settled the complaining member state can directly activate the arbitral procedure of the BPDS.

Finally, the Brasilia Protocol established a sequential DSM with separate procedures to treat controversies among member states and among a member state and a private party. Member states can open a dispute over matters of interpretation, implementation or violation of rules established by the ToA and any other legal instrument (such as protocols, agreements, decisions, resolutions and directives). Formal procedures contemplate three stages: direct negotiations, intervention by the CMG and a judiciary mechanism, each subject to (relatively flexible) time limits. All disputes need to go through the first two stages (direct negotiations and intervention by the CMG) before the judiciary mechanism can be triggered (except when the issue was already subject to a claim). The judiciary procedure is undertaken by an “*ad-hoc* tribunal” of three members that makes “mandatory and definitive” determinations (chart 3).<sup>6</sup>

The private sector cannot directly trigger the DSM (chart 4). All complaints must be first submitted to the “national section” of the CMG, that may then take it before the CMG plenary. If the CMG does not reject the complaint (it must do so by consensus), it must convene a three-members committee of experts to decide over its procedence. The committee (selected from previously agreed national lists) must reach its conclusion by unanimity and in a fixed term. If the complaint is found improcedent or the committee fails to reach an unanimous agreement, the complaining state may trigger the mechanisms set in the BPDS. If the complaint is found procedent and the “accused” party does not implement appropriate measures, the complaining member state can directly activate the arbitral procedures of the DSM between member states.

The DSM adopted by MERCOSUR relies on third-party adjudication and a recommended remedy, with retaliation left as the only response for non-compliance.<sup>7</sup> This

---

<sup>5</sup> If either the MTC or the CMG decide by consensus that the claim is appropriate, the “accused” member state must adopt the measures recommended in a definite period of time. If it fails to the member that raised the claim may directly invoke the arbitral procedure of the BPDS.

<sup>6</sup> Each side in the controversy will appoint one member of the *ad-hoc* Tribunal. The third member cannot be a national of any of the parties involved. Each tribunal will define its own procedures. Decisions by be taken by a majority vote. Apart from the legal sources of MERCOSUR, if the parties agree a tribunal may decide a controversy on an *ex aequo et bono* basis, thus opening an additional door to inter-state negotiations.

<sup>7</sup> Yarbrough and Yarbrough (1997) classify DSM in four stylised categories, namely: a) DSM-I (a third party provides information on violations and disseminates that information, with retaliation as the only punishment); b) DSM-II (a third-party provides non-binding adjudication with retaliation as the only punishment); c) DSM-III (binding third-party adjudication and an appeal process); and d) DSM-IV (third-party enforcement of the type common in domestic legal systems, with the right to retaliate abolished).

mechanism provides flexibility to the parties and stimulates compliance on the basis of the perceived benefits of an ongoing relationship. However, its major shortcoming is a limited ability to end disputes and a relatively high rate of ongoing disputes.

## **2. *The institutional performance of MERCOSUR***

The discussion of section 1 underlined three major institutional traits of MERCOSUR, namely: a) its strong inter-governmental bias; b) the “incomplete” character of its organs’ legal acts; and c) the absence of an independent jurisdictional body. This design gave governments a high degree of control over the process, ensuring graduality and flexibility.<sup>8</sup> This “institutional model” was very effective at the initial stages, when interdependence was low and commitment at a peak, and it proved quite resilient for nearly a decade. However, clear signs of diminishing returns are on sight. This section briefly reviews the performance of MERCOSUR institutions since the ToA. In the next section we attempt an explanation of their sources and evolution.

### **2.1 *A strong inter-governmental bias***

MERCOSUR organs were created as strictly inter-governmental. All decision-making authority rests in the hands of government officials. Except for a small Administrative Secretary with very limited logistic, depository and information gathering/disseminating responsibilities, there is no bureaucracy “autonomous” from national administrations. The creation of strictly inter-governmental organs was aimed to prevent isolation of decision-making layers from the national agencies responsible for enforcement. The objective was to engage in decision-making the national agencies and bureaucracies (particularly the ministries of the economy) responsible for implementation. This approach built upon the poor results of previous experiences in Latin America, where “integration bureaucracies” disconnected from the rest of the national public sector or diplomats with limited ability to push decisions forward within their own administrations usually undertook commitment with few chances of being implemented.

The semi-annual meetings of the CMC (regularly followed by Presidential summits) were to be important “signalling” and decision-making events. Since the members of the CMC are the ministers, usually working under very tight time-constraints, the effectiveness of each meeting has varied according to the quality and extension of the preparatory work. The latter, in turn, was influenced by the changing priority attributed by national administrations to the establishment of a regional regime, the initiative and resources of the member state in charge of the *pro-tempore* presidency and, more importantly, the nature of the issues involved.

---

According to this taxonomy the DSM of MERCOSUR resembles DSM-II. WTO’s DSM and the European Court of Justice may be assimilated, respectively, to “weak” and “strong” versions of DSM-III. Charts 2, 3 and 4 were also inspired in Yarbrough and Yarbrough (1997).

<sup>8</sup> Boldorini y Zalduendo (1995)

Since 1991 the CMC issued an average of nineteen decisions per year, with above average figures in 1994 (the last year of the “transition period”, when many decisions related to the implementation of the customs union were taken) and the 1997/99 period (table 1). Two major conclusions emerge after examining the record of the CMC. First, while in the initial years of MERCOSUR trade and institutional issues accounted for most of the decisions, in the late nineties a high and rising share was related to justice, culture, education and security. Second, while in the initial years of MERCOSUR the CMC produced detailed working mandates and set precise deadlines to guide the activities of lower-level organs (such as the “Las Leñas Schedule” -*Cronograma de Las Leñas*- in 1992 and the “Year 2000 Action Program” -*Mercosur 2000*- in December 1995), since the mid-nineties no new detailed route map with targets and deadlines for lower-level bureaucratic layers was agreed.

Over time, the credibility and effectiveness of CMC meetings diminished. The growing difficulty to iron out differences in lower decision-making layers led to issue-congestion and an over-burdened agenda at the top. The credibility of Presidential summits, that also started as important “signalling” events, also suffered as failures to implement and agree on pending issues mushroomed since the mid-nineties. The regular intervention of the heads of state in trade and policy disputes (christened as “presidential diplomacy”) served at critical times to unlock blocked negotiations or de-escalate conflict. However, as implementation and follow-up were usually poor, this method over-exposed top political leaders and ultimately damaged credibility.

The effectiveness of the CMG to undertake technical negotiations, lay the groundwork for substantive CMC meetings and enforce CMC decisions also varied over time. The SGTs were originally conceived as organs responsible for undertaking the daily collaborative work necessary to meet the targets and deadlines set by upper-level organs.<sup>9</sup> The SGTs were also regarded as the institutional vehicles to engage national bureaucracies in the process, rooting negotiations and technical work as firmly as possible in national competent agencies. Since MERCOSUR lacks a mechanism to automatically enforce legal acts, the active involvement of public sector officials with capacity to implement and push the agenda forward within their own administrations was a pre-requisite to effectiveness. SGTs were also given responsibility for undertaking preparatory work, thus performing a mixed role as technical and negotiating fora.<sup>10</sup>

Initially the activities of the CMG and the SGTs fostered mutual knowledge between national officials and contributed to develop a highly motivated team spirit, stimulating commitment and helping to root negotiations as firmly as possible in competent

---

<sup>9</sup> The *Las Leñas Schedule* set a detailed action plan for each SGT, including a sequence of activities and deadlines to be completed by December 1994. However, in spite of the precise targets set by the *Las Leñas Schedule*, SGTs performed heterogeneously.

<sup>10</sup> In theory, the role of the CMG and the SGTs can be assimilated to that of the Committee of Permanent Representatives (Coreper) in the Council of the European Union. However, Coreper is a more systematic and structured forum. According to Wallace (2000), Coreper “meets at least weekly to agree items on the Council agenda, and to identify those that need to be discussed (and not merely endorsed) by ministers”.

national agencies.<sup>11</sup> After the mid-nineties, however, the effectiveness of the CMG suffered due to the larger number of issues left unsolved at the top and the technical layers' lack of authority to search for common ground in contentious areas. When there was disagreement at the decision-making level as regards the precise content of targets, technical layers replicated the dissent and failed to make progress. As a result, the morale of those involved and the credibility of the process suffered. These problems were made worse by the fact that national officials were frequently over-burdened, as they added to their ordinary tasks new international negotiating responsibilities. The effectiveness of the SGTs also suffered because each technical negotiating forum was disconnected from the rest, even when issues at stake were closely inter-twinned.

Failure of the CMG to reach consensus at the decision-making level and set precise guidelines and targets to guide the work of technical fora (SGTs) was a major factor behind decreasing effectiveness. The informal exchanges that during the initial years of the process laid the ground for substantive CMG meetings were gradually replaced by formal plenary sessions (particularly in the critical 1998/99 period) that simply reproduced disagreement over time.<sup>12</sup> In this latter period the co-ordinators of the "national sections" of the CMG even failed to meet regularly, as it was previously the rule (usually once a month).

As explained in section 1.1, the need to administer trade-related issues on a daily basis and to implement and follow-up common trade policies led to the establishment of a Trade Commission in 1995. The MTC was created as the institutional *locus* where trade officials would meet and interact on a regular basis. But the MTC (and the technical committees under its orbit) suffered many of the same problems faced by the CMG and the SGTs. In particular, although technical committees combined the task of carrying forward technical negotiations and administering trade disputes, the latter in practice distracted energies from the former.<sup>13</sup> Although the MTC was instrumental to channel trade disputes through the consultations mechanism, their number fell markedly precisely at the most critical period (1998/1999) (table 2).

The inter-governmental structure of MERCOSUR made the process flexible and cost-effective at the initial stages. However, it also stimulated governmental (and executive) "encapsulation", limiting the permeability of the decision-making process to non-governmental actors. The establishment of a consultative regional organ (ESCF) in 1995 failed to fill the gap, as private actors correctly perceived that their ability to influence outcomes could be maximised if exercised at the national rather than the regional level. The fact that the ESCF had no budget to finance its operations also conspired against

---

<sup>11</sup> Active inter-governmental negotiations also provided the opportunity to train human resources in activities complementary to their routine tasks (such as international bargaining; development of inter-personal skills; drafting, understanding and communication abilities; etc.)

<sup>12</sup> Peña (1999).

<sup>13</sup> Except for TC Num 5 (that drafted and administers the Protocol on Competition Defense) and TC Num 6 (that drafted the common anti-dumping regime), the activity of TCs suffered from the same bias as the Trade Commission: their members got involved in dealing with market access problems rather than with the enforcement of common trade policies. Therefore, controversies over NTBs, CET perforations, sector issues (like the special regime for motor vehicles), and rules of origin became the cornerstone of TCs' negotiations and energies.

representation. In effect, only those organisations able to support and finance a continuous involvement were in a position to be active participants.

The record of the legislative consultative organ (the JPC) has been equally modest, failing to play either a proposition or an advisory role to technical-negotiation layers as well as to decision-making organs. Moreover, the JPC was unable to block (or even react to) measures unilaterally taken by national legislatures, such as Argentine legislation excluding sugar from free-trade commitments.<sup>14</sup> The activities of the Administrative Secretary were also kept to a minimum.

## 2.2 *“Incomplete” legal acts*

Although all “acts” undertaken by MERCOSUR decision-making organs are mandatory, they are neither “immediately applicable” nor have “direct effect”.<sup>15</sup> In practice, this means that member states undertake the commitment to “internalise”, but not necessarily to enforce these acts. They can be conceived, therefore, as “incomplete” legal acts, equivalent to signed but not yet ratified international agreements.

In MERCOSUR all norms need to be transposed (“internalised”) through domestic legislative or administrative acts in accordance to the mechanism and procedures established by domestic legislation.<sup>16</sup> Since there are neither mandatory time limits to “internalise” nor effective procedures to ensure it, the process has been slow, uneven and highly vulnerable to the good will and the effective (legal, administrative or political) obstacles faced by each government.

Frequently, delays in “internalisation” were aggravated by the fact that MERCOSUR decision-making organs did not take into account the administrative, legal or constitutional obstacles faced by each national government to enforce a decision, resolution or directive. Therefore, decision-making organs could easily turn out norms with few chances of being rapidly enforced. Moreover, since to become fully operative a decision, resolution or directive would need to be “internalised” by all member states, the uneven pace of “internalisation” led to significant delays in enforcement. Implementation was also

---

<sup>14</sup> In 1997 the Argentine legislature passed legislation excluding sugar from free trade commitments until Brazil phases out the subsidies granted to the sugar and alcohol industries.

<sup>15</sup> The principles of “immediate applicability” and “direct effect” are easier to refer to than to define. As a matter of fact, the European Court of Justice often uses both terms interchangeably. The principle of “immediate applicability” is more “formal” and means that norms produced at the international level do not need to be “transposed” into domestic legislation in order to “apply fully” to (or develop all their effects upon) individuals. The effect of norms immediately applicable can vary according to their nature and content. The principle of “direct effect” is more “material”. It gives individuals the right to invoke before domestic (or community) jurisdictions norms produced at the international level even if these norms need to be transposed to fully develop all their effects. With the usual caveats we are indebted to professor Ramón Torrent for his useful clarifications.

<sup>16</sup> Strictly speaking, not all norms need to be “internalised”. That would be the case, for example, of a technical standard identical to the one domestically enforced.

postponed due to failure to report progress to the Administrative Secretary and to the “internalisation” of modified versions of the original norm.<sup>17</sup>

After the loose mechanisms established by the OPP failed to improve performance, member states took steps to speed up and facilitate “internalisation”, but mostly exhortative. In July 1998 the CMG agreed to “undertake the maximum possible efforts” to “internalise” rules requiring only administrative decisions and asked the JPC to facilitate congressional treatment of decisions requiring legislative changes.<sup>18</sup> The CMC, in turn, asked the JPC to speed up legislative procedures in those cases where “internationalisation” required the participation of Congress.<sup>19</sup> Technical-negotiating groups (SGTs and TCs) were also asked to inform “national sections” of any decision, resolution or directive under consideration to facilitate the identification of potential legal or administrative obstacles to “internalisation”. It was also established that all norms requiring only national administrative acts to be “internalised” should include an explicit term to complete the process and, whenever possible, an identification of agencies involved and steps required.<sup>20</sup>

Since these initiatives were basically exhortative and established only indicative terms, they had very limited impact upon performance. In order to have a mechanism to make a follow-up of the process of “internalisation”, in 1998 the Administrative Secretary was requested to prepare regular reports identifying the current status of each norm passed. However, since these reports were confidential they made no contribution to increase transparency.

### **2.3 A “weak” dispute settlement mechanism**

Member states made intensive use of consultations as a first step before triggering the claims procedure or the judiciary dispute settlement mechanism of the Brasilia Protocol, which have been used more sparsely. Many disputes were also managed through straight “self-help” mechanisms, such as diplomatic bargaining and direct involvement of high-level political authorities (“presidential diplomacy”).

The option to hold consultations in the Trade Commission was established in 1995 and the procedures to initiate, follow-up and terminate them were established one year later.<sup>21</sup> In an attempt to prevent lengthy consultations, at the end of 1999 a directive established new procedures to speed up the process.<sup>22</sup> Consultations were actively used as a mechanism to exchange information and promote adjustment, generally in non-fundamental trade-related matters. During the initial years the mechanism was used actively, but the number of consultations fell markedly since 1998 (table 2).

---

<sup>17</sup> Jardel (1998)

<sup>18</sup> Resolution 22/98.

<sup>19</sup> Decision 3/99.

<sup>20</sup> Resolution 23/98.

<sup>21</sup> Directive 6/96.

<sup>22</sup> Directive 17/99. However, the two parties can decide not to conclude the consultation by consensus.

By October 1999 only 13% of total consultations were pending of resolution, nearly half of which had been initiated during 1998. The relatively low level of un-finished consultations has been taken as an indicator of effectiveness. However, the termination of a consultation cannot be assimilated to the effective settlement of the underlying dispute.<sup>23</sup>

The OPP also established a General Procedure to Make Claims before the Trade Commission aimed to speed up trade-related complaints raised either by member states or by the private sector. Between 1995 and 1999 the mechanism was used eleven times, most frequently by Argentina (nine times as against two by Brazil).<sup>24</sup> Of the eleven claims raised six were settled within the mechanism, while by October 2000 three were still pending. The remaining two were taken to the dispute settlement procedures established by the Brasilia Protocol. For the claims mechanism to lead to the settlement of a dispute the parties need to reach consensus either at the MTC or the CMG. The "self-help" nature of the procedure is reinforced by the fact that technical committees do not play the role of a third-party, as they are composed by national officials. The claims procedure has been slower than expected.<sup>25</sup>

In December 1998, after two years of negotiation, member states finally agreed on a code to regulate the implementation of the Brasilia Protocol. The code defined key terms, notification and confidentiality procedures, qualifications for both judges and experts and conditions to be fulfilled in order for the private sector to make presentations. Member states started to use the DSM shortly after the code was promulgated: in less than two years the DSM dealt with three cases, two raised by Argentina and one by Brazil.<sup>26</sup>

The operation of the BPDS has faced numerous problems. One has been the possibility of delayed negotiations: if member states agree, they can extend the mandatory fifteen-days term to undertake bilateral negotiations in the CMG almost indefinitely. In practice, this means that the triggering of a third-party adjudication procedure can be delayed and replaced by political and diplomatic bargaining. Although it is quite desirable that a DSM provides ample room for direct negotiations, the possibility of long delays before a third-party adjudication mechanism is activated may create uncertainty on the part of the private sector.<sup>27</sup>

---

<sup>23</sup> A consultation may end satisfactorily although the underlying problem has not been solved (eg: a request of information about a member state restrictive measure may be answered satisfactorily, even though the underlying measure is not removed). Most disputes treated through the claims mechanism or through judicial procedures started as consultation.

<sup>24</sup> Argentina raised five claims against Uruguay and four against Brazil, on issues such as internal taxation, sanitary restrictions, failure to "internalise" regulations, import licenses and production and export subsidies. The two claims raised by Brazil were against Argentina and referred to the imposition of antidumping duties on aluminium wire imports and treatment of the sugar sector.

<sup>25</sup> The *Ad Hoc* Group on Institutional Affairs is working on a code to increase its effectiveness.

<sup>26</sup> The issues raised by Argentina (import licenses and subsidies to the production and export of porcine meat) had been previously subject to claims procedures. In contrast, the case raised by Brazil (over Argentine safeguards on textiles) did not go first through the claims process. In what can be taken as a confirmation that MERCOSUR DSM is regarded as a "weak" one (certainly weaker than WTO's), Brazil also took the case before the WTO.

<sup>27</sup> The private sector cannot directly trigger the dispute settlement mechanism. If there is a private sector complaint, it has to be first taken up by a member state. However, as we've just said, the latter can in practice postpone third-party adjudication, extending negotiations indefinitely. In the BPDS the private sector cannot

A second problem has been that the *ad-hoc* character of the tribunals conspires against the development of a "body of common interpretation". Although there is nothing like "jurisprudence" in the legal arsenal of MERCOSUR, permanent tribunals (as opposed to *ad hoc* ones) are more likely to develop commitment with their previous determinations.<sup>28</sup>

Finally, there is the critical issue of enforcement. Although the verdict of the *ad-hoc* tribunals are formally final (they're not subject to an appeal procedure) and binding, the practical meaning of "binding" in each member state differs according to the domestic constitutional background. Since these verdicts do not have equivalent "supremacy" over domestic legislation in all member states, enforceability is subject to different practical (legal) requirements.<sup>29</sup> The limit case is Argentina, where international agreements have supremacy over national law and can be directly enforced by private parties before the local courts.

### 3. *Accounting for institutional design in MERCOSUR: an eclectic view*

Except for institutionally-based accounts (such as property rights theory, economic history and new institutional economics), economists have not devoted much time or energies to account for variation in regional institutions. In effect, most of the contributions have come from the camp of international relation theory and/or political science. In these disciplines the major divide has been between functionalist/neo-functionalist theories, *vis-a-vis* realists and neo-realists. According to the former the incentive to co-operate, further liberalise, lower transaction costs and develop common regulatory regimes is related to the intensity of economic interdependence. Realist and neo-realists, in turn, underline concepts such as hegemony, leadership and relative gains to help understand the strengths and weaknesses of regional institutions.

However, available empirical evidence does not seem to support fully any of the contending explanations. Grieco (1997) argues that in contrast to the functionalist story, the evolution of interdependence does not appear to be a reliable predictor of the existence and success of regional institutions. While in some regions interdependence has risen without a parallel increase in institutionalisation (such as in APEC), in others there has been modest regional institutionalisation even in the absence of a marked increase in interdependence

---

invoke a derived rule as contrary to the Treaty of Asunción or any other agreements. All private parties can do is to challenge measures adopted by member states in violation of the Treaty of Asunción.

<sup>28</sup> The verdicts of the tribunals are not considered to be part of the legal sources of Mercosur.

<sup>29</sup> It is said that the conflict stems from the opposition of "monist" legal systems, where obligations acquired under international law automatically become part of domestic legislation (such as in Argentina and Paraguay) and "dualist" ones, where international law obligations have no domestic force until they are "internalised" through domestic implementing legislation (such as in Brazil). While some jurists maintain that enforcement does not require a domestic act in the case of Brazil, other disagree (González, 1999). However, it is interesting to point out that the European Union has put in place common procedures even though some members are "monists" and other "dualists" (such as the UK). This suggests that the issue is political, rather than procedural.

(such as in ASEAN). Alternatively, the existence of a hegemonic leader does not seem to have been neither a necessary nor a sufficient condition for regional institutions. In the European Union, a paradigm for “dense” regional institutions, the largest economy (Germany) accounts for only a quarter of regional GDP and provides a market for less than a fifth of total regional exports. In contrast, in the Pacific basin (where we see modest institutionalisation in the case of APEC) the US accounts for over half of regional output and is the market for more than a third of total regional exports.

Mattli (1999) tried to integrate these contending approaches into an eclectic framework that takes into account the role of both “supply” and “demand” factors in shaping regional institutions. According to this author, functionalist, neo-functionalist and institutional theories provide useful insights about the factors that create a “demand” for regional institutions. But for regional institutionalisation to proceed political leaders have to be willing and able to accommodate and respond to existing pressures towards integration. Thus realist and neo-realist explanations help to understand the strengths and weaknesses of “supply-side” conditions in the establishment and success of regional institutions.

A complete account of the incentives and dynamics of regional integration requires not only an adequate understanding of the internal logic of discrimination, but also of its reactive components. In effect, regional arrangements can also be fostered by “defensive” motivations and “domino” effects.<sup>30</sup> Since discrimination is the essence of preferential trade arrangements, outsiders may feel enticed to react to the formation of regional agreements in one of two forms: they can either try to join the agreement or to create their own regional group.<sup>31</sup> In the first case the outcome will depend on whether the original partners are prepared to share the benefits of the arrangement and on the size of the “entry fee”. In the second case success will be closely related to the degree to which “internal supply and demand conditions” are satisfied. Mattli maintains that the fact that “internal demand and supply conditions” are generally weak can help to account for the modest progress usually recorded by “defensive” regional integration arrangements.

To properly understand the establishment and development of regional institutions in MERCOSUR two key factors need to be taken into account. One is the relatively low starting level of interdependence between member states. The second is the weight of “defensive” considerations behind economic integration: although the formation and development of MERCOSUR cannot be fully accounted for by external events, these played a key role in shaping the evolution of regional co-operation. In effect, the launching of NAFTA negotiations in 1990 set the background to the signature of the Acta de Buenos Aires (1990) between Argentina and Brazil and, shortly after, to the formation of MERCOSUR. In 1994 the preparation of an hemispheric presidential summit and the launching of negotiations towards an FTAA stimulated adoption of a common external tariff at the end of the “transition period”, when many doubted that MERCOSUR would effectively adopt the structure of a customs unions.

---

<sup>30</sup> Bouzas and Ros (1994) and Baldwin (1993).

<sup>31</sup> Mattli (1999) christened the two options the “first” and “second integrative response”, respectively.

### 3.1. The “demand” for institutions: low, but rising

The shape of regional institutions in MERCOSUR can be partly explained by the lack of strong functional demand pressures to reduce market fragmentation and stimulate policy harmonisation. In effect, economic intercourse in the region has been traditionally low measured either by conventional “trade encapsulation” indexes or by other indicators of macroeconomic interdependence. Although for the smaller economies (Paraguay and Uruguay) Argentina and Brazil have been relevant trade partners for decades, this was not the case either of Argentina or Brazil. Therefore, in a context of relatively low interdependence the primary purpose of MERCOSUR was to raise economic intercourse rather than to administer its effects.

Despite the fact that “demand pressures” were not significant, structural reform in the late eighties raised the potential to benefit from increased economic intercourse. In effect, market-oriented policies opened new opportunities for intra-regional specialisation and widened the potential to benefit from scale economies. The nearly two-fold increase in the aggregate “trade encapsulation” index during the nineties confirms the significant potential for larger trade flows (table 3). Interdependence also increased through monetary and financial channels, as “demonstration” and “contagion” effects spread throughout the region.<sup>32</sup>

The rapid rise in trade interdependence was made possible by the broader policy environment (ie: the overwhelming priority of unilateral trade liberalisation during the early nineties) and the mechanism adopted to implement preferential trade liberalisation during the “transition period” (the so-called Trade Liberalisation Program, TLP). The TLP was path-breaking compared to other precedents in the region because of its calendar of automatic, across-the-board and linear tariff cuts, scheduled to grant a 100% preference over MFNs tariff rates by the end of 1994. In effect, once the treaty was ratified by each national Congress tariff-cutting commitments became binding domestic legal obligations. In practice, the TLP did not mean that national governments lost all flexibility to deal with special circumstances, as suggested by episodic *ad-hoc* interventions in 1992/93 and by the implementation of the “*régimen de adecuación*” as of 1995.<sup>33</sup> But the traditional logic of preferential trade liberalisation in Latin America was turned upside-down through the adoption of a “negative” instead of a “positive” list approach.<sup>34</sup>

In contrast to tariffs, commitments in the area of non-tariff barriers (NTBs) were looser: member countries agreed to eliminate all NTBs by the end of the “transition period”, but left the critical issues of definition and identification to technical negotiations to be undertaken by national bureaucracies. The ToA also committed member countries to negotiate and adopt a common external tariff (CET) by December 1994 and to co-ordinate macroeconomic and sector policies. However, the ToA made no provision about specific

---

<sup>32</sup> For an analysis of macroeconomic interdependence see: Heymann (1999).

<sup>33</sup> The “*régimen de adecuación*” established a new automatic schedule to liberalise trade in a small group of sensitive products from 1995 to 1999.

<sup>34</sup> Bouzas (1998). The TLP illustrates how “loose” institutional arrangements can provide a framework to take “hard” policy decisions.

targets or procedures. While some objectives were met (ie: negotiation of a CET by December 1994), others were missed (ie: sector and macroeconomic co-ordination).

As unilateral and preferential trade liberalisation, as well as “contagion” effects, raised interdependence the demand for more formal, substantive and centralised institutions began to mount, particularly on the part of smaller countries. Ambiguous and unilaterally changeable rules (particularly in the realm of market access) produced uncertainty and limited the benefits of the larger market. By the same token, the disagreement over what constituted a “level playing field” produced conflicts over investment location (such as in the motor vehicles industry). The slow pace of “internalisation” and a weak DSM aggravated these grievances. The critical year of 1999 demonstrated the limited institutional resources (rules) to deal with a shock (the sizeable devaluation of the Real). Unilateral initiatives and “presidential diplomacy” were the preferred modes of response, constrained only by reputational considerations and domestic legal obligations. As the credibility of MERCOSUR organs and procedures suffered, the asymmetry of the constraints posed by domestic legal arrangements was made more evident..<sup>35</sup>

In sum, weak “demand pressures” for regional institutions at the start-out of MERCOSUR helps to account for the “lean” institutional design originally adopted. But this did not prevent member states from taking “hard” decisions and successfully implementing them. The ensuing rapid rise in interdependence was not strong enough to alter one basic feature of MERCOSUR, namely: structurally asymmetric interdependence produced by large differences in size. Although Brazil was the member that experienced the largest relative increase in “trade encapsulation”, its absolute level remained relatively low to shift the balance between the preference for flexibility as against to more formal and procedural institutions (table 3).<sup>36</sup> This structural feature, combined with a leadership gap on the “supply side”, can contribute to account for the current *impasse* in MERCOSUR institutional development.

### 3.2 *The “supply” of institutions: a leadership gap*

“Supply” factors (the conditions under which political leaders are willing and able to accommodate demands for functional integration or respond to external events) provide the other side of the coin to account for the type and pace of institutionalisation that has taken place in MERCOSUR. Again following Mattli (2000), “willingness” depends greatly on the expected payoff of economic integration to political leaders. This, in turn, tends to be positively correlated with the prevalence of economic difficulties as a background condition.

---

<sup>35</sup> The (relative) restraint to implement trade restrictive measures on the part of Argentina after the devaluation of the Real in January 1999 is accounted for by the limits posed by the domestic legal system rather than by any rule or MERCOSUR organ. Since the violation of the any “legal norm” derived from the ToA or its associated instruments would be easily challenged in domestic courts, the Argentine government had few options but to show restraint.

<sup>36</sup> However, aggregate “trade encapsulation” indexes do not tell the full story. In effect, a more detailed analysis shows that Mercosur has turned into a key outlet for Brazilian manufacturing exports. See: da Motta Veiga (1999).

This explanation is consistent with the record of MERCOSUR during the first half of the nineties, when the ToA was signed and the bulk of the trade liberalisation program implemented. On the one hand, the opposition to preferential liberalisation from adversely affected domestic interests (one of the “political costs” of economic integration) subdued in the context of a broader trade policy environment that emphasised unilateral trade liberalisation and structural reform.<sup>37</sup> On the other, the expected “benefits” rose stimulated by “defensive” considerations and the perception of an economic performance that lagged behind that of other regions in the world.

But “willingness” is not enough. Politicians and member state governments also need to be able to overcome collective action problems typical of economic integration.<sup>38</sup> Repeated interactions, issue-linkage and reputation can help to overcome collective action problems typical of trade relations. But in a world of uncertainty and incomplete information these mechanisms are unlikely to provide enough guarantee against violation of agreements. This makes “commitment institutions” (such as a DSM) necessary to improve the chances of compliance. Commitment institutions can monitor or help enforcement of rules among a group of countries seeking regional integration, enhancing the chances of successful co-operation by limiting the range of possible choices in cases when self-restraint is insufficient to ensure compliance. In more demanding “co-ordination games”, the (“supply”) condition for success is even stronger: a focal point is needed to co-ordinate rules, regulations and policies and to ease distributive tensions. The role of the focal point and facilitator is normally performed by an undisputed regional leader, who is able to provide “collective goods” and perform other tasks on behalf of the group of countries searching closer ties.

Analysed from this standpoint “supply conditions” in MERCOSUR have been very weak. During its first decade of existence repeated play, issue-linkage and reputation have been the most widely used vehicles to stimulate co-operation and constrain defection, possibly aided by the conviction that size asymmetries would create strong centrifugal forces towards the alignment of other member states behind Brazilian preferences. But opacity and “self-help” mechanisms have remained dominant as member states (and particularly Brazil) have been reluctant to move towards more transparent and formalised regimes that would have raised the cost of non-compliance<sup>39</sup>. Weak “supply” conditions help to account for lean “commitment” institutions and the practical absence of enforceable co-ordination initiatives at the regional level. In particular, they help to explain the fragility of centralised monitoring and third-party enforcement procedures in the DSM, a feature that has failed to provide certainty to private sector agents.

The fulfilment of the more demanding conditions typical of coordination games has been even rarer. Except for isolated episodes of trade policy *ad-hocery* in the early

---

<sup>37</sup> After 1995 unilateral trade liberalisation (that had contributed to dissolve opposition to preferential trade liberalisation) ceased to be an over-riding policy priority in all member states, and particularly in Brazil. See: da Motta Veiga (1999).

<sup>38</sup> See: D. Snidal (1985)

<sup>39</sup> One outstanding example is the confidential character of the Administrative Secretary reports on the progress of “internalisation”.

nineties<sup>40</sup>, distributive issues have been mostly managed on a national basis with little consideration given to “collective” needs. The meagre progress recorded in policy coordination and/or harmonisation on issues such as effective implementation of a CET, common customs procedures, production and investment subsidies, macro-economic and exchange rate policy and trade negotiations with third parties suggests that member states have been inclined to maintaining autonomy and flexibility. In particular, the incentives for the larger member state to provide the leadership required (and pay the costs for it) have been very weak.<sup>41</sup>

The existing gap in the provision of leadership can be thus explained by the modest payoff perceived by the Brazilian government (the most obvious candidate to exert such a role) from doing so. More formal, centralised and substantive institutions in MERCOSUR would have constrained flexibility and discretion, in a context of limited interdependence, a volatile economic environment and not fully convergent national preferences.<sup>42</sup>

#### **4. Concluding remarks**

The main institutional traits of Mercosur are the strong inter-governmental bias of its organs, the key role of consensus in decision-making and the non-existence of an “autonomous” legal order (including a jurisdictional body to settle disputes). These features have been consistent with an institutional model that emphasises continuous bargaining, flexibility and adaptability. This institutional approach was very effective to increase interdependence in a context where functional demands for integration were weak. As Khaler (1995) argues, “state-like” institutions (emphasising the role of explicit rules and injunctions) may not be the most efficient institutional form in all environments. Decentralised and informal institutions can be more effective when scarce and expensive information requires substantial information gathering before additional institution building can occur or, alternatively, when plentiful and cheap information about the preferences and reputation of partners make reputation-based systems sufficient to ensure compliance.

In the initial years of MERCOSUR institutions with the ability to adapt rapidly and easily to changes in the environment proved to be both effective and durable, helping to increase interdependence and develop a “learning process” that may eventually lead to more formal, centralised and substantive institutional forms as demand and supply conditions develop. Moreover, this institutional design did not prevent taking “hard” policy decisions, such as the TLP.

---

<sup>40</sup> These episodes of *ad-hocery* (for example, accepting Argentina’s increase of its statistical import surcharge in 1993) can be interpreted as an acceptance of derogations in exchange for the right to benefit from derogations at some in the future.

<sup>41</sup> The firm opposition of the Brazilian government to accept the inclusion of an “escape” clause or a safeguard mechanism after the end of the transition period illustrates more than the formal argument that such mechanisms are alien to a customs union. The defence of such a rigid stance –even after the sizeable devaluation of the Real in 1999- is hard to reconcile with the exercise of constructive, benevolent leadership in the region.

<sup>42</sup> For a discussion of the factors (including changing national “preferences”) explaining the contrasting record of MERCOSUR in the nineties, see: Bouzas (1999).

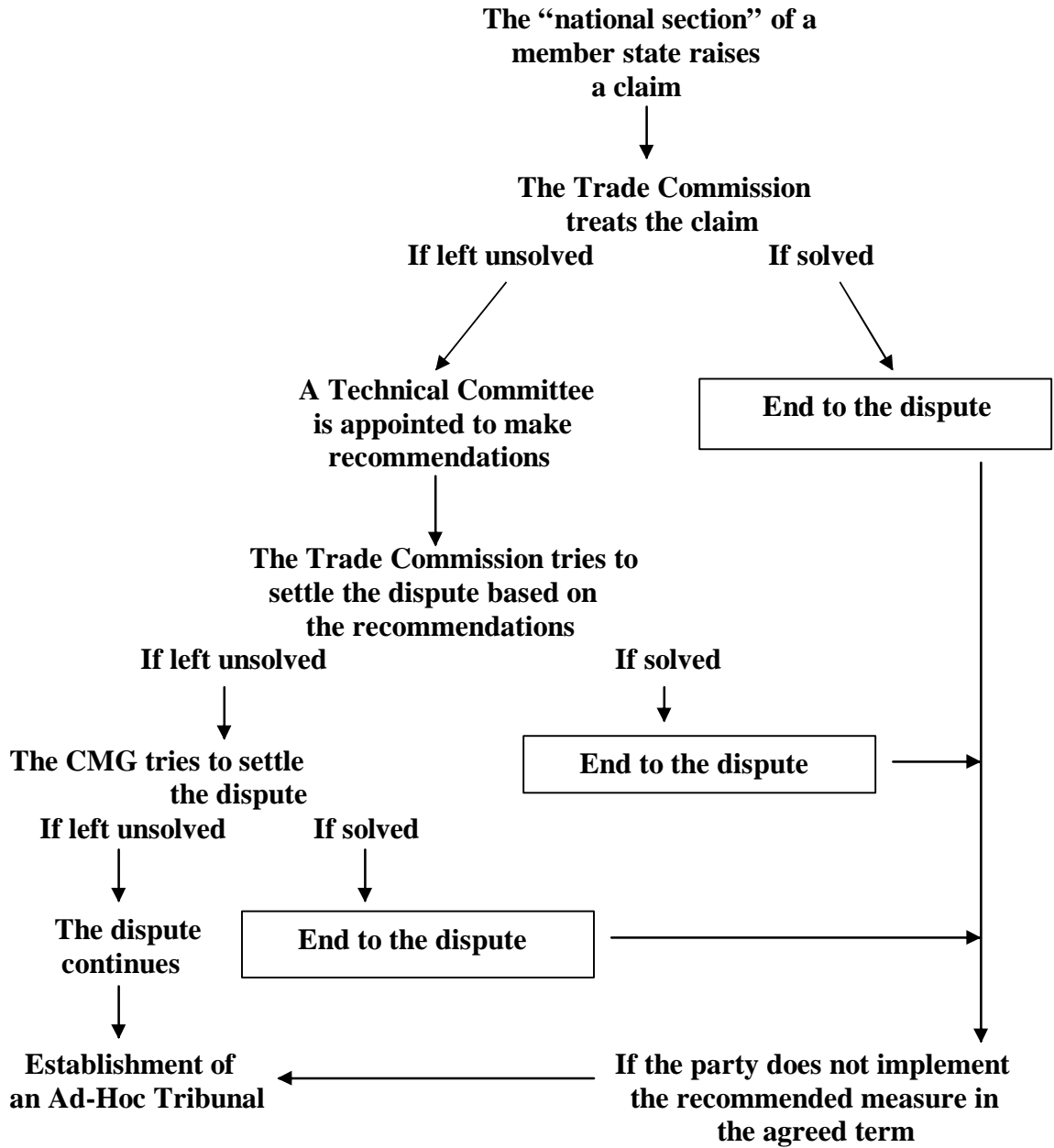
From the standpoint of furthering economic integration in the region the institutional design of MERCOSUR seems to have reached a point of diminishing returns. Since the mid-nineties a growing wedge between commitments and implementation has developed, *pari passu* with a growing credibility gap. The sharp increase in interdependence has created new functional demands for institutionalisation, most evident in the case of the smaller partners. This has made more obvious the shortcomings that dominate the “supply” side, still constrained by low and asymmetric levels of interdependence, macroeconomic fragility, vulnerability to external shocks and divergent national preferences. This has given a premium to the maintenance of flexibility, particularly on the part of Brazil. In the future these structural factors will continue to shape the context in which MERCOSUR institutions will evolve. Progress towards more “dense” institutional forms will be therefore at best gradual and slow.

- R. Baldwin (1993), "A Domino Theory of Regionalism", *Working Paper* no. 4465, Cambridge, Mass: NBER.
- M.C. Boldorini y S. Zalduendo (1995), "La estructura jurídico-institucional del Mercosur después del Protocolo de Ouro Preto", *Boletín Informativo Techint* No 283, julio-septiembre.
- R. Bouzas (1999), "Las Perspectivas del Mercosur: Desafíos, Escenarios y Alternativas para la Próxima Década", in J. Campbell (ed), *Mercosur. Entre la Realidad y la Utopía*, Buenos Aires: CEI-Editorial Nuevohacer.
- R. Bouzas (1998), "Strategic Issues and Market Access Negotiations in the Americas: A Perspective From Mercosur", Buenos Aires: Universidad de San Andrés, *Documento de Trabajo* No 15, octubre.
- R. Bouzas and J. Ros (1994), "The North South Variety of Economic Integration", in R. Bouzas and J. Ros (editors), *Economic Integration in the Western Hemisphere*, South Bend: University of Notre Dame Press.
- P. da Motta Veiga (1999), "Brazil in Mercosur: Reciprocal Influences", in R. Roett (ed), *Mercosur. Regional Integration, World Markets*, Boulder, Col: Lynne Rienner Publishers Inc.
- F. González (1999), "Mercosur: incompatibilidad de sus instituciones con la necesidad de perfeccionar la unión aduanera. Propuesta de cambio", *Integración y Comercio*, año 3, núm. 9, septiembre-diciembre.
- J. Grieco (1997), "Systemic Sources of Variation in Regional Institutionalisation in Western Europe, East Asia and the Americas", in E. Mansfield and H. Milner, *the Political Economy of Regionalism*, New York: Columbia University Press
- D. Heymann (1999), "Interdependencias y Políticas Macroeconómicas: Reflexiones sobre el Mercosur", en J. Campbell (ed), *Mercosur. Entre la Realidad y la Utopía*, Buenos Aires: CEI-Editorial Nuevohacer
- S. Jardel (1998), "Las Instituciones del Mercosur", 2do Congreso de Economía, Consejo Profesional de Ciencias Económicas de la Capital Federal, *mimeo*.
- M. Khaler (1995), *International Institutions and the Political Economy of Integration*, Washington DC: The Brookings Institution.
- W. Mattli (1999), *The Logic of Regional Integration. Europe and Beyond*, Cambridge: Cambridge University Press
- F. Peña (1999), "Contribución al Análisis de la Experiencia Institucional del Mercosur", Informe para IRELA, *mimeo*.
- D. Snidal (1985), "Coordination Versus Prisoners' Dilemma: Implications for International Cooperation and Regimes, *American Political Science Review* 79, December.
- H. Wallace (2000), "The Institutional Setting. Five Variations on a Theme", in H. Wallace and W. Wallace, *Policy-Making in the European Union*, Oxford: Oxford University Press
- B. Yarbrough and R. Yarbrough (1997), "Dispute Settlement in International Trade: Regionalism and Procedural Coordination", in E. Mansfield and H. Milner, *the Political Economy of Regionalism*, New York: Columbia University Press

**Chart 1**  
**Mercosur: Decision-making organs**

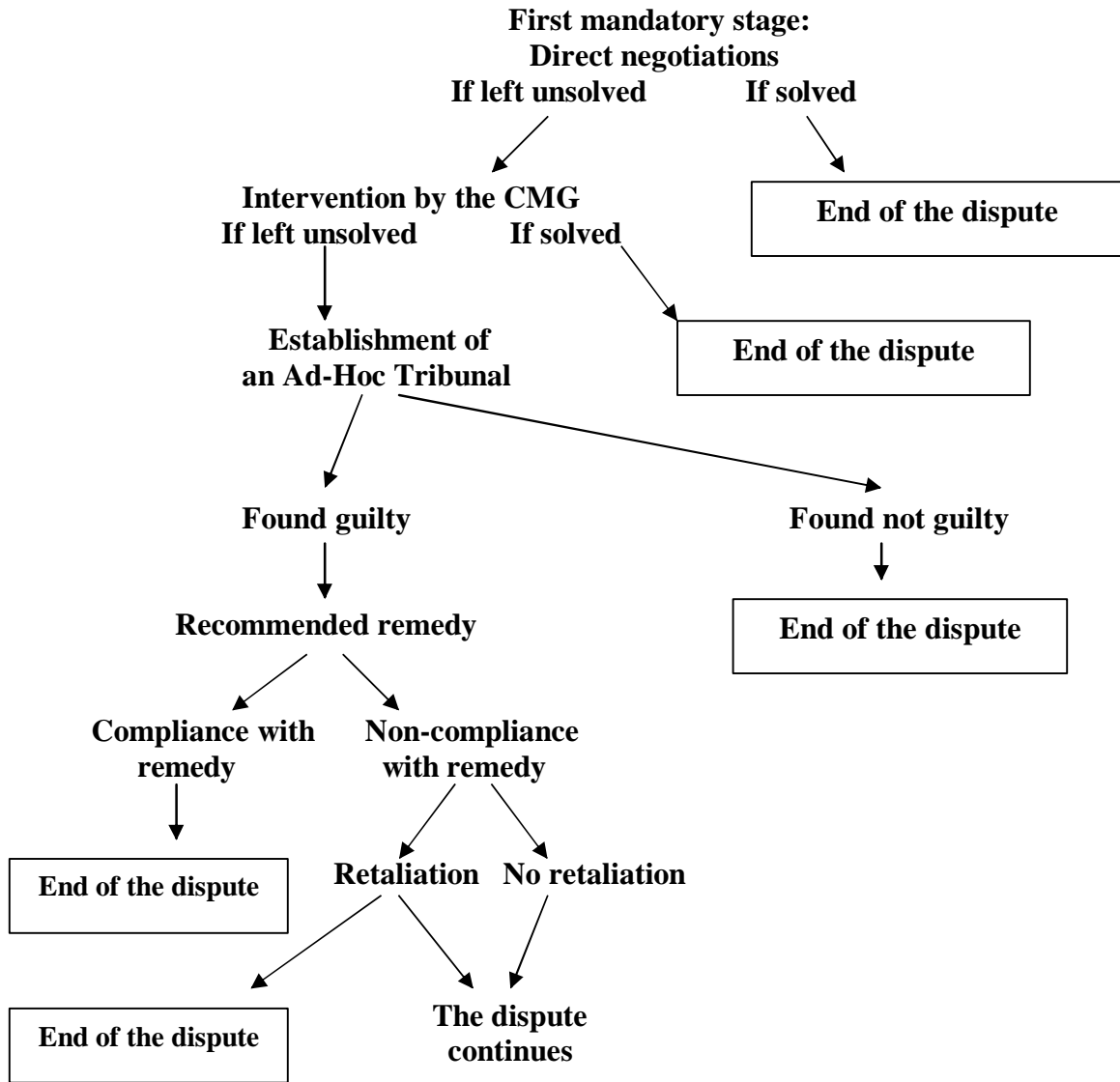
**PLEASE INSERT**

**Chart 2**  
**Sequence of a claim before the Trade Commission**



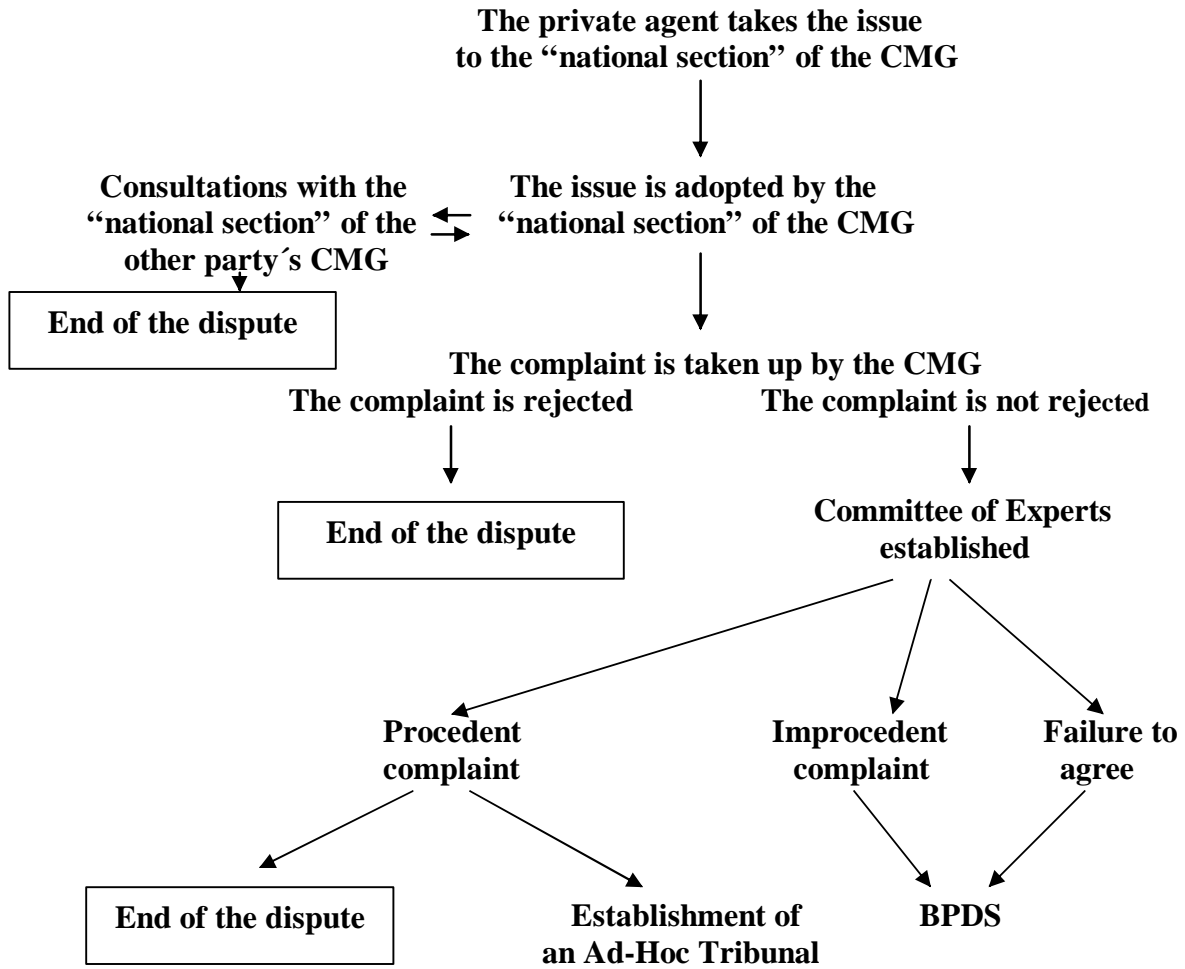
Source: Prepared by the authors on the basis of the OPP's annex on General Procedures to Make Claims Before the MTC (1994).

**Chart 3:  
Sequence of a dispute between member states  
according to the BPDS**



Source: Prepared by the authors on the basis of the BPDS (1991)

**Chart 4:  
Sequence of a dispute initiated by the private sector  
according to the BPDS**



Source: Prepared by the authors on the basis of the BPDS (1991) and its reglament (1998).

**Table 1**  
**Common Market Council:**  
**Summary of Decisions taken between 1991 and 1999**

	1991	1992	1993	1994	1995	1996	1997	1998	1999	Total
<b>NUMBER OF DECISIONS:</b>	16	11	13	29	9	18	26	23	27	172
<b>OF WHICH, IN PERCENTAGE:</b>										
<b>Trade policy</b>	18.8	18.2	30.8	62.1	0.0	27.8	30.8	13.0	3.7	25.6
<b>Cult, Just, Educ &amp; Security</b>	0.0	27.3	0.0	10.3	22.2	38.9	23.1	43.5	37.0	23.8
<b>Institutional Affairs</b>	81.3	27.3	30.8	6.9	33.3	16.7	3.9	26.1	11.1	22.1
<b>Other issues</b>	0.0	9.1	23.1	20.7	0.0	0.0	15.4	4.4	14.8	11.0
<b>External Negotiations</b>	0.0	9.1	0.0	0.0	11.1	11.1	23.1	0.0	25.9	9.9
<b>“Deepening”</b>	0.0	0.0	0.0	0.0	33.3	0.0	3.9	8.7	3.7	4.1
<b>Technical Standards</b>	0.0	9.1	15.4	0.0	0.0	5.6	0.0	4.4	3.7	3.5
<b>Total</b>	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0	100.0

Source: Authors' calculations based on CMC Decisions.

**Table 2**  
**MERCOSUR Trade Commission:**  
**Summary of Consultations, 1995/1999**

	1995	1996	1997	1998	1999	Total
<b>Total number of consultations</b>	134	85	65	32	39	355
<b>Pending consultations*</b>	0	7	16	15	8	46
Pending consultations as a share of total consultations (percentage)	0	8.2	24.6	46.9	20.5	13.0

\* October 1999

Source: Authors' calculations based on data from the MTC.

**Table 3**  
**MERCOSUR: Indicators of interdependence, 1991/1999**

	1991	1992	1993	1994	1995	1996	1997	1998	1999
<b>Trade "encapsulation index" (exports to Mercosur as a share of total exports, %):</b>									
<b>Argentina</b>	16.5	19.0	28.1	30.3	32.3	33.3	36.2	35.6	30.2
<b>Brazil</b>	7.3	11.4	14.0	13.6	13.2	15.3	17.1	17.4	16.4
<b>Paraguay</b>	35.1	37.5	39.6	52.1	57.1	63.2	60.9	61.2	41.6
<b>Uruguay</b>	35.5	33.6	43.5	47.0	47.1	48.1	49.7	55.4	45.1
<b>Mercosur</b>	11.1	14.3	18.6	19.4	20.5	22.7	24.8	25.8	20.4
<b>Exports to Mercosur to GDP ratio (percentage):</b>									
<b>Argentina</b>	1.04	1.02	1.56	1.87	2.62	2.91	3.26	3.16	2.49
<b>Brazil</b>	0.57	1.05	1.22	1.08	0.87	0.94	1.12	1.14	0.89
<b>Paraguay</b>	4.14	3.82	4.17	5.43	5.85	6.86	8.49	7.89	3.64
<b>Uruguay</b>	5.56	4.59	5.06	5.53	5.50	6.03	6.86	7.59	5.03
<b>Mercosur</b>	0.83	1.13	1.44	1.46	1.46	1.58	1.84	1.86	1.41

Source: Authors' calculations on the base of national official figures.