

**IN-DEPTH ANALYSIS OF MERCOSUR**  
**INTEGRATION, ITS PROSPECTIVES AND THE**  
**EFFECTS THEREOF ON THE MARKET ACCESS**  
**OF EU GOODS, SERVICES AND INVESTMENT**

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## **INTRODUCTION**

The following document “In depth analysis of Mercosur integration, its prospectives and the effects thereof on the market access of EU goods, services and investment” constitutes the final report of the study commissioned by D.G. Trade to the consultants.

This final report includes the consultant’s revisions following D.G. Trade services comments on preliminary versions. It keeps strictly to the terms of reference established by the contract signed between D.G. Trade and the University of Barcelona by focusing on Mercosur integration and not on the development of EU-Mercosur negotiations. In accordance with article 13 of the contract, the report is the absolute property of the Commission. Any information gathered or conclusions reached by the consultants on matters not covered by the terms of reference have been kept out of this final report and remain the consultant’s property.

The study has been organised into four chapters. Most of the analysis and the empirical research is found in the first two chapters, whereas the last two are more oriented towards policy issues.

In order to facilitate reading, the main text offers a summary of the principal results while the annexes provide more detailed information. However, annexes 1.I and 1.II ~~must be seen as~~ integral parts of the main text. ~~They~~ constitute one of the more important components of the study ~~and they were included~~ into two annexes simply because ~~their~~ nature (a directory of MERCOSUR’s legislation compiled for the first time) does not allow them to be read as the rest of the chapters.

Annex 2.II exists only in hard copy as it has been made by hand by underlining the 189 photocopies of the Annexes of the Montevideo Protocol on Services in order to show the increase (or decrease) in the degree of liberalization. These texts were taken from MERCOSUR’s Official Journal. Annex 2.III exists also only in hard copy and it is

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not recommended to be made public as it includes some information obtained by the consultants on a confidential basis.

All the study is written in English. The subject matter of some parts of the study, particularly annexes 1.II and 2.I, has required the translation of highly specialised legal terminology. Translation should always be checked with the original Spanish or Portuguese texts.

The initial project proposed a screening of MERCOSUR member states legislation that contradicted MERCOSUR rules. However, as the project developed, the relevance of this exercise decreased for three reasons: a) in many important areas, MERCOSUR legislation has not yet entered into force and, as a consequence, contradictions with member states legislation simply do not arise; b) in some cases, violation of MERCOSUR rules by member states has been validated *a posteriori* by MERCOSUR decisions; c) some MERCOSUR acts (namely in the phytosanitary area) presented as harmonizing measures contain simply the list of the divergent measures applied by member states and as a consequence, here again, the problem of them being contradicted does not arise.

MERCOSUR's state of crisis, steadily aggravated in the last year, advised against pursuing, as initially envisaged, a deep analysis of the benefits of further integration. The problem lies rather on how to avoid a complete dilution or disintegration of the process. As a consequence, the emphasis on that analysis has been replaced by that on the dilemmas MERCOSUR faces and consequently the strategies and the recommendations to overcome the crisis. However, a discussion of the benefits of the integration, both from the point of view of MERCOSUR and the European Union, can be found in different sections of chapters 3 and 4.

Section 3.3 has taken into account the information gathered through individual

interviews of firms and business representatives as well as through a questionnaire circulated among firms associated with AMEC (*Asociación Multisectorial de Empresas*, an association of Spanish exporting firms) and other European firms participating in MEBF (MERCOSUR-EU Business Forum). We thank all of them for their collaboration.



## **CHAPTER 1**

# **AN OVERALL VIEW OF MERCOSUR'S DEVELOPMENT**

### *1.1 Background to MERCOSUR's current stalemate*

Most Latin American (LA) countries have been very active participants in regional integration initiatives. Most of these agreements, however, have made scant progress. During import substitution industrialization, intra-regional trade liberalization collided rapidly with national development strategies. Once the “easy” phase of reciprocal trade liberalization was left behind (usually involving goods not produced locally), the exchange of preferences based on a “positive list” approach strengthened the leverage of import-competing interests, who effectively blocked progress. The demise of the Latin American Free Trade Association (LAFTA) and its substitution by the Latin American Integration Association (LAIA) in 1981 confirmed the inclination of LA countries towards discretion and flexibility in regional integration affairs.

MERCOSUR member states made active use of the instruments provided by LAFTA and LAIA to expand bilateral trade. In fact, Argentina and Brazil (jointly with Mexico) were the most active users of “sector complementation agreements” in the 1960s and 1970s, leading to a rapid increase in reciprocal trade. At the end of the 1970s nearly 80% of Argentine-Brazilian bilateral trade was conducted under LAFTA preferences.

However, geo-political tensions, disparate national development strategies and an adverse international economic environment worked against regional integration initiatives. In less than a decade the region suffered two large external shocks (the oil and the external debt crisis) that sharply lowered intra-regional trade. International credit rationing and a foreign exchange shortage in the early 1980s led to a significant increase in protection region-wide. As a result, between 1980 and 1985, Argentine-Brazilian bilateral trade nearly halved, reducing the share of Argentina as a market of destination for Brazilian exports to a meager 3% (down from over 6% in 1966-70).

Against this background, the Argentine-Brazilian *Programa de Intercambio y Cooperación Económica* (PICE) signed in 1986 and the Treaty of Asunción of March 1991 establishing the Common Market of the South (MERCOSUR) were path-breaking events. A stylized account of the history of MERCOSUR can analytically distinguish six phases:

- a) The PICE as an antecedent to MERCOSUR (1985-89);
- b) The foundations of MERCOSUR: the Acta de Buenos Aires and the Treaty of Asunción (1990-91);
- c) Transition towards the customs union (1991-94);
- d) MERCOSUR's paradoxical "golden age" (1995-97);
- e) Conflict escalation (1998-2000);
- f) MERCOSUR in a stalemate (2001-?)

*1.1.a) The PICE as an antecedent to MERCOSUR (1985-89)*

Three factors converged in the mid-1980s to produce a major change in the political and economic environment of regional integration in the Southern Cone. First, democratization in Argentina, Brazil and Uruguay created new incentives to redress bilateral relations, especially between the two largest countries, making military, energy and trade cooperation the main ingredients of new "good neighbor" policies. Second, the macroeconomic and regulatory crisis of Argentina and Brazil made evident the exhaustion of a development model based on protection and widespread state intervention. The external debt crisis also contributed to a perception of common challenges *vis-à-vis* the world economy. Third, the proliferation of regional integration initiatives worldwide underlined the risk of marginalization and the potential contribution of regional cooperation to strengthen the voice and muscle of the region in international affairs.

In this new environment the Argentine and Brazilian governments signed in 1986 the *Programa de Integración y Cooperación Económica* (PICE), laying the framework for increased cooperation on a sector basis (through, among other means, trade liberalization and technological cooperation). The performance of the PICE shared many of the features typical of LAFTA and LAIA: after an initial period of intra-regional liberalization and rapid trade growth (that restored trade flows to the levels recorded prior to the external debt crisis), the exchange of concessions slowed down and trade flows reached a plateau. In 1988 the two governments signed a *Tratado de Integración, Cooperación y Desarrollo* aimed at establishing a common market in a period of ten years. The *Tratado de Integración* served to reaffirm the political commitment to promote regional cooperation, but it shared the lack of precision and enforcement mechanisms typical of most LA integration efforts. However, by the turn of the decade bilateral trade flows had experienced a two-fold increase over 1985 levels. Moreover, the radical change experienced by the predominant attitude towards bilateral relations on the part of the Argentine and Brazilian governments laid the foundation for a more ambitious approach.

*1.1.b) The foundations of MERCOSUR: the Acta de Buenos Aires and the Treaty of Asunción (1990-91)*

The late 1980s witnessed the initial steps towards unilateral trade liberalization in Argentina and Brazil, a process that speeded up in the early 1990s.<sup>1</sup> The turn of the decade was also a watershed for the predominant development model: market-oriented reforms gained growing predicament in public debates and policy-making. This change in focus had a major impact on regional integration initiatives: its major outcome was the signing of the *Acta de Buenos Aires* in June 1990. The *Acta* adopted an approach to trade liberalization that emphasized an automatic, linear and universal mechanism of tariff

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<sup>1</sup> Argentina implemented a trade liberalization program in the late 1970s, but it was abandoned after the financial crisis of the early 1980s. The external debt crisis led to further increases in protection.

elimination. According to the agreed schedule, by the end of 1994 Argentina and Brazil would apply 100% preferences over MFNs` tariff rates on a reciprocal basis. The *Tratado de Asunción* signed in March 1991 extended these commitments to Paraguay and Uruguay and created the Common Market of the South (MERCOSUR).

The *Tratado de Asunción* included four mechanisms to move towards a common market, namely: a) a Trade Liberalization Program (TLP) to be concluded by December 31<sup>st</sup> 1994; b) the adoption of a common external tariff (CET) as of January 1<sup>st</sup> 1995; c) the coordination of macroeconomic and sector policies and d) sector agreements to deepen and speed up the liberalization of intra-regional trade flows. However, only the TLP included detailed enforcement mechanisms. All member states undertook essentially the same commitments, except for a larger number of transitory exemptions and one additional transition year to reach 100% preferences over MFNs´ tariff rates in the case of Paraguay and Uruguay.

The approach to intra-regional trade liberalization adopted by MERCOSUR was shaped by the structural asymmetries as well as by the domestic conditions that prevailed in the region (particularly the imperative of structural reform and the reluctance to resign autonomy in domestic policy making, except as a lock-in device for trade liberalization). These conditions help to account for: 1) the adoption of automatic mechanisms to ensure trade liberalization (thus freeing the process from domestic pressures) and 2) a “soft” institutional design that did not involve a significant pooling of national competences.

#### *1.1.c) Transition towards the customs union (1991-94)*

The period of transition towards the customs union was characterized by tensions emerging from divergent macroeconomic policies and performances. The adoption of a currency board in Argentina in 1991 brought inflation down and laid the basis for fast

aggregate demand growth. In the meantime the Brazilian economy remained dominated by high volatility and a disappointing growth performance. In this context bilateral trade imbalances rose sharply, fueling domestic demands for protection (especially in Argentina). Given the lack of flexibility to tinker with tariffs, non-tariff barriers (NTBs), private sector agreements and other *ad hoc* initiatives (such as Brazilian purchases of Argentine wheat and oil) served as safety valves. The rapid growth of Brazilian industrial exports to the region (particularly to Argentina), gave rise to a significant domestic coalition in support of MERCOSUR. Higher Brazilian manufacturing exports were heavily concentrated in sectors traditionally influential in foreign trade policy-making (such as steel, chemicals, motor vehicles and textiles). For many of these industries higher exports to the region was a partial compensation for the loss of domestic market share as a result of unilateral and multilateral liberalization. Other governmental and non-governmental actors (such as the legislatures and the trade unions) also took increasing interest in MERCOSUR.

Despite rising trade disputes, intra-regional trade flows (particularly of industrial goods) boomed between 1991 and 1994. By 1994 intra-regional trade flows accounted for 19% of total foreign trade, as compared to 8% just three years earlier. In contrast to the PICE, the period of transition towards the customs union confirmed an approach to regional integration that can be described as “uncoordinated automaticity”. This approach eventually prevailed over the guidelines adopted in the *Acta de Las Leñas* (June 1992). The *Acta de Las Leñas* included a schedule to harmonize a set of critical domestic policies in areas where existing policy asymmetries threatened to create insurmountable obstacles to market integration. Despite its detailed commitments, the *Acta de Las Leñas* had very little impact.

The *Tratado de Ouro Preto* (December 1994) brought this period to a conclusion, postponing the objective of a common market and focusing instead in the implementation of a customs union. According to the agreed schedule, by year 2001 a CET should be in

force for most of the tariff schedule, while all transitory exceptions to intra-regional free trade should have been phased out. The CET adopted in December 1994 was heavily influenced by the tariff structure of Brazil, combined with transitory exceptions to accommodate divergent national production and protection structures. For a set of sensitive products, a *Régimen de Adecuación Final* established a schedule to reach intra-regional free trade by the end of the decade (see below Sections 2.1 and 2.2).

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#### 1.1.d) MERCOSUR's paradoxical "golden age" (1995-97)

Macroeconomic stabilization in Brazil after 1994 led to a sharp expansion of domestic aggregate demand with significant spill-over effects on the rest of the region. This boosted exports from partners such as Argentina, severely hit by the 1994 Mexican crisis. In addition, macroeconomic stabilization in Brazil stimulated *de facto* convergence in macroeconomic policy and performance, contributing to rapid trade growth. During this period Brazil and Argentina benefited from a foreign investment boom that included the implementation of regional restructuring strategies on the part of transnational firms in sectors such as motor vehicles, food, chemicals, financial services and telecommunications. Progress towards policy coordination, however, remained very modest.

In December 1995 MERCOSUR member states agreed a medium-term action plan christened *Agenda MERCOSUR 2000*. The *Agenda* targeted for priority negotiations the consolidation and "deepening" of the customs union, including services trade liberalization, government procurement, tax harmonization, etc. During the 1995-97 "golden years", MERCOSUR concluded two free-trade agreements with Chile and Bolivia and increased its activism in international trade negotiations, signing a framework agreement with the European Union and participating in the Free Trade Area of the Americas (FTAA) negotiations as a single entity.

Despite this generally favorable environment, MERCOSUR failed to make progress in tackling national discretion on policy and regulatory issues. This was the case with macroeconomic policy, but also with industrial, tax and investment policies. This led to blocked negotiations and a credibility crisis about the effectiveness and relevance of MERCOSUR's regulatory and policy framework. No progress was made on the harmonization of policies for the so-called "special sectors" (sugar and motor vehicles), of policy-induced or structural asymmetries, on the removal of non-tariff barriers (NTBs) or the free circulation of goods.

A number of economic and political factors help to account for the fact that the sizable increase in the "political capital" of MERCOSUR during the 1995-97 period was not strong enough to push member countries to make breakthroughs in the policy agenda identified in December 1995. First, after the initial progress in tariff elimination, the emerging agenda gained in depth and complexity, demanding member countries more convergent views and preferences over instruments and outcomes. That such shared views did not exist is confirmed by the contrasting directions taken by national industrial and export promotion policies since the mid-1990s.

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Second, the asymmetric interdependence that binds MERCOSUR member countries together gave rise to divergent incentives to constrain national policy discretion and "deepen" economic integration. Brazil, by far the largest MERCOSUR partner, traded intra-regionally only 15% of its total foreign trade in 1996 (as compared to 33% for Argentina, 50% for Uruguay and 63% for Paraguay). This relatively low level of regional interdependence, combined with a long-standing tradition of policy independence, was a major factor behind Brazil's reluctance to constrain national policy discretion.

Third, since foreign policy considerations played a key role in the engagement of



Brazil in MERCOSUR, the emergence of different views with Argentina over foreign policy priorities reduced the former's perception of net gains to be derived from regional cooperation. With the expected trade-off between Argentina's greater access to the Brazilian market and its alignment on Brazilian views on foreign policy failing to materialize, Brazilian policy-makers found few reasons to resign policy discretion or abide by collective disciplines. The expectation that progress on the FTAA negotiations may create pressures to "deepen" MERCOSUR also failed to materialize, as Brazilian trade officials saw the prospect of a hemispheric free-trade area as distant and unlikely. This view was strengthened by the US Administration's failure to obtain fast-track authority from Congress.<sup>2</sup>

Paradoxically then, MERCOSUR's golden age led to a period of regulatory paralysis and a credibility crisis. As the scope of the negotiating agenda widened, the ability to reach effective compromises shrank. The difficulties faced by MERCOSUR were made evident not only by its failure to deal effectively with the emerging "deepening" agenda, but also by its inability to tackle more conventional issues, such as NTBs and enforcement of a CET.

#### *1.1.e) Conflict escalation (1998-2000)*

The East Asian crisis of 1997 sharply reduced the leeway enjoyed by MERCOSUR, based on rapid output and foreign trade growth eased by abundant foreign finance. The *Régimen de Adecuación Final*, scheduled to be concluded in December 1998 (one year later in the case of Paraguay and Uruguay) was phased out as planned, but the economic slowdown led to renewed tensions between the partners. After the devaluation of the Real in January 1999 trade tensions peaked.

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<sup>2</sup> Perceptions began to change slowly after the Belo Horizonte summit of Western Hemisphere trade ministers. However, by the time the FTAA process had gained credibility again, MERCOSUR was facing growing difficulties to keep its act together.

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The external negotiations of MERCOSUR with its LAIA partners also deadlocked. After concluding two free-trade agreements with Chile and Bolivia, MERCOSUR failed to reach a deal with Mexico<sup>3</sup> and the Andean Community. The subsistence of bilateral preferential agreements (in some cases even expanding pre-existing preferences, such as in the new bilateral pact between Mexico and Uruguay) caused new “perforations” to the CET. These “perforations” increased as a result of unilateral decisions and “embedded flexibility” (such as the authorization to optionally increase the CET by three percentage points granted in 1998). The “deepening” agenda made scant progress as well: MERCOSUR member countries signed a Protocol on Trade in Services (December 1997), but its “value added” over the commitments undertaken in the GATS three years earlier was the promise to liberalize services’ trade in a period of ten years.<sup>4</sup>

The sharp devaluation of the Real in January 1999 brought *de facto* macroeconomic policy convergence between Argentina and Brazil to an abrupt end. Intra-regional trade contracted sharply, and even though the much feared “invasion” of Brazilian goods into neighboring countries failed to materialize, trade conflicts and protectionist pressures increased, stimulated by domestic recession and diving trade. These pressures were mostly dealt with through *ad hoc* mechanisms such as private sector agreements, more aggressive implementation of trade relief laws and other NTBs. Disclosure of some firms’ plans to transfer production facilities from high-cost Argentina to low-cost Brazil (most visibly in motor vehicles) strengthened the perception of MERCOSUR as a zero-sum game.

The *Agenda de Buenos Aires* adopted in June 2000 aimed at re-launching MERCOSUR. The Agenda embraced many topics, including macroeconomic coordination; investment, export and production incentives; special customs regimes; external relations; market access issues; implementation of the CET; trade relief and competition defense; and institutions. Member countries agreed on a standstill on new

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<sup>3</sup> [The agreement reached in 2002 simply extends the validity of preexisting bilateral agreements and creates the framework for future negotiations](#)

<sup>4</sup> The Services Protocol is not enforced yet because Congressional ratification is still pending.

restrictions to intra-regional trade. However, the immediately enforceable decisions gave green light to practices incompatible with the customs union, such as the authorization to maintain imports-duty drawbacks (extended until December 2005) or to continue to enforce domestic trade defense laws (originally extended until December 2001, but later on postponed). Most of the remaining issues required additional negotiations, which eventually proved inconsequential. In the vast majority of cases the deadlines were missed and thus extended at the Florianópolis summit of December 2000.<sup>5</sup>

#### 1.1.f) MERCOSUR in a stalemate (2001-?)

During year 2001 regional events were dominated by the marked deterioration of economic conditions in Argentina, a fact that stimulated unilateral policy decisions and deepened the disarray of the customs union. In March 2001 an emergency economic program included unilateral changes to the tariff structure (Argentina was waived temporarily from its CET obligations in June 2001), sector tax and trade benefits and a dual exchange rate system for exports and imports (abandoned after the devaluation of the peso). As a result, the customs union approach to regional economic integration<sup>6</sup> became increasingly challenged in Argentina as well as in other countries, such as Uruguay. Conflicting views as to the pace and rhythm of other multilateral or regional negotiations (such as the FTAA) also surfaced openly. In response to this renewed pressure in June 2001 the CMC created a special group in charge of reassessing the CET. Member countries also agreed to convene the Trade and Investment Consultative Council created by the “4+1 agreement” (Rose Garden Agreement) between the US and MERCOSUR signed in June 1991.

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<sup>5</sup> The major achievements of the Florianópolis summit were an agreement on indicative macroeconomic targets and approval of a Regional Regime for the Motor Vehicles Industry.

<sup>6</sup> A “customs union approach” to regional economic integration differs from a “free trade area” approach. The first aims at unifying commercial policy with third countries while the second leaves this area of economic policy to the discretion of each member state and outside the integration framework. However, as discussed later on, the building of a customs union does not require only the establishment of a “common” commercial policy, it requires also the merging of the former separate customs territories into a “single” one.

The full-fledged economic crisis of Argentina since December 2001 has placed MERCOSUR on hold. However, even in this critical context there were some positive signs during 2002. First, the new Argentine government reversed the tariff changes unilaterally introduced in 2001, enforcing the CET again. Second, the Central Banks of Argentina and Brazil restored suspended reciprocal credit lines to facilitate bilateral trade. Third, a Permanent Court of Appeal for dispute settlement and a Technical Secretariat to assist in the negotiations were finally created, following protracted negotiations. Lastly, Argentina and Brazil agreed to “clean the table” on pending trade disputes and made quantitative restrictions on automotive trade more flexible to enable Argentina to increase its duty-free exports to Brazil. These piecemeal agreements do not constitute a major change in course, but may lay the basis for constructive negotiations in the context of a renewed political commitment. The fact that new governments will take office both in Argentina and Brazil in 2003 may help to re-invigorate MERCOSUR and to focus on priority policy issues.

## ***1.2 Screening of MERCOSUR legislation***

In our revision we have found no satisfactory and comprehensive analysis of the legal content of MERCOSUR integration. Available literature offers either an aggregate quantitative description of MERCOSUR legal acts classified along the six major areas used by the Instituto para la Integración de América Latina (INTAL) Database (see, for example, Pérez Antón 2001) or a more qualitative but also partial analysis (see, for example, Abreu 2000). Moreover, even though it is useful as a classification device, the INTAL Database has three major shortcomings when used to make such analysis. First, it makes no difference between the internal and external dimensions of regional economic integration (a key issue to properly understand MERCOSUR’s recent history and current dilemmas). Second, it classifies under the same headings topics that have different roles in the process of regional economic integration (for example, economic issues like investment or provision of services and non-economic issues like cultural and judiciary

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co-operation). Finally, the INTAL Database goes into excessive disaggregation in some areas, such as product classification.

To undertake a screening of MERCOSUR legislation it may be useful to classify it according to criteria that resemble, even if they are not identical, those of the EU's "Directory of Legislation in Force". For the sake of simplicity all MERCOSUR legal acts (except those that can be considered "preparatory" or referring to "internal organization" matters) were classified (see Annex 1.I) in three major chapters according to their main object (repetitions are inevitable in some cases), namely:

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- A) Construction of the customs union and the internal market;
- B) Other aspects of the integration process; and
- C) External relations.

Annex 1.II includes a brief description and comments on each individual legal act or set of legal acts when their content is similar. Annex 1.III includes all MERCOSUR legal acts classified chronologically in order to facilitate their search and identification in the directory.

Following a detailed examination of the inventory we reached three major conclusions. Some of these conclusions are not exclusive of MERCOSUR, but rather typical of regional integration agreements. However, in the case of MERCOSUR their consequences seem to have been aggravated by a deficit of political commitment, blurred priorities and too flexible rule-making procedures. Our three major conclusions are as follows:

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- MERCOSUR legal acts show drafting deficiencies, including errors and inconsistencies. A number of important legal texts overlap and contradict each other, such as the Services Protocol and the Colonia Protocol on intra-zone

investment. While the former covers investment in services –“commercial presence”-, the latter extends its coverage onto investment in the service sectors. Similarly, important norms such as the national treatment principle as defined in Article 7 of the Treaty of Asunción are far more general and imprecise than their GATT’s equivalent.

- The production of legal acts is biased towards some topics (one remarkable example is standardization). We also found numerous legal acts in areas that have little relationship with the enforcement of a customs union (such as judicial cooperation or education), while at the same time there is almost no effective legislation regulating “internal market” issues other than trade in goods (such as cross-border supply of services, right of establishment, movement of capitals or movement of workers). Similarly, very little attention is paid in terms of rule-making to issues critical to the construction of the external dimension of a customs area.
- Finally, our detailed analysis of the current stock of legal norms has shown that there are too many legal acts with no practical effects. This has been probably the result of the need to meet deadlines and targets and provide a sense of progress in “rule making”. This has reduced transparency (i.e., it is unclear which rules are effective) and seriously challenged the credibility of the rule-making process.

### ***1.3 Trends in aggregate trade flows: 1986-2000***

#### *1.3.a) Intra-regional trade flows*

Since the mid-1980s and until the slowdown that followed the East Asian crisis, intra-MERCOSUR trade rose almost continuously. Argentina and Brazil were the main

beneficiaries of this expansion: until 1998 exports to the region increased at a 21.6% and 18.2% average annual rate, respectively. The intra-regional exports of the smaller economies expanded at more modest –but still high- rates (14.4% in the case of Paraguay and 11.6% in that of Uruguay), confirming that the rapid rise of intra-MERCOSUR trade was a by-product of closer economic ties between its two largest partners. Total intra-regional trade increased from US\$2.6bn in 1986 to US\$20.4bn in 1998 (see Table 1.IV.1 in Annex 1.IV).<sup>7</sup>

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The gap between the rates of growth of extra and intra-regional exports was the highest in Brazil, where exports to MERCOSUR increased three times faster than sales to the rest of the world. Uruguay and Argentina followed the Brazilian performance closely: intra-regional exports increased nearly two and a half times faster than exports to the rest of the world. However, while Argentine exports to the rest of the world increased at a relatively high pace, Brazilian and Uruguayan extra-regional exports performed very poorly. For these two countries, therefore, intra-regional trade turned into a key factor behind total export growth. This goes counter the simplistic view that size asymmetries mean that MERCOSUR had marginal economic effects on Brazil. Indeed, were it not for exports to MERCOSUR, the performance of Brazilian sales abroad would have been more disappointing than it actually was. Most probably, the expansion of exports to the regional market also contributed to reduce pressure on sectors squeezed by foreign competition as a result of unilateral liberalization.

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Foreign trade performance changed radically after 1998: between that year and 2000, intra-regional exports contracted in all MERCOSUR member states, except Paraguay (total intra-regional trade fell by US\$2.7bn). The sharpest fall was recorded in the case of Uruguay, where exports to MERCOSUR halved returning to the levels recorded in 1995. Argentine and Brazilian exports fell more moderately by 13.5% and 10.6%, respectively.

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<sup>7</sup> Argentina and Brazil are also the less open economies as measured by the foreign trade/GDP ratio.

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### *1.3.b) Regional trade openness and foreign trade concentration indexes*

The rapid rise of intra-regional trade was accompanied by a significant increase in regional trade openness and foreign-trade concentration indexes (see Tables 1.IV.2 and 1.IV.3 in Annex 1.IV). However, these aggregate trends did not affect equally all member states: regional trade openness indicators remained flat in the case of Uruguay, while those of Paraguay increased only in the import side. These data confirm that the changes brought about by MERCOSUR in the cases of Paraguay and Uruguay were far less significant than in the case of the two larger partners, which shared a long established tradition of autarchy and foreign trade repression.

The same conclusion can be reached after examining the intra-regional to total foreign trade ratios. Absolute levels are unambiguously higher in the case of the smaller countries, but the increase experienced as a result of MERCOSUR was much larger in the case of the bigger economies. The disparate absolute values of the trade openness and regional trade concentration indicators are structural factors that shape an asymmetric structure of incentives to engage in policy co-ordination in MERCOSUR (see section 2.3).

### *1.3.c) Changes in the aggregate commodity composition of foreign trade*

On aggregate, the most significant changes in the commodity composition (HS sections) of aggregate MERCOSUR exports were:

- the sharp fall recorded in the contribution of food, metal and textile products to total exports, and
- the increase in the share in total exports of transport equipment, mineral



products (petroleum), electrical machinery and chemicals.

As it should be expected as a result of differences in economic size and total foreign trade, these aggregate trends reflect the changes experienced in the commodity composition of Brazilian exports (which account for nearly two thirds of MERCOSUR total exports). These, however, were heavily influenced by changes in the commodity composition of intra-regional trade (see Table 1.IV.4 in Annex 1.IV). Again, intra-regional trade flows stand out as a major determinant of aggregate trends.

#### *1.3.d) Changes in the regional composition of foreign trade*

The rise in the ratio of intra-regional trade to total foreign trade took place at the expense of different trading partners, depending on whether one focuses on the export or the import side. In the case of exports, the remarkable increase of intra-regional trade shares (14.5 percentage points between 1986 and 2000) occurred at the expense of all other trading partners except Latin America (see Table 1.IV.5 in Annex 1.IV). The share of NAFTA in total MERCOSUR exports fell by 5.5 percentage points, while that of the EU contracted by 4 percentage points. The EU performed poorly as a market of destination for MERCOSUR exports, even when the EU maintained its share (28%) in total Brazilian sales abroad. By contrast, in the case of Argentina, Uruguay and Paraguay the EU share in these countries' total exports contracted sharply (by 11.5, 10.5 and 5.0 percentage points, respectively). Since the dynamism of Brazilian total exports during the period under consideration was very low, the stability of the share of the EU as a market of destination for Brazilian exports confirms the modest role played by the EU as an export outlet.

On the import side the change in the regional composition of foreign trade looks less dramatic. The share of the region in total MERCOSUR imports experienced a more

modest (but still remarkable) 8.5 percentage points' increase. The major trading partners of MERCOSUR (the EU and NAFTA) managed to marginally increase their shares in total imports (by 2 and 1 percentage points, respectively) (see Table 1.IV.11 in Annex 1.IV), while the share of the rest of the world (excluding Latin America) fell by nearly 10 percentage points. Again, the performance of the EU as the origin of MERCOSUR imports varied across countries: while the EU share in total Brazilian imports increased from 23% in 1986-88 to 28% in 1998-2000 (an increase much larger than the one percentage point rise experienced by NAFTA), it fell in the case of Uruguay and, more remarkably, Argentina. In the case of Argentina, imports from the EU performed much worse than those coming from NAFTA. Indeed, NAFTA's share in Argentina's total imports increased by nearly two percentage points.

### *1.3.e) Changes in the commodity composition of intra-regional foreign trade*

The most significant change in the commodity composition of intra-regional exports was the sharp increase in the share accounted for by transport equipment (equivalent to a 10 percentage points increase) (see Table 1.IV.5 in Annex 1.IV). Other product categories with more modest higher shares include food products, electrical machinery and cellulose and paper. In absolute terms Brazilian exports were a major determinant of changes in the commodity composition of intra-regional trade (Table 1.IV.6). In the case of Argentina, motor vehicles and minerals increased significantly their share in total exports to the region: the share of motor vehicles almost trebled (from 6.6% in 1986-88 to 22.2% in 1998-2000) while that of minerals –mainly petroleum- experienced a twofold increase from 7.1% to 15.4%) (Table 1.IV.7). In the case of Paraguay, all product categories that increased their share in total intra-regional exports include natural-resource intensive goods such as vegetal products, edible oils, food products, furs and skins and cellulose and paper. Industrial products such as plastics and metals also increased their share in total exports, but the absolute value of exports remains very low (Table 1.IV.8). In the case of Uruguay the categories that experienced the largest increases include food

products, minerals, cellulose and paper and transport equipment (Table 1.IV.9).

The product categories that lost share in total intra-regional exports were chemicals, animal products, metals, furs and skins and textiles. All MERCOSUR member states (except Uruguay) shared a lower contribution of chemical and metal products to total exports. The falling share of textiles, in turn, masks divergent trends in the case of Argentina and Brazil, with rising shares on the one hand, and Paraguay and Uruguay, with falling shares on the other. The share of textiles in Paraguay's intra-regional exports fell remarkably, from 50% in 1986-88 to 19% in 1998-2000. The counterpart was a rising contribution of natural resource intensive products (such as vegetal and food products and furs and skins), that jointly increased their share in total exports from less than a quarter in 1986-88 to over 60 percent in 1998-2000.

The rise in the share of transport equipment was also the major change experienced by the commodity composition of intra-regional imports (see Table 1.IV.10 in Annex 1.IV). In effect, between 1986 and 2000 the share of imports of transport equipment in total MERCOSUR imports nearly trebled (from 7.3% to 20.9%). This increase was mainly accounted for by Argentine-Brazilian bilateral trade, ruled by an administered trade regime. The share of food products in total intra-regional imports also experienced a significant increase, up from 1.8% in 1986-88 to 5.1% in 1998-2000. The rise in the share of food products in total imports was the largest in the case of Paraguay and Uruguay.

#### *1.3.f) Changes in regional shares in MERCOSUR imports by type of commodity*

Between 1986 and 2000 the share of MERCOSUR in imports classified by commodity increased for all HS 2-digit categories, except for textiles, furs and skins and art objects (see Table 1.IV.11 in Annex 1.IV). The largest percentage increases were recorded in

animal products, vegetal products, transport equipment, food products and mineral products. In some of these commodity groups (such as animal and food products) EU exporters experienced a significant loss of market share.

As a supplier of MERCOSUR, the EU increased its share by type of commodity only in precious metals and stones, wood and wood manufactures, optical instruments and mineral products. By the end of the period, however, these categories accounted for only 6% of total EU exports to MERCOSUR. In most other chapters, the EU experienced a contraction in market shares, including food products, animal products, furs and skins, electrical machinery, footwear, edible oils, metals, ceramic and glass, plastic manufactures, vegetal products and transport equipment. In 1998-2000 electrical machinery (39%), transport equipment (14.3%), metals (5.5%) and plastic manufactures (5%) jointly accounted for nearly two thirds of EU exports to MERCOSUR.

As compared to NAFTA, between 1986 and 2000, EU exports to MERCOSUR performed poorly in the categories of electrical machinery, metals and food products. In effect, in all these product categories the share of NAFTA as a supplier of MERCOSUR increased, in contrast to that of the EU. NAFTA also experienced market share contractions lower than those of the EU in commodity groups such as animal products, furs and skins and plastic manufactures. EU exporters outperformed NAFTA's in vegetal products, edible oils, mineral products, chemicals, wood products, cellulose and paper, ceramic and glass, transport equipment and textiles.

However, most of the losses in EU market shares in MERCOSUR by chapter occurred prior to the establishment of MERCOSUR (the only significant exception was footwear). In effect, between 1992 and 2000 the performance of the EU as a supplier to MERCOSUR appears as much more homogeneous than in 1986-2000. Between 1992 and 2000, EU's market share losses in MERCOSUR were limited to the HS chapters art objects, footwear, animal products, food products, electrical machinery, miscellaneous

products, textiles and chemicals. In addition, during 1992-2000, EU exporters recovered part of the ground previously lost in transport equipment, metals and edible oils. Table 1.IV.12 in Annex 1.IV lists the four-digit HS categories in which the EU experienced the largest market share contractions in the 1992 -2000 period.<sup>8</sup>

*1.3.g) Changes in the commodity composition of EU exports to MERCOSUR*

The most remarkable change in the commodity composition of EU exports to MERCOSUR in 1986-2000 was the rise in the contribution of transport equipment and cellulose and paper products (see Table 1.IV.10). In particular, the rise in the share of transport equipment in total EU exports to MERCOSUR was more than 6 percentage points. This is a remarkable difference with the performance of NAFTA, in which the share of exports of transport equipment fell by 1.2 percentage points. As seen in sub-section 1.2.h) this accounts for the sharp contraction of NAFTA in MERCOSUR imports of motor vehicles.<sup>9</sup>

The most significant fall in the share by commodity groups in total EU exports to MERCOSUR was experienced by metal products, chemicals and animal products. Apart from transport equipment, another significant difference in the changes by commodity composition of NAFTA exports to MERCOSUR as compared to the EU was the remarkable increase in the share of electrical machinery (which in the case of the EU remained flat).

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<sup>8</sup> The analysis considered only tariff items in which the EU had a market share higher than 0.25 in 1992-94.

<sup>9</sup> Most car manufacturers established in MERCOSUR (including US firms) produce European models, which means that intra-industry (and intra-firm) trade is made primarily with plants established in the EU, rather than in the US.

#### **1.4 Trends in aggregate FDI inflows**

FDI inflows into MERCOSUR experienced a remarkable increase during the 1990s, rising from \$3.6bn in 1991 to \$44.9bn in 2000 (a \$55.8bn peak was recorded in 1999) (Table 1.V.1 in Annex 1.V). This performance translated into a significant rise in the share of FDI in regional gross capital formation, which rose from 3.7% in 1991 to over 35% in 2000 (Table 1.V.2). On average, FDI inflows have contributed with 10.5% of total gross capital formation, ranging from a maximum of 24.6% in the case of Argentina to just 4.7% in that of Uruguay.

During the first half of the 1990s Argentina was the destination for nearly two thirds of total FDI inflows into MERCOSUR (Table 1.V.1). However, during the second half of the decade Brazil's share increased remarkably: by year 2000 FDI flows into Brazil accounted for three fourths of total FDI flowing into MERCOSUR. In the 1996-2000 period Spain was the largest single investing country in MERCOSUR with a share of nearly 30% (MERCOSUR figures exclude Uruguay because of lack of comparable data) (Table 1.V.3). The US was the next largest investing country in the region, with a share of 20%. Taken as a group, the EU was the origin of 60% of total FDI inflows into Argentina, Brazil and Paraguay. The share of EU investors was highest in Argentina (69%), followed by Brazil (56%).

As far as sectors of destinations are concerned, transport and communication was the main recipient of FDI in 1996-2001 (17.8% of total FDI inflows), influenced by the high share of FDI inflows into that sector in the case of Brazil. Financial services was the second major recipient sector, again as a result of large FDI inflows into Brazil. Petroleum follows very closely as a third major sector of destination, a position fully accounted for by FDI inflows into Argentina. Electricity, gas and water is listed in the

fourth place, with a more balanced contribution of FDI inflows into MERCOSUR's two largest economies (Table 1.V.4).

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Total FDI inflows into Brazil increased from US\$9.6bn in 1996 to over US\$33bn in 2000 (Table 1.V.5). On average, eighty percent of all FDI inflows were channeled to the services sector (Table 1.V.6). Over a quarter of total FDI inflows into the services sector were invested in postal and telecommunication services, while an additional fifth was channeled respectively to the business services and financial sectors. Consequently, these three sectors received over two thirds of total FDI inflows into services activities and more than half of total FDI inflows into the Brazilian economy. On average, during the 1996-2000 period total FDI inflows into the industrial sector accounted for 17% of total FDI. Inflows into agriculture and extractive industries accounted for a modest 5.7%. The major recipient sectors in industry were motor vehicles (23% of total FDI in manufacturing), chemicals (18%) and electronic and communication equipment (9%).

According to the country of origin, the largest single investor in Brazil was the United States (responsible for 24% of total FDI inflows in the period), closely followed by Spain (21%) (Table 1.V.7).<sup>10</sup> The Netherlands and France were the next largest sources of FDI with a share of 9.3% and 7.6%, respectively. Germany, traditionally a large investor in Brazil, played a marginal role during the late 1990s, accounting for a meager 1.6% of total FDI inflows. The share of the EU in FDI inflows in Brazil between 1996 and 2000 was 52%.

The composition by sector of destination of FDI inflows into Argentina was more balanced than in the case of Brazil (Table I.V.8). Although the services sector still accounted for a high share of total FDI inflows (an average of 42.7% between 1992 and 2000), manufacturing and petroleum and mining played a more significant role, attracting 34.6% and 22.6% of total FDI inflows, respectively. Food and beverages was the most important industrial sector of destination of FDI (accounting for nearly a third of total

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<sup>10</sup> Spain was the single largest foreign investor in Brazil in 2000 (US\$9.5bn, as compared to US\$5.4bn from the US).

FDI inflows into industry), followed by the chemical and plastic industry (28.9%) and motor vehicles (18.1%). Electricity, gas and water were the largest FDI recipient in the services sector (27.7%), followed by finance (25.9%) and transport and communications (20.5%).

The first investing country in Argentina was Spain, that accounted for over a third of total FDI inflows in 1992-2000 (Table I.V.9). The United States kept the second place with a 18% share. The EU accounted for 60% of total FDI inflows into Argentina, with Spain responsible for more than half of EU inflows into Argentina. Other significant European investors include the Netherlands (12% of FDI inflows originated in the EU) and France (10.8%). In contrast to Brazil, where FDI from other South American countries accounted for less than 1% of total FDI inflows, their contribution in the case of Argentina was much more significant (accounting for nearly 7% of total FDI inflows, mainly of Chilean and Brazilian origin).

Paraguay played a very marginal role in accounting for FDI inflows into the region: between 1990 and 2000 Paraguay received only 0.7% of total flows. Again, the services sector (banks and telecommunications) was the major destination (65% of the total), followed by industry (29%) (Table I.V.10). Food, beverages and tobacco was the major recipient activity in industry, responsible for almost two thirds of the total. In Paraguay the major single investing country was the US (with a share of over a third), with Brazil and Argentina following closely (15% and 14%, respectively) (Table I.V.11). A European country appears only in the fourth place: the Netherlands with a share of 10%.

Uruguay had a share in total MERCOSUR FDI inflows even lower than that of Paraguay: between 1990 and 2000 FDI inflows into Uruguay represented only 0.6% of total FDI inflows into MERCOSUR. Aggregate figures for Uruguay show that services (mainly trade) accounted for 70% of FDI inward flows in the 1995-99 period, while



industry attracted 16.7% and the primary sectors 12.8% (Table 1.V.12). Again, the US was the largest single investor (31% in 1995-99). Aggregate figures indicate that the 35% of FDI inflows were originated in European countries, while MERCOSUR and Chile contributed with 20.7% (Table 1.V.13).

A revision of these aggregate figures leads to four major conclusions:

- The EU was a major participant in the FDI boom experienced by MERCOSUR in the 1990s, particularly by Argentina and Brazil.
- The leading role was played by new investors in the region, such as Spain (and to a lesser extent France). Traditional investors such as Germany and the UK played a marginal role.
- FDI in extractive industries (mainly petroleum) was significant only in the case of Argentina.
- FDI in manufacturing as a share of total FDI inflows was modest and concentrated in three sectors: food and beverages, chemicals and motor vehicles.
- Service activities (particularly banking, communications and trade) were the major recipients of FDI.

### 1.5. *The effects of MERCOSUR on selected sectors*

The assessment of the sectoral impact of MERCOSUR is obscured by the fact that regional economic integration proceeded *pari passu* with other far-reaching economic transformations, such as unilateral trade liberalization and macroeconomic stabilization in the mid-1990s. These coincident set of influences make too difficult to isolate the effects of regional integration from other key determinants of sectoral performance in the 1990s. There are, however, a number of studies that tried to provide an in-depth analysis of MERCOSUR effects on selected sectors.<sup>11</sup> These studies covered durable and non-durable consumer, intermediate and capital goods. The factors taken into account to assess the sectoral impact of regional integration were the effects on intra and extra-regional trade flows, FDI flows, competitive pressures and productive restructuring and business` strategies.

Table 1.1 suggests some convergent trends concerning the performance of trade flows. In effect, in most sectors intra-regional trade expanded *pari-passu* with imports from the rest of the world, suggesting limited trade diversion effects.<sup>12</sup> However, these trends were typically not accompanied by higher exports to extra-zone markets. In some sectors, such as motor vehicles, there is widespread evidence of trade diversion as compared to a free-trade scenario. However, considering the high pre-existing protection, the expansion of intra-regional trade flows caused by intra-regional preferences and administered trade arrangements proceeded in parallel to a significant increase in imports from the rest of the world. In other sectors, where administered trade arrangements were not used, such as in footwear, machine tools and textiles (the latter is not included in Table 1.1) the liberalization of intra-regional trade led to sizable regional trade imbalances (generally a Brazilian trade surplus). These imbalances reflect structural asymmetries between Brazil and its smaller partners.

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<sup>11</sup> These studies include the following: Tigre, P.B. et alli (1999); Nofal, M.B. e Wilkinson, J. (1999); Hasenclever, L. et alli, (1999); Chudnovsky, D e Erber, F., (1999); Bekerman, M. et alli, (1999); Bekerman et alli, (1999).

<sup>12</sup> This was basically the result of the simultaneity of preferential and unilateral liberalization.

As far as the effects on extra-regional FDI inflows were concerned, the available evidence confirms a significant impact on sectors in which transnational corporations had a dominant position prior to the early nineties, with very limited impact on other activities. As discussed in subsection 1.4, FDI inflows into MERCOSUR during the 1990s were heavily concentrated in services deeply affected by regulatory change (be it privatization or unilateral liberalization, such as in finance).

**TABLE 1.1**  
**MERCOSUR: AN OVERVIEW OF THE EFFECTS OF REGIONAL INTEGRATION ON SELECTED SECTORS**

<b>Sectors</b>	<b>Intra-zone trade</b>	<b>Extra-zone trade</b>	<b>FDI</b>	<b>Competitive pressures</b>	<b>Sector restructuring and business strategies</b>
<b>Footwear</b>	Strong growth. Large Brazilian trade surpluses. Unilateral trade measures.	Export and import growth. Some trade diversion benefiting Brazilian exporters.	No FDI.	Extra and intra-zone imports exert downward pressure on prices in Argentina.	Specialization based on static comparative advantages. Heterogeneous business strategies depending on the country and firm size: “offensive” and “defensive” strategies. No investment complementation.
<b>Pharmaceuticals</b>	Strong growth led by intra-firm trade in multinational corporations	Strong import growth and substitution of domestic production.	Acquisitions and <i>greenfield</i> investments	Higher domestic prices despite foreign competition.	Increase in the share of output of multinational companies. Higher imports of inputs and output rationalization on a subregional basis (plant specialization). Intra-firm trade in MERCOSUR and lower regional production of inputs and intermediate products. Local firms increase imports of inputs. Few agreements between local firms.

<b>Motor vehicles</b>	Strong growth. Administered trade.	Strong import growth, including parts and accessories. More recently, extra-zone export expansion. Trade diversion as compared to the free-trade scenario.	Strong FDI inflows, including new players.	Pressure on prices in the early 1990s, relieved thereafter.	Restructuring of production processes and linkages with autopart producers.
<b>Petrochemicals</b>	Growth starting from an already high base.	Strong import growth.	FDI inflows from multinational firms already established in the region.	Limited pressures on domestic prices. Kept under reign by trade remedies.	Specialization of transnational firms. Limited intra-regional FDI, mainly of Brazilian firms in Argentina and trading associations.
<b>Dairy</b>	Growth, mainly exports to Brazil. Frequent use of NTBs.	Trade diversion at the expense of the EU.	Large FDI inflows, including new players. Acquisitions.	Pressure on domestic prices in Brazil.	Concentration of supply. New investments and acquisitions by transnational firms. Modernization, joint-ventures and sell-off by local firms.
<b>Machine tools</b>	Growth, mainly exports from Brazil. Large Argentine-Brazilian trade imbalance.	Strong import growth.	Not relevant.	Very small	Plant specialization in Brazil, with a higher extra-zone import coefficient. Very limited intraregional production complementation agreements.

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The competitive pressures on domestic supply seem to have been relatively limited. On one hand, in sectors in which the pressures from extra-zone competition were initially high, these were contained through the maintenance of positive tariff rates and the enforcement of trade remedies (mainly antidumping). On the other hand, intra-regional competition had an effect on prices only in a few sectors, such as the dairy industry. In others, NTBs were used frequently to compensate for the loss of tariff protection. These trends suggest that the competitive pressures produced by regional economic integration were generally limited, counteracted either through unilateral trade remedy measures in sectors with competitive market structures or through other regulatory arrangements in activities with more concentrated market structures, such as motor vehicles and petrochemicals.

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Several divergent patterns of sectoral restructuring and business strategies can be observed among the sectors studied. These differences are partly the result of structural sector asymmetries. The liberalization of intra-regional trade led to significant restructuring only in sectors dominated by multinational firms, such as motor vehicles and, to a lesser extent, dairy products. Although the pharmaceutical sector shares some features of the above mentioned industries, the restructuring process was influenced more by domestic and international regulatory change (such as stronger protection of intellectual property rights) and unilateral trade liberalization than by regional integration. In the footwear industry the major restructuring process took place in Brazil and it was less related to MERCOSUR than to the export strategies of leading footwear exporting firms. Productive complementation between Argentine and Brazilian firms has been also negligible.

These summary observations are synthesized in Table 1.2, confirming the very limited influence of MERCOSUR on the performance of the sectors studied. The effects of MERCOSUR were basically limited to intra-regional trade flows, with very modest

effects on extra-regional exports. The effects on production structures were even more restricted, especially the so-called dynamic effects of economic integration materialized in productivity gains from economies of scale and scope. Price competitive pressures were also limited.

The effects of MERCOSUR on industrial sectors were heavily influenced by features peculiar to the agreement, apart from the elimination of tariffs on intra-regional trade or the adoption of a common external tariff. One of these features is the variety of mechanisms used by business and governments to regulate regional markets, including the strategies of transnational firms in sectors where they have a dominant position, informal private sector agreements, intra-zone and extra-zone NTBs and national regulatory and promotional regimes for specific sectors (such as motor vehicles). This largely accounts for the fact that the competitive pressures of intra-regional trade liberalization were limited to the initial stage of the process and to those sectors in which a competitive market structure inhibits the effective operation of private sector agreements.

**TABLE 1.2**  
**MERCOSUR: REGIONAL INTEGRATION AND ITS EFFECTS ON SELECTED SECTORS**

<b>Sectors</b>	<b>Relative importance of MERCOSUR</b>	<b>Main impacts of MERCOSUR</b>	<b>Other shaping factors</b>
<b>Footwear</b>	Low	Intra-zone trade.	Trade barriers to intra-regional trade. Asymmetries in structural competitiveness conditions.
<b>Pharmaceuticals</b>	Low	Intra-zone and extra-zone trade. Modest effects on production.	Multinational firms' strategies. Multinationals account for a major share of the domestic supply of output and imports. New property rights protection regimes.
<b>Motor vehicles</b>	High	Intra-zone trade and significant effects on production.	Multinational firms strategies. Multinationals account for a major share of the domestic supply of output and imports. National and local promotional regimes. Administered trade.
<b>Petrochemicals</b>	Low-Medium	Intra-zone trade and partly on production.	Multinationals and large local groups strategies. Informal sector agreements.
<b>Dairy</b>	High	Intra-zone trade and on production.	Multinational firms strategies. Intra-zone trade barriers.
<b>Machine tools</b>	Low	Trade	Exceptions to the CET and structural asymmetries.



## 1.6 *The specific case of the motor vehicles industry*

Mise en forme : Puces et numéros

During the 1990s, the motor vehicles industry underwent a major transformation, particularly in Argentina and Brazil. Total vehicle production increased from 750,000 units at the beginning of the period to nearly 2,200,000 prior to the economic slump of the late 1990s. Between 1995 and 2000 the sector attracted over US\$15bn in foreign direct investment, which helped to transform an obsolete production base into a sector using state-of-the-art technology and delivering world-class products. As part of this process new plants were established in Argentina and Brazil. The result was that nearly all the world's major automobile manufacturers currently have production facilities in the region.

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The restructuring of regional production was a major factor behind fast modernization and capacity expansion. In effect, the limited specialization that prevailed in the industry prior to the 1990s was gradually replaced by a regional division of labor that made motor vehicles trade one of the fastest growing categories of intra-regional trade. As a result, before the economic slump of the late 1990s automobile trade accounted for nearly one-third of total intra-regional trade.

However, the motor vehicles sector remained exempted from intra-regional free trade disciplines and from MERCOSUR common trade policies for most of the nineties.<sup>13</sup> In effect, only in March 2000 Argentina and Brazil agreed a common regional regime (including intra-regional free trade) for the automobile sector, but to be implemented only as of 2006.<sup>14</sup> Consequently, the sweeping changes that took place in the regional motor vehicles industry during the 1990s were the result of the combined effects of administered trade and national promotional regimes, rather than of MERCOSUR itself. This does not mean, however, that intra-regional trade and specialization did not play a major role in shaping the new contours of the industry. Well on the contrary, the high significance of the sector in terms of trade and investment volumes as well as its sizable effects on total

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<sup>13</sup> The confusion over the role of MERCOSUR on motor vehicles intra-regional trade reached even World Bank economist Alexander Yeats (1996), who wrote in the mid-1990s an influential report taking the motor vehicles industry as a major example of the trade diversion effects of MERCOSUR.

<sup>14</sup> A few months later the bilateral agreement was joined by Paraguay and Uruguay. For a review of the agreements regulating the industry see section 2.1.d)

industrial output and employment led to frequent clashes, particularly between Argentina and Brazil.

Argentina was the country that benefited most from intra-MERCOSUR motor vehicles trade during the nineties. The Argentine motor vehicles industry experienced a boom during the decade, when national output increased from 100,000 units per year in the early nineties to reach a peak of nearly 450,000 units before the economic downturn of 1998. The expansion of output was accompanied by far-reaching modernization and specialization and a shift from supplying almost exclusively a limited domestic market to significant outward-orientation. This performance cannot be adequately understood without taking into account the role played by the Brazilian market: by 1998 the Argentine motor vehicles industry exported nearly 50% of its total output (mostly to Brazil), under the umbrella of an administered trade agreement and the incentives offered by a national promotion regime. This enabled Argentine plants to specialize in a lower number of models and achieve significant economies of scale in the context of a relatively small domestic market.

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The Brazilian motor vehicles industry also changed considerably in the 1990s, albeit production levels were subject to sharp stop-and-go cycles. The expansion of the industry in Brazil was accounted for by significant pent-up domestic demand for vehicles and Brazil's growing role as a global supplier for world model vehicles and parts. The Brazilian government encouraged this trend through the enforcement of a new "automotive regime" in the mid-1990s, aimed to give preferences to established manufacturers. As part of this process, complemented by an aggressive aid policy from state and local governments, the Brazilian motor vehicles industry experienced a process of decentralization, moving away from traditional locations such as the state of Sao Paulo onto new regions such as the state of Paraná and the northeast. These incentive schemes were a source of permanent attrition between Argentina and Brazil. The bilateral conflict peaked after the devaluation of the Real in January 1999, when relative production costs shifted markedly against Argentina,

stimulating terminals and autopart makers to switch production lines from Argentina towards Brazil.

Although automakers established in the MERCOSUR region have become much more productive during the 1990s, they still are unable to produce at internationally competitive costs. Apart from exchange rate misalignments, part of the explanation lies in the inability of the industry to fully exploit scale economies and reach optimal plant output levels. This has caught the industry into a vicious circle of overcapacity and relatively high unit costs. Rationalization within the region will contribute to reduce excess capacity and a stronger outward orientation will help to increase output through higher export growth. Export growth is being stimulated by complementation and specialization agreements with other regional producers, most remarkably Mexico (a world-class automaker deeply integrated into the huge North American market). Productive complementation with Mexico may assist the MERCOSUR industry to participate more fully in international production networks and become internationally competitive.

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Intra-regional specialization, in turn, is bound to be a traumatic process. In effect, after the current transitional regime expires in 2005 the Argentine motor vehicles industry is set to suffer. In contrast to what happened in the 1990s, the industry should take advantage of the transition to develop niches of specialization to compensate for the predictable reduction in the number of established terminals. That will be the only mechanism to reserve the Argentine motor vehicles industry a role in the evolving hemispheric division of labor.

**TABLE 1.3  
HIGHLIGHTS OF MAJOR AUTOFIRM OPERATIONS IN MERCOSUR  
COUNTRIES**

Automaker	Argentina	Brazil	Uruguay
Daimler-Chrysler	Chrysler and Mercedes Benz merged in June 2000. Córdoba plant that produced Jeep Cherokee and Grand Cherokee shut down in 2001. 60% of production exported, mainly to Brazil. Luxury models imported from Germany. Neon, M Class, non-Cherokee SUVs imported from the US.	Recent history in this country. Invested \$185m in 1998-2000 to build a new plant and entered into a joint venture with BMW to produce engines. Increased local content from 50% in 1999 to 70% in 2000. Six plants in MERCOSUR; needs to harmonize two disparate production strategies (Chrysler, Daimler Benz) and eliminate excess capacity.	
Fiat	The firm most affected by the devaluation of the Real. Shifting production to Brazil: gearboxes and engines. Production decisions/coordination moved to Brazil. Siena and Palio models are leaders in environmental standards.	Rapid growth of investment. Fiat largest production base outside of Italy. \$240m truck plant in Minas Gerais opened in November 2000; exports to Latin America and Europe. Closed factory in Venezuela. Demand to be supplied from Brazil. Transfer of production of Córdoba plant (Argentina) to Minas Gerais.	
Ford	Strong brand loyalty, long history in the market. MERCOSUR integrated operations: imports some models (Ka, Fiesta) from	First auto firm to assemble in Brazil. Economic pressures triggered continued efforts to boost competitiveness. Workforce reduction and	

	<p>Brazil and exports Ranger pick-up, Escort and one truck model.</p> <p>Exports Ranger and Escort to Central America.</p>	<p>reorganization of distribution networks to cut costs.</p> <p>Plans to open \$1.2bn plant in Bahía in 2002, creating 5000 new jobs and sourcing of products from 300 new suppliers.</p>	
General Motors	<p>\$450m state-of-the-art plant in Rosario; only GM facility worldwide with just-in-time line manufacturing.</p> <p>Manufactures Chevrolet Corsa for sale within and outside MERCOSUR.</p> <p>Very active in fostering bilateral agreements with Mexico and Chile to fully exploit capacity. Encourages local parts suppliers to set up shop close to plant.</p>	<p>Began operations in 1925.</p> <p>Large industrial complexes in Sao Caetano do Sul and Sao José dos Campos, and a \$560m modular assembly facility opened in September 2000 in Gravataí, Río Grande do Sul.</p> <p>Innovative selling: 55% of Chevrolet Celtas (compact car) are sold via the web.</p> <p>Investment plans of up to \$1.6bn up to 2003.</p>	
PSA Peugeot-Citroen	<p>\$300m upgrade of Palomar factory.</p> <p>Produces 206, 306, 405 model cars plus SUVs and pick-ups.</p> <p>Aims to sell full line of models manufactured in MERCOSUR by this year.</p> <p>Exports of SUVs models to Europe to keep in-country operations afloat.</p>	<p>Built first Brazilian factory in the 1990s in Rezende, Río de Janeiro.</p> <p>Most technologically advanced plant in the world producing Citroen's luxury Xsara Picasso and the economy-sized Peugeot 206, Xsara Picasso will be exported to MERCOSUR.</p> <p>Models imported from Argentina and Uruguay.</p> <p>50% of inputs sourced domestically from existing suppliers. An estimated 75% to be</p>	<p>Assembly operations since 1992.</p> <p>OFEROL licensee produces and exports to Argentina and Brazil.</p> <p>Autoparts imported from Argentina, Brazil and France</p>

		sourced domestically in 2003.	
Renault	<p>Autofirm with the most extensive/integrated production in Southern Cone. Strategic move to export global operations to LDCs to compensate for stagnant markets in Europe.</p> <p>Aims to make MERCOSUR its second biggest market after Europe, for both domestic and export sales.</p> <p>Produces small cars and SUVs.</p> <p>Harmed by tariffs on the re-export of non-MERCOSUR inputs within MERCOSUR.</p>	<p>Major commitment to Brazil in 1996, new plant in Sao José dos Pinhais.</p> <p>Strategy aimed at producing “carros populares” intended for mass consumption.</p> <p>20% of total production to be exported to other Latin American markets.</p> <p>Renault-Nissan partnership bearing fruit.</p> <p>Engine exports from Curitiba plant to Nissan plant in Mexico.</p> <p>Nissan to produce Frontier pick-up trucks in Curitiba.</p>	<p>NORDEX licensee assembled 10,000 out of French CDKs.</p> <p>75% of exports go to Argentina, 23% to Brazil and 2% to Paraguay.</p> <p>Less than 10% of manufactured vehicles sold in Uruguay.</p>
Toyota	<p>\$150m factory in Zárate builds Hilux pick-up, best selling pick-up in Argentina.</p> <p>High production costs relative to Brazil; less competitive in Brazilian and non-MERCOSUR markets.</p> <p>Critical of high local content requirements.</p> <p>Heavy reliance on autoparts from Japan.</p>	<p>Light commercial trucks.</p> <p>\$300m investment in plant in Indaiatuba, Sao Paulo, to produce the Corolla model.</p>	
Volkswagen	<p>Arrived in 1980 with purchase of Chrysler Córdoba plant.</p> <p>Gol is top-selling passenger car.</p> <p>Manufactures gearboxes for export</p>	<p>Began activities in 1953.</p> <p>Operates four factories.</p> <p>Largest market share in Brazil.</p> <p>Exports to the US, Mexico and Canada.</p> <p>Exported 110,000</p>	

	<p>to Mexico, Brazil, South Africa and Spain.  Licensee of Spanish-based SEAT for the Córdoba car and Inca pick-up.  Transmissions for export for VW, Audi, SEAT and Skoda.</p>	<p>vehicles in 2000.  Large complementation with Mexico: 63% of total exports go to that country.</p>	
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Source: O'Keefe and Haar (2001)

## **CHAPTER 2**

# **THE PRESENT STATE OF MERCOSUR** **INTEGRATION**



## 2.1 *Intra-zone market access conditions for goods and services*

### 2.1.1. *Goods*

At the end of the transition period (December 1994) MERCOSUR admitted four restrictions to the free circulation of goods, namely:

- residual tariffs levied on four national lists of sensitive products (*Régimen de Adecuación*);
- tariffs levied on sugar and motor vehicles (“special sectors”);
- non-tariff restrictions, as listed by member countries at the end of 1994;
- rules of origin.

By January 2000 all residual tariffs had been eliminated as established by the *Régimen de Adecuación*. However, tariffs continued to be levied upon “special sector” products and rules of origin continued to be enforced on all traded goods. Yet the most pervasive hindrance to intra-regional free trade was non-tariff measures such as antidumping duties, import licenses, technical and sanitary and phyto-sanitary standards and others. The elimination of tariffs and the spillovers produced by the macroeconomic turmoil that pervaded the region in the late 1990s encouraged the use of non-tariff measures, turning market access conditions less transparent and more volatile. The lack of progress in the identification and removal of non-tariff restrictions has been one of the most unsatisfactory areas of MERCOSUR’s regulatory performance.

#### 2.1.1.a) *The Régimen de Adecuación*

The *Régimen de Adecuación* was a transitory mechanism devised in 1994 to give producers of a list of sensitive products additional time to adjust to intra-regional free trade. The *Régimen de Adecuación* established an automatic schedule to increase preference margins

up to 100% of MFN tariff rates in a period of four years in the cases of Argentina and Brazil, and five years for Paraguay and Uruguay. The products that qualified to benefit from the *Régimen de Adecuación* were those still included in national exemption lists or protected by safeguards. The list of products included in the *Régimen de Adecuación* provided an extremely accurate map of the structure of national sensitivities (Table 2.1).

**TABLE 2.1**  
**REGIMEN DE ADECUACIÓN FINAL:**  
**A PHOTOGRAPH OF NATIONAL SENSITIVITIES**  
**1994**

	<b>Number of tariff lines</b>	<b>Main beneficiary products</b>	<b>100% preference margin over MFN tariff rate on:</b>
Argentina	212	Steel products, textiles and footwear, paper and cardboard, wood, tyres, sugar, household electrical appliances, orange juice, coffee and furniture	January 1, 1999
Brazil	29	Textile products, rubber manufactures, wines and preserve peaches	January 1, 1999
Paraguay	432	Textiles and footwear, food products, paper and cardboard, hides, pharmaceutical products, steel products, furniture, machinery and equipment, soap, glass manufactures, plastics, cement	January 1, 2000
Uruguay	958	Textiles and footwear, machinery and equipment, steel products, food products, pharmaceutical products, chemicals, plastics, paper and cardboard, glass manufactures, stones and pottery, furniture, toys and wood	January 1, 2000

Source: Dec 5/94, 19/94, 29/94, 16/96, Res 48/94 and annexes.

*2.1.1.b) Non-tariff barriers and measures (NTBs)*

As the time for the complete elimination of tariffs in sensitive products drew closer, domestic pressures to raise protection through other means increased, particularly in

Argentina. Since no safeguards on intra-regional imports could be enforced after 1995 (Brazil opposed a renewal of the safeguards regime in force during the transition period), domestic pressures found an escape valve in *ad-hoc*, non-transparent protectionist measures that made the pending issue of non-tariff restrictions even more relevant.

At the end of 1994 MERCOSUR member countries had identified a list of non-tariff measures and had agreed to proceed to their elimination or harmonization, a commitment to be overseen by the Trade Commission. According to the annexes to Dec 3/94, member states identified a total of 224 non-tariff measures and restrictions affecting imports and 51 with effects on exports. In October 1995, 51 additional measures were added to the list.

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In June 1996 the CMG established that by July 31st 1997 member states should agree on a definitive date to eliminate or harmonize existing measures. In that same year the Brazilian government submitted a methodological proposal, distinguishing between non-tariff measures (mainly aimed to protect public health, the environment, public morale and to combat unfair trade practices) and non-tariff restrictions. The former would not be subject to negotiation. However, the classification of national practices into each category proved very controversial.

The backlog in dealing effectively with NTBs was aggravated by new restrictions. In 1997 the Brazilian government enforced horizontal import restrictions (shortening the minimum authorized length for the financing of imports) as a means to improve a rapidly deteriorating trade balance. Although some intra-regional trade flows (such as wheat and oil imports from Argentina) were heavily affected by the decision, the Brazilian official stance was to regard the decision as “financial” rather than “commercial”, therefore refusing to negotiate. Eventually, the Brazilian government admitted to grant special treatment for small volume imports from MERCOSUR and for imports with less-than 180 days finance.

In the first semester of 1998 Brazilian authorities enforced new import license requirements on animal and food products, chemicals, pharmaceutical and quality

certificates on a list of 170 industrial products. These new regulations affected a variety of Argentine exports, leading this country to trigger dispute settlement procedures in 1999. However, by 2001 Brazil continued to request import licenses for agricultural and food products. In summary, while by 1998 the sector and product-specific non-tariff barriers and restrictions previously identified remained largely untouched, new horizontal restrictions mushroomed to compensate for a deteriorating trade imbalance. After some tinkering, MERCOSUR partners usually obtained some kind of special treatment, but the background was one of uncertainty and instability in market access conditions.

The other side of the coin showed itself after the devaluation of the Real in January 1999, when pressures for protection increased in Brazil's partners, particularly Argentina. In effect, following the devaluation of the Real, Argentina enforced more rigorously its trade defense laws (levying antidumping duties and minimum import prices on steel imports), applied technical barriers to electronic, meat and cleansing products, enforced quotas on textiles and fostered a private sector "voluntary agreement" on footwear. Many of these sectors were the same that had experienced adjustment problems in earlier times and, precisely for that reason, had been included in Argentina's *Régimen de Adecuación* (phased-out on January 1, 1999). Faced with these adverse circumstances, the Argentine authorities pressed again to implement a safeguards regime (based on LAIA's precedent) but were deterred by the stiff opposition coming from Brazil and the high chances that such a regime would be effectively challenged at the domestic courts. In compensation, the Argentines introduced other trade-distorting measures, such as export tax rebates (including sales to MERCOSUR). The worsening macroeconomic environment during 2001 led the Argentine government to implement additional restrictions and discriminatory practices (including a two-tiered foreign exchange system and sector "competitiveness agreements" based on tax-breaks and other incentives).

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Also unilaterally, in 2001 Paraguay decided to eliminate a number of preferences for intra-regional trade, enforcing a 10% tariff rate on intra-regional imports on a list of nearly 500 products (until December 2002). Again, MERCOSUR's Common Market Council responded flexibly and granted Paraguay a waiver as long as the number of items

benefited by the decision was less than 5% of total tariff lines. In turn, Uruguay increased its tariff rate by 3 percentage points, but applying the extra tax on intra-regional imports as well. Uruguay also introduced import controls on textiles and footwear and set minimum prices on edible oil imports from Argentina.

A recent inventory of the most frequent types of non-tariff restrictions in force in MERCOSUR is offered by Vaillant (2001). The inventory is based on: a) consultations made before the Trade Commission, b) complaints submitted to the Common Market Group, and c) dispute settlement procedures. The author classifies non-tariff measures and restrictions in six types, namely:

- I) quantitative restrictions and other measures of similar effect (import quotas, voluntary export restraints, import licenses and import or export prohibitions);
- II) measures directly affecting prices (antidumping duties, safeguards, specific duties, internal taxes discrimination, import finance and export taxes and subsidies);
- III) government participation in foreign trade (government procurement);
- IV) customs procedures and administrative practices (customs valuation, classification and nomenclature, consular certifications);
- V) technical barriers (standards and registration); and
- VI) measures related to preferential trade policies (tariff preferences, rules of origin).

Table 2.2, based on consultations made before the Trade Commission, shows a great diversity of measures by type. Excluding those related to government procurement –a topic still formally under negotiation- 24.3% of the measures identified directly affect prices (mainly internal tax discrimination and antidumping duties), technical barriers account for 18.4%, quantitative restrictions for 12% (the most important being import licenses and prohibitions), and 15.3% are directly related to preferential policies (enforcement of preferences and rules of origin). Non-tariff measures are most frequently

applied to agricultural products (39% of the total), metal-mechanics, raw materials and chemical products. These four sectors account for nearly all non-tariff measures identified in Vaillant's study.

**TABLE 2.2**  
**NON-TARIFF MEASURES BY SECTORS AND TYPE OF MEASURE:**  
**CONSULTATIONS BEFORE THE TRADE COMMISSION**

<b>Sector Type</b>	<b>Food and agriculture</b>	<b>Metal-Mechanics</b>	<b>Raw Materials</b>	<b>Chemicals</b>	<b>Others</b>	<b>All sectors</b>	<b>No data</b>	<b>Total</b>
<b>Quantitative restrictions</b>	16	10	7	7	1	3	1	45
<b>Price measures</b>	39	15	9	2	7	25	7	104
<b>Govt. procurement</b>	1	1	-	-	1	-	-	3
<b>Customs procedures</b>	3	1	3	3	6	8	3	27
<b>Technical barriers</b>	52	6	3	5	5	3	4	78
<b>Preferential trade policies</b>	11	23	5	13	2	5	6	65
<b>Others</b>	3	1	-	2	-	1	-	7
<b>No data</b>	39	7	14	7	6	2	18	93
<b>Total</b>	164	64	41	39	28	47	39	422

Source: Vaillant (2001).

Technical barriers are particularly important in food and agriculture, where they account for 31.9% of total sector barriers (as opposed to an average of 18.4% for all sectors). Technical barriers are frequently combined with other measures that directly affect prices or quantities (such as antidumping duties or import licenses). In the metal-mechanics and chemical sectors the most frequent non-tariff measures are related to the enforcement of preferential trade policies (36% and 33.3% of the total, respectively, as compared to only 15.3% for all product categories).

The list of claims submitted to the Common Market Group, also provides some evidence about the relatively high incidence of NTBs in the food and agricultural sector. The topics that have most frequently given rise to claims include internal tax discrimination, product registration requirements, specific duties, tariff preferences and import prohibitions. NTBs such as intra-regional trade preferences, internalization of norms, rules of origin and technical standards were taken to the dispute settlement mechanism.

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Torrent (2002) points out that the notion of non-tariff barriers usually makes reference to two areas that are distinctive from an economic, legal and political standpoint (i.e.: direct and indirect barriers to trade). Direct (or border) barriers to trade are applied exclusively on foreign trade (such as quotas, special import duties –including antidumping duties- and import licenses). Indirect barriers, in turn, may be enforced on all trade (both internal and external) and there is no a priori reason why they should be removed. While the elimination of direct barriers to trade is part of regional economic integration, indirect barriers are unlikely to disappear unless economic integration leads to complete harmonization of domestic regulations. Consequently, the appropriate approach to deal effectively with trade-distorting indirect barriers is to identify a subset of priority measures that should be eliminated.

The difficulties associated to the treatment of non-tariff measures in a process of economic integration are exacerbated when member countries do not share a consensus over which are the legitimate national objectives that parties may follow through domestic

regulations or the parameters within which they should be fostered. This may lead to a competition between alternative objectives and standards. This has been clearly the case in MERCOSUR, where member countries have so far failed to agree on criteria to classify non-tariff restrictions according to whether they must be eliminated, harmonized or accepted as legitimate.

Available studies (Vaillant 2001, Berlinski 2001) conclude that nearly one third of non-tariff measures taken to the Trade Commission consist of quantitative restrictions, customs and administrative procedures and enforcement of preferential trade rules (type I, IV and VI measures according to Vaillant, 2001). These measures should receive priority treatment and should be removed unless there is adequate evidence that they serve broader principles, such as the protection of human or animal health.<sup>15</sup>

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The Vaillant and Berlinski surveys also conclude that technical barriers account for nearly 20% of total non-tariff measures. In the case of these NTBs the appropriate approach should be to harmonize certification procedures, setting “minimum standards” for each product. However, in order to be effective any agreement in this area will need to simultaneously strengthen internalization procedures.

At last, type II measures –directly affecting prices- include a wide and heterogeneous array of instruments that cannot be dealt with in a single package. In the case of antidumping duties and safeguard procedures the two alternative options are either an agreement setting the parameters for the implementation of national regimes or the replacement of national policies by a regional competition defense regime (particularly in the case of antidumping). Both options involve some degree of common discipline, an approach that may be extended to other instruments such as export and import financing. The enforcement of antidumping duties has become a major issue in Argentine-Brazilian relations (see subsection 2.1.1.e).

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<sup>15</sup> After 1998, other Mercosur member states complained over Brazil’s customs valuation procedures, on the grounds that they were allegedly non-transparent and enabled protectionist pressures on the part of import-competing sectors (such as textiles and food products).



### 2.1.1.c) *Rules of origin*

All intra-MERCOSUR trade is still subject to rules of origin, a fact that inhibits the free circulation of goods. The MERCOSUR rules of origin regime combines a change in tariff classification and a 60% regional value added requirement (applied simultaneously). Specific rules of origin are also applied in the case of industrial products such as steel and chemicals. After the end of the transition period, rules of origin should have been enforced exclusively on a subset of products meeting at least one of the following criteria:

- transitory exemptions to the common external tariff (CET) -if exported to a member that had the product in its national exemptions list with a tariff higher than the CET tariff;
- products that used as inputs imports exempted from the CET for more than 40% of its fob value;
- products benefiting from selective trade policies, such as motor vehicles and sugar (“special sectors”), and
- imports from extra-zone charged with antidumping or countervailing duties.

However, since member states were unable to draft a list of products meeting at least one of these conditions, rules of origin continued to be enforced on all traded goods. The need to continue to enforce universal rules of origin was strengthened by the ever growing number of exceptions to the CET. Eventually, Dec 69/00 authorized member countries to continue to enforce rules of origin for all traded goods until December 31 2005. The universal enforcement of rules of origin is accompanied by high administrative costs and prevents firms and consumers from reaping the benefits of the free circulation of goods. For some industries with a significant degree of intra-regional specialization (such as motor vehicles) this is a far from negligible factor. Moreover, the enforcement of the

rules of origin regime has given rise to conflicts between member countries (such as the much-publicized bicycles dispute between Argentina and Uruguay), making market access conditions uncertain.

#### 2.1.1.d) “Special sectors”

Since the creation of MERCOSUR, the sugar and motor vehicles sectors have been temporarily excluded from intra-regional free trade and common trade policies. The reasons for these exclusions were the existence of: a) significant policy asymmetries in national investment and production regimes, and b) well organized and very influential domestic interests. The extension of MERCOSUR general disciplines to the sugar and motor vehicles sectors has been under negotiation since the Treaty of Asunción. However, progress has been modest. Sugar remains excluded from intra-regional free-trade, while motor vehicles trade is administered through a network of bilateral agreements. Only in year 2000, MERCOSUR member states agreed a common motor vehicles regime to be implemented as of 2006.

The main reason for temporarily excluding sugar from intra-regional free trade and common external trade policies was the prevailing disagreement over the extent to which Brazilian subsidies to alcohol production distort incentives to sugarcane growers and the sugar industry as a whole. The Brazilian official stance has been that there is no evidence of such distortions. However, the Argentine government has managed to maintain sugar excluded from MERCOSUR rules and disciplines for over a decade under the argument that freeing intra-regional trade would endanger the subsistence of domestic sugar-cane growers and sugar producers, regionally concentrated in the poor Northwestern region. In 1997 the Argentine Congress passed a law that made the elimination of tariffs on intra-regional sugar trade conditional to a complete phase-out of Brazilian subsidies to alcohol production. The legislation was vetoed by the Executive, but it was subsequently confirmed by Congress through a qualified majority vote. The MERCOSUR “re-launching agenda” of June 2000 established that a common approach to the sector should be agreed before the

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end of that year. As part of that commitment, Brazil proposed intra-regional free trade as of January 2002 and the adoption of a 16% common external tariff. However, strong domestic opposition in Argentina has so far blocked progress.

Motor vehicles' trade has also been subject to protracted negotiations for most of the 1990s. At the end of the transition period, Dec 29/94 called for the implementation of a common MERCOSUR automobile regime no later than January 1, 2000 (when Argentina's special sector regime was scheduled to be phased out).<sup>16</sup> The new scheme should include intra-regional free trade, a common external tariff and the elimination of national incentives that distort intra-regional competition. The agreement was set to include a transition mechanism to move away from national regimes and towards a regional one, presumably through the harmonization of existing promotion policies.

However, shortly after the passage of Dec 29/94, the Brazilian government introduced a new program for the motor vehicles sector aimed at attracting foreign investment. The regime included import quotas, preferential import tariffs for established firms for parts and finished vehicles and foreign trade performance requirements. By the end of 1996, the Brazilian government introduced an even more ambitious incentives package to encourage firms to locate in relatively backward regions. The incentives were amplified by generous tax deferrals granted by local governments. A major source of conflict was the fact that many of these benefits would extend well beyond the deadline established to adopt a common regime.

Failure to reach an agreement and lack of disposition of national authorities to discipline national or sub-national incentives led in 1998 to a proposal to extend managed trade for an additional five-year transition period. Eventually, in 2000 Argentina and Brazil announced the main ingredients of the so-called common transition regime. The agreement should have been enforced in July 2000, but it was opposed by the smaller partners and gave rise to conflicting interpretations over the method to measure national content. Paraguay and Uruguay opposed what they considered to be too high a CET (35%).

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<sup>16</sup> Argentina declared the motor vehicles regime before the WTO as a TRIM and obtained a phase-out period.

Uruguay also lobbied to gain a quota scheme that would enable the country to maintain its modest production base (that survives on the basis of administered trade with Argentina and Brazil). Paraguay, in turn, aimed at maintaining its national regime to import used cars.

Eventually, in December 2001 Argentina, Brazil and Uruguay signed an agreement to be enforced as of January 2002. The trilateral agreement included:

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- a 35% CET for passenger cars and no quantitative restrictions on imports;
- a 35% CET for trucks and buses (Brazil) and 18%-25% (Argentina), converging towards 35%;
- a 14% CET for agricultural machinery;
- a 14%-18% import tariff on domestically produced parts and components (with an ascendant chronogram for Argentina) and 2% for non-domestically produced parts;
- an administered trade regime with (rising) annual limits on bilateral trade imbalances subject to semi-annual monitoring;
- 60% regional content requirement, with 30% of local content for passenger cars (25% for trucks and buses) if measured by parts, and 44% for cars (37% for trucks and buses) if measured by sets or subsets. Producers would enjoy a transition period to adapt to the new measurement mechanism;
- creation of a Motor Vehicles Committee to determine transition procedures when the initial phase concludes by the end of 2003;
- a \$65m export quota from Uruguay to Argentina and Brazil.

Paraguay joined the motor vehicles agreement in July 2001, gaining the temporary maintenance of its used cars import regime and obtaining an export quota to other member states to attract foreign investments into the automotive sector. However, shortly after signing the new agreement the Argentine government demanded new changes, in particular more flexible administered trade regulations (to enable higher Argentine exports to Brazil,

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at that time limited by the deep domestic economic recession), an advancement of free trade from January 2006, to 2004, and a reduction of the CET from 35% to 25% for passenger cars and to zero for trucks, buses and agricultural machinery.<sup>17</sup> In October 2002 the Argentine and Brazilian governments finally agreed to flexibilize quantitative regulations for motor vehicles' bilateral trade, enabling Argentina to increase its exports to Brazil in the short run. As agreed before, motor vehicles' trade will be subject to free trade as of 2006.

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Free motor vehicles' trade in 2006 will create further restructuring pressures in the industry. The trend seems to be towards a concentration of production in Brazil. However, Argentina may be able to maintain certain production lines provided firms are able to compensate the small domestic market and limited backward linkages with an emphasis in specialization and world-class manufacturing.

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#### 2.1.1.e) Trade defense (antidumping and countervailing duties)

Despite the formal existence of a customs union, the absence of a common competition policy means that member states continue to enforce trade remedy laws against intra-regional trade flows. Already in 1998, out of 25 antidumping measures enforced by Argentina eight were applied against imports from Brazil. By the same time, out of 29 investigations then underway, seven were being conducted against Brazilian products. In fact, Argentina has become a major user of antidumping duties against intra-regional (mainly Brazilian) exports. Brazil has also turned into a major user of antidumping duties, but all investigations and duties imposed have been against imports from extrazone.

The trend to make intensive use of trade remedy laws in Argentina worsened after the devaluation of the Real in January 1999. In effect, after that traumatic episode, antidumping duties and investigations became one of Argentina's favorite protectionist

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<sup>17</sup> Administered trade was originally conceived as a mechanism to encourage production for export in Argentina. However, when the domestic recession in Argentina sharply reduced the number of vehicles imported from Brazil, exports to Brazil also fell because of the balanced trade requirements.

devices. Steel products, poultry, pork, household electrical appliances and motorcycles were some of the most heavily affected products.

Dec 28/00 instructed the Common Market Group to draft disciplines to be applied to antidumping investigations and duties and to submit its proposal by November 30, 2000. However, on December 2000 Dec 64/00 extended the term set by Dec 28/2000 until June 30 2001 and set disciplines on rules and procedures to undertake antidumping and countervailing duties' investigations on intraregional trade. The new procedures included the exchange of information prior to the formal opening of investigations, a maximum of three-years for antidumping or countervailing duties and measures to encourage price undertakings, when there is preliminary evidence of dumped or subsidized imports (in an effort to prevent the imposition of duties). However, by 2002, Argentina had not internalized the procedures set in Dec 64/00, leading to a complaint on the part of the Brazilian authorities. In June 2002 Dec 13/02 and 14/02 formally adopted GATT-94 agreements on antidumping and countervailing duties, in practice admitting the failure of member states to go beyond multilateral commitments. Indeed, the only practical effect of those decisions was that of extending the deadline for the application of antidumping and countervailing duties procedures to intra-zone trade (see section 3.2 ).

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One of the most divisive issues concerning trade remedies against intra-regional imports has been the divergences that exist between the Argentine and Brazilian authorities about how to deal with state aids to industry. Whereas the Brazilian authorities have favored treating the two issues separately, the Argentines have refused to desist from using trade remedies as long as there is not an agreement extending competition policy to state aids to industry.

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### 2.1.2 Services

The Treaty of Asunción envisaged free trade in services but said nothing about the process, methodology or time-frame to reach it. In December 1995, the MERCOSUR Year

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2000 Action Program reiterated the commitment to liberalize trade in services and mandated the negotiation of a regional framework treaty based on the existing GATS before September 1996. However, during the next two years progress in the negotiations was very modest (the target date set for drafting an agreement was not met). Eventually, in December 1997 the Common Market Council approved the Protocol on Services Trade (Montevideo Protocol) by which member states committed full liberalization of services trade in a period of ten years following ratification. The Protocol committed member states to grant immediate and unconditional MFN treatment to other member states' service providers. However, national treatment and market access commitments would be limited to sectors and modalities explicitly included in national lists of commitments, to be submitted and negotiated on an annual basis. Following the GATS' approach, the Services Protocol excluded government purchases, to be regulated by an independent agreement.

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In 1998 MERCOSUR member states approved the first list of specific national commitments involving professional, communication, distribution, construction and engineering, finance, tourism and transportation services. Until June 2002 three rounds of negotiations have proceeded under the framework of the Services Protocol. Each round has aimed to: i) bind the *status quo* offered by existing national regulatory regimes in designated sub-sectors; ii) increase the transparency of prevailing restrictions on market access and/or national treatment for the different sectors and modes of supply<sup>18</sup>; and iii) move forward in the Multilateral Restraint Round covering business services, distribution, education and tourism (in all these sectors countries must submit specific implementation commitments). Res 12/02 convened the Fourth Round of Negotiations, aimed to complete for all the selected sectors the exercise of liberalization, consolidation and transparency. A detailed analysis of the content of initial offers and the first three rounds of negotiations is included in Annexes 2.I and 2.II

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<sup>18</sup> However, this goal was not always achieved. First, frequently the schedules simply introduce a sector as "unbound" in all eight positions (Market Access and National Treatment in the four modes of supply). Second, when "unbound" is accompanied by a list of national measures, this should not be interpreted as meaning that these are the only measures permitted. In fact, "unbound" means that any new restrictions can be enforced.

Tables 2.3, 2.4 and 2.5 summarize the main results obtained after three rounds of negotiations. Table 2.3 reports the share of “no restriction” commitments on intra-MERCOSUR trade classified by sector and member state. In the case of Argentina the highest shares of “no restriction” commitments are in tourism, business services, communications and distribution. However, a 50% share also prevails in sectors such as finance, construction and engineering, and social and health services. Brazil concentrates its “no restriction” commitments in distribution, communications, business services, teaching and education and engineering and construction. Uruguay made “no restriction” commitments in tourism, distribution and business services, while Paraguay made them only for tourism. In all other sectors the share of “no restriction” commitments is below 50%.

In the case of Brazil, “no restriction” commitments are more frequent concerning national treatment than market access in sectors such as business services, communications, financial services and health and social security services. The same trend is evident in the case of Paraguay (especially for financial, business and social and health services) and Uruguay (to a lesser extent in the case of business and financial services). By contrast, Argentina shows similar indexes of “no restriction” commitments either in market access or national treatment.

It is interesting to point out that the business, communications, teaching and education, and social and health services (subject to very limited commitments in the Uruguay Round) were included in intra-MERCOSUR negotiations with significant “no restriction” commitments. By contrast, environmental services show a similar pattern of commitments in intra-regional and multilateral negotiations (essentially no offers).



**TABLE 2.3**  
**PERCENTAGE OF “NO RESTRICTION” COMMITMENTS**  
**IN MERCOSUR BY MEMBER STATE AND SECTOR**

		<b>Argentina</b>	<b>Brazil</b>	<b>Uruguay</b>	<b>Paraguay</b>
<b>Business services</b>	MA	60	52,9	44	14,8
	NT	60,5	61,6	56,5	24,4
<b>Communications</b>	MA	59,3	55	6,9	17,1
	NT	61,1	67,5	8	18,4
<b>Construction and engineering</b>	MA	50	50	30	25
	NT	50	50	30	25
<b>Distribution</b>	MA	56,3	75	68,8	29,2
	NT	56,3	75	68,8	33,3
<b>Teaching and education</b>	MA	33,3	53,6	25	35
	NT	25	53,6	25	35
<b>Environment</b>	MA	0	25	0	0
	NT	0	25	0	0
<b>Financial services</b>	MA	50	3,8	35,7	20
	NT	50	26	46	45
<b>Social and health services</b>	MA	50	25	25	25
	NT	50	50	25	37,5
<b>Tourism</b>	MA	75	8,3	75	68,8
	NT	75	0	75	68,8

MA, market access

NA, national treatment

Source: based on official data

Table 2.4 lists some sectors and sub-sectors with the highest rate of unbound commitments for Argentina and Brazil. These sub-sectors can be considered as the most sensitive to engage in liberalization or to make binding commitments in a changing regulatory environment.

**TABLE 2.4**  
**ARGENTINA AND BRAZIL: SECTOR AND SUB-SECTORS**  
**WITH LOW INDEXES OF INTRA-MERCOSUR**  
**BOUND COMMITMENTS**

<b>Country</b>	<b>Sectors</b>	<b>Sub-sectors</b>
<b>Argentina</b>	Business services	Rental of unmanned air or road transportation services; agriculture, fisheries and hunting-related services; energy distribution services; special photography services; audiovisual works.
	Communications	Postal services, radio and TV services, sound and image transmission services, sound recording services
	Distribution	Commission agent services
	Teaching and education	Secondary and superior teaching, adult teaching
	Environment	All
	Financial	Life insurance and other than life insurance services
<b>Brazil</b>	Business services	Rental of unmanned air or road transportation services; photography services.
	Communications	Postal services, audiovisual services.
	Environment	All
	Financial	All insurance and re-insurance services, banking and other financial services.
	Tourism	All

Source: based on official data

According to the quantitative methodology used by Berlinski (2001), Table 2.5 shows that after three rounds of negotiations the offers of Argentina have been the most significant (the same pattern shown in multilateral negotiations). This is true either of market access or national treatment commitments. However, the trend is more visible concerning market access commitments, where the Argentina index reached 272.5 as compared to 210.5 in the case of Brazil (in a comfortable second place well ahead of Uruguay). The wedge in the depth of the Brazilian and Uruguayan offers is a distinctive feature of Table 2.8 as compared to the multilateral commitments made by the two countries, that had similar coverage ratios.

Another significant and more relevant difference between the offers made by MERCOSUR member states in intra-regional negotiations and in the Uruguay Round is the broader coverage of the former and, particularly, the relatively high level of “no restriction” commitments as a share of total commitments. For example, in the realm of market access the share of commitments made by Brazil reached 36.1% at the WTO as compared to 52.9% in MERCOSUR<sup>19</sup>. The share of “no restriction” commitments increased even more remarkably from 22.3% at the WTO to 76.1% in MERCOSUR. Concerning national treatment, the share of “no restriction” commitments is over 90% for the four member states, as compared to a range that goes from 34.4% (Brazil) to 75% (Uruguay). These figures indicate that, in sectors subject to negotiations, MERCOSUR member states adopted nearly universal commitments in the case of national treatment and for a very high share of commitments in the case of market access.

Similarly to what happened in the offers made in the GATS, the level of liberalization offered by the larger countries is higher than that by the smaller partners. Similarly, in the case of Brazil the share of “no restriction” commitments is higher for commercial presence (mode of supply # 3). At last, similarly to what was observed at WTO, on intra-MERCOSUR negotiations Brazil emphasized liberalization through mode of supply # 3 (as compared to other modes of supply). This is coincident with the readiness of Brazilian offers to make more commitments concerning national treatment than market access.

The use of this quantitative methodology to assess the extent of national commitments is of limited value. A cross-country comparison of the number of commitments with no restrictions can provide a very rough idea of the extent of national commitments, but very limited information on the substantive content of these commitments. In effect, a country with a lower number of sectors with commitments subject to no restrictions can provide more substantial market access and national treatment benefits in sensitive or economically important sectors than another country with a higher number of commitments with no restrictions but concentrated on sectors not economically

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<sup>19</sup> [A detailed comparison between commitments in the GATS and the Montevideo Protocol frameworks is](#)

relevant. If anything, this quantitative assessment may be more useful to make historical comparisons for a single country and assess the speed and pace at which new commitments are made.

A related problem is that the disaggregation of sectors is not homogeneous (this was already the case in GATS). In some cases, subsectors are clearly identified and given a CPC number. In others, the disaggregation does not specify different subsectors but simply relates to different aspects of the legal regime applicable to the sector. At last, the relevance of specific commitments can be blurred by the enforcement of horizontal restrictions, such as those applied by Brazil regarding authorization and capital control of telecommunications firms.

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Yet the set of commitments undertaken by MERCOSUR member countries after three rounds of negotiations, as well as the attempt to consolidate the *status quo* of national regulations, suggest the intention to go beyond GATS. However, in order for these concessions to enter into force the Services Protocol will have to be ratified by national legislatures, something which is still pending.

On the other hand, the approach adopted by MERCOSUR in the area of services has not addressed the enforcement of common rules, either concerning intra-regional trade liberalization or regulatory issues. In the first area, the objective of reaching common rules has been replaced by the acceptance of the GATS approach of more or less negotiated and bound asymmetrical unilateral liberalization. In the second area, common rules are very limited in number and touch only marginal regulatory issues.

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provided in section 3.2 below.

**TABLE 2.5**  
**COMMITMENTS UNDERTAKEN BY MERCOSUR MEMBER STATES**  
**AFTER THREE ROUNDS OF NEGOTIATIONS**

	Argentina	Brazil	Paraguay	Uruguay
<b>Market access</b>				
<b>1) Percentage of negotiated commitments (with or without restrictions)</b>	56,7	52,9	22,9	39,5
<b>2) Percentage of “no restriction” commitments/total of negotiated commitments</b>	96,1	76,1	87,5	85,1
<b>3) Liberalization index*</b>	272,5	210,5	82,5	167,5
<b>National treatment</b>				
<b>1) Percentage of negotiated commitments (with or without restrictions)</b>	56,9	52,4	27,9	45,6
<b>2) Percentage of “no restriction” commitments/total of negotiated commitments</b>	95,3	97,9	96,3	90,4
<b>3) Liberalization index*</b>	273,5	234,5	105	199

Source: based on official data.

\* Index calculated on the basis of Hoeckman’s methodology, that counts one point per each “no restraint” offer, half point per each offer with some kind of restraint and zero point for unbound sectors.

### *2.1.3 Government procurement*

Government procurement was originally addressed by the Ad Hoc Group on Services and by a Technical Committee (created by the Trade Commission) charged with the task of examining competition-distorting public sector policies. The Technical Committee was given the task to examine the compatibility of national regimes and legislation with the working of the customs union and to make recommendations to harmonize and/or eliminate certain practices. In 1996 Argentina proposed the creation of an Ad Hoc Group in charge of

drafting a protocol to ensure market access and harmonized government procurement practices. In 1998 the Common Market Group set the criteria, procedures and calendars to negotiate a common government procurement regime, the regulatory framework of which would be drafted by the Ad Hoc Group. Since then negotiations have made very modest progress. Most of the effort has been placed in drafting a protocol that would be compatible with existing national legislation, ~~particularly as regards bidding procedures- and in putting forward joint MERCOSUR proposals in the FTAA process and in negotiations with the European Union.~~ Member states have also circulated preliminary lists of entities, goods, services and public works to be covered by the Protocol. However, by mid-2002 they have been unable to conclude the phase of technical negotiations.

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The draft version of the Protocol on Government Procurement currently under negotiation states that MERCOSUR firms will gain access to other member states' official bids to purchase goods, services or public works provided:

- (i) they are included in the Protocol's annex (a negative list will apply to goods while a positive list will apply to services and public works);
- (ii) the bid exceeds a still to be defined minimum value for goods (on the one hand) and services and public works (on the other); and
- (iii) the public sector entity organizing the bid is included in the positive list of covered entities to be annexed to the Protocol.

When negotiations conclude, the Protocol will not replace national legislation. Instead, the latter will have to adapt to the content of the Protocol to prevent inconsistencies and to make sure that the national treatment principle is effectively enforced. Public utility concessions and purchases by state and municipal governments will be excluded from the disciplines set by the Protocol.

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Other ingredients of the draft version currently under negotiation include:

- i) Firms from MERCOSUR member states will have a preference in case of a tied bid: regional firms will be granted the contract if the price offered is up to 3% higher than the price offered by a foreign supplier;
- ii) As far as rules of origin are concerned, member states will apply MERCOSUR rules as established in the VIII and XXII Additional Protocols to the *Acuerdo de Complementación Económica Núm 18*. As a general rule, goods should meet a 60% regional value added requisite. In the case of services and public works, the supplying firm shall have to be effectively established in a MERCOSUR member state;
- iii) All controversies will be settled according to the procedures and mechanisms established by MERCOSUR's dispute resolution system.

Among the most relevant issues still under discussion are the following:

- i) coverage: there are divergences about the extension of the Protocol's commitments to subnational governments;
- ii) minimum bid values: there is disagreement over the minimum bid values above which the disciplines set of the Protocol will apply;
- iii) MERCOSUR preference: there is agreement over the size of the preference, but not over the criteria to apply the preference.

Government procurement legislation in MERCOSUR countries already give preference to local suppliers. In Brazil, for example, Law 8666/93 regulating government procurement establishes in its Art 3 that in public sector bids and contracts "under the same conditions preference will be given, in that order, to goods and services: i) produced or delivered by Brazilian firms of national capital; ii) produced in the country; and iii) produced or delivered by Brazilian firms". However, the Sixth Constitutional Amendment (1995) abolished Art 171, which made a distinction between a "Brazilian firm" and a

“Brazilian firm of national capital”. Consequently, current Brazilian legislation provides preferential treatment to goods and services produced domestically, with independence of the origin of the capital of the firm producing the goods or delivering the service. Still in the case of Brazil, state laws can offer preferential treatment for national suppliers or for suppliers established in specific districts. Consequently, government procurement can be used as an industrial policy instrument by state governments, eventually creating tensions in a regional regime.

In the case of Argentina, Law 25551/01 also grants preferential treatment for domestically produced goods and services in purchases made by federal agencies and public utility firms. The margin of preference is defined as a percentage over the price quoted for imported goods or services (7% in the case of medium and small firms and 5% for the rest). In deregulated markets or in markets subject to competition, the preference for domestically produced goods or services will apply only in case of equal prices. The domestic content requirement for goods and services subject to the preference is 60%.

#### *2.1.4.- Electronic commerce and personal data protection*

MERCOSUR activities related to electronic commerce and personal data protection are incipient. SGT (Working sub-group, *Sub Grupo de Trabajo*) Number 13, in charge of electronic commerce, was created by Decision 59/00 of the Common Market Council, which altered the structure of SGTs and transformed the Ad Hoc Group on Electronic Trade in SGT 13. The sub-group has already met on seven occasions and drafted an action plan. In the November 2002 meeting the sub-group discussed three issues, namely:

- Means of payment: the Brazilian delegation was charged with the task to prepare a general diagnosis about the issue.
- Digital signature: the sub-group is preparing recommendations on Digital Certification. The sub-group extensively discussed the principles to be applied, including the objective to promote convergence of regional and international norms, particularly those of the European Union.



- Consumer protection: the sub-group considered recommendations about consumer information rights for Internet. If passed, the recommendations will be submitted to the Common Market Group for approval. The sub-group is also working on recommendations on Internet consumers' privacy, to be discussed in the near future.

#### *2.1.5. Summary of internal market access issues*

The previous review confirms that free circulation of goods and services among MERCOSUR member states is blocked by numerous non-tariff barriers. Some of them are a consequence of the partial enforcement of the customs union due to the failure of member states to implement the agreed common trade policies. Such is the case, for example, of rules of origin and trade remedy legislation.

There are other trade barriers, however, that stem from divergent national regulations concerning standards and sanitary and phytosanitary matters. A large number of these divergent national regulations were harmonized only marginally. Moreover, since national standards continue to differ significantly, there has been little progress in mutual recognition agreements. The prevailing state is one of generalized competition between different standards and procedures and lack of agreement on how to deal with the issue, except market fragmentation. Even in those cases in which a MERCOSUR norm was eventually agreed, lack of internalization or differences in the enforcement of the agreed norm can place effective barriers to intra-regional trade.

The subsistence of NTBs on intra-regional trade is the outgrowth of two different logics. One is a short-term logic raised by macroeconomic urgencies: in this case NTBs are a response to macroeconomic (mainly external) imbalances and bear little relation to trade policy per-se. Remarkably, it is not infrequent that these kind of NTBs specifically target imports from other MERCOSUR member states, particularly when large bilateral currency misalignments prevail. The second logic is accounted for by the political economy of protection. Sectors benefiting from special protection are among those that benefited most

from import substitution and display severe competitiveness problems vis-à-vis regional partners. It is not by chance that Brazil frequently applies NTBs to agricultural imports (except poultry and pork), while Argentina targets most frequently textiles, footwear, steel, pork and poultry.

In the area of services and government procurement, the record of MERCOSUR is more disappointing than in the realm of goods. Despite the signature of a Services Protocol nearly five years ago, ratification by all member states is still pending. Although the exchange of concessions after three rounds of negotiation has gone beyond those made in the GATS, in practice they have not been enforced because of lack of ratification. The longer the time it takes to ratify the Protocol on Trade in Services, the later the ten-year calendar to fully liberalize sector trade will bite. In the area of government procurement progress has been even slower, and negotiations are still underway with no specific calendar to be completed.

## 2.2. *Common external trade policies*

In order to assess the state of MERCOSUR as a customs union one must address three analytically distinct issues, namely: a) whether a common external trade policy has been formally adopted; b) whether that policy has been effectively enforced; and c) whether member states have been able to implement joint negotiating strategies *vis a vis* third parties. The adoption and enforcement of a common external policy has far reaching domestic implications, as it involves moving towards a common structure of protection. In turn, the implementation of a common negotiating strategy *vis-à-vis* the rest of the world demands shared objectives and the successful arbitration of divergent national agendas.

### 2.2.a) *Adoption of a common external trade policy*

The Treaty of Asunción established the enforcement of a common market after a transition period set to conclude on December 31, 1994. The common market would involve the free circulation of goods, services and factors of production, the adoption of a common external trade policy and, if necessary, sector and macroeconomic policy co-ordination. In December 1992 the Presidents agreed the broad guidelines of the common external trade policy: tariffs would range between 0 and 20%, there will be tariff escalation according to domestic value added, a number of transitory exceptions would be admitted, and all exceptions would converge towards the common external tariff (CET) according to a pre-determined schedule.

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The differences in the structure of production and protection that prevailed among MERCOSUR member states made the determination of item-by-item tariffs a painful process. The main differences were in product categories such as capital goods, electronic products, telecommunications and computers. Olarreaga and Soloaga (1998) showed that the agreed tariff structure of MERCOSUR was a result of national political determinants weighted by economic size. In effect, the 1994 CET agreement reproduced the Brazilian

tariff structure coupled with transient mechanisms to accommodate divergent national preferences.

The approved CET consisted of eleven tariff rates (ranging from 0 to 20%), tariff escalation and an average tariff rate of 11.3%. Tariff rates varied between 0 to 12% for inputs, between 12 and 16% for capital goods, telecommunications and computer products and between 18 and 20% for consumer goods (Kume e Piani, 2001). Exceptions to the CET included the following:

- i) the so-called “special sectors” (sugar and motor vehicles) to be subject to a common regime in the future;
- ii) capital goods (900 tariff items) and computer and telecommunication products (220 items); and
- iii) four national exemption lists including a maximum of 300 tariff items each (except Paraguay with 399).

Exceptions would converge towards the agreed CET according to a predetermined calendar: capital goods in 2001 (Paraguay was given a special waiver until 2006), telecommunication and computer products in 2006 and items included in national lists would converge by 2001 (again with the exemption of Paraguay that would do so in 2006). The convergence process would be automatic, linear and progressive. All exceptions would be eliminated as of 2006. All imports from special customs areas or export processing zones (except Tierra del Fuego and Manaus until 2013) would be charged the CET or the national tariff rate (if the product was temporarily exempted from the CET).

Table 2.6 presents nominal and effective tariff rates based on the CET that will be in force in 2006.<sup>20</sup> The most heavily protected sectors (in nominal terms) are motor vehicles,

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<sup>20</sup> Nominal protection makes reference to the applied nominal tariff rate. But nominal tariff rates are not adequate indicators of the protection conferred to value added in a particular activity. In order to have an estimate of the latter, effective protection rates can be calculated. Effective protection rates take into account the nominal protection conferred to the final product as well as to its inputs, consequently providing an indication of how high is the protection conferred to value added. Positive nominal tariff rates can render

trucks and buses, apparel and textiles, plastics and electrical material. Only nine out of 32 sectors have tariff rates below 10%. Considering effective protection rates, the most heavily protected sectors are motor vehicles, trucks and buses, beverages and other food products, apparel, processing of agricultural products, steel products and plastic goods, all with effective protection rates higher than 20%.

**TABLE 2.6**

**MERCOSUR'S CET IN 2006: NOMINAL AND EFFECTIVE TARIFF RATES**

<b>Sectors</b>	<b>Nominal tariff rate (%)</b>	<b>Effective tariff rate (%)</b>
Agriculture and livestock	3,78	2,93
Mineral extractive (excl fuels)	3,95	1,72
Petroleum and coal	0,00	-1,82
Metal mineral products	11,47	13,29
Steel	7,98	12,55
Non-ferrous metals	9,78	10,28
Other metal products	15,80	21,25
Machines and tractors	13,85	14,22
Electrical material	15,99	19,99
Electronic equipment	13,10	12,86
Cars, trucks and buses	33,97	123,96
Other motor vehicles and parts	13,81	14,22
Wood and furniture	10,97	13,10
Cellulose, paper and printing	11,94	12,71
Rubber	12,84	14,70
Production of chemical products	12,83	13,91
Petroleum refining	4,58	5,33
Miscellaneous chemical products	8,80	10,62
Pharmaceutical products	10,00	9,95

negative effective protection if nominal tariff rates levied on inputs are higher than those levied upon the final product.

Plastic products	16,54	20,59
Textiles	16,39	21,77
Apparel	19,58	22,28
Leather and footwear	14,23	15,75
Coffee industry	11,33	11,73
Processing of vegetal products	12,09	22,17
Slaughterhouses	9,76	9,81
Diary industry	15,57	16,57
Sugar	16,00	16,90
Production of vegetal oils	8,72	9,90
Food and beverages	15,69	23,64
Miscellaneous products	14,38	16,10
Simple average	12,44	17,19
Simple average (excl. cars, buses and trucks)	11,72	13,63
Minimum	0,00	-1,82
Maximum	33,97	123,96
Maximum, (excl. cars, buses and trucks)	19,58	23,64
Standard deviation	5,92	20,74
Standard deviation (excl. cars, buses and trucks)	4,44	6,23

Source: Kume y Piani (2001)

### *2.2.b) Implementation of a common external trade policy*

The customs union was formally launched on January 1 1995, but enforcement of a common external trade policy has been fragmented. Furthermore, the myriad of existing tariff exceptions has made inevitable the enforcement of rules of origin for all traded products. Currently, over a third of total tariff items do not enforce the CET, but the

number may in reality be higher due to the persistence of national discretion (see Table 2.7).

Apart from the partial enforcement of a CET, MERCOSUR member states also failed to implement the customs code approved in 1994. Although in 1997 the Trade Commission engaged in the drafting of an additional protocol to make the customs code enforceable, no progress has been made. Another area of partial progress is the integration of border control facilities: although member states have formally adopted them, budget constraints and national resistance have prevented full implementation. No progress has been yet made concerning the use of unified customs documentation or the issue of tariff revenue distribution.

The most important obstacles to the effective enforcement of a CET are the following:

- Persistence of national governments' discretionary authority to *de facto* change tariff rates.

At least two mechanisms have maintained or given national authorities the power to unilaterally change import tariff rates. One is the authorization to temporarily reduce tariff rates on designated products to deal with supply constraints, a mechanism implemented in 1996, renewed in 1998 and still in force (see Annex 2.III). The other is the authorization given in 1997 to optionally raise the CET by three percentage points (the decision was a compromise to enable Argentina to eliminate the 3% statistical import surcharge challenged at the WTO without effectively lowering Argentine tariffs). Originally, the increase would be in force until December 2000 but it was later on renewed and is still applied. The tariff surcharge is currently 1.5% and enforcement is optional. Moreover, member states can exclude designated products from the surcharge.

A decision that further weakened the enforcement of the CET was the waiver granted to Argentina in June 2001 to temporarily reduce tariff rates on capital goods to zero

and to raise tariffs on consumer goods up to 35%. Indeed, this waiver was a response to Argentina's unilateral tariff changes introduced in March 2001. As a result of this decision Argentine tariff rates diverged significantly from the agreed CET: in April 2001 the average CET rate on intermediate products was 17.2%, while in the case of Argentina it reached 25%. For consumer goods the difference was even higher: a CET of 18.7% as compared to a national average of 27.9% (the difference between average rates of effective protection rates was even higher: 22.9% and 40.2%, respectively). Most of these changes were reversed after the devaluation of the peso in January 2002.<sup>21</sup>

- The subsistence of special import regimes including temporary admission, draw back and other exceptions resulting from national government procurement regimes.

In Ouro Preto, MERCOSUR member states agreed that special import regimes could be used in intraregional trade only for products transitorily exempted from the CET and, more generally, for products subject to rules of origin even if they were not formally exceptions to the CET. However, in the MERCOSUR-Chile FTA the parties decided to continue using these instruments during a transition period. Since then the issue has not been addressed effectively.

Special import regimes have been under negotiation since 1996, when the Trade Commission established a Technical Committee to determine the number and major features of the existing regimes and to identify the beneficiary products. The objective was to produce a list of goods on which certificates of origin would continue to be required. However, progress in making the list was very slow and a set of unilateral decisions made negotiations even more difficult. In 1997, for example, Paraguay reduced to zero (originally

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<sup>21</sup> The loss of collective discipline led Paraguay to unilaterally eliminate preferences for intra-regional trade and enforce a 10% tariff rate on intra-regional imports for a list of about 500 products (valid until December 2002). Again, the Common Market Council responded flexibly, granting Paraguay a waiver as long as the number of items benefited by the decision was less than 5% of total tariff lines. Uruguay, in turn, increased its tariff rate by 3 percentage points, levying the extra tax also on intra-regional imports.



until January 1999) the tariff rate on raw material and input imports made by industrial and agricultural firms benefiting from government programs.

In mid-2000, and faced with the absence of progress in dealing with the issue, the authorization to enforce special import regimes (temporary admission and draw back) was extended until 2006. The maintenance of special import regimes is a good example of the political economy of intra-regional trade negotiations, since they are largely the result of transnational coalitions of extra-zone import-competing sectors with significant intra-regional export interests. Special regimes enable these interest groups to benefit from relatively high protection of the regional market, while giving them the opportunity to import inputs and parts at world prices.

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- The lack of agreement on a common trade defense regime for extra-regional imports.

In a customs union, common trade policies must include common safeguards and common rules to deal with unfair trade practices. In 1996 a common safeguards code was approved, replicating the existing WTO agreement and authorizing the enforcement of safeguards either by MERCOSUR as a customs union or by member countries individually. The code established a Safeguards and Trade Defense Committee in charge of assessing whether there was injury or threat of injury to domestic producers, launch investigations and eventually determine the application of duties. A common framework for antidumping measures was approved in 1997 and one for countervailing duties three years later. However, no codes have been approved yet. This means that there is still no unified procedure to enforce trade remedy laws as in a unified custom territory.

TABLE 2.7

MERCOSUR: ENFORCEMENT OF THE COMMON EXTERNAL TARIFF\*

<p><b>Argentina</b></p>	<p>100 items exempted from the CET until 31/12/02, most of them with tariff rates lower than the CET.          Telecommunication and computer goods: in convergence to the CET until 1/1/06, most of them with tariff rates lower than the CET.          Motor vehicles (35% tariff rate) and parts with tariff rates lower than the CET, for an unspecified period.          710 capital good items with zero tariff rates, until 31/12/02.          1268 consumption good items with tariff rates of 28% and 302 consumption good tariff items with tariff rates between 20 and 26.6%, until 31/12/02.          Textiles: 429 items with a 35% tariff rate (WTO bound rate) and 225 items with 30% tariff rates until 31/12/07.          Footwear, 27 items with specific tariff rates until 31/12/07.          Toys, 7 items with specific tariff rates until 31/12/07.          National Health Emergency Law (medicines), 93 medical equipment items, 61 diagnosis inputs and 39 medicines with zero tariff rates until 31/12/07.          Products bound at the WTO with tariff rates lower than the CET.</p>
<p><b>Brazil</b></p>	<p>100 items exempted from the CET until 31/12/02, most of them agricultural products with tariff rates higher than the CET and healthcare products with tariff rates lower than the CET.          Telecommunication and computer goods: in convergence to the CET until 1/1/06, most of them with tariff rates higher than the CET.          Capital goods, computer and telecommunication products, 2800 <i>ex-tarifarios</i><sup>22</sup> with a 4% tariff rate until 30/06/04.          Motor vehicles (35% tariff rate) and parts with 50% tariff reduction, for an unspecified period.          Medicines, 555 items with zero tariff rates until 31/8/02.          Products bound at the WTO with tariff rates lower than the CET.</p>
<p><b>Paraguay</b></p>	<p>100 items exempted from the CET until 31/12/02, most of them with tariff rates lower than the CET.          399 items exempted from the CET until 1/1/06, most of them with tariff rates lower than the CET.          369 items charged with METI (<i>Medidas Especiales Temporarias de Importación</i>, Special Temporary Import Measures) until 31/12/02.          Telecommunication and computer goods: in convergence to the CET until 1/1/06, most of them with tariff rates lower than the CET.          Capital goods: in convergence to the CET until 1/1/06, most of them with tariff rates lower than the CET.          Motor vehicles: tariff rates between 10 and 15%.</p>

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<sup>22</sup> “Ex-tarifarios” are mainly non-internally produced capital goods that are levied at rates lower than the CET.

	Products bound at the WTO with tariff rates lower than the CET.
<b>Uruguay</b>	100 items exempted from the CET until 31/12/02, most of them with tariff rates lower than the CET. Telecommunication and computer goods: in convergence to the CET until 1/1/06, most of them with tariff rates lower than the CET. Capital goods: some with zero tariff rates until 31/12/02. Capital goods: in convergence to the CET until 1/1/06, most of them with tariff rates lower than the CET. Motor vehicles and parts: 23% tariff rate. Textiles: minimum import prices (tariff equivalent approx. 30%) Products bound at the WTO with tariff rates lower than the CET.

\* Excludes transitory exceptions due to supply constraints (see Annex 2.I), as well as preferences included in bilateral agreements with LAIA partners (see section 2.2.c.i)

Mise en forme : Puces et numéros

### 2.2.c) *Negotiations with third parties*

#### 2.2.c.i) *Intra-LAIA negotiations*

In 1996 MERCOSUR reached two free-trade agreements, one with Bolivia and the other with Chile. The agreement with Bolivia was based on the close trading relation that the Andean country has both with Argentina and Brazil. In effect, despite the fact that Bolivia is a member of the Andean Community, trade relations with Brazil and Argentina have been traditionally more important than with other Andean countries. This moved Bolivia to ask a waiver from the Andean Community to sign an FTA with MERCOSUR. The natural gas pipeline under construction linking Bolivian natural gas fields with Brazilian consumption centers in the central and eastern regions will greatly increase trade flows. The FTA with Bolivia includes no exceptions and an automatic calendar for phasing out tariffs. Jointly with Chile, Bolivia is a member of the “Extended MERCOSUR” and participates regularly in the ministerial and presidential summits.

Negotiation of an FTA with Chile was more complex. The first priority for MERCOSUR countries was for Chile to join the customs union. This stance was based on the attempt to strengthen the bargaining capacities of the custom union as well as to prevent the erosion of the preferences enjoyed by the smaller countries that had adopted the CET.

However, the Chilean government maintained consistently that although it purported to become a full member of MERCOSUR, it was not prepared to abandon either its own tariff policy or its autonomy to undertake bilateral negotiations with third parties. Indeed, jointly with Mexico, Chile has been one of the Latin American countries most actively engaged in preferential negotiations. In practice, the Chilean stance has inhibited this country's full membership into the customs union. The incentives to do so were further reduced by the FTA with MERCOSUR (that effectively granted Chile preferences into that market) and by MERCOSUR difficulties to enforce its own collective trade disciplines.

The negotiation of the MERCOSUR-Chile FTA was also difficult because of the content of the trade agenda. Despite the fact that Chile has lower average tariff rates than MERCOSUR and that tariffs are being cut down, protection is still high for certain temperate agricultural products of export interest to MERCOSUR (particularly to Argentina and Uruguay). This explains the extended phase-out periods for products such as flour and wheat. Chilean safeguards and flexible price bands on wheat and edible oils have led to periodic conflicts, which have even reached the WTO dispute settlement mechanism.

In contrast to the FTAs with Chile and Bolivia, MERCOSUR has failed to negotiate equivalent agreements either with the Andean Community or Mexico<sup>23</sup>. Indeed, the maintenance or renegotiation of pre-existing bilateral agreements with other LAIA (Latin American Integration Association) partners (authorized until 2003) and the failure to design a collective negotiating strategy both with Mexico and the Andean Community are indicators of MERCOSUR's difficulties to effectively enforce a common external trade policy. Table 2.8 lists the preferential trade agreements to which MERCOSUR member states are parties either collectively or individually. Brazil and Argentina have bilateral agreements with the Andean Community (AC), while Paraguay and Uruguay have bilateral agreements with each AC country. All members of MERCOSUR have agreements with Mexico and Cuba (except Paraguay).

**TABLE 2.8**  
**MERCOSUR AND LAIA: BILATERAL PREFERENTIAL AGREEMENTS**

	<b>Argentina</b>	<b>Brazil</b>	<b>Paraguay</b>	<b>Uruguay</b>
<b>Colombia</b>	Selective agreement ACE 48	Selective agreement ACE 39	Selective agreement APR 18	Selective agreement APR 23
<b>Cuba</b>	Selective agreement ACE 45	Selective agreement ACE 43	No agreement	Selective agreement ACE 44
<b>Ecuador</b>	Selective agreement ACE 48	Selective agreement ACE 39	Selective agreement APR 30	Selective agreement ACE 28
<b>México</b>	Selective agreement ACE 6	Selective agreement APR 9. New selective agreement in negotiation	Selective agreement APR 38	Selective agreement ACE 5.15
<b>Peru</b>	Selective agreements ACE 48	Selective agreement ACE 39	Selective agreement APR 20	Selective agreement APR 33
<b>Venezuela</b>	Selective agreement ACE 48	Selective agreement ACE 39	Selective agreement APR 21	Selective agreement APR 25

Source: ALADI

As Table 2.9 shows, most bilateral preferential agreements have a limited scope. Only the agreements between Paraguay and Uruguay and Ecuador cover a large number of tariff items. However, only a handful of them grant 100% preferences. Similarly, only the agreement between Mexico and Uruguay is considered by LAIA as a “new generation agreement” covering a large number of products as well as disciplines other than market access conditions for goods.

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<sup>23</sup> The agreement with Mexico recently signed in 2002 does simply extend the validity of existing bilateral agreements and creates a framework for future negotiations.

**TABLE 2.9**  
**SELECTIVE BILATERAL PREFERENTIAL TRADE AGREEMENTS**

<b>Participating countries</b>	<b>Type and number</b>	<b>Date of signature</b>	<b>Number of items with preferences</b>
Argentina México	ACE 6	1986	1970 1400
Argentina Perú	ACE 9	1988	358 212
Brazil México	APR 9	1983	Motor vehicles
Argentina Colombia	ACE 11	1988	329 232
Colombia Paraguay	APR 18	1983	33 34
Argentina Venezuela	ACE 20	1992	201 144
Paraguay Perú	APR 20	1983	75 94
Paraguay Venezuela	APR 21	1983	192 240
Argentina Ecuador	ACE 21	1993	533 299
Ecuador Uruguay	ACE 28	1994	5822 6124
Ecuador Paraguay	ACE 30	1994	6503 6533
Colombia Uruguay	APR 23	1983	35 27
Uruguay Venezuela	APR 25	1983	57 35

Perú	APR 33	1983		66
Uruguay				31
México	APR 38	1993		2006
Paraguay				950
Brazil	ACE 39	1999		(*)
Colombia			(1731)	1480
Ecuador			(1504)	1314
Perú			(1608)	1371
Venezuela			(1640)	1380
Cuba	ACE 43	1999		273
Brazil				288
Cuba	ACE 44	1999		200
Uruguay				59
Cuba	ACE 45	1999		27
Argentina				79
Argentina	ACE 48	2000		
Colombia				
Ecuador				
Perú				
Venezuela				

(\*) In brackets the number of preferences granted by Brazil to each counterpart

Source: ALADI

In June 2000 the Common Market Council ratified that MERCOSUR should negotiate as a single party with non-members, placing June 30 2001 as the deadline for completion of any pending bilateral negotiation. The Common Market Council also established that existing bilateral preferences will be authorized to remain in place only until June 30, 2003, instructing to launch collective negotiations with Mexico and the Andean Community. Despite these formal constraints, bilateral negotiations between Mexico and Brazil continued, as well as between Mexico and Argentina. Eventually, Mexico and Brazil agreed a limited preferential trade agreement covering 815 tariff lines (with preferences ranging from 20 to 100%) and a special chapter on motor vehicles trade. The agreement is

quite modest in terms of coverage, except in the motor vehicles sector, where the two countries have agreed tariff-free quotas starting from 140,000 vehicles per year in 2002 to reach 210,000 in the fourth year. Argentina and Mexico also signed a bilateral agreement on motor vehicles trade. A negotiation for an intra-regional FTA between MERCOSUR and the Andean Community is also underway, but the differences that split the parties are significant. It is uncertain whether an agreement will be reached before the next MERCOSUR presidential summit to be held in Río de Janeiro next December.

### 2.2.c.ii) The FTAA negotiations

MERCOSUR member states have shown disparate strategic interests throughout the FTAA negotiations. Moreover, differences have widened along time. This has been partly the result of the disappointment with the functioning of the customs union. Indeed, there is enough evidence that some member states may have even regarded hemispheric negotiations as a vehicle to influence the intra-regional bargain process. An example of such strategic interactions has been Argentina's insistence on revitalizing the "four+one" scheme of negotiations between the US and MERCOSUR.<sup>24</sup> However, despite these divergent strategic interests, MERCOSUR member states have managed to maintain a unified stance on market access negotiations. This common stance has been facilitated by the fact that the FTAA negotiations have not yet reached the critical phase of exchanging market access concessions (scheduled to take place in 2003).

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The FTAA negotiations have been heavily influenced by the worsening macroeconomic and political environment throughout the Hemisphere. Almost two years before the scheduled date to conclude the negotiations (December 2004), the major participants (particularly the US and Brazil) do not seem fully convinced that the FTAA is

<sup>24</sup> The "four+one" mechanism was instituted by the Rose Garden Agreement in 1991 (see above, subsection 1.1.f). It consisted on a mechanism to channel trade consultations and negotiations between the United States and MERCOSUR member states. However, the "four+one" scheme has been sparsely used.

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the appropriate way to go forward. In both countries influential voices oppose the creation of a hemispheric-wide free trade area, a stance that may be exacerbated after the Brazilian presidential elections (Brazil and the US will co-chair the negotiations as of next year).

Recent trends in US trade policy have also had a significant influence on the FTAA process. New trade barriers against steel imports, a new agricultural legislation – raising considerably agricultural subsidies- and the strings attached to the Trade Promotion Authority law have given indications that the US may be reorienting its trade strategies towards more protection and heightened unilateralism. Although the increase in US protection can be partly related to the fact that 2002 is an election year, this is not enough to account for heightened unilateralism –of which protection is just one indicator.

Indeed, the preferred US strategy seems to be to continue to move forward in the FTAA process while simultaneously pursuing bilateral negotiations. The US-Chile agreement is practically concluded, and negotiations on a US-Central America FTA have already started. If successful, this strategy will lead to the consolidation of new hub-and-spoke systems in the Western Hemisphere, simultaneously raising the leverage of US negotiators in setting the agenda and its terms.<sup>25</sup>

The drive towards an FTAA may also be weakened by the fact that the Andean and Caribbean countries already enjoy quite substantial duty-free access to the US market, either under the benefits of the Andean Preferences Trade Act (in the case of the former) or NAFTA-parity (in the case of the latter). Of course, neither APTA nor NAFTA-parity are contractual agreements and therefore their benefits may be unilaterally removed by the US. However, this single reason is unlikely to play a major role in increasing commitment with the FTAA. Indeed, each regional grouping may have its own reasons for trying to reach a bilateral deal with the US first. This has been Mexico's strategy during the nineties, in its successful drive to become the center of a hub and spoke system.

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<sup>25</sup> Indeed, there are already several hub-and-spokes systems in the Western Hemisphere, the most significant of which is that headed by Mexico, the only country in the Western Hemisphere that simultaneously enjoys contractual free-trade or preferential access to North American, EU and a large number of Latin American markets.

The FTAA negotiations are currently centered on reducing the number of brackets included in the agreement's draft text submitted to the Buenos Aires ministerial summit in April 2001 and on launching the exchange of offers and demands concerning market access negotiations. According to the Buenos Aires ministerial declaration (April 2001), market access negotiations were scheduled to start on May 15<sup>th</sup> 2002 organized in five groups, namely: agriculture, market access, investment, services and government procurement. The meeting of the Trade Negotiations Committee held on May 15<sup>th</sup> 2002 failed to clarify any of the "grey areas" left unsolved by the work of the negotiating groups. This convinced the participants to move away from their original focus on the methods and modalities of negotiations, and to directly engage in the exchange of offers and demands schedules. In the April 2002 meeting the TNC determined that governments will have to submit liberalization offers between December 15<sup>th</sup> 2002 and February 15<sup>th</sup> 2003, in order for demands for improvement to be submitted in the next three-month period. According to this schedule revised lists of offers will have to be submitted by July 15<sup>th</sup> 2003.

Market access negotiations on industrial and agricultural goods will take as the tariff-base the applied tariff rate, rather than bound tariffs. Custom unions will notify a base-tariff, even if the CET includes exceptions by some members. In order to facilitate convergence within each customs union, the CET may be altered until April 15<sup>th</sup> 2003, when the base-tariff is scheduled to be notified.

The participants also agreed that the whole tariff schedule will be subject to negotiation, although not necessarily to tariff elimination. Tariff cuts will be linear, but there may be exceptions to the general rule. Each member state will be requested to make substantial tariff elimination offers at the startup of the process. The rest of the products will be classified in three tariff phase-out categories: a) five years, b) ten years, and c) more than ten years. An Ad Hoc group was created to negotiate specific rules of origin as of September 30<sup>th</sup> 2002.

The TNC meeting also decided that the groups dealing with market access and agriculture must define before February 15<sup>th</sup> 2003 a methodology (including a chronogram) to deal with non-tariff measures (elimination, reduction, etc). The group on agriculture also received a broad (and vague) mandate to continue working on the extent and method to eliminate export subsidies on agricultural products and other practices that distort agricultural trade, including those that have an effect equivalent to an export subsidy. No target date to conclude this task was set.

Other decisions taken in the realm of market access were equally imprecise. For example, in the TNC's May meeting it was left undecided whether "commercial presence" (in GATS jargon), i.e. FDI in the services sectors, would be dealt with by the investments group or the services group. Indeed, offers can be submitted to either of the two groups. In both groups the recommendation was that offers should be broad and compatible with existing legislation. In the case of the investment group (but not necessarily in the case of investment in service activities, where offers can be submitted to the services group as "commercial presence"), offers shall adopt a negative list approach. As far as the services group is concerned, the parties agreed that the initial offers will be based on the existing multilateral commitments or improvements over and above them. This decision was a compromise between those parties that supported taking as the baseline the commitments bound in the GATS and those inclined to take existing practices as the baseline (which would include unilateral liberalization beyond GATS' commitments).

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At last, the government procurement group agreed that the coverage of the agreement will be "broad", that offers will include central and federal government units and that they "may include other levels". Again, this formula was a compromise between alternative approaches to defining the baseline to exchange offers.

#### 2.2.d) Conclusions concerning common external trade policies

The partial implementation of a common external trade policy has been the result of conflicting interests and a general failure to successfully arbitrage them. The result has been extensive perforations of the CET and unstable intra-regional preference margins, which in turn has prevented the CET from becoming a reliable indicator of intra-regional preferences. This has compounded (and been partly determined by) a relatively high level of national policy discretion concerning intra-regional market access conditions, as discussed in section 2.1.

The partial implementation of a common external trade policy has prevented MERCOSUR from reaping the information and efficiency benefits of a customs union as compared to a free trade area. Moreover, it has led to a credibility crisis over MERCOSUR's bargaining resources. The combination of these factors leads us to conclude that MERCOSUR's common external trade policies have been not only imperfect but also ineffective, since they have neither played the role of a reliable indicator for private investor decisions nor improved member states' bargaining capabilities *vis a vis* third parties.

The current impasse on the enforcement of MERCOSUR's common external trade policies has revived the debate about the strategic objective of the regional group. While some have proposed to abandon the target of a customs union and replace it by the project of a free trade area<sup>26</sup>, others continue to emphasize the presumed benefits of a unified custom territory. The proponents of the free-trade area approach have been more influential in Argentina and Uruguay, where a growing consensus exists that "importing" the Brazilian structure of protection devoid of the benefits of stable access conditions into that market is not an attractive bargain. However, also in Brazil an influential view has emerged that criticizes the custom union approach on the grounds that it has "tied Brazil's hands" to negotiate with others (the recent electoral campaign has been eloquent in this respect).

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<sup>26</sup> See footnote 6

Indeed, if the customs union approach is to prevail, more pooling of national policy discretion will be necessary. This will certainly affect Brazil, but also the smaller members of MERCOSUR. In effect, the partial implementation of a common external trade policy has also enabled the smaller economies to benefit from special import regimes, which have been used extensively by countries such as Uruguay.

### ***2.3. Policies to manage structural and policy asymmetries***

MERCOSUR member states have made very limited progress in implementing disciplines to deal with state policies and aids and incentives that distort intra-regional competition. Wide differences in tax and incentives structures can distort trade flows and investment location. Asymmetries in macroeconomic policies and performances can also have a significant impact on trade and investment flows and lead to significant pressures for increased protection and market fragmentation. This was explicitly recognized by Article I of the Treaty of Asunción that mandated the coordination of macroeconomic and sectoral policies as well as a general commitment on the part of member states to harmonize their legislation in order to strengthen the integration process<sup>27</sup>.

The Treaty also stated that “during the transition process, the main instruments for the construction of the Common Market” will be, besides the trade liberalization program, *inter alia*, “the coordination of macroeconomic policies, which will take place gradually and in parallel with the programs of tariff reduction and elimination of non tariff restrictions”.

However, these guidelines were no more than programmatic principles. In effect, they included no specific mechanism or policy to compensate or correct structural and/or regulatory asymmetries. The issue was taken up again in the *Agenda de Las Leñas* of 1992.

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<sup>27</sup> (...)“La coordinación de las políticas macroeconómicas y sectoriales entre los Estados parte –de comercio exterior, agrícola, industrial, fiscal, monetaria, cambiaria y de capitales, de servicios, aduanera, de transportes y comunicaciones y otras que se acuerden- a fin de asegurar condiciones adecuadas de competencia entre los Estados parte”, y

The *Agenda* set targets and a schedule to harmonize national macro and microeconomic policies. According to Machado (2000) “the *Agenda de Las Leñas* mandated the elaboration of a diagnostics, the assessment of existing asymmetries and the submission of specific policy proposals. The approach revealed a concern to reduce asymmetries in national policies and instruments”, but emphasizing foreign trade issues over and above other topics.

The modest progress recorded in this policy area can be partly accounted for by the priority assigned to the trade policy agenda. In effect, after 1992 the accumulation of bilateral trade imbalances attracted most of the energy of the negotiators (Lucángeli, 1998). However, since these imbalances were mainly the result of divergent macroeconomic policies and performances, the harmonization of domestic incentives generally received very little attention. The latter, however, would gradually become major sources of attrition.

One consequence of the accumulation of bilateral trade imbalances and the failure to deal with policy asymmetries was a significant increase in *ad hoc* trade policy measures. In 1993, Argentina raised the statistical import surcharge (from 3% to 10%) and made intensive use of antidumping duties, minimum specific duties and safeguards on a variety of products (including paper, textiles, footwear, tyres, electrical housing appliances and chemicals). The official document “*Consolidación de una Unión Aduanera y Transición para el Mercado Común*” released in 1993 formally recognized the impossibility to meet the targets set in *Las Leñas*, opting instead to promote convergence on trade and other policy instruments required to implement the customs union. This turned the negotiation of a CET into a key issue. However, while Argentine negotiators favored to simultaneously harmonize all trade policy instruments (tariffs, export incentives, rules of origin for products excluded from the CET, free-trade zones, non-tariff restrictions) and even some government subsidies, the Brazilian preferred to concentrate in the negotiation and enforcement of a CET, leaving other issues for future treatment.

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“*El compromiso de los Estados Parte de armonizar sus legislaciones en las áreas pertinentes para lograr el*

Faced with the Brazilian reluctance to engage in broad-based negotiations, the Argentine officials proposed: a) the implementation of structural adjustment programs as of January 1995; and b) the maintenance of a safeguards regime for intra-regional trade. The former was conceived as a means to facilitate restructuring in sensitive sectors via specialization, public procurement, competition policy, technological cooperation and harmonization of regulatory asymmetries. A safeguard clause, in turn, would make trade restrictions compatible with economic restructuring. The proposal was opposed by Brazil, which maintained that a safeguards regime would go against the spirit of market integration of a customs union. Eventually, the adoption of the *Régimen de Adecuación* in 1995 proved to be an imperfect substitute.

### 2.3.a) *Competition-distorting public sector policies: the broad view*

Dec 20/94 of the Common Market Council created a technical committee to examine competition-distorting public sector policies. The committee was instructed to make a diagnosis and classify measures according to the following criteria:

- a) measures involving an exemption from common trade policies;
- b) tax measures;
- c) credit measures;
- d) government procurement measures; and
- e) rules governing public sector firms or monopolies.

The committee should classify measures according to their compatibility or incompatibility with the customs union, taking into account economic efficiency criteria and GATT obligations. The proposal should include guidelines to harmonize compatible

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*fortalecimiento del proceso de integración.(...)"*

measures and to progressively eliminate those incompatible with the custom union. The list was to be submitted by June 30 1995. In practice, the technical committee remained inactive during 1995 and 1996. In July 1996 (Dec 15/96) the Common Market Council instructed the Common Market Group to create an *Ad Hoc* group in charge of drafting recommendations on how to deal with competition-distorting public sector policies. In June 1997 the *Ad Hoc* group asked member states to submit a list of competition-distorting public sector policies in order to produce a consolidated list of national distorting practices. However, it set no date for the submission.

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Throughout this period, the issue of indirect tax rebates has been a permanent source of conflict (see sub-section 2.3.c). Moreover, since the mid-1990s the increasingly active role of local governments (particularly in Brazil) in granting production and investment incentives introduced a new ingredient into an already complex picture. The most frequently used incentives were financial and fiscal measures as well as “dedicated” infrastructure. In the case of the motor vehicles industry, the incentives granted included direct capital contributions by sub-national governments. Although it is unclear whether sub-national incentives played a determinant role on regional investment location decisions, they did create widespread inter-state conflict.

The demand to make an inventory of existing incentives at the national and sub-national levels was reiterated by Dec 31/00. The inventory should list the measures enforced and briefly describe the content of the incentive, its legal base, the application authority and the eligibility criteria. The most important incentive mechanisms enforced by each country include:

### *Brazil*

Brazilian incentives can be classified along four categories, namely: a) incentives to agriculture, b) national federal incentives, c) regional federal incentives, and d) sub-national incentives. The analysis of Brazilian incentives leads to the following conclusions:



- the key role played by export incentives (exemption of PIS/PASEP and COFINS, “presumed” credit against the IPI, Proex-interest rate equalization and BNDES/Exim financing). Excluding the latter instrument, in 1999 these incentives accounted for 33% of the total funds dedicated to sector policies and 19% of total incentives. Of all these incentives, only the Proex-equalization can be strictly characterized as an export subsidy in WTO terms.
- the key role played by alternative mechanisms to finance investment (BNDES, Constitutional Funds, Regional Investment Funds). In 1999 these mechanisms accounted for nearly 14.5% of total sector incentives (including export finance granted by the BNDES-Exim) and 8.6% of total subsidies. These first two categories correspond to horizontal policies.
- the regional scheme of *Zona Franca de Manaus* and two sector regimes (computer and motor vehicles) granting various tax benefits.
- sub-national government initiatives to attract investment using fiscal subsidies, financial aids and dedicated investment on infrastructure.
- the marginal role of federal and local government programs aimed at stimulating R&D and technology activities.

The broad picture that emerges from the examination of Brazilian incentives is the significant reduction of federal tax incentives after 1998 (due to fiscal adjustment), compensated by a significant increase in local government tax subsidies. These benefits were granted mainly through the exemption/reduction of local taxes, the incidence of which is important in the case of Brazil. The reduction of local taxes gives an advantage to local firms and products, thus eroding the tax base of other states (firms located in states that “import” inputs from states granting tax incentives get a credit for the indirect tax paid on inputs, which can be later on deducted from local tax liabilities).

## *Argentina*

Argentina enforces nation-wide incentives regimes, national incentives regimes applied on a regional basis and regional incentives schemes. The major conclusions emerging from an analysis of Argentina's incentives are the following:

- incentives target exports and activities related to foreign sales. Production and investment incentives are limited.
- there are two national regimes with regional impact: the *Tierra del Fuego* special customs area and the tax rebate program on exports shipped from Patagonian ports.
- there are modest sector promotion schemes (mining and forestry).
- there are no incentives for technology and R&D.
- sub-national governments are active, particularly in Buenos Aires, Córdoba and Mendoza, and they use a diversified array of incentives that include tax exemptions and dedicated infrastructure.

It is important to point out that the Argentine inventory was submitted before the implementation of sector competitiveness plans in early 2001, which consisted on tax benefits offered on a sector and firm basis, mainly in exchange for employment commitments. The implementation of sector competitiveness plans proved to be cumbersome and led to a significant loss of transparency and presumably high costs in terms of foregone tax revenue. Most of them will be in place until 2003.

In the case of Argentina it is also noticeable [that there is](#) a trend to increase the number of sector special regimes backed by law. Apart from the mining and forestry programs (mentioned above), Congress is considering a bill to offer special incentives to the software industry.

## *Uruguay*

The two major regimes that exist in Uruguay are the *Ley de Promoción de la Inversión* and the *Ley de Promoción Forestal*. The former is a horizontal program that authorizes the Executive to grant fiscal incentives to targeted investments, which may also benefit from exemptions from local real estate contributions. The latter grants fiscal benefits to investments in forestry. In the realm of export incentives the Central Bank offers credit and a 9% tax rebate on wool textiles.

## *Paraguay*

In the case of Paraguay the two main instruments used are tax exemptions on new investments, including tariffs on extra-zone imports of capital goods, inputs and raw materials, and the *Ley de Maquila y Zonas Francas*, consisting of special tax regimes for highly export-oriented investment and production facilities. Paraguay also enforces a special scheme of tax reimbursements for forestry.

### *2.3.b) Export incentives*

Dec 10/94 aimed to discipline incentives to intra-regional exports. Dec 10/94 determined that tax incentives should not be used for intra-regional exports, except for:

- a) long-term finance for capital good exports granted in conditions, terms and costs compatible with international practices;
- b) indirect tax rebates on exports, up to an amount equivalent to the tax paid along the process of production (or, alternatively, to exempt exports from indirect taxes until production taxes are harmonized); and
- c) those established by special customs regimes (temporary admission and drawback) for intermediate products, parts or components used to produce goods in process of convergence towards the CET, or for products charged

with the CET but in which inputs, parts or components in process of convergence to the CET account for more than 40% of the product's fob value. The reimbursement, suspension or exemption of import tariffs should never be higher than the amounts effectively paid, suspended or exempted.

Dec 10/94 also established as general guidelines that export incentives should be GATT-compatible; that the concession or creation of a new incentive (as well as the maintenance of existing ones) should be subject to consultation between member states as of January 1995; and that member states should refrain from using multiple exchange rate regimes. In order to appropriately enforce Dec 10/94, member states were asked to implement adequate verification and auditing mechanisms concerning indirect tax rebates. However, no precise instructions were given as to the content of these procedures. Indeed, the lack of practical mechanisms was one of the major drawbacks of Dec 10/94.

Dec 10/94 did not address domestic production and investment subsidies explicitly, as they were supposed to be dealt with by a special group aimed at disciplining competition-distorting public sector policies. Moreover, Dec 10/94 was vague enough to allow for the maintenance of questionable national practices concerning indirect tax rebates (see next sub-section).

### *2.3.c) Tax asymmetries*

Argentina and Brazil are federal states, a fact that affects the tax structure.<sup>28</sup> On aggregate, local governments collect a higher share of total government revenues in Brazil than in Argentina. In effect, by the late-1990s, state and local governments collected taxes for the equivalent of 10% of GDP in Brazil as compared to only 4% in Argentina. This means that the scope for activist incentive policies on the part of local governments is significantly larger in Brazil than in Argentina. The existence of several tax jurisdictions also creates

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<sup>28</sup> For a more detailed discussion see Annex 2.IV.

problems in the realm of indirect taxation, as local indirect taxes are usually of the “cumulative” type.

The major source of government revenues for all MERCOSUR member states is consumption taxes. All member states levy a value-added tax (destination principle), but in the case of Brazil that tax (Impuesto a la Circulación de Mercaderías y Servicios, ICMS) is enforced by the state (and not the federal) governments. Argentina and Brazil levy other general consumption taxes, such as the gross revenue tax in Argentina (Impuesto a los Ingresos Brutos, IIB) and a services tax in Brazil (Impuesto sobre Servicios, ISS). Both taxes are enforced by the state and local administrations. The IIB is a cumulative tax. The ISS is levied on all services (except transportation and communications, taxed with the ICMS) and it is administered by municipal governments. Since the ISS is applied separately from the ICMS, there are cumulation effects between the two. Brazil also applies two social security contributions (COFINS and PIS/PASEP) with effects equivalent to a general consumption tax (the tax base is business’ total sales).

All cumulative indirect taxes create problems to ensure that indirect tax incidence is neutral, i.e.: that indirect taxes are paid in the country of consumption and not in the producing country. When governments attempt to compensate the effects of cumulative indirect taxation through tax rebates, the calculation of the exact incidence of the tax (an almost impossible task) becomes problematic. The method most frequently adopted is to establish a fixed tax rebate that may bear little relationship with the real incidence of the tax. Argentina enforces several categories of indirect tax rebates depending on the kind of export product. In the case of Brazil, although exports are exempted from the COFINS and PIS/PASEP, they are affected by the tax accumulated in earlier stages of production. In compensation the government offers a “presumed” tax credit on IPI liabilities.

### *2.3.d) Negotiations of competition defense*

The issue of competition defense and the need to harmonize existing legislation entered early into MERCOSUR's negotiating agenda. Yet by 1994 national competition defense regimes were still incipient. Dec 21/94 defined a number of basic principles for defense competition and established that before March 31, 1995 member states should submit detailed information on existing national legislation. Based on this information, the Common Market Group would draft a Competition Defense Statute before June 30, 1995.

The basic competition defense principles agreed included:

- a) the definition and prohibition of a set of agreements and concerted practices aimed at impeding, restricting or distorting competition;
- b) the definition and prohibition of what constitutes an abuse of a dominant position;
- c) the examination of concentration initiatives that would lead to a market share equal or higher than 20%; and
- d) the definition of cooperation and coordination criteria between national authorities in charge of enforcing competition defense law.

In 1996, Dec 18/96 passed MERCOSUR's Competition Defense Protocol (not yet in force). The Protocol applies to all acts which may affect competition throughout the region. The Protocol listed the practices that limit or restrain competition or market access and those that constitute an abuse of dominant position. Member states were asked to adopt common rules to control practices and contracts that may affect competition or lead to a dominant market position. The Trade Commission and the Competition Defense Committee (formed by the competent national agencies) were designated as the agencies responsible for enforcing the Protocol.

The Protocol established that within a period of two years member states "should draft common rules and mechanisms to discipline state aids that may limit, restrict, falsify

or distort competition and may affect intra-regional trade”. This commitment provided the background to the creation of the *Ad Hoc* group on distorting public sector policies already mentioned in sub-section 2.3.a) (Dec 15/96). The group failed to make progress due to fundamental differences over the desirability of reducing national policy discretion. Lack of agreement on the subject was one of the reasons to maintain national antidumping regimes. In fact, the Argentine authorities have refused to stop applying its domestic antidumping and countervailing regimes to intra-regional trade until there is an agreement on state aids and competition defense extends its reach into state aids.

### *2.3.e) Protocols on investment promotion and protection*

The Buenos Aires Protocol (Dec 11/94) defined general treatment principles for extra-zone investors while the Colonia Protocol (1993) addressed disciplines on intra-regional investment. None of these protocols are yet in force. The Protocols share a number of formal features such as the definition of what constitutes an investor or an investment. They also list conventional principles concerning investment protection, expropriation and compensation, transfers and dispute resolution.

The Protocols make no progress in disciplining investment incentives. The Buenos Aires Protocol establishes that member countries should not “grant third parties a treatment more favorable than that established by the present Protocol”. However, since the Buenos Aires Protocol makes no reference to incentives or instruments to attract investment, the statement can be applied exclusively to the legal treatment. The Protocol left the door open for divergent national incentives regimes, since it established that “each member state will promote in its own territory the investment of third parties and will admit those investments according to its own legislation and regulations”.

The Colonia Protocol was even more explicit in authorizing divergent national treatments for intra-regional investors. Art. 2 established that investors from other member states should be treated “not less favorably” than local investors or third party investors,

although transitory and limited exemptions could be maintained.<sup>29</sup> However, this opened the possibility of more favorable treatment, as explicitly stated in Art 7 (“if the legislation of one member state (...) or an agreement between an investor from a member state and the member state where the investment was made have agreed more favorable treatment than (...) that of the present Protocol, it will prevail over the present Protocol”. The Protocol also established that there will be no “performance requirements as a condition for establishment, expansion or maintenance of investments demanding a certain level of exports, the acquisition of domestic inputs or services or any similar conditions”. Argentina and Brazil reserved their rights to temporarily maintain performance requirements in the motor vehicles industry (see section 3.2 for additional comments)

### 2.3.f) *Macroeconomic asymmetries*

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During the 1990s, MERCOSUR made remarkable progress towards the elimination of tariffs on intra-regional trade. Moreover, until 1998 intra-regional trade expanded swiftly: intra-regional exports increased fourfold, growing at a rate six times higher than exports to the rest of the world. The elimination of tariffs as well as the rapid rise of intra-regional trade occurred in a context in which macroeconomic coordination was absent. However, during some periods of time there was a *de facto* convergence of macroeconomic policy and performance (for a more detailed discussion of macroeconomic issues see Annex 2.V).

Although Article I of the Treaty of Asunción established as an objective the coordination of macroeconomic and sector policies, it set no mechanism to ensure it. Consequently, the Trade Liberalization Program proceeded in a context in which each member country put forward its own macroeconomic objectives independently. Along all this period, cooperation, and even the exchange of information, were very limited. When there was convergence this was a *de facto* event due to exogenous reasons.

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<sup>29</sup> Argentina exempted from national treatment air transportation, shipbuilding, nuclear power generating stations, uranium mining, insurance and fisheries. Brazil included a longer list (hydroelectric power-generation, communications, financial intermediation, insurance, pension funds and social security and internal river transportation).



This uncoordinated approach was compatible with the elimination of tariffs and the rise of intra-regional trade flows during 1991-98 either because of *de facto* convergence (such as between 1994-98) or extremely favorable international conditions (as between 1991 and 1994). However, when international conditions worsened and macroeconomic asymmetries grew wider in the late 1990s, trade performance and trade liberalization suffered. Between 1998 and 2000 intra-regional trade fell by 13% and market access restrictions mushroomed. Parallel to the worsening of regional economic environment, the issue of macroeconomic coordination returned to the fore. The *Acta de Ushuaia* (1998) established that member countries should work towards macroeconomic harmonization and address issues relevant to monetary unification. Yet the *Acta de Ushuaia* was an initiative of the Argentine government geared more to promote an extension region-wide of the currency board system used in that country (and eventually dollarization) region-wide, than a proposal aimed to foster intra-regional coordination.

In 1999 the Presidents agreed the standardization of macroeconomic statistics as a first step towards enhanced macroeconomic cooperation. In 2001, member countries set medium-term indicative targets for selected macroeconomic indicators such as the inflation rate, the public sector debt/GDP ratio and the public sector deficit/GDP ratio. A system was also established to correct deviations from the agreed targets, but including no enforcement mechanism.<sup>30</sup> The assumption behind this approach was that, given the divergent national revealed preferences concerning the exchange rate regime (an inflation targeting regime with managed floating in the case of Brazil and a currency board in the case of Argentina), the best option would be to promote convergence in a set of nominal variables, in the expectation that this would prevent major disruptions in real variables. The foreign exchange and financial crisis of Argentina in 2002 radically changed the approach and the environment for macroeconomic policy coordination: although one of the major obstacles

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<sup>30</sup> The targets agreed included a maximum 5% inflation rate for the transition period 2002/2005 and then a convergence towards 3%: a maximum 3.5% of GDP public sector deficit for the transition period until 2003 and 3% thereafter; and a declining trend for the public sector debt/GDP ratio after 2005 and a convergence towards a 40% ratio thereafter.

for enhanced coordination was removed (the currency board), the Argentine crisis opened a period of significant macroeconomic volatility.

The macroeconomic disruptions suffered by MERCOSUR since the East Asian crisis of 1997 suggest that economic integration will hardly progress, or even be maintained, in a context in which such significant macroeconomic divergences prevail. A worsening macroeconomic environment and synchronic cycles have led to a significant increase in non-tariff measures and other *ad hoc* interventions (such as private sector “orderly marketing agreements”) that have significantly deteriorated market access conditions.

However, the prospect of macroeconomic coordination in MERCOSUR is shaped by the underlying structural factors. A major one is that despite the rapid rise of intra-regional trade during the 1990s, regional interdependence is still modest and, more importantly, highly asymmetric. The ratio of intra-regional exports to GDP is only 2%, well below the levels recorded by the EEC in the early 1970s (9%). This is the consequence of a relatively low ratio of intra-regional to total foreign trade (20.4% in 2000) and low international tradability on the part of the largest economies. In effect, the export to GDP ratio in Argentina and Brazil was below 10% (prior to the devaluation of the Argentine currency).

Trade interdependence among MERCOSUR member states is also highly asymmetric. Whereas for the region as a whole the intra-regional to total foreign trade ratio was 20.4% in 2000, that ratio reached 63.5% for Paraguay, 44.5% for Uruguay, 31.8% for Argentina but only 14.5% for Brazil. This structural feature has decisively shaped national incentives to coordinate macroeconomic as well as other policies.

As it is the case in the real economy side, regional financial interdependence is also modest, but it has been clearly on the rise. All MERCOSUR member states are net capital importers, meaning that the most significant links are established with extra-regional capital exporting countries. This is very clear as far as FDI is concerned: during the FDI boom of

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the 1990s, all member states were net recipients. Although intra-regional FDI increased, it never reached over 2% of total FDI inflows. Interdependence is also limited for portfolio capital (except for “contagion” effects). According to BIS data, between 1994 and 1997 the capital inflows into MERCOSUR that were originated in the US, EU, Canadian and Japanese banking sectors never accounted for less than 80% of total capital inflows. Regional financial interdependence is also constrained by the lack of depth of domestic financial markets. The exception to the rule is the close connection between the Argentine and Uruguayan financial sectors. Traditionally, Uruguay has served as an off-shore banking center for Argentine residents. However, the role of Uruguay as an off-shore financial center has been as a transit facility: limits on scale and product diversification have constrained its ability to upgrade its financial intermediation functions regionwide.

Labor market integration is even more incipient than that existing in goods, services and capital markets. There are no special facilities for labor movement and national labor markets continue to be highly segmented. Per capita income disparities are also very large. Whereas in the EU the difference in per capita incomes between Germany and Portugal is two and a half times, in MERCOSUR the difference between average per capita incomes between Argentina and Paraguay (measured in PPP exchange rates) is four and a half times. In such asymmetrical context, more labor market integration would probably mean large migration flows.

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The empirical evidence on macroeconomic interdependence in MERCOSUR confirms what one would expect from these structural conditions. The aggregate demand and the real exchange rate in the importing country (predominantly the former) are the main determinants of bilateral trade flows. This was confirmed after the sharp devaluation of the Real in January 1999, when total trade contracted while Argentina maintained a bilateral trade surplus with Brazil. The empirical evidence also shows an elastic response of bilateral trade to changes in economic activity levels. According to available estimates, the cumulative effects (including lags) of a 1% increase in Brazilian real GDP stimulate an increase of over 2.5% of Argentine exports towards that country. The “long term” response of Argentine exports to Brazil’s real exchange rate shows an elasticity of 0.9%, confirming

that changes in activity levels are more significant determinants of bilateral trade flows than changes in the real exchange rate.

Argentina and Brazil EMBI spreads until 1998 show a close correlation, suggesting that shocks originate in external factors. This is compatible with the evidence that intra-regional capital flows are modest as compared to capital flows to/from abroad. Given the high correlation of national risks, portfolio diversification into regional financial assets has been very limited.

The limited intensity of interdependence has given rise to low incentives to coordinate. However, this does not mean that macroeconomic spillovers have been negligible during the 1990s. Considering the significant increase in non-tariff barriers in recent years, maintaining market access conditions is likely to demand more macroeconomic convergence, either coordinated or *de facto*. The obstacles to coordination are aggravated by the absence of a regional focal point. Brazil would be the obvious candidate to play such role, but it has a poor macroeconomic track record. Paradoxically, the most stable economy in the region is Paraguay, which can hardly play the role of a focal point for macroeconomic coordination. The abandonment of the currency board by Argentina in January 2002 removed one of the major obstacles to enhanced regional cooperation, but opened the door to heightened volatility. In the present circumstances of deep financial crisis, it is unlikely that coordination efforts will succeed. Credible commitments will have to focus on modest and implementable initiatives.

#### ***2.4. The legal and institutional nature of MERCOSUR***

##### *2.4.a) MERCOSUR's law: an overview*

MERCOSUR was created in 1991 by a short Treaty (the Treaty of Asunción) that defines its objectives, principles and instruments and lays down its institutional structure. It includes five annexes that established: a) an automatic, linear and generalized program of

elimination of intra-zone tariffs, b) a system of rules of origin, c) a transitory system of intra-zone safeguards, d) a timeframe for the setting up of a dispute settlement mechanism and e) ten working groups to promote the coordination of specific economic and sector policies. Annex I had to be fully incremented by 1994 (1995 for Paraguay and Uruguay) and the other Annexes were envisaged only for the transitory period until December 31st 1994. Before this date a new permanent institutional structure had to be defined as well as definitive procedures for decision-taking.

The conventional interpretation of the Treaty of Asunción considers it a “framework treaty” to be filled up by “secondary” legislation (Abreu 2000). This “secondary” legislation would be produced by MERCOSUR organs. However, the process has not worked as this interpretation suggests. First, some of the more relevant pieces of “filling up” legislation produced by MERCOSUR organs (the protocols on competition, services or investment) are not really “secondary” legislation but primary law (i.e. international treaties added to the Asunción Treaty and approved following the same procedures) (see Annex 2.VI). Since they are international treaties, they are not subject to the procedure of *internalization* discussed below, but to usual ratification mechanisms. This practice is overseen by most studies of MERCOSUR institutions (in particular those that attempt to analyse the “internalisation deficit” without distinguishing between proper “internalisation” and “ratification” as well as those that do not point out that, at present, a consolidated version of the Asunción Treaty would be much longer than the European Community Treaty or even NAFTA).

Second, the most remarkable achievements of MERCOSUR can be attributed to the operation of primary law, and particularly to the Treaty of Asunción annex that established the elimination of intra-zone tariffs. In contrast, truly “secondary” legislation has proved quite ineffectual. Although these results can to a large extent be explained by the underlying economic, social and political factors discussed in section 1.1, there seems to be a number of strictly legal misconceptions in the approach used to produce “secondary” legislation. Because of the political and practical relevance of the issue, the next section engages into a strictly legal discussion of the nature of MERCOSUR’s secondary law.

#### 2.4.b) *The nature of MERCOSUR's secondary law*

The nature of MERCOSUR's secondary law is not easy to ascertain. Since the regional academic and political debate has been clouded by misunderstandings on the nature of "regional integration law" in general and on the nature of European Community law in particular, some preliminary considerations concerning regional integration and EC law may thus be useful. Many of these misunderstandings are based on the concept that regional integration law (or EC law at least) is a kind of "*tertium genus*" between the "law for the States" and the "law for individuals". This approach mixes the issue of the creation of obligations for States with that of applying the law to (or making its effects being felt by) individuals. This obscures one of the major challenges for regional integration law, namely: that of creating obligations for States, the substantive content of which will eventually apply to individuals.

The notion of "supranationality" as the distinguishing feature of European integration has aggravated the misunderstanding. The distinction between "supranationalism" and "intergovernmentalism" as referring to the existence or not of an international mechanism to produce law that obliges States independent of a national act of acceptance, ratification or internalization has been mixed up, on the one side, with the issue of the composition of the bodies or institutions that create such law and, on the other, with the effects of such law upon individuals.

In effect, while NAFTA is a perfect example of "intergovernmentalism" in the sense of absence of an autonomous mechanism for new law creation (i.e. any new NAFTA law –or a modification of the existing one – must be the result of a new Treaty), the EC Treaties cannot be simply considered as its "supranational" opposite. The EC Treaties do

certainly create a supranational mechanism of law production, but the Treaty itself is an international treaty that, like NAFTA, imposes a wide ranging set of obligations on Member States without any intervention of supranational institutions, but simply as a result of the acceptance of those obligations by each Member State.

When there is a supranational mechanism of law creation, the nature of the law depends neither on the specific composition of the institutions producing it nor on the procedures that these institutions follow. The supranational nature of EC law is not altered by the fact that the Council (an intergovernmental body) is the institution that enacts it (on the basis of a proposal of the Commission and with variable degrees of participation of the Parliament). Similarly, the nature of EC law remains the same whether the Council acts by unanimity or by majority voting (and still remains the same whether it is the Council or the Commission that produces implementing legislation).

Once “integration law” has been created and has entered into force, the question of its direct applicability to individuals remains open. The conventional interpretation of EC law in informed circles [in](#) MERCOSUR is that all EC law is immediately applicable. This is not correct. Indeed, this is only the case with regulations. Neither directives nor primary law (the Treaties) are immediately applicable. The EC legislates mainly through regulations in certain areas (trade policy, fisheries, agriculture, monetary questions), while in others (such as in the harmonization of national legislation) it does so through directives (that are not immediately applicable).

At last, the issue of the “direct effect” of a piece of international/supranational legislation (in the sense of making possible “to invoke a legal provision before a jurisdiction”) is different, in general and in the specific case of EC law, from that of its “direct applicability”. There are EC legal provisions that are not directly applicable to individuals but that can be invoked in national or community jurisdictions. Others are neither immediately applicable nor have direct effects.

EC directives, for example, are not directly applicable to individuals. However, since EC law has the vocation of being or becoming a “law for the individuals”, the states are obliged not simply to “apply” them but to “transpose” them, i.e. to produce a piece (or pieces) of national legislation embodying the normative content of the directives in order to make sure that such content “is delivered” to individuals in the very same conditions and with the very same attributes of any other piece of national legislation. The European Court of Justice (ECJ) has systematically rejected the plea made by Member States that they “already apply the directive in all specific cases”. Instead, what the ECJ has focused on is whether the national legislation necessary to give the directives “full applicability” to individuals exists or not.

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However, provisions included in EC directives have, in some cases, direct effect even if they are not immediately applicable. When its content is clear, precise and unconditional, a provision can be invoked before a jurisdiction to challenge national legal provisions contradicting it (only in this sense “direct effect” exists). It must be underlined that the European Court of Justice does not recognize direct effect to whole pieces of legislation but to specific provisions. The reason is that the direct effect of a norm does not depend on the formal nature of the act -as immediate applicability does- but on the substantive content of a provision.

The nature of EC directives is best explained, for the purposes of comparing it with the nature of MERCOSUR legislation, by means of an example. Consider a directive on the use of pesticides in agricultural production that replaces a more permissive previous one: the directive is adopted on December 31st 1995 and sets a deadline for transposing it into national legislation by December 31st 1998. The directive, as “law for the States”, enters into force immediately on January 1st 1996 (or at a later date if it is so established). The obligation for member states is that of having into force a piece of national legislation applicable to individuals by December 31st 1998 at the latest.

Each piece of national legislation transposing the directive will set a date for its entry into force. That date can be earlier than December 31st 1998, but not later. The



typical situation will thus be that most member states will have their national pieces of legislation enforced before the target date (or by that date at the latest). If a member state does not have its national legislation in place by that time, it will be in violation of EC law. Yet this fact will not prevent other members from being in conformity with Community law, “giving life” through national legislation to the directive’s legal content.

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This logic is quite different from that prevailing in MERCOSUR. Indeed, the exact nature of MERCOSUR’s “secondary” law was unclear during 1991-1994. This is the reason why Articles 38 to 42 of the Ouro Preto Protocol (1994) tried to clarify it. Article 40 states that, in order to achieve the simultaneous entry into force in all member states of MERCOSUR’s legislation, MERCOSUR’s legal acts will only enter into force 30 days after MERCOSUR’s Administrative Secretariat has notified that they have been *internalized* by all Member States<sup>31</sup>.

In Article 40 two issues seem to overlap. One is that of entry into force of MERCOSUR legislation as law for the States. The other is the applicability of MERCOSUR legislation to individuals. Such overlapping may give rise to three different interpretations. Consider a *resolución* of the Common Market Group with the same content as the above mentioned EC directive. One possible interpretation is that given by the third arbitration award in the dispute between Argentina and Brazil on safeguards (2000). The *resolución* enters into force only when it has been transposed by all member states (i.e., incorporated into national law) and all the required notifications have been made. In the

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<sup>31</sup> “Con la finalidad de garantizar la vigencia simultánea en los Estados Partes de las normas emanadas de los órganos del MERCOSUR previstos en el artículo 2 de este Protocolo, deberá seguirse el siguiente procedimiento:

- i) Una vez aprobada la norma, los Estados Partes adoptarán las medidas necesarias para su incorporación al ordenamiento jurídico nacional y comunicarán las mismas a la Secretaría Administrativa del MERCOSUR;
- ii) Cuando todos los Estados Partes hubieren informado la incorporación a sus respectivos ordenamientos jurídicos internos, la Secretaría Administrativa del MERCOSUR comunicará el hecho a cada Estado Parte;
- iii) ***Las normas entrarán en vigor simultáneamente en los Estados Parte 30 días después de la fecha de comunicación efectuada por la Secretaría Administrativa del MERCOSUR, en los términos del literal anterior. Con ese objetivo, los Estados Parte, dentro del plazo mencionado, darán publicidad del inicio de la vigencia de las referidas normas por intermedio de sus respectivos diarios oficiales.*** (emphasis added)

meantime the *resolución* has entered into force neither as law for the States nor as law for the individuals.

A second interpretation is that given by the fourth arbitration award on the dispute between Brazil and Argentina on antidumping measures on poultry (2001). This interpretation, taken over by other awards later on, accepts that the *resolución* is not applicable to individuals because that must be simultaneous in all member states and requires the already outlined transposition and notification procedures. However, the fourth award establishes that member states have the obligation to *internalize* the norm before the date set (December 31st 1998) and can be challenged by other member states for not doing so. Some analysts have argued that this interpretation brings MERCOSUR law back towards the EC precedent on the nature of directives. This, again, is not correct. Indeed, even in this interpretation, the *resolución* does not enter into force until it has been incorporated into national law by all member states. Consequently, if by December 31st 1998 the new *resolución* has not been internalized by all member states (and therefore it has not entered into force), the pre-existing resolution (more permissive in the use of pesticides) will remain in force. As a result, it is this previous *resolución* (and the national legislation *internalizing* it) which must be applied by all member states, including those that have already *internalized* the new norm and would be ready to apply it! If those member states that “have done their homework” and *internalized* the new *resolución* applied the more restrictive one, there would be a contradiction between MERCOSUR's legal order (in which the old *resolución* would remain in force) and the national legal order in which the new *resolución* would already apply. Rights indirectly granted to producers by the former MERCOSUR's legislation (still in force) would be violated by the new national law.

The third interpretation would be equivalent to that of EC directives. In that case the entry into force of MERCOSUR legal acts would be independent from the existence of national legislation *internalizing* its content and making it applicable to individuals. To our knowledge this interpretation has only been suggested by Cozendey (2001) and, in spite of its ingenuity, it is difficult to sustain on the basis of the present drafting of Ouro Preto

Protocol's Article 40 and the interpretations already given to it. In any case, no arbitration award has gone so far in this direction.

Three final considerations may help to elucidate the nature of MERCOSUR's "secondary" law. First, the distinction between the second and the third interpretation is blurred when:

- a) all member states have *internalized* MERCOSUR legal acts. On the contrary, the difference is manifest when some member state is not fulfilling its obligations.
- b) the example taken is a provision that: a) gives rights to individuals instead of restricting them and/or b) is a provision *de minimis* not prohibiting member states to enact more liberal provisions. Again, the differences are manifest in the case of a provision that restricts individual rights as compared to the pre-existing legislation.

The second consideration is that the difference between the second and the third interpretations is also evident as regards the dynamics of the law of integration. According to the second interpretation, the effective application of the new norm must wait until the more reluctant state has moved forward. Exactly the opposite happens according to the third interpretation: the new law comes into life in the real world from the moment when the more enthusiastic state has transposed it.

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Finally, the difference between both interpretations is also clear from the standpoint of the content and the effects of an arbitration or judicial decision declaring the violation of a member state obligation to *internalize* or transpose new legislation. However, a thorough discussion of this point exceeds the limits of this study.

#### 2.4.c) MERCOSUR's institutional system: decision-taking and consultative bodies

The Asunción Treaty created two decision taking bodies, the Common Market Council (CMC) and the Common Market Group (GMC, from *Grupo Mercado Común*). In 1994 the Ouro Preto Protocol created a third one, the MERCOSUR Trade Commission (CCM, from *Comisión de Comercio del MERCOSUR*). Above them, although not formally established, periodic “Presidential Summits” would provide strategic direction to the integration process.

All MERCOSUR organs are composed by ministers and officials employed in national governments and administrations (for a more detailed analysis see Annex 2.VII). Apart from a *Secretaría Administrativa* with limited logistic and secretarial tasks, there is no organ or bureaucracy independent from national administrations.<sup>32</sup> National officials combine their participation in MERCOSUR organs with their routine tasks in national administrations. This means that MERCOSUR has no functional equivalent to EU member states' Permanent Representations in Brussels.

Initially, this organizational approach intended to prevent the isolation of regional decision-taking organs from national Administrations and agencies ultimately charged with the internalization of legislation and policy implementation. The approach seemed justified by the poor results obtained by previous regional integration experiences in Latin America, where “integration bureaucracies” de-linked from member states politics and national services engaged in commitments and produced legislation and policies that were never (or only very partially) implemented at the national level.

From a legal and political standpoint the three MERCOSUR organs are equivalent in the sense that they assemble representatives of member states' governments. However, lower ranking organs such as the GMC and CCM are not simply preparatory working groups of the higher ranking institution (the CMC). They can certainly “pass upwards”

<sup>32</sup> In 2002, the *Secretaría Administrativa* is being transformed into a *Secretaría Técnica* responsible for giving technical advice and support negotiations. However, resources continue to be kept at a minimum (see section 4.2 below).

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unsolved issues, but they also have the power to adopt legal acts without referring them to the CMC (i.e. the Ministers). In effect, while the CMC adopts *decisiones*, the GMC adopts *resoluciones* and the Trade Commission issues *directivas*, all of which share the same legal nature. This is also a very important difference between the structure of MERCOSUR and that of the Council of the European Union. The Council also has a three-tiered structure composed by: (a) the Council –or “Councils”-; b) the Coreper – Committee of Permanent Representatives- and other high-level committees or groups; and c) the working groups. However, in the EU Council all decision-taking power is concentrated at the highest ministerial level, which means that all decisions agreed at a lower level must pass through the Council, even if there is no debate (mechanism of the “A points” in the Council’s agenda).

Moreover, each one of the two lower ranking bodies (GMC and CCM) has its own structure of auxiliary technical groups. This is a type of organization prone to create overlapping and even inconsistent decisions. There have been two attempts to clarify and re-organize this structure (one in 1995 and the other in 2000 –CMC Decision 59/00), but with very little success.

Another important difference between the composition of MERCOSUR and EU Council’s bodies is that while in the former there are several representatives from each member state (two in the CMC and four in the GMC and in the CCM), in the latter only one individual represents each member state government, independent of the number of individuals accompanying him or her in the delegation. The experience of the EU Council seems to confirm that the multiplication of “seats at the table” is directly proportional to the inability to accept responsibility for difficult decisions and inversely related to the effectiveness of the decision-making process.

The highest ranking organ, the CMC, is composed by the Foreign Affairs and Economy Ministers, with the general coordination falling in the hands of the former. The participation of the Economy Ministers tried to make sure that the integration process did not become a mere diplomatic exercise and that CMC decisions, many of them on

economic issues, were effectively implemented. In principle, the CMC meets in ordinary session semi-annually and the Presidents attend the meetings at least once a year (in practice all presidential summits have been semi-annual). Considering the extension of the agenda, the frequency of CMC meetings seems too low. This is particularly the case for an integration process that was supposed to be filled up by “secondary” legislation.

The effectiveness of CMC meetings decreased progressively during the nineties. The Presidential Summits, that at the startup of MERCOSUR played a very important function as orientation and signaling events, gradually lost credibility as implementation failed to materialize and divergences became more open. Even if the so-called “presidential diplomacy” sometimes served to unlock negotiations, it over-exposed and weakened the Presidents, particularly when the follow up of decisions was insufficient or simply non-existent. Moreover, “presidential diplomacy” was not strictly a MERCOSUR political instrument, but a bilateral mechanism used by Argentina and Brazil to which the two smaller partners had almost no option but to acquiesce.

The GMC was given three main and different functions: a) to prepare CMC meetings and decisions; b) to implement CMC decisions; and c) to adopt legislation (*resoluciones*) and to organize, by means of SGTs (*Subgrupos de Trabajo*), the technical work necessary to move integration forward. At the startup of MERCOSUR, the GMC and the activities of the SGTs stimulated personal knowledge and mutual trust among national officials, contributing to the development of motivation and team spirit. Consequently, they helped to the advancement of negotiations and their acceptance by national agencies. Since the mid-1990s, however, the effectiveness of the GMC decreased as a result of the increasing number of questions that found neither a “political” solution at a higher level nor were solved at SGT’s “technical” level.

The reason behind the creation in 1994 of the CCM was the need to manage day-to-day problems related to intra-zone trade and to implement common trade policy instruments. To assist the CCM in this endeavor, ten Technical Committees (CT) were created. The CCM was conceived as the institutional *locus* in which foreign trade national

officials would meet and interact regularly. However, during some periods the CCM was unable to fulfil even its minimum statutory requirement of meeting once per month. Eventually, the CCM and its CTs suffered the same problems that caused the loss in efficiency of the GMC and its SGTs.

The Ouro Preto Protocol also created two consultative bodies: the FCES (*Foro Consultativo Económico y Social*) and the CPC (*Comisión Parlamentaria Conjunta*). The FCES assembles nine members from each member state representing business, workers and consumers. Actually, the FCES has been more a vehicle of *ex post* communication of decisions already adopted by MERCOSUR organs than an instrument of *ex ante* participation. In this sense, the FCES compares unfavorably with the experience of FTAA negotiations, where private sector involvement is relatively well organized and anticipatory.

The CPC has also had a very modest role. On the one hand, the CCP has not contributed with either proposals or technical advice. On the other, it has been unable to block (or even react to) unilateral measures by some member state Parliaments manifestly contrary to MERCOSUR law (such as Argentina's unilateral exclusion of sugar from intra-zone trade liberalization). The CPC has also failed to contribute to solve the problem of delays in *internalization* of MERCOSUR law when the latter requires legislation adopted by Parliament.

#### *2.4.d) MERCOSUR's institutional system: dispute settlement*

Less than a year after the signature of the Asunción Treaty, the Brasilia Protocol (*Protocolo de Brasilia para la Solución de Controversias – PBSC-*) established MERCOSUR's dispute settlement mechanism (for a more detailed discussion see Annex 2.VII). The PBSC was conceived as a transitory agreement to be enforced during the "transition period", at the end of which a definitive institutional system including a dispute settlement mechanism would be set up. However, the Ouro Preto Protocol extended the applicability of the PBSC and postponed the creation of a permanent system until full convergence on the External

Common Tariff, scheduled to take place in 2006. It also established the procedure for filing complaints before the CCM.

The PBSC dispute settlement mechanism combines diplomatic procedures of consultation and negotiation with procedures of arbitration. Formally, the three main procedures available are consultations, complaints and arbitration. Consultations offer a mechanism to settle disputes through direct negotiations subject to pre-established rules and timeframes. The mechanism of consultations aims at enabling member states to manage trade frictions that do not justify triggering complaint or arbitration procedures.

The complaints procedure can lead to an arbitration panel, but it is not a kind of “first instance” prior to engaging in arbitration. In effect, member states can directly initiate arbitration procedures without passing through the complaints mechanism. Complaints can be filed on behalf of member states or individuals, but they must always be introduced by a member state representative before the CCM. The dispute is settled if, after a procedure developed in accordance with pre-established rules and timeframes, the CCM or, in a second instance, the GMC arrive to a solution by consensus.

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Finally, the arbitration procedure is a state-to-state procedure even when it can be triggered either at a member state’s own initiative or at the initiative of an individual. The arbitration procedure includes an initial stage of direct negotiation between the parties and a second diplomatic stage that involves the GMC. If no solution is arrived at through these diplomatic means, the proper arbitral procedure can be launched before an *ad hoc* three-member panel. The decision of the panel is final and cannot be appealed. If a state found in violation of its obligations does not conform to the arbitration award, the complaining state can apply retaliatory measures.

In February 2002 member states signed the *Protocolo de Olivos sobre el Sistema de Solución de Controversias en el MERCOSUR* (Olivos Protocol). The new Protocol will replace the PBSC after its ratification and entry into force. However, it will not repeal the commitment to adopt a new and permanent system in 2006. The five major innovations of



the *Protocolo de Olivos* are: i) the mandatory choice of a dispute settlement forum; ii) the implementation of an expedite mechanism to deal with technical issues; iii) the shortening of the time frame to trigger arbitration procedures; iv) the creation of a permanent Court of Appeal; and v) the possibility that the Court of Appeal issues interpretative opinions.

## **CHAPTER 3**

### **MERCOSUR'S INSUFFICIENT INTEGRATION:** **COMPARATIVE ANALYSIS, COSTS AND** **DILEMMAS FOR THE FUTURE**

### ***3.1 The “value added” of MERCOSUR integration as compared to multilateral obligations***

#### *3.1.1 Introduction*

Regional integration does not take place in a vacuum. Countries’ interactions prior to a regional integration agreement are governed by the multilateral system. Consequently, in order to assess the “value added” of regional integration agreements their content must be compared with that of preexisting multilateral obligations.

Torrent (2002) distinguishes to this effect between “content” and “effective content”. “Content” is defined in terms of width and depth. The width of an international agreement or organization (including regional ones) can be defined in terms of the number and the scope of the areas covered by it. Depth refers to the degree to which these areas are subject to common rules or collective regulation. An example taken from the multilateral level helps to differentiate both notions. The General Agreement on Trade in Services (GATS) is wide because it covers all service sectors and all aspects of post-establishment treatment of foreign firms; but it is not deep (and, at any rate, heterogeneously deep) since the market access and national treatment commitments made in member countries’ schedules are quite limited.

At first sight, width can be easily determined by looking at the subject matter and coverage of regional integration agreements. This apparent ease does not apply to rules because the width of rules must be analyzed using a matrix approach: the vertical axis referring to sectors (such as agriculture or financial services) and the horizontal axes to policies or regulatory interventions (such as taxation, competition or labor standards). Depth is not easy to determine, in particular in relation to rules. The best criterion for determining depth is the extent to which member states maintain their discretion to regulate specific areas: the more they do, the shallower the regional integration agreement will be.

Application of this criterion requires careful analysis of the relevant legal provisions establishing the regulatory framework and its implementation.

For analytical purposes the distinction between width and depth is sound but can also be misleading. Indeed, width and depth are not independent characteristics of integration. What matters is the content of the process, and width and depth are but two dimensions of it that must be considered jointly. The real world offers plenty of examples of bilateral economic agreements that are wide in scope, but have no depth in terms of obligations or effective cooperation. Frequently, they end up being little more than political declarations of intent.

On the basis of this concept of “content”, “effective content” is defined as “content (of regional integration)” minus that of multilateral obligations.

In order to apply this approach to the analysis of MERCOSUR, a careful analysis of its legislation as compared to its member countries’ multilateral obligations was undertaken. This demands to have an instrument such as a directory, capable of being used to classify legislation (very much like the method applied in EU enlargement negotiations to analyze the compatibility of candidate states legislation with EU *acquis*). Since that directory did not exist prior to the present study (see section 1.2 and the corresponding Annexes), the examination that follows is preliminary and sets a scheme to be later deepened. Only in relation to GATS and MERCOSUR services liberalization the analysis has been pursued exhaustively (see Annexes [2.I](#) and [2.II](#)).

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### 3.1.2 Trade in goods

As discussed in chapters 1 and 2, the only area in which MERCOSUR has achieved positive “effective content” is that of tariff liberalization on intrazone trade in goods. This is important because, as is well known, tariffs bound in GATT were much higher than those effectively applied. Therefore, the increase in the level of commitment undertaken in the

context of MERCOSUR is much higher than the preference that results when preferences are compared to applied tariffs.

On other issues covered by the Agreements of GATT's Annex 1 A, all of them related to trade in goods, the tendency has been to leave aside the initial objective of reaching deeper rules and simply restate WTO obligations within MERCOSUR's framework. This has been the case in the areas of Technical Barriers to Trade (TBTs), Sanitary and Phytosanitary Standards (SPSs) and Antidumping (AD) and Countervailing Duties (CD). In all of them MERCOSUR has adopted the respective WTO agreements.

In terms of procedure, this approach enables disputes to be raised within MERCOSUR's dispute settlement mechanism. On substance, however, it does not contribute to the establishment of an integrated legal framework because WTO agreements had already been approved by member states. Moreover, this does not imply that they have to be "transposed" into domestic legislation (internal legislation may -and will- continue to differ among WTO -and MERCOSUR- Member States provided the limits set by the multilateral agreement are not violated).

On specific technical and sanitary and phytosanitary standards, MERCOSUR has produced a great number of pieces of legislation (many of them not yet entered into force) that should be carefully examined by specialists in order to assess the extent (if any) of its positive "effective content". Concerning extra-zone trade, the only meaningful result has been some harmonization of external tariffs, but very little has happened in other areas. Looked at from the EU perspective such harmonization is not beneficial if it leads to higher tariffs.

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### 3.1.3. Services

Section 1.2.2 has dealt with the main characteristics of the Montevideo Protocol on Trade in Services and the content of commitments undertaken within that framework. Annexes [2.I](#) and [2.II](#), exhaustively compare these commitments with those undertaken in the GATS.

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The present section applies to this comparison Hoeckman's methodology in a more disaggregated manner. Although we already mentioned the limitations of this quantitative approach, it helps to provide an overall view.

Tables 3.I.1 to 3.I.12 in Annex 3.I compare across four service sectors and three MERCOSUR member countries the offers made at GATS and in MERCOSUR after three rounds of intra-regional negotiations. This data allows for a more careful examination of the extent of GATS-plus commitments undertaken sub-regionally, taking into account differences in the number of sectors and sub-sectors included in the offers and the modality of commitments (share of "none", "unbound" and "restrictions").

The tables show that the GATS-plus character of sub-regional commitments vary significantly across sectors and countries. In the case of Brazil the largest differences between offers made in GATS and MERCOSUR are in the communications sector (only the courier sector was included in the offers made in GATS). By contrast, in MERCOSUR Brazil included 5 out of 18 sub-sectors. Moreover, Brazil included 83 no-restriction commitments as compared to only 4 in GATS. In construction and engineering, where Brazil made numerous offers in the GATS, the number of offered sectors and the share of no-restriction (none) offers increased in MERCOSUR. In financial services the GATS-plus content of Brazilian offers in MERCOSUR is very modest: there is an increase in the number of sub-sectors included in insurance and an increase in the number of "none" restrictions in banking activities (particularly in mode of supply #3). Overall, however, the intra-MERCOSUR offer is dominated, as that of GATS, by "unbound" and "restrictions" commitments.

In the case of Argentina the increase in the commitments undertaken sub-regionally is less remarkable, but starting from a more generous offer in the GATS. In the case of communications the two sectors added by Argentina to the original GATS offer include many "unbound" and "restrictions" commitments. For the rest, the GATS and MERCOSUR offers are exactly similar. In construction and engineering the share of

“none” commitments increased, but in many cases this is the result of computing “unbound\*” commitments as “none” (when the modality of provision is technically not possible). In distribution and financial services Argentina’s offer differs very little from the GATS as well, except for a small increase in the number of non-restriction commitments in insurance, but not in banking activities. The analysis of Argentine sub-regional offers suggests that this country implicitly received from its MERCOSUR partners (and particularly from Brazil) credits for the comparatively generous offers made at GATS.

Uruguay made very limited offers in the GATS in the four sectors considered, except for banking activities (included in financial services). In communications, engineering and construction and distribution Uruguay made no offers in the GATS. In MERCOSUR Uruguay included a significant number of no-restriction commitments in distribution and engineering and construction (although, again, in the case of this sector many “unbound” commitments are counted as “no-restrictions”). In communications, “unbound” and specified restrictions are frequent. In financial services, apart from including insurance in the MERCOSUR offer (excluded from GATS), Uruguay increased the number of sub-sectors listed in banking activities (with a balanced participation of the three modalities of commitment). A similar pattern is observed in the case of insurance.

In sum, the commitments already undertaken in MERCOSUR after three rounds of negotiations confirm a GATS-plus approach to services trade. However, the extension of these commitments must be qualified by more detailed country analysis. In addition, in order to become effective concessions and enter into force the Services Protocol will have to be ratified by national legislatures, something that is still pending. Finally, it must be mentioned that the adoption of the GATS approach as the only one to promote MERCOSUR services’ integration means that the region has not moved forward in the path towards “positive” integration, which should demand adoption of common sector regulations. The only exception to this is transportation, where a common “Cono Sur” institutional framework exists (see next section).

### 3.1.4 *Movement of capital and regulation of banking activities*

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The only existing MERCOSUR legislation refers to the adoption of already existing international, in particular Basle, norms.

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### 3.1.5 *General conclusion*

The general conclusion is that, as compared to multilateral obligations, the "effective content" of MERCOSUR integration is concentrated on:

- intra-zone tariffs elimination
- some broader and deeper commitments on intrazone market access and national treatment on services (if the Montevideo Protocol and its Annexes eventually enter into force)
- efforts to harmonize some aspects of extra-zone commercial policy, mainly in the realm of tariffs.
- some minor harmonization of standards
- other miscellaneous areas



### 3.2. *MERCOSUR: a comparison with EU integration*

If judged by the objectives set by the Treaty of Asunción, MERCOSUR was launched and conceived as a process of "deep integration". In effect, after the enforcement of a customs union, member states were expected to gradually broaden and deepen the scope and depth of common rules until reaching a common market with free factor mobility. Apart from differences in methodology, the substantive target seemed to be to progressively cover much of the ground covered by European integration. On institutions, however, MERCOSUR was conceived to be much lighter than the European Union.

After more than a decade of economic integration, MERCOSUR has made very limited progress towards the originally stated aims. This should not be problematic, were not for the fact that neither political will nor institutional procedures seem capable of effectively moving the process into the originally stated direction.

3.2.a) *MERCOSUR is not a customs union, not even an incomplete one*

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Eleven years after the Treaty of Asunción MERCOSUR continues to be spoken of in the academic and technical literature as an "incomplete" customs union. In this expression the term "incomplete" makes reference to the subsistence of multiple "perforations" (i.e. national exceptions) to the common external trade policy. However, the very notion of an "incomplete customs union" suggests that a sort of customs union at least partially exists.

Yet this standard description is misleading. MERCOSUR has made very little progress to meet the key requirement of a customs union as defined by GATT's Article XXIV, namely: to merge four separate customs territories into a single one. It is only when national customs territories are unified that the benefits of a customs union can be fully reaped both by member states and, provided certain conditions are met, by non-members. For member states these benefits include:

- the enhancement of the union's bargaining resources due to a larger import market;
- competition among different points of entry, thus stimulating efficiency and facilitating trade;
- the increase of transparency and the lowering of transactions costs (by eliminating the need of rules of origin on intra-regional trade); and
- dynamic gains derived from a larger market and deeper integration.

For non-members a customs union has the advantage over a free-trade area that it is more transparent and can be considered a step forward in the process of multilateral liberalization (provided the conditions set in Art XXIV are effectively met).

In order to merge separate customs territories two main conditions are required, namely:

- a) a high degree of harmonization of rules applicable to extra-zone trade (concerning not only tariffs but also other aspects of the trade regime); and
- b) enforcement of the principle of "free circulation" (Arts 9 and 10 of the EEC Treaty, present articles 23 and 24 EC Treaty).

Indeed, from a methodological point of view, the second condition is even prior to the first, since it sets the principle and creates pressures toward harmonization of rules on extra-zone trade. Once the principle of free circulation is established and effectively implemented, the subsistence of asymmetries in the enforcement of common trade policies can be treated as true "exceptions". For the remainder of the universe (which would cover most goods and services) the customs union will effectively exist.

MERCOSUR does not meet any of these conditions:

- First, MERCOSUR not only fails to effectively enforce a common external tariff, but it implements neither a common customs code (initially approved

in 1994) nor other common procedures applied on imports from non-members (such as trade defense).

- o Second, MERCOSUR law does not set the principle of free circulation of imports from third countries, which implicitly means that the four custom territories remain separate.

Therefore, MERCOSUR is far away from being an "incomplete customs union". Indeed, it resembles more an "incomplete free trade area with some degree of harmonization of member states' extra-zone commercial policies".

### 3.2.b) *MERCOSUR's FTA is more shallow than initially conceived*

Apart from the effects on intra-zone trade of the subsistence of rules of origin and other administrative procedures derived from the lack of "free circulation" of goods, MERCOSUR is a shallow free-trade area.

First, intra-regional trade continues to be hindered by trade defense legislation. The latest decisions concerning trade remedies (Dec 13/02 and 14/02) were announced as "steps forward" in regional integration. However, they are actually a non-transparent acceptance of the failure to move ahead. Dec 18/96 adopted the Fortaleza Protocol on Competition, which authorized the enforcement of antidumping duties on intra-zone trade until December 31, 2000. Nearly two years after this target date, no agreement concerning the elimination of antidumping has been reached. Dec 13/02 on antidumping (and Decision 14/02 on countervailing duties) did not extent the deadline as should have been expected, but instead adopted WTO agreements on AD and CVDs (of which MERCOSUR member states were already signatories). These decisions have no practical effect on the rules applicable by each member state, since they all were already bound by the WTO agreements and had adapted to them their respective internal legislation. On substance, the two practical effects of Dec 13/02 and 14/02 were to admit through a cumbersome and non-

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transparent procedure the inability to reach an agreement (implicitly admitting a continuation of trade defense procedures against imports from intra-zone) and the possibility to take violations of WTO rules on the matter into MERCOSUR dispute settlement system.

Second, MERCOSUR has not yet started the process of tax harmonization necessary to achieve indirect tax "neutrality" on intra-zone trade (in the EEC the harmonization of the VAT occurred in the '60s and '70s). Indirect tax harmonization would make sure that such neutrality prevails (even if tax rates continue to differ among countries) by guaranteeing that: a) export tax rebates are the exact equivalent of the indirect taxes paid in the exporting countries, and b) imports are taxed in importing countries in a non-discriminatory way as compared to internal products. In the case of MERCOSUR, due to the asymmetries in domestic tax legislation and the different existing indirect tax regimes, export tax rebates do not match the amount of internal taxes paid in the exporting country. Instead, the rebate is calculated as a percentage of export values. Different rates apply depending on the type of product. This practice reduces transparency and opens the door to the use of export tax rebates as a hidden export subsidy on intra-zone trade.

Third, the elimination of "non-tariff trade barriers" has become a recurrent theme, but it has not been accompanied by a credible elimination program. MERCOSUR organs have produced a great amount of legislation harmonizing technical norms and standards (including sanitary and phyto-sanitary standards). However, this at first sight impressive body of legislation has had little effect on market integration because:

a) much of it has not even entered into force because "internalization" is still pending. This is the case of whole "packages" of legislation in sectors as important as motor vehicles (where there are nearly forty GMC resolutions still not enforced). The production of new legislation in these areas (even when older norms have not entered into force) expands the stock of unfinished business and damages effectiveness and credibility. It may be more productive to concentrate on making effective the legislation that has

already been passed, rather than continuing to expand the stock of unimplemented regulations.

b) plenty of legislation aimed to "harmonize standards" fails to do so because it simply collects and replicates existing divergent national norms. National legislation are divergent not only because they differ among member states, but also because each member state applies different criteria and standards to each of the other three (i.e. standards applied by Argentina, for example, to products originating in Uruguay are different from those applied to products originating in Brazil or Paraguay). This is notably the case in an area so important to MERCOSUR as phyto-sanitary standards for specific agricultural products (37 GMC resolutions).

c) on aggregate, the process of harmonization of technical standards seems unfocused. The impetus to harmonize seems to come more from the work program agreed by each technical group, than from priorities set in a well structured program.

### *3.2.c) MERCOSUR has not gone beyond goods' trade liberalization*

The EEC Treaty included from the very beginning provisions that extended integration beyond goods' trade, encompassing the provision of services, right of establishment, movement of capital and movement of workers. Certainly, not all these provisions had the same nature and the same effects. Treaty provisions on liberalization of capital movements, in particular, were shallower than the rest and required much more secondary legislation to really become effective. Moreover, the practical effects of many of the liberalization provisions (in all areas, including trade in goods) were curtailed by the existence of divergent (and legally justified) national legislation raising "indirect barriers" to trade, the elimination of which could only be gradually (and never completely) achieved through a detailed process of harmonization. But in any case, the fact remains that from the very beginning the EEC Treaty included far-reaching and effective provisions covering services, right of establishment, movement of capital and movement of workers, at a minimum

enshrining the obligation to grant national treatment to economic agents from other member states.

This has not been the case in MERCOSUR. The Asunción Treaty does not contain any operational provision applicable to economic relations other than trade in goods, even if it proclaims the target of a common market and sets the principle that economic integration should eventually embrace services and the movement of factors of production. This suggests that the extension of economic integration into areas other than trade in goods was seen as being fully the task of "secondary legislation".<sup>33</sup>

Yet secondary legislation has been quite ineffective, suggesting that MERCOSUR integration has not been driven by secondary legislation enacted by MERCOSUR organs in the context of a "framework treaty" (the Asunción Treaty). On the contrary, MERCOSUR has reached the most tangible results only in those areas openly addressed by "primary law" (such as the Asunción Treaty's Trade Liberalization Program).

As far as movement of capital is concerned, MERCOSUR has produced only two pieces of legislation. One has been repealed and the other has not yet entered into force, although its coverage is only partial and it does not purport to produce broad liberalization. On financial markets regulation the only existing pieces of legislation refer to internationally accepted norms and standards for financial supervision.

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As far as movement of workers is concerned, no single provision recognizes freedom of circulation or a general obligation of national treatment. The only piece of legislation referring to movement of workers is Dec 19/97 that allows for cumulation of social security rights. However, according at least to Uruguay representatives in MERCOSUR's Foro Consultivo, it does not go much further than preexisting bilateral agreements.<sup>34</sup>

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<sup>33</sup> Frequently, this so-called "secondary legislation" uncovers additions to primary law (see below)

<sup>34</sup> In November 2002 an agreement to facilitate residence and the movement of personas was announced by the Interior ministers. The agreement will be submitted to the next presidential summit.

Services and direct investment are two areas of major strategic importance both from an economic and political point of view. This is why failure to place them under the framework of MERCOSUR legislation is one of the major “unfinished business” of regional integration. Briefly, the situation concerning services and investments is as follows:

a) The only existing general MERCOSUR rules on the two topics are those included, respectively, in the Montevideo Protocol and its additional annexes (services) and in the Colonia Protocol (investments). None of them has entered into force yet.

b) The Montevideo Protocol on services and its additional annexes follow the GATS approach. This means, apart from the fact that many commitments undertaken in its framework simply replicate those undertaken under GATS, that the process of integration in the services area concentrates in “negative” liberalization, leaving aside “positive” integration, i.e. harmonization of rules and regulatory criteria. Such a harmonization is essential, in particular from the EU perspective, in so far as it could lock in policies favorable to EU investments (which, in themselves, are quite unaffected by intra-zone “negative” liberalization).

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c) The Montevideo and the Colonia Protocols overlap/contradict each other. Indeed, the Montevideo Protocol on services follows the WTO/GATS system of definitions. Therefore, it covers the "commercial presence" of foreign services suppliers. But since "commercial presence" is in practice "foreign direct investment" of other member states' firms in the country of origin, those transactions are also covered by the Colonia Protocol on investment. This overlapping creates a potential for conflict. The Montevideo Protocol on services (that limits "commercial presence" to sectors and issues listed in the respective schedules of commitments) is less liberal than the Colonia Protocol on investments (signed in the early nineties) that liberalizes foreign direct investment in all sectors (except those listed as exceptions).

On specific services sectors, only insurance, transport and telecommunications have been covered by MERCOSUR legislation. On the latter, 20 GMC resolutions have been adopted but most of them have not yet entered into force (although they refer only to strictly technical questions and do not address the core aspects of the telecommunications market). On transport, MERCOSUR harmonisation has been facilitated by the existence of a geographically broader framework where agreements are negotiated (the Cono Sur framework); this was also the case in Europe, where many transport agreements were negotiated, outside the European Community framework, in the framework of the UN Economic Commission for Europe.

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### 3.2.d) Beyond economic issues

MERCOSUR integration is somehow paradoxical in the sense that the lack of progress in areas explicitly targeted in the Asunción Treaty as pertaining to the establishment of a "common market" (services and movement of factors of production) is accompanied by significant spill-over into areas not initially envisaged as part of the integration process, such as education and justice. In both areas developments in MERCOSUR address issues that European integration has taken decades to tackle (or has not yet tackled).

Spillovers can "bring new life" into a process of regional integration, engage new actors and government agencies and increase the legitimacy of the process by going beyond "market integration". But they can also shift the balance between priorities and contribute to a loss of direction. European integration gives very good examples of both the positive and negative aspects of a more encompassing agenda.

In the case of MERCOSUR the dangers seem bigger than the benefits in spite of some positive developments in the areas of health and intellectual property. New agreements (not secondary legislation; see section 2.4) are concentrated mainly in the areas of education and justice. But in the realm of education the protocols approved are limited to the recognition of diplomas for academic (to pursue studies) but not professional purposes

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and to the setting up of programs of collaboration or promotion of activities devoid of specific funding. Protocols on judicial cooperation are very ambitious and cover very sensitive issues, which in the European experience have proved very resilient to harmonization or to legally binding commitments. This is perhaps the reason why many of them have not entered into force yet. Moreover, there are doubts whether these protocols will be effectively implemented after they enter into force. Domestic judiciary systems need deep reform and often fail to ensure even adequate internal cooperation.

Concerning circulation of persons and procedures at the border, there is some legislation envisaging the facilitation of procedures (simplification of documentation, differentiation of channels of entry at the border, etc.) but there is no significant expansion of the labor rights of MERCOSUR member state citizens. Moreover, the implementation of purely administrative commitments (such as special entry channels at the borders) were either not enforced or phased out after some time.

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In the area of the environment there has been only one legal act (D 2/01), simply adopting the principles of the Río 1992 Declaration but lacking operational content. This is also the case concerning employment: D 8/92 is an act empty of any operational content.

### 3.2.e *MERCOSUR's external relations*

MERCOSUR activity in the area of external economic relations has mainly concentrated on agreements with Chile and Bolivia, countries with which a horizontal agreement has been concluded, later enlarged by specific sector agreements extending to those two countries agreements signed among MERCOSUR Member States.

Concerning relations with the EU it is worth mentioning that the 1995 framework agreement was never approved by MERCOSUR in spite of the fact that it is a Party to it. The exchange of letters on its provisional application was not approved either, in spite of the fact that it is only MERCOSUR as an international organization (and not its Member States) that is a Party to it.

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It is true that coordination in the FTAA and MERCOSUR-EU negotiations as well as "4+1" dialogue with United States have helped to keep some sense of "common endeavor". But this positive factor is counterbalanced by the proliferation of separate initiatives and agreements concluded by individual Member States with third countries (see chapter 2.)

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### 3.2.f *MERCOSUR institutional framework*

MERCOSUR's institutional framework has already been discussed in point 2.4 where some elements of comparison with the EU have already been put forward.

### 3.3 *The costs of MERCOSUR's modality of integration from the EU business perspective*

EU businesses have exported and invested heavily in MERCOSUR during the last decade, particularly prior to the economic slowdown that followed the Russian debt default. However, most of this explosion in business activity is disconnected from regional integration. In effect, unilateral trade liberalization, real exchange rate appreciation and structural reforms (i.e.: privatization) have been far more important determinants of EU business opportunities than the existence of MERCOSUR. The deepening regional crisis and the collapse of the currency board and other economic arrangements in Argentina during 2001/2002 produced in EU business growing concerns on legal instability, regulatory uncertainty and profitability. These fears were made clear in the draft version of the Madrid Declaration prepared by the European Section of the MEBF. Many of them were taken again in the final version of the document.

The offensive agenda of EU businesses is well-known. The MEBF documents reproduce in the market access section a list that includes the major barriers identified by EU firms and business federations. In addition, the services and investment sections contain the main proposals put forward by European investors.

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Taking as a base the Madrid Declaration of the MEBF (April 2002), Table 1 summarizes the major interests revealed by EU business in EU negotiations with MERCOSUR.

**TABLE 3.1**  
**A SUMMARY VIEW ON EU BUSINESS DEMANDS**  
**CONCERNING MERCOSUR**

<b>Areas of negotiation</b>	<b>Issues</b>	<b>Problems identified /Proposals</b>
Market access (goods)	Tariffs	Tariffs for many product categories remain high and do not encourage companies to invest.
	Other expenses related to imports	“Special taxes and fees” are collected on imports, inflating prices.
	Tax base for tariff and import taxes calculations	Minimum import prices are fixed arbitrarily above the real price of many imported goods.
	Import and export regimes	Import or export regimes of MERCOSUR countries widely differ, hampering economic benefits of integration. To obtain an import license frequently involves various administration agencies and compulsory registration of importers.
	Customs procedure	Custom procedures in some MERCOSUR countries can be complex, slow and unpredictable. Internal customs have not disappeared.
	Standards, technical regulation, conformity assessment, and certification	Regulations vary widely among the countries and frequently deviate from international standards
	Sanitary and phytosanitary measures	Compulsory registration result in very bureaucratic, slow and complex procedures
	Use of trade defense instruments	Use of antidumping measures against some EU exports are perceived by EU companies as protectionist
Investments and Services	Taxation	Negotiations on double taxation avoidance agreements
	Privatization / Deregulation	MERCOSUR countries should complete the liberalization and privatization process, permitting foreign access to the provision of services and goods on the basis of national treatment.
	Movement of personnel	Foreign managers and directors of companies to be permitted to carry out their jobs in the recipient countries. Bureaucratic practices should not slow down the granting of work and residence permits.

	Regulation	Transparent and stable regulatory frameworks to avoid uncertainty and unpredictable changes of law that deter foreign investment in services should be developed
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This agenda suggests that EU businesses operating in MERCOSUR face obstacles in the following areas:

- (i) the characteristically complex and changing nature of the domestic regulatory environment creates high uncertainty for investors and exporters (changes in the tax system, sanitary and phyto-sanitary regulations, customs procedures, etc). After the events in Argentina, the list has been expanded to include the ability and willingness to honor pre-existing contracts (i.e.: public utility concessions, banking regulations);
- (ii) the persistence of important barriers to the free circulation of goods, that constrain the potential benefits of free trade, particularly for firms located in more than one country; and
- (iii) the problems derived from the incompleteness of the “custom union”, including differences among national trade regimes, high CET for selected products, intra-regional customs, etc..

The answers to the questionnaire submitted to EU businesses in the context of the present research confirm that the current crisis of MERCOSUR aggravated EU concerns. The answers show a pragmatic response of EU firms facing a business environment characterized by uncertainty and regulatory opaqueness. Six major conclusions emerge from the answers to the questionnaire:

- (i) The interest in the MERCOSUR market goes hand-by-hand with general interest in the Latin American market. However, many firms consider that, because of lack of infrastructure, establishment in MERCOSUR does not mean better access to other

Latin American markets. As a matter of fact, many firms already established in MERCOSUR export to other Latin American countries (Chile, for example) or even to other MERCOSUR Member States, from parent companies in Europe and not from subsidiaries in MERCOSUR;

(ii) Firms are convinced of the importance of MERCOSUR market in the long run, but are equally convinced that MERCOSUR will not become a Customs Union in the short and medium term. Most firms consulted seem convinced that MERCOSUR Member States are not “good friends” among them;

(iii) as far as trade negotiations are concerned:

(iii.1) firms are not afraid of the FTAA process and the potential competition from US companies. Establishment in MERCOSUR by European firms with specific know-how makes them very competitive in MERCOSUR markets and the FTAA may create new opportunities for them in the Americas. However, as pointed out in (i), the lack of infrastructure could hamper the potential benefits of the FTAA for European companies established in MERCOSUR;

(iii.2) as firms do not believe in MERCOSUR consolidation in the short and medium term, they tend to be extremely skeptical on the possibilities of success of current EU-MERCOSUR negotiations. When asked, they would prefer negotiations to concentrate on specific issues that interest them instead of pursuing an ambitious agreement that may never arrive;

(iv) as a result of the circumstances explained in (i) and (ii) and of specific features of Brazil’s culture and economic tradition, establishment in Brazil is envisaged as the best option for many firms because it guarantees, at least, access to this market, by far the most important one in Latin America. Brazil is seen as a very protectionist country not only in terms of rules but also in terms of market culture. Brazilian firms (not to talk about the public sector) tend to “buy Brazilian”;

- (v) establishment is important to make European firms competitive in MERCOSUR markets and to reduce actual and potential discrimination, especially in Brazil, whose economic culture makes a big difference between FDI – which is positively assessed – and imports – negatively seen. Even in Brazil, the most protectionist MERCOSUR member state, there is no discrimination against firms controlled by foreign capital after establishment. They are considered “Brazilian”; and
- (vi) regulatory and governance risks – changes in rules and procedures, inefficient tax structures, complexity of administrative procedures and corruption, among other phenomena -negatively impact EU exporters and investors in MERCOSUR. There was a great insistence on the negative consequences of legal instability in trade rules (and the uncertainty they create) and of arbitrariness in customs practices. There is an “escalation” of protectionist practices, in particular in Brazil. Whenever possible, firms split their exports in smaller shipments in order to minimize risk. Arbitrariness is directly linked to corruption. Firms are divided between those that consider corruption as a phenomenon absolutely generalized and those that consider that there are honest officials in the ports and customs services.

The opinions expressed by the European section of the MEBF as well as the answers to the questionnaire prepared for this project indicate a clear perception, on the part of EU business with interests in MERCOSUR, of the internal fragility of member countries and the obstacles to move forward in regional economic integration.

Regulatory uncertainty and protectionist inclinations, particularly in Brazil, are two factors that come out frequently as inhibiting trade and investment flows. Consequently, one major conclusion of business surveys is that the agenda of trade liberalization with MERCOSUR must include not only tariffs, but also a generalized reduction in the regulatory and administrative obstacles to trade. Business facilitation thus becomes a main priority for EU businesses. The regulatory agenda also has significant importance for EU business: in this respect, a bilateral agreement could help to bridge the domestic regulatory

gap that prevails in each member state, as well as the regulatory and institutional gap that prevails in MERCOSUR as a group.

In summary, the perspective of EU business tends to strengthen the conclusions we draw on four main areas of the integration process:

- customs union: high relevance to regulatory issues apart from tariffs as well as to practices in points of entry;
- services (including investments): the current GATS-like approach is of little help to EU investors. EU business would prefer MERCOSUR to concentrate on regulatory issues, locking in investor friendly rules;
- investment in industry: no major problems detected, except for the fact that in Brazil preferential credit lines include “national content” requirements<sup>35</sup>;
- macroeconomic coordination: EU business is sympathetic to any mechanism that would promote macroeconomic stability.

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<sup>35</sup> It was also pointed out that the signature of a national person continues to be needed in Brazil (at least in practice) to open the banking accounts necessary for establishment. This creates specific problems for small and medium size firms.



### 3.4. *MERCOSUR: an overview of its current dilemmas*

More than a decade after the signature of the Asuncion Treaty, MERCOSUR offers a mixed record. While MERCOSUR has made significant progress in removing tariffs, in most other areas performance has been short of expectations.

Part of the success of MERCOSUR in eliminating tariffs can be attributed to the fact that regional integration was part of a broader policy drive towards economic reform. In this new paradigm trade liberalization and more outward-oriented trade regimes played a key role. The fact that MERCOSUR was part of a broader policy drive accounts for methodological innovations such as the adoption of automatic and across-the-board trade liberalization calendars (the Trade Liberalization Program), quite in contrast to the “positive list” approach typical of Latin American economic integration. The result was a significant increase in intra-regional trade, which in turn considerably raised intra-regional interdependence. The fact that preferential liberalization took place in parallel to the unilateral reduction of tariff and non-tariff barriers also accounts for the modest presence of trade diversion. In this new policy environment, Argentina and Brazil were able to carry forward a transaction that consisted, in very simple terms, in obtaining preferential access into the Brazilian market in exchange for Argentine support to Brazilian international trade strategies.

However, at the end of the transition period, MERCOSUR began to face mounting difficulties. These difficulties were a result of:

- a) a growing wedge between the macro and micro economic policies prevalent in the major partners,
- b) a deteriorating international macroeconomic (financial) environment, and
- c) difficulties to successfully deal with “deeper” integration issues going beyond border barriers to trade.

These factors posed insurmountable obstacles to the effective implementation of the agenda adopted in December 1995, creating a growing gap between

commitments and implementation. This placed into question the credibility and effectiveness of MERCOSUR.

Since 1998 MERCOSUR entered into a downward spiral of stagnant trade, rising conflict and growing market fragmentation. The credibility crisis and the growing wedge between commitments and implementation were aggravated by blurred priorities and unfocused policy-making. This placed MERCOSUR institutions and procedures under severe questioning.

The “re-launching” agenda adopted in June 2000 confirmed that worsening conditions required a new political initiative. However, the “re-launching” of MERCOSUR failed to build on a new positive agenda and, in practice, it did not go beyond a list of “unfinished business” and good intentions. More than two years later, many of the problems then identified remain untouched, while new ones have emerged. Even the idea of MERCOSUR as a customs union has been increasingly placed under question. Remarkably, this seems to coincide with the pragmatic diagnostic made by the business sector.

#### *3.4.a) The problems of implementation*

MERCOSUR displays significant problems in the realm of implementation. One area in which these problems have been most evident is the enforcement of border trade disciplines affecting intra regional-trade. These problems deepened after 1995, when the policy and regulatory agenda of MERCOSUR shifted from border barriers to trade towards the more complex issues of common foreign trade policies and non-border barriers.

One major problem of MERCOSUR as an integration regime has been the subsistence of unilateralism as a relatively low-cost policy option. In practice, unilateralism has been stimulated by an approach that enshrined flexibility and a case-

by-case focus, as opposed to the enforcement of rules and established procedures. Structural instability (macroeconomic volatility) contributed to make things worse, widening the scope and reasons for unilateral action. As a result MERCOSUR shows significant differences with rules-driven processes of such different kind as NAFTA or the European Union.

During its short life MERCOSUR has made intensive use of diplomatic resources, of which so-called “presidential diplomacy” has been the major example. The intervention of top political authorities to unblock critical negotiations is always necessary, but quite different from the regular intervention in day-to-day affairs. Moreover, the intensive use of diplomatic resources to move regional integration forward was accompanied by poor implementation mechanisms. Consequently, even in those areas with agreed regional rules, implementation weaknesses proved functional to the subsistence of national discretion.

The effects of these fragilities worsened as the regional integration agenda grew more complex and demanded a deeper and broader pooling of national discretion. The obstacles to effectively move forward with this deeper agenda translated into a “broadening” of the issues addressed by the negotiations and a parallel multiplication of normative acts, many of which were usually not enforced. This “broadening” of the negotiating agenda led to a loss of focus and a “normative inflation” that amplified the stock of unfinished business. This widening “implementation gap” proved very damaging to MERCOSUR’s credibility.

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A broad and unfocused agenda, aggravated by a growing “implementation gap”, has led to a shallow integration process. Except in the realm of tariffs, MERCOSUR has had a very limited impact on the way in which national economies are regulated. In addition, it has moved member states very little towards becoming a single custom territory or a common market. This performance can be explained by a number of factors, including the following:

- the structural framework of the process of economic integration;
- its methodology, or “integration technology”, and its instruments; and
- the institutional mechanisms adopted.

Wide differences in economic size and economic structure have translated into asymmetric interdependence relations. The smaller countries are much more vulnerable to events taking place and policies being implemented by the larger countries, thus raising their incentives to coordinate. For the larger countries with more modest regional interdependence links, by contrast, the incentives to forego national policy discretion for the sake of enhanced coordination are much lower (particularly in the case of Brazil).

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Smouts (1998) points out that “regional constructions (...) seem to be an answer to the need felt for new political spaces (...), towards which social forces can redirect demands that the nation-State is no longer able to satisfy”. In other words, faced to the erosion of the nation-state due to globalization, regionalism can become part of “the search for a pertinent space for action” or a new “space of meaning” (Laidi, 1998). However, it does not look as if MERCOSUR has moved forward in response to the erosion of the economic, political or symbolic power of its member states. It does not seem either than those responsible for giving MERCOSUR political direction have been able to draw the consequences of the above mentioned erosion and translate them into an agenda envisaging the emergence of a regional space as an area for “action and political meaning”. The shallow nature of MERCOSUR (or the fact that deeper integration is relevant only for some selected actors, such as multinational firms in a handful of sectors) help to account for the difficulties to translate into agreements and policy decisions the integration will expressed in MERCOSUR founding charters.<sup>36</sup>

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<sup>36</sup> In the case of Brazil –the largest MERCOSUR partner- closer relations with Argentina and MERCOSUR itself were initiatives aimed at updating the globalist approach to foreign policy typical of Brazil, itself in turn strongly anchored in a territorial vision of the state. The national industrial development project remains untouched as the main paradigm in Brazilian foreign policy, not even complemented by a regional approach. On the contrary, in the negotiations with its partners the national industrial development project shows itself as a competitive rather than a cooperative project.

Integration technology also contributed to make deepening unlikely. MERCOSUR founding treaties are as ambitious as imprecise. Consequently, the dynamics of the negotiating agenda and the enforcement of agreements (in areas such as investment or competition) owe more to the asymmetric structure of incentives that shapes national costs and benefits, than to the demands derived from the need to consolidate regional economic integration. Although MERCOSUR was initially conceived as a dynamic process that should be “built along the road”, its rule-making procedures are very deficient, partly as a result of the structural framework and conditions mentioned above.

As far as institutional mechanisms are concerned, member states exhibit a significant domestic institutional deficit. This obviously places into question the very effectiveness of domestic policies and regulations. In this context, it comes as no surprise that the regional space reproduces what is already prevalent at the national level. Considering the integration methodology prevalent in MERCOSUR and the kind of instruments used, the scope for formalized institutional mechanisms remains very limited.

This set of factors lead to what may be called “low effectiveness of integration mechanisms”, particularly concerning their ability to influence private and public behavior. This “low effectiveness”, however, applies both to rules and disciplines to enforce a free-trade area as well as a customs union. Indeed, this issue precedes the chosen economic integration model and is to a large extent independent of it. These issues will have to be addressed more effectively were MERCOSUR to be a free trade area or a customs union.

#### *3.4.b) A free-trade area or a customs union?*

As we have argued before, MERCOSUR remains an unsatisfactory free-trade area. Many of the problems faced by the process of economic integration are not related to the choice of a modality of integration but to the effectiveness of the instruments used.

However, whether MERCOSUR member states will emphasize building a free-trade area or a customs union remains an important policy issue both for domestic reasons as well as because this will have an effect on third parties.

The “imperfections” that pervade MERCOSUR common trade policies are numerous. There is a large number of exemptions (many of which are discretionary), there are bilateral agreements that grant different treatment to the same goods imported from the same origin, and there is nothing close to “free circulation” (as revealed in the subsistence of origin requirements and internal borders). These issues have been under discussion for many years, but with very little effective progress.

Size and development asymmetries have been an obstacle to shape a trade strategy common to all member states. Brazil has a large and diversified economy, a fact that has at least three implications. First, Brazilian policy makers do not see Brazil as a “small economy” and therefore consider their domestic market as a useful bargaining chip. This bargaining chip can become bigger if the “internal market” expands into the sub-region. Second, economic diversification and relatively high protection means that liberalization would have relatively high transition costs. Even if trade opening improved welfare in the long-term, Brazil would face a transition problem derived from high adjustment costs. This poses economic as well as political economy problems to trade liberalization, which takes us to the third implication: a diversified and protected economy means that there are powerful domestic interests focused on preserving the domestic market. In this sense, the international economic policies of Brazil can to a large extent be seen as functional to these influential domestic interests (focused more in domestic rather than export markets). By contrast, the smaller countries have less diversified economies. For them, low protection in capital goods and intermediate product industries makes much sense and transition costs are not that high.

These divergent preferences must be dealt with through adequate negotiation. In effect, the welfare and efficiency costs of relatively high protection for the smaller

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countries can be counterbalanced by enjoying preferential and stable access to the larger markets and by the attraction that that would have for foreign direct investment (that would otherwise locate in the bigger market). As it has been the case in the EU, the attainment of this can be helped through redistributive transfers (certainly more difficult among low per capita income countries than among developed economies).

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The key issue in MERCOSUR is that this bargain has not been successfully maintained along time, thus leading to a questioning of the very idea of a customs union. While in Brazil there is a growing perception that the “political” benefits expected from MERCOSUR have not materialized (particularly the alignment of the smaller countries behind Brazil’s international priorities), in the rest of the region prevails the view that Brazil has been reluctant to resign policy discretion and unilateralism and to provide constructive leadership to the region. Indeed, these related perceptions are not fully correct. On the one hand, as we have seen in Chapter 1, Brazil benefited substantially from trading with the region and has also been negatively affected in some periods by growing regional interdependence. Hence, economic considerations should be more explicitly included in the equation of the Brazilian side. On the other, the smaller countries have also made frequent use of discretion and non-implementation, thus being also partly responsible for weak enforcement mechanisms. Overcoming MERCOSUR’s current impasse will consequently require a mutual reassessment of costs and priorities.

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Negotiations with third parties, and particularly the FTAA process, have deepened MERCOSUR’s divide. In contrast to the FTAA process in which centrifugal forces have been stronger, negotiations with the EU have served to maintain joint work.

### 3.4.c) *Conclusions*

MERCOSUR is currently in a deep crisis. The crisis has been aggravated by the macroeconomic turmoil that affects the region since 1998. However, its causes are deeper than the bad shape of the macro-economy. In short, the “low effectiveness of regional integration” in MERCOSUR can be accounted for by four major factors, namely:

- a lack of clear focus. This translates into a broad negotiating agenda that distracts attention from areas critical to the construction of a customs union or a free-trade area;
- regional commitments and agreements that frequently add very little to existing multilateral commitments;
- a sterile dynamism that masks the ability of member countries to maintain discretion in policy making, even in areas closely related to intra-regional trade; and
- failure to make a sustainable bargain on the matrix of costs and benefits associated to the adoption of common trade policies and “deepening”.

If MERCOSUR is to survive as a relevant economic integration process, effectiveness and credibility will have to be significantly upgraded. In this context, the improvement in the macroeconomic outlook appears as a necessary but not a sufficient condition. In effect, a revitalization of MERCOSUR will critically depend on a new “social contract” that lays renewed foundations for a regional partnership and reshapes common objectives and shared targets. This will demand a deep revision of the role of Brazil and its readiness (and abilities) to provide constructive regional leadership.



The coincidence of new governments in MERCOSUR's two largest partners in 2003 creates a propitious opportunity to undertake a reassessment of where member states want the process to be taken. Raising political commitment and rebuilding the foundations of the common endeavor will be a necessary condition to regain dynamism. However, politics by itself will not do the job. After adequate political commitment is ensured, the key challenge will be to adopt rules and procedures that can make economic integration effective and real.

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## **CHAPTER 4**

# **PROSPECTS AND PROPOSALS FOR MERCOSUR** **FROM THE EU PERSPECTIVE**

#### 4.1 . *Scenarios for MERCOSUR*

Not many exercises have been made on medium and long-term scenarios for MERCOSUR. One major reason is the lack of well-established trends due to the relatively short life of the regional integration process. However, after more than a decade since the Treaty of Asunción, it is possible to identify some regularities on which to make hypothesis on structural determinants. Interdependence has increased significantly (although it continues to be highly asymmetrical) and societal interests linked to regional integration have increased considerably. Moreover, after more than a decade the effects of structural differences, policy preferences and institutional capacities have had enough time to show up.

The elaboration of long-term scenarios demands the identification of structural political, economic and social variables that act as national “shaping factors” in the process of regional integration. The identification of these variables is critical to make any prospective analysis because the structural dilemmas of MERCOSUR are closely linked to the relationship of the economic integration process to: i) established trends in member countries (particularly concerning the way in which issues such as economic and political sovereignty are dealt with), and ii) the prevailing development model.

The scenarios were constructed based on the interaction of three key variables. Two variables are “domestic” and point at alternative paths of economic, political and social organization in MERCOSUR’s two larger partners.<sup>37</sup> Our main hypothesis is that the compatibility (although not necessarily the convergence) between these alternative paths will continue to be a critical determinant of the long-term shape and viability of the regional integration process. Since all MERCOSUR member states are peripheral countries heavily dependent from the international environment, we included in the analysis a third variable that captures alternative international scenarios. These scenarios are construed

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<sup>37</sup> The exclusion of Paraguay and Uruguay from this analysis is a simplification based on the assumption that the major trends in the regional integration process are shaped by events in its two larger partners.

taking into account economic organization, regulatory patterns and the distribution of power.

In order to define the two domestic variables just referred to, we construed prospective scenarios on the evolution of MERCOSUR's major partners. They were made taking into consideration alternative combinations of four attributes describing alternative ways to organize the economy, the polity and the society in a long-term trajectory. The four selected attributes were: a) governability, b) social cohesion, c) the intensity of international integration, and d) the degree of economic adaptability. We characterized each one of these scenarios with a qualitative ranking ranging from high to low. Combining these four attributes we identified four plausible and clearly distinct scenarios for Argentina and Brazil. In the case of Brazil these four stylized scenarios were called:

- a) participative modernization,
- b) national neo-developmentalism,
- c) social crisis and disintegration, and
- d) triumphant markets.

In the case of Argentina the four alternative scenarios were called:

- a) equitable growth,
- b) mighty Argentina,
- c) Latinia, and
- d) dollarization.

Table 1 summarizes the major features of each scenario.

**TABLE 1**  
**DOMESTIC VARIABLES: ECONOMICS, POLITICS AND SOCIETY**  
**IN ARGENTINA AND BRASIL**

<i>Features</i>				
<i>Scenarios</i>	<i>Governability</i>	<i>Social Cohesion</i>	<i>Economic Adaptability</i>	<i>International Integration</i>
<i>BRAZIL</i>				
<i>Participative modernization</i>	<i>High</i>	<i>High</i>	<i>High</i>	<i>Medium-High</i>
<i>National developmentalism neo-</i>	<i>High</i>	<i>Medium</i>	<i>Medium</i>	<i>Medium</i>
<i>Social crisis and disintegration</i>	<i>Low</i>	<i>Low</i>	<i>Low</i>	<i>Low</i>
<i>Triumphant markets</i>	<i>Medium</i>	<i>Low</i>	<i>High</i>	<i>High</i>
<i>ARGENTINA</i>				
<i>Equitable growth</i>	<i>High</i>	<i>High</i>	<i>High</i>	<i>High</i>
<i>Mighty Argentina</i>	<i>Medium</i>	<i>Medium</i>	<i>Low</i>	<i>Low</i>
<i>Latinia</i>	<i>Low</i>	<i>Low</i>	<i>Low</i>	<i>Low</i>
<i>Dollarization</i>	<i>Medium</i>	<i>Low</i>	<i>High</i>	<i>High</i>

In order to define the international variable, the scenarios were construed based on three global attributes, namely: a) the depth and extension of globalization (market integration), b) the way in which that process and its effects are administered (international coordination), and c) the structure of international power (hegemony). According to alternative combinations of these attributes we constructed three plausible “global order” scenarios, scenarios, which we named: a) New Rome, b) post-Westphalian condominium, and c) Post-imperial anarchy. Table 2 briefly describes the attributes of each.

**TABLE 2**  
**THE EXTERNAL VARIABLE: THE INTERNATIONAL ORDER**

<i>Features</i>	<i>Market integration</i>	<i>International coordination</i>	<i>Hegemony</i>
<i>Scenarios</i>			
<i>New Rome</i>	<i>High</i>	<i>Low</i>	<i>High</i>
<i>Post-Westphalian condominium</i>	<i>Medium</i>	<i>High</i>	<i>Medium</i>
<i>Post-Imperial anarchy</i>	<i>Low</i>	<i>Low</i>	<i>Low</i>

Based on these variables we undertook a sequential exercise that consisted of:

- 1) identifying alternative combinations of the “domestic” variables, distinguishing those combinations in which regional integration appears as dysfunctional to the prevailing national projects and those that can live with different “kinds” of MERCOSUR; and
- 2) making plausible scenarios for MERCOSUR incorporating into the relevant scenarios identified in 1) alternative hypotheses about the international order.

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Our exercise led us to construct four alternative scenarios for MERCOSUR in 2010, which we called: i) *MERCOSUR Communitas* ; ii) *MERCOSUR Fortis*; iii) *MERCOSUR Levis*; and (iv) *MERCOSUR Finitus*. Table 3 presents a brief description of each scenario (for details on each scenario see Annex 4.I).

**TABLE 3**  
**ALTERNATIVE SCENARIOS FOR MERCOSUR 2010**

<i>Variables</i> <i>Scenarios</i>	<i>Brazil</i>	<i>Argentina</i>	<i>International order</i>
<i>Communitas</i>	<i>Participative modernization</i>	<i>Equitable growth</i>	<i>Post-westphalian condominium</i>
<i>Fortis</i>	<i>National neo-developmentalism</i>	<i>Mighty Argentina (Latinia)</i>	<i>Post-imperial anarchy (Post-westphalian condominium)</i>
<i>Levis</i>	<i>Triumphant markets</i>	<i>Dollarization (Equitable growth)</i>	<i>New Rome (Post-westphalian Condominium)</i>
<i>Finitus</i>	<i>Social crisis and disintegration</i>	<i>Equitable growth</i>	<i>New Rome (Post-westphalian condominium)</i>

Note: scenarios between brackets also lead to compatible configurations.

Of course, it is likely that MERCOSUR will not resemble any of these particular scenarios, but a combination of them. In any case, the performance of the last decade seems to have moved MERCOSUR away from the virtuous *MERCOSUR Communitas* scenario, certainly the most akin to the EU experience and to a successful agreement with the EU. In

the context of this performance, the alternatives for MERCOSUR seem to lay between two contradictory scenarios (*MERCOSUR Fortis* and *MERCOSUR Levis*) or the terminal crisis envisaged in *MERCOSUR Finitus*.

For the EU, only two of the four stylized scenarios would involve a continuing interest in the undergoing negotiations. These are the scenarios *MERCOSUR Communitas* and *MERCOSUR Fortis*. Both scenarios are compatible with some consolidation of MERCOSUR as a customs union and, particularly, with the establishment of a minimum set of rules geared to administer the flow of goods, services and investment between the member countries and between these and the rest of the world. In this sense, the scenario *MERCOSUR Fortis* could be characterized as the minimum required for a viable negotiation with the EU. By contrast, *MERCOSUR Finitus* and *MERCOSUR Levis* seem compatible with a consolidation of the FTAA. In fact, a NAFTA-minus FTAA –not an unlikely possibility- would strengthen the probability that the subregional group will survive with the features associated to *MERCOSUR Levis*.



## **4.2. *MERCOSUR integration from the EU perspective: strategic priorities for the future***

### **4.2.1 *Historical background***

The EU has traditionally been sympathetic to MERCOSUR integration. However, this general attitude has failed to translate into a well-designed strategy able to set priorities and to target cooperation towards those priorities.

Initially, the Commission induced MERCOSUR member states to give MERCOSUR legal personality as an international organization, an objective achieved by Article 34 of the Ouro Preto Protocol. Following the 1995 framework agreement, the EU strategy consisted in undertaking negotiations to "fill it up", a process that has been carried forward without a target date. From the EU perspective these negotiations have been conducted with a kind of "virtual MERCOSUR", assuming that MERCOSUR would effectively become a customs union as announced in the Asunción Treaty in 1991.

The present critical state of economic integration in MERCOSUR suggests that the EU should radically alter its strategy. If the EU aims to strengthen economic integration in the MERCOSUR region, it has to define a well-structured and selective strategy that goes beyond the simple continuity of trade negotiations and that does not take for granted that the "virtual MERCOSUR" will become real in the near future.

### **4.2.2 *Elements for a EU strategy concerning economic integration in MERCOSUR***

In order to develop a EU strategy concerning economic integration in MERCOSUR it is necessary to set a number of criteria to assess its significance from the perspective of the EU. We will consider the following three:

- the matrix of offensive and defensive EU interests, in trade as well as in foreign direct investment issues;
- the potential contribution of regional integration to MERCOSUR member states' development, a goal derived from the priority of development in EU's external action; and
- the potential contribution of MERCOSUR to the global architecture and a more balanced multilateral system (the main EU goal in international economic relations).

In order to set the priorities of the EU in relation to MERCOSUR's integration, it may be helpful to contrast these criteria with the present dilemmas facing MERCOSUR (see section 3.4). These dilemmas suggest that there are three critical areas that challenge the very existence of MERCOSUR as a substantive process of regional economic integration. These critical areas are:

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- trade policy for goods, especially concerning the consolidation of MERCOSUR as a single customs territory;
- treatment of services and investment; and
- institutions.

Confronting the criteria to assess the significance of MERCOSUR to the EU with the areas critical to the future development of MERCOSUR, it is possible to identify some strategic priorities of the EU in its relationship to the subregional group.

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#### *4.2.2.a The consolidation of MERCOSUR as a single customs territory*

One major priority should be to effectively consolidate MERCOSUR as a single customs territory. Doing so does not require full convergence to a CET. As the experience of the European Community proves, national "exceptions" to the CET are possible provided that:

- they are managed and authorized collectively and are not simply the result of unilateral actions,
- they are exceptions to a single (not only "common") regime that covers other trade policy areas.

The consolidation of MERCOSUR as a single customs territory meets in the best possible way the three outlined criteria, namely:

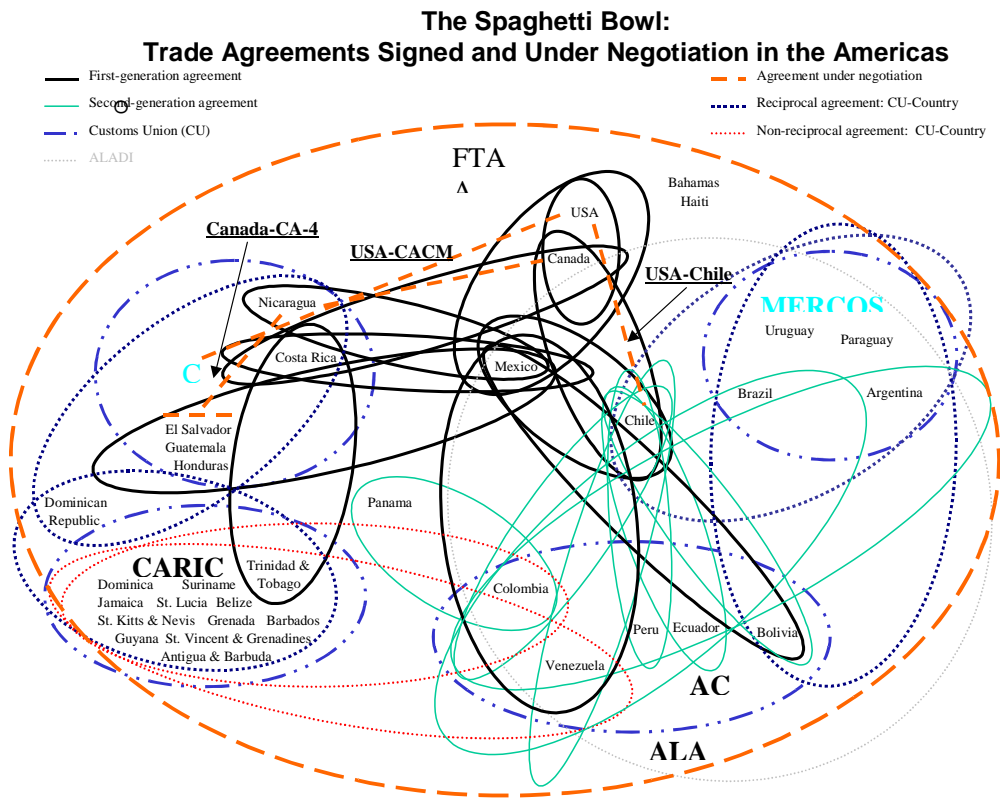
- It enables exporters to reap the benefits of MERCOSUR integration by giving them access to an enlarged market. A unified customs territory also facilitates trade (and, consequently, exports from the EU) because it would give importers and exporters the choice of a point of entry to the enlarged market. This would increase competition among points of entry and may help to reduce arbitrary rules and corruption. "Best practices" in foreign trade will get rewarded.
- From the point of view of MERCOSUR economic integration per se, the consolidation of the single customs territory will eliminate the need for rules of origin on intra-zone trade and all the cumbersome administrative procedures associated to their implementation and control. Intra-zone trade would be facilitated and the trade-creating and dynamic effects of regional integration will be strengthened;
- From the point of view of the potential contribution to global governance and a stronger multilateral system, the consolidation of MERCOSUR as a single customs territory would have three positive effects, namely: a) it would contribute to simplify the "spaghetti bowl" of preferential trade agreements currently taking shape in the Americas (see graphic 4.I), and inhibit the proliferation of bilateral agreements and multiple membership to

FTAs<sup>38</sup>; b) it would pool member states' bargaining resources to take part in the Free Trade Area of the Americas process, partially leveling the playing field; and c) it would enable MERCOSUR to better participate in WTO negotiations.

In order to promote the consolidation of MERCOSUR as a single customs territory, the EU should increase the awareness of decision-makers and other interested parties of the fact that, in law and in practice, the creation of a customs union requires merging former separate customs territories into a single one. This has to be done through the enforcement of the principle of "free circulation of imports", clearly and unambiguously recognized in Treaty provisions.

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<sup>38</sup> For an analysis of the "architectural" problems raised by multiple membership in different FTAs by different members of any one of them, see Torrent (2002 b)



Graphic 4.I

Source: 2002 Report on Regional Integration. Inter-American Development Bank

The EU should emphasize the importance of the consolidation of MERCOSUR as a single customs territory. Indeed, the EU should recall:

- that the EU is not, in particular in trade issues, “the 15” (Member States), but a separate entity with legal personality (whose foundation is a well consolidated Customs Union)
- that the undergoing negotiations between the EU and MERCOSUR were launched on the EU side (and authorized by the EU Council) as "bi-regional". Indeed, no negotiating mandate exists for an agreement with MERCOSUR as four separate customs territories.
- that European business is interested in MERCOSUR as an enlarged market and that this will become effective only if it consolidates as a single customs territory.

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The consolidation of MERCOSUR as a single customs territory raises the issue of the allocation and distribution of tariff revenue. This would be a much welcomed field for cooperation and technical assistance by the EU as well as, political and technical debate in MERCOSUR (and between MERCOSUR and the EU). The issue may be easier to tackle than imagined because:

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- o if the consolidation of MERCOSUR as a customs union promotes economic growth and foreign trade, total tariff revenue may not fall; and
- o Brazil, by far the largest economy in the region, is also the country less reliant on foreign trade duties as a source of public sector revenue. Consequently, if Brazil is willing to play the role of "benign leader" in the region (this is indeed a necessary condition for the survival of MERCOSUR), it should be able to guarantee that other parties at least maintain their share in total tariff revenue.

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*4.2.2.b Priorities concerning specific trade issues related to MERCOSUR integration*

From the EU perspective, not all the pending issues of MERCOSUR integration have the same priority. And not all of them have to be looked at from the same perspective. Priorities on Mercosur integration should be weighted with priorities in the ongoing Mercosur –EU negotiations. If the EU has no offensive interest in a specific issue, either because it relates to a sector non relevant for EU exports or in which EU firms are already well established in Mercosur Member States markets or because the EU also wants to keep it out from the scope of the negotiations, Mercosur’s lack of integration concerning this specific issue may be considered as quite irrelevant from the EU perspective.

This criterion should be applied by EU negotiations according to the evolution of the negotiations.

*4.2.2.c Priorities concerning specific issues related to MERCOSUR's integration in the area of services and investment*

The screening of MERCOSUR legislation proves that integration has not touched the areas of services and investment yet. Indeed, MERCOSUR legislation in these two areas has not entered into force. Moreover, were it to enter into force, there may be contradictions between the protocol on services trade and that on intra-regional investment.

Two lessons can be drawn from the current state of affairs: a) services and investment remain two areas much more difficult than trade in goods to be tackled by MERCOSUR integration and, in general, by any regional integration process; b) the objective of reaching horizontal, far-reaching rules on these areas is doomed to fail. Consequently, it looks a more promising approach to select specific issues for negotiation and insert them in an overall strategy. This strategy must focus on two sets of questions: a)

the general approach to be followed in the area of services and investment; b) the sector priorities concerning intra-MERCOSUR as well as EU-MERCOSUR relations.

Two conflicting approaches exist concerning the liberalization of services and investment: that of NAFTA and that of GATS. In the NAFTA approach provisions on services apply exclusively to cross-border exchanges (transport or telecommunication services between country A and country B, for example). Investment in service sectors, by contrast, is dealt with in the chapter governing investment issues jointly with investment rules applied to any other economic sector. In the GATS approach, investment in the services sector is dealt with as "commercial presence" of foreign services providers (one of the four "modes of supply" of services).

The NAFTA approach is more coherent than GATS because it separates two issues (trade and investment) that, although intertwined, are distinct from a legal, political and economic point of view. NAFTA and GATS also differ on the strategy for liberalization in the field of investment. NAFTA favors a "negative" list approach according to which liberalization rules apply universally except for measures included as exceptions; while GATS follows a "positive list" approach according to which liberalization rules apply exclusively to the sectors and issues listed in a schedule of commitments.

However, after the failure of the OECD Multilateral Agreement on Investments, that followed the NAFTA approach, the EU has been increasingly prone to uphold the GATS approach. In effect, the EU has done so in the recently signed agreement with Chile as well as in the WTO context, where the EU seems reluctant to take investment (i.e. "commercial presence") away from the GATS in order to, negotiate a new agreement on investment covering all sectors of the economy. The EU approach on this issue seems to be coincident with that of Brazil, at least in the undergoing FTAA negotiations. Indeed, how to deal with investment in the services sectors is one of the main unresolved "architectural" issues in the FTAA context, with the US pushing for a NAFTA approach while Brazil favors that of GATS.

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Consequently, concerning the general approach to services and investment the criterion related to the contribution to global architecture clearly prevails. As a result, the EU should favor the GATS approach in MERCOSUR integration. This means the ratification of the Montevideo Protocol on services, while leaving aside the Colonia Protocol on investments (that follows the NAFTA approach and overlaps with the Montevideo Protocol).

The discussion of sector priorities in EU's strategy towards MERCOSUR goes ~~beyond the scope of the present study, centered on MERCOSUR integration in itself.~~ However, there is no doubt that it is in the EU interest to help MERCOSUR to focus in the area of sector regulation in areas such as financial services or telecommunications. Focusing on internal and international regulations instead of pursuing solely a GATS approach centered on liberalizing market access and making commitments on national treatment may be more productive, as the EU experience clearly shows that a GATS approach may be insufficient to achieve regional integration if internal regulation is not at least partially harmonized.

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#### 4.2.2.d *Priorities in MERCOSUR's institutional strengthening*

The specificity of this topic advises to discuss it as a separate section.

### ***4.3.- Strengthening MERCOSUR: specific recommendations***

Very often, in particular from a European perspective, the strengthening of regional integration is identified with the creation of regional institutions that mirror those of the European Community. This approach is inappropriate (in general and in particular as it applies to MERCOSUR) due to four main reasons:

- it fails to take into account the diversity of models of regional integration;
- it is contradicted by the considerable success of NAFTA, an agreement that deepened integration in North America with a light regional institutional structure;
- it is not very useful when applied to MERCOSUR because it is most likely that its institutional structure's main characteristics will not be modified in the foreseeable future;
- finally, it does not take sufficiently into account the fact that the success of European integration depends not solely on its institutional design but on the strength of its legal system. This, in turn, has been dependent on the voluntary compliance of Member States (including voluntary compliance to the rulings of the European Court of Justice). This voluntary compliance is a result of a general attitude of respect for the rule of law that prevails in all member states.

Therefore, the strengthening of MERCOSUR should leave aside the creation of new institutions and concentrate on three main issues, namely:

- a) how to strengthen MERCOSUR law;
- b) how to strengthen MERCOSUR's institutional structure without altering its essential characteristics; and
- c) how to strengthen the internal commitment to regional integration in each individual member state.

These three issues have to be analyzed against the background of a redefinition of MERCOSUR's agenda (something that we have already discussed from a EU perspective in the previous sub-section). Concerning the first two issues, it is convenient to distinguish what could be done without modifying MERCOSUR Treaties and what would require only minor changes, fully compatible with the preservation of the main characteristics of existing institutions.

#### 4.3.a Strengthening MERCOSUR law

As mentioned before, the strength of regional integration law depends, first and foremost, on Member States' internal attitudes with respect to the rule of law (by public institutions as well as by private operators). This should be always taken into account as it is probably the major factor explaining MERCOSUR legal weakness. Focusing on MERCOSUR's law itself, the following recommendations can be made:

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*Without any Treaty modification*

##### 1.- The relation between primary and secondary law should be clarified.

Primary law gives a process of regional integration solid foundations and continuity. Secondary legislation provides it with flexibility and capacity of adaptation. The successes of EU integration depend heavily on a historically adequate "mix" of primary and secondary law. NAFTA, in contrast, relies only on primary law. This can eventually make the agreement too rigid: but primary law has been carefully drafted keeping in mind what it was (primary law enshrined in an international Treaty subject to cumbersome legal -and political- procedures for approval).

MERCOSUR was conceived on the basis of very light "constitutional" foundations in terms of primary law (a "framework" Treaty) and it was supposed to develop through the production of secondary legislation. However, the process has not worked that way. The main pieces of what is presented as secondary legislation are, in actual fact, additions to the Asunción Treaty. If all these additions were ratified by all Member States, the Asunción Treaty would become the longest Treaty in history and MERCOSUR would become the most rigid integration process ever conceived. That result is negative because of two political and practical reasons:

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- First, it confounds on the nature of the process. The issue is not only terminological: many speak of "internalizing secondary legislation" when in the most relevant cases the issue is that of "ratifying international agreements that constitute additions to the Asunción Treaty", something that is completely different from the legal and the political points of view.
- Secondly, it will be problematic in the future. The EU experience proves unequivocally that secondary legislation needs continuous change and adaptation. To have the content of its provisions "constitutionalised" in the founding Treaty makes little sense.

Therefore, if the only possible destiny of many provisions included in pieces of supposedly "secondary legislation" is that of becoming "constitutionalized" in the Asunción Treaty, it may be better to forget about them and stop the ratification process.

2.- In so far as MERCOSUR secondary legislation needs internalization/ratification by Member States, "fast track" procedures should be introduced to make the process swift.

It is well known that "fast track" procedures as those used by US Congress are compatible with the preservation of parliamentary powers on ratification of international treaties<sup>39</sup>. They are, essentially, procedural rules adopted by Parliament defining how to exercise those powers. Their main goal is twofold: a) to get a final parliamentary decision within a pre-established deadline; and b) to guarantee a single decision on the agreement (or the package of agreements) submitted by the executive, preventing the disaggregation of the whole in separate pieces of legislation.

Consequently, "fast track" procedures increase the international credibility of the Executive negotiators. This, in turn, increases the credibility and effectiveness of the international agreements to which they apply. These are the reasons why in the Americas (North, Central and South), the existence of "fast track" procedures is considered a sort of precondition for the credibility of the U.S. as a partner in international trade negotiations.

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<sup>39</sup> For a comprehensive analysis of the legal and political aspects of "fast track", see Jackson (1997).

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Rather paradoxically, MERCOSUR Member States have not been able to put into place "fast track" procedures among themselves. The result is well known: after being adopted by MERCOSUR organs, norms enter into a kind of "limbo" where they can remain indefinitely awaiting the completion of the internalization process. This weakens up to the point of nullification the credibility of MERCOSUR law (in particular when combined with the effects of art. 40 of the Ouro Preto protocol, discussed below). The establishment of "fast track" procedures for the internalization/ratification of MERCOSUR legislation is such an easy way to strengthen MERCOSUR that it seems to constitute, as for the US, a kind of a necessary precondition for MERCOSUR to regain its credibility as a negotiating partner.

*With minor modification of the Treaties*

### 3.- To revoke Article 40 of the Ouro Preto Protocol.

The official explanation for Article 40 of the Ouro Preto Protocol is that it was needed in order to guarantee the simultaneous application of MERCOSUR legislation in all Member States. This simultaneous applicability would be needed to prevent that a Member State is "trapped" in applying "onerous" MERCOSUR legislation to its own residents while not receiving "reciprocity" on the part of the rest.

This official explanation does not hold. Indeed, in order to achieve the proclaimed goal, Article 40 is redundant. It may be enough to adopt a technique sometimes used by Argentina when internalizing MERCOSUR legislation, namely: to postpone the internal measure's entry into force until all Member States have finalized their internalization process and notified it to MERCOSUR's Administrative Secretariat (SAM).

In reality, the practical effects -"*effet utile*"- of article 40 seem to have been the following:

- to give a "second chance blocking power" to individual Member States on MERCOSUR legal acts (in addition to the "first chance blocking power" offered by the consensus rule to adopt decisions by MERCOSUR organs).
- to inhibit the evolution of the nature of MERCOSUR legislation in the direction of European Community directives. Such evolution would have been compatible with the Asunción Treaty and coincident with the drafting of some legal acts prior to the Ouro Preto protocol (a drafting that pointed to the entry into force of those acts as "law for the States" independently of whether they were "internalized" or not).
- to make life easier for politicians and civil servants in charge of MERCOSUR affairs within each national administration, who were given the guarantee that the decisions of MERCOSUR organs (of which they were members) were powerless since what really mattered was their internalization (or lack of it).

At the end of the day, Art. 40 of the Ouro Preto protocol served to further imbalance the legal system of MERCOSUR, increasing the weight of national legislation at the expense of MERCOSUR law.

4.- The "constitutional impediment" for some MERCOSUR Member States to accept that decisions of MERCOSUR organs would create new rights and obligations without requiring a national ratification or internalization procedure is unfounded.

All MERCOSUR Member States are also WTO members. Therefore, it must be assumed that there is no legal/constitutional impediment that prevents them to accept WTO law and obligations. WTO provides for a mechanism of production of international law that works without requiring (even without allowing for) any national procedure of ratification

or internalization. This is the case, in particular but not only, when waivers have to be adopted or when new members have to be admitted. In both cases, the decision is made by a WTO organ. Moreover, these organs act on the basis of majority vote (even if consensus is, in principle, looked for).

There seems to be no reason (apart from lack of political will) why what is valid for the WTO ~~should not be valid for MERCOSUR. Therefore, any future reform of~~ MERCOSUR founding treaties should assess the introduction of WTO-type mechanisms within MERCOSUR legal and institutional structure. Of course, such an introduction should only apply to transitory departures from common rules (mirroring the logic of WTO waivers). The two rather unquestionable cases to experiment these new procedures could be those of safeguard measures on intra-zone trade and antidumping measures on extra-zone trade. Both could be authorized or adopted by MERCOSUR organs without requiring an internalization procedure.

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5.- In exceptional circumstances one Member State may depart from common rules subject to a MERCOSUR procedure even if the decision may be immediately applicable.

MERCOSUR history is full of episodes by which a Member State departed from common rules by means of a unilateral decision later on validated by MERCOSUR organs. If this has been, and is, the case, it seems much better to provide a legal framework for that event, instead of allowing it to develop as a de facto practice and in open violation of MERCOSUR law (further weakening it).

The basis for such a legal framework could be provided by a distinction between two situations: that of adopting a common regime and that of authorizing departures from it. In the first case the requirement of consensus must be maintained (at least in the short and medium term it cannot be envisaged that MERCOSUR will introduce new obligations by majority voting). In the second case, by contrast, mechanisms not requiring consensus could be used since the issue would not be that of introducing new obligations but that of authorizing a Member State to depart from its obligations.

Therefore, in exceptional circumstances (more or less rigidly or loosely defined), one Member State should be able to depart from common rules (introducing, for example, safeguard measures on intra-zone trade or modifying the external regime), subject to a MERCOSUR procedure (such as very short notice and publication in MERCOSUR Official Journal -BOM), even if the measure would be immediately applicable. After notification the measure would be examined by MERCOSUR organs. Two alternative procedures could then be considered as an outcome of the examination process: a) explicit authorization by consensus or majority voting by the other parties; b) repeal of the measure, also by consensus or majority voting by the other parties. The decision should, in any case, be published in the BOM and would have immediate effect after its publication.

Two precedents from the European Community could be of interest for the detailed discussion of this mechanism: a) concerning the point of substance, the study of cases in which unilateral action by Member States (normally subject to ex post Community examination) has been allowed by the Treaties (in particular in the "transitory period" leading to the Customs Union); b) concerning the point of procedure, the so-called "comitology" procedures, which offer a good repertoire of alternative procedures applicable in the framework of such a mechanism. In any case, it seems beyond doubt that any mechanism of that kind would be an improvement over the present combination of formal rigidity and substantive lack of respect for common rules.

6.- On dispute settlement, the Olivos Protocol is a step forward in the right direction. It seems advisable to let it be applied and learn from experience instead of envisaging a new modification of it.

#### *4.3.b Strengthening MERCOSUR institutions*



*Without any Treaty modification*

7.- Increase the number of meetings of its main political body: the Consejo del Mercado Común (CMC).

A process of "deep integration" ruled by a body that meets only from time to time and normally not more than twice per semester seems inconceivable. At this stage it seems obvious that a process so complex and demanding as that of MERCOSUR requires more than a few hours per year of political discussion and legislative work at the ministerial level. In this respect, the argument of Ministers' overloaded agenda is unacceptable. Here again, the EU experience (with Ministers' agendas not less overloaded than those of MERCOSUR's Member States Ministers) indicates that the Council (at the ministerial level) holds around 80 meetings per year. Many of these meetings may be useless, but many of them are substantive and necessary. All in all, most specialists in the workings of the EU Council would agree that between a day and a day and a half per week would be a reasonable amount of time for the EU Council to cover the complete agenda of its different meetings.

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CMC should meet, at the very least, once per month in order to provide adequate political guidance to MERCOSUR and to have enough time to deepen the debate and find adequate solutions on legislative issues. That increase in the number of CMC meetings would definitely strengthen the internal structure of MERCOSUR's institutional system, excessively torn away by Heads of State "presidential diplomacy" on one side and the bureaucratic approach of technical working groups and high officials committees on the other.

8.- Improve the organization of CMC meetings.

If the CMC were to meet more often, its agenda could be organized on the basis of the model of the Council of the European Union, that distinguishes between "A points" (to be approved, in principle, without any debate) and "B points" (to be discussed). The corresponding articles of the rules of procedure of the Council of the EU could also be

adapted, in particular on approval of the agenda and on the possibility of transforming an "A point" into a "B point".

The division of the CMC's agenda into these two parts would also help to introduce recommendation number 11, to be discussed below. But such a division is justifiable in itself because it combines democratic legitimacy (in so far as a body composed by Ministers of democratically elected governments have the final word on all points -"A" and "B"- even if some of them are adopted without discussion -"the A points"-) with efficiency (allowing the debate to concentrate on unsolved issues- those introduced as "B points"-).

9.- MERCOSUR's Administrative Secretariat (SAM) should definitely be strengthened.

The current reforms (transforming the Secretariat into a "Technical" one rather than keeping it as simply "Administrative") may have the merit of breaking the taboo of the "only Administrative" Secretariat, but it is clearly insufficient. The increase in the number of personnel employed in the Secretariat will be nil (or, at best, very small). In these conditions, it will very difficult to imagine that its role will be enhanced.

At the very least, it is necessary to create within the SAM a proper legal division (with a head and, at least, two additional lawyers) endowed with sufficient independence to, at least, improve the quality of MERCOSUR legislation. Apart from carrying the work commissioned by MERCOSUR bodies, the head of the legal division should be given the right to give confidential oral and written opinions to them on his/her own initiative.

10.- The structure of working groups dependent from the GMC and the Trade Commission should be streamlined.

The present structure looks overcrowded, with too many groups that maybe do not meet sufficiently enough to justify their existence or too costly if all the groups meet relatively

often. The streamlining of the structure of working groups could also contribute to better focus MERCOSUR on a limited number of priorities. Indeed, proliferation of working groups may give the activities of MERCOSUR their present disorderly character, in so far as their content and orientation depend mainly on the "productivity" of the more active technical groups (which are not necessarily those in charge of the priority issues).

The fact that presently some aspects of this working group structure are enshrined in primary law is not an obstacle for streamlining. In order to do it, it is enough to take a political decision concerning the increase or reduction in the number and periodicity of meetings.

*With minor modifications of the Treaties*

11.- Concentrate decision-taking power in the CMC.

The present MERCOSUR's institutional structure is centered on bodies composed by representatives of Member States' governments and National Administrations. This is a characteristic not to be modified, at least in the short and medium run. But it is doubtful whether the present three level structure with bodies in each level which are conceptually the same (representatives of Member States Governments and Administrations) and do, in practice, the same (to enact legislation) is really adequate. Had the integration process been a success, progressively gaining scope and strength, the adequacy of the institutional structure would have been proven by the facts. But since this is not the case the question of that adequacy remains open.

It may be useful to dispel one major misunderstanding, namely, the idea that this three level structure somehow resembles that of the Council of the European Union, with the GMC playing the role of COREPER, i.e. coordinating the activity of the working groups and creating an interface between the "political" and the "technical" level. This

analogy is incorrect because the GMC has the power to adopt legislation whereas COREPER has not. The latter's role is strictly preparatory of Council's decisions because, in principle, it is only the Council (at ministerial level) that has the power to adopt them.

The concentration of the decision-taking power at ministerial level has, at least, two advantages:

- o first, it gives greater legitimacy to decisions (because they are adopted by a body composed of Ministers from democratically elected governments), both in relation to citizens and private operators as well as in relation to Member States' administrations in charge of implementing them;
- o second, it stimulates the involvement of Member State governments (and Ministers) in the integration process by making them responsible (and accountable) for all the decisions taken within its framework.

These two advantages would not be counterbalanced by any disadvantage in terms of efficiency, because no significant delay occurs in the adoption/ implementation of the decision as compared to the current delays experienced by internalization procedures. Furthermore, any delay in the adoption of a decision may be shortened by more frequent CMC meetings (see recommendation 7 above). If necessary, and as a last resort mechanism to adopt urgent decisions, a written adoption procedure could be established, allowing for a decision to be taken in a matter of hours.

The attribution of decision-taking powers to the CMC in exclusivity would not leave either the GMC or the working group structure without work: working groups would continue to give shape to the decision and the GMC would continue to coordinate the working groups structure and to solve, prior to debate in the CMC, issues that cannot be settled at the technical level.

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## 12.- Streamline national representation at top MERCOSUR decision-taking bodies.

There is presently a contradiction in the composition of MERCOSUR governing bodies. On the one side, Member States representation is attributed to a plurality of individuals. On the other, it is not made clear that all these individuals representing Member States are, constitutionally, the same thing (a minister from a Member State government) and fulfill the same role (to represent and to commit the whole government).

Member states plural representation in MERCOSUR bodies was originally an attempt to directly involve officials from the economic area in order to prevent the emergence of an isolated “integration constituency” constituted by diplomats with little effective input in domestic policy-making. However, in practice, plural representation in MERCOSUR bodies has served to magnify the failure of Member States governments to internally achieve a unified position on issues related to MERCOSUR integration (or, at least, to arbitrate quarrels of protagonism and jealousies between different Ministers). Such inability also exists in EU Member State governments. However, the problem lies in the fact that MERCOSUR present institutional rules admit (and protect) this inability without creating any pressure to overcome it. In contrast, EU rules on the composition of the Council challenge that inability by attributing Member States governments’ representation in the Council to a single person endowed with the power and the responsibility to commit the whole administration.

The EU experience tends to confirm, in the context of regional integration, the common sense negotiating principle that the attribution of a single role (the representation of a Member State government in our case) to a plurality of individuals tends to reduce the ability of the representation to arrive to compromises and trade-offs among issues under discussion. The reason is quite straightforward: no individual that is part of a collective representation thinks and acts as a government, while all of them act as sectorial ministers whose views on the issue under discussion may perfectly well not coincide.

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In the European context, the idea of attributing the representation of Member States government within the Council to a vice-prime minister (or vice-president) for EU affairs, directly linked to the Prime Minister (or the President), has been repeatedly put

forward as a means to bring coherence as well as political impulse to the activities of the Council, "upgrading" it from the approaches and logic of individual sector Ministries. This idea, never implemented in the European context because of intra-bureaucratic jealousies, could be usefully taken over in the context of MERCOSUR. The appointment of such a vice-president or minister for MERCOSUR affairs directly linked to the President is perfectly compatible with the presence in each delegation of sector ministers. It could be conceived of as an instrument for keeping the advantages of "presidential diplomacy" (in the sense of guaranteeing high level political leadership as well as ability to establish trade offs among sector interests) without its inconveniences (excessive involvement of the Presidents in the day-to-day affairs at the risk of receiving too much share of the blame for failures and shortcomings).

It is also not advisable that an international treaty (such as the Treaty of Asunción) establishes how the representation of each Member State in MERCOSUR bodies must be made. Such provisions only create rigidities and interfere with internal Member States decisions.

#### *4.3.c Strengthening member states' commitment to MERCOSUR*

MERCOSUR has gradually lost momentum and priority within each Member State. The first reason concerns substance: MERCOSUR integration seems too far from the real problems that affect citizens and economic operators (or too ineffective to contribute to their solution). But there is also a second reason: MERCOSUR integration has largely remained a process conducted by politicians and bureaucrats without any deep involvement

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either from Parliaments or civil society. This is a problem that should at the least be minimized.

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### 13.- Member States Parliaments' involvement in the process must be enhanced.

There are basically two main reasons for doing so, namely:

- to increase the democratic legitimacy of the process, not only because of the involvement of the Parliaments but also because it would somehow create a bridge between the regional process and individual citizens.
- to increase efficiency: MERCOSUR law will always require internal measures to be adequately implemented and applied to citizens and economic operators (even if the need for internalization procedures disappeared for the entry into force of MERCOSUR legislation as "law for the States"). In some cases, these internal measures will consist of legislation enacted by Parliaments. Parliamentary involvement "upstream", during the process of decision-making, may result in a smoother Parliaments participation "downstream", when MERCOSUR decisions have to be implemented.

The United States experience with "fast track" procedures shows, contrary to what is often believed, that they are not only compatible with Parliament's involvement in international affairs but also capable of promoting it. In effect, "fast track" legislation contains policy guidelines on the issues to which it applies and it also establishes procedures for consultation with Parliamentary bodies and committees. If applied to a process like MERCOSUR, which produces a rather steady flow of legislation to be internalized or implemented, "fast track" procedures would allow for a periodical scrutiny by Parliaments of MERCOSUR activities. This periodical scrutiny would stimulate public debate on the issues. From the public opinion's point of view, this pattern of information and discussion would compare favorably to the present one, too much centered on press

conferences after a meeting of MERCOSUR bodies and the more or less ~~calculated~~ leakage of information prior to them.

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#### 14.- Broaden positive experiences of civil society participation, such as that of COMISEC.

COMISEC is a Commission created by the Uruguayan government and linked to the Presidency (through the Oficina de Planeamiento y Presupuesto, a unit ranked as a Ministry and linked directly to the Presidency). It is chaired by a high official (the Director General for Trade).

It is composed of delegates from the following national institutions: National Budget and Planning Agency, Uruguayan Chamber of Industries, National Chamber of Commerce and services, Mercantile Chamber, National Worker's Union, Rural Association of Uruguay, Rural Federation of Uruguay, Federated Agrarian Cooperatives, state-owned enterprises, and local governments. Among its MERCOSUR associates, Uruguay is the only country that has established this institutional framework.

The Sectorial Commission is COMISEC's supreme body and meets periodically under the chairmanship of the Director. COMISEC's specialized work units are the following: a) Documentation and Information Center; b) Consulting Unit; c) MERCOSUR Information System (SIM), a national network linking 20 MERCOSUR information Centers throughout the country; d) Social Affairs and Youth Group; e) Universities network (ARCAM Group); f) Monitoring MERCOSUR; g) Observatoire of MERCOSUR.

Even with very modest means in terms of personnel and budget, COMISEC's activity has proved very useful in providing information and facilitating exchange and interaction around issues concerning Uruguay's participation in MERCOSUR. Initiatives of this kind could make a positive contribution in the other member states. Moreover, the existence in the four Member States of like-minded institutions would produce synergies and enhance their aggregate influence.



# **ANNEXES**

**ANNEX 1.I**

**DIRECTORY OF MERCOSUR'S LAW**

Legislation already entered into force is shown in black bold letter; legislation not entered into force is shown in red (see the appendix to this annex for an update on the basis of additional information provided in B.O.M. n. 20)

## A) CONSTRUCTION OF THE CUSTOMS UNION AND THE INTERNAL MARKET

### A.0.- Tariff classification

- **Tariff classification (approved jointly with the Common External Tariff)**  
D 22/94 + Dir. 7/95 + R 19/95 + R 65/01 (definitive version)
- **Internal procedures for the settlement of problems of classification**  
R 81/93 + D 26/94
- **Specific classification decisions**  
Dir. 6/95, 16/95, 17/95  
1/96, 3/96, 9/96, 13/96  
1/97, 3/97, 6/97, 13/97, 14/97, 16/97, 18/97  
5/98, 10/98, 12/98  
3/99, 4/99, 5/99, 7/99, 8/99, 9/99, 10/99, 16/99  
2/00, 7/00, 8/00, 9/00  
3/01, 5/01, 3/02

### A.1.- Intra-zone trade regime

- **Tariff elimination and “adaptation regime”**

#### General rules

**Annex I Asunción Treaty + D 22/00**

“ adaptation regime”

**D 5/94 + R 48/94 + D 24/94 + D 9/01**

- **Rules of Origin**

General rules

**Annex II Asunción Treaty + D 6/94** (modified by **D 4/02**) + **D 23/94**  
(modified by **D 16/97**) + **D 7/94 + D 21/98 + D 3/00** (which modifies **D 6/94** and **D 16/97**)

Specific Lists of products

**D 5/96 + Dir. 8/97** (which replaces **D 5/96** and is modified by **D 41/00**)

Entities empowered to deliver certificates, Procedure regime and sanctions

**D 2/91**

Control of certificates and Administrative rules for the implementation of the Origin regime

**Dir. 4/00** (which replaces **Dir. 12/96**, which also had been modified by **Dir. 12/97, Dir. 20/97, Dir. 11/98, Dir. 15/99**)

- **Non-tariff trade restrictions (measures applicable to foreign trade)**

General program of elimination

**D 3/94 + D 17/97 + R 123/94** (modified by **R 17/95**)

Export incentives and subsidies; Temporary admission and draw back

**R 7/91 + D 10/94 + D 21/98** (repealed by **D 69/00**)

- **Travelers tax exemptions**

**D 18/94**

- **Sectoral agreements**

Iron and steel products: **R 13/92**

Sugar: **D 19/94 + D 7/94**

Motor vehicles: **D 29/94 + D 70/00 + D 4/01**

- **Trade protection and competition**

Exchanges of information and consultations in the implementation of national legislation to intra-zone trade

**R 63/93**, extended by **R 129/94**, that explicitly authorizes the application of national legislation + **Dir. 5/95, D 64/00**

Competition; general criteria

**D 21/94**

Competition /Fortaleza Protocol)

**D 18/96 + D 2/97 + D 13/02 + D 14/02**

- **Specific regimes**

Rental cars: **R 76/93** (replaced by **R 35/02**)

Private cars for tourism: **R 131/94** (replaced by **R 35/02**)

Promotional materials: **R 115/94** repealed by **R 121/96**

Specific customs treatment partly transported by sea or river (Cono Sur): **Dir. 4/97**

Psychotropic substances: **R 49/97** repealed by **R 27/98**

Postal services: **R 117/94 + R 29/98 + R 21/99 + R 22/99**

Borderline transit: D 18/99 + D 14/00

Perishable products: Dir. 20/95

Goods for cultural projects: R 122/96

- **Specific territorial regime**

- Specific exception for Brazil and Uruguay (Colonia and Manaus "zonas francas"): D 9/01

**A.2.- Extra-zone trade regime**

- **Common External Tariff and modifications**

General regime

D 7/94 + D 22/94 + Dir. 7/95 ("ratified" by R 19/95) + R 36/95 + R 65/01 (definitive version)

Across the board modification

D 15/97 + D 67/00 + D 6/01

Specific modifications

R 1/95, 30/95, 35/95

60/96, 62/96, 70/96, 72/96, 73/96, 119/96, 120/96

7/97, 10/97, 11/97, 24/97, 40/97, 44/97, 45/97, 63/97, 82/97

1/98, 2/98, 3/98, 12/98, 13/98, 35/98, 36/98, 39/98, 41/98

18/99, 19/99, 20/99, 40/99, 41/99, 64/99, 65/99, 76/99, 4/00, 14/00, 46/00, 47/00, 58/00, 59/00, 63/00, 64/00, 65/00

3/01, 7/01, 11/01, 12/01, 25/01, 29/01, 30/01, 32/01, 45/01, 46/01, 48/01, 17/02, 36/02,

Temporary exceptions for specific Member States

General rules: **R 22/95 + R 37/95 + R 19/96 + 69/96** (extended by **R 33/98**) + **69/00**

General exception for Argentina. **D 1/01**

Specific exceptions

**R 33/95, 37/95, 40/95, 70/96, 64/01**

**Dir. 4/96, 7/96, 11/96, 18/96** (modified by **2/97 + 11/97**), **19/96**  
**5/97, 10/97, 15/97, 19/97**

**3/98, 4/98, 6/98, 7/98, 8/98, 9/98, 16/98**

**1/99, 2/99, 6/99, 11/99, 12/99, 13/99** (extended by **5/00**), **14/99**

**1/00, 3/00, 11/00, 12/00, 13/00, 14/00**

**1/01, 10/01, 11/01, 12/01**

**1/02, 2/02, 6/02**

- **GSP (Generalized system of preferences)**

Accession to GSP/UNCTAD agreement: **D 51/00**,

Second round of negotiations of the GSP/UNCTAD agreement: **D 52/00**

- **Customs code and other customs legislation**

Customs code: **D 25/94**

Customs dispatching : **D 16/94**

Customs valuation: **D 17/94 + Dir. 4/95**

Integral control/ customs station of rail border- Uruguayan-: **Dir. 4/02.**

- **Safeguards**

**D 17/96** (+ **4/97**, Spanish version plus error correction) + **D 19/98** (extension of transitory provisions)

- **Trade protection**

Complaints and consultations on extra-zone dumped imports by another Member State:  
**D 3/92**

Antidumping regulation: **D 11/97** (repeals **D 7/93** concerning antidumping)

Countervailing duties: **D 29/00** (repeals **D 7/93** concerning countervailing duties)

**A.3.- Other aspects of the internal market**

- **Services**

In general

Montevideo Protocol: **D 13/97** (Spanish) and **D 12/98** (Portuguese)

Sectoral Annexes and lists of commitments: **D 9/98** (initial), **D 1/00** (first round), **D 56/00** (second round), **D 10/01** (third round), **D 11/01** (general commitments for the future)

Specific sectors

Insurance: **D 8/99** + **D 9/99** (harmonization in order to liberalize establishment)

Transport



- Hazardous merchandises (rules on substance: **D 2/94 + D 14/94**; sanctions: **D 8/97**; uniform control procedure **R 6/98 + R 2/99**; specific control procedures: **R 10/00**; specific control procedures for rail transport))
- Multimodal transport: **D 15/94**
- Document TIF/DTA (application Cono Sur agreements): **R 9/92**
- “Green card” (application Cono Sur agreements): **R 37/92 + R 120/94 + R 63 /99**
- Access to the profession (in the framework of ALADI agreement): **R 58/94**
- Insurance multimodal transport: **R 62/97**
- Vehicle technical inspection (application Cono Sur agreements): **R 75/97**
- Vehicle technical rules Cat. M3 for motor vehicle passengers transport: **R 19/02**
- Vehicle technical rules Cat. M2 for motor vehicle passengers transport: **R 20/02**

Transport/traffic security: **R 8/92**

Telecommunications: **R 42/93 + R 43/93 + R 25/94 + R 6/95 + R 146/96 + R 64/97** (repealed by **R 60/01**) + **R 65/97** (repealed by **19/01**) + **R 66/97 + R 68/97 + R 69/97 + R 70/97 + R 71/97 + R 30/98 + R 43/98 + R 23/99 + R 24/99 + R 44/99 + R 45/99 + R 31/01 + R 5/02 + R 6/02 + 18/02**

- **Capital markets**

General criteria for regulation:

**D 8/93 + D 13/94**

Basel norms on minimal requirements of capital

**D 10/93** (only one article)

Principles for Banking Supervision

**D 12/94** (only one article)

Criteria for debt classification and risk splitting

R 1/96 (only two articles)

Basel norms for transparency in financial systems

R 53/00 + R 20/01 (only one article)

- **Free movement of capitals**

Elimination of limits for tourism purposes

R 43/92

Liberalization short term credit bonds ("descuento de efectos")

R 52/92 + R 58/98

- **Intra-zone Investments**

General rules with annex of exceptions: D 11/93

- **Extra-zone investments**

General rules: D 11/94

- **Movement of workers:** D 19/97

**A.4.- Taxation**

- **Indirect taxation:** Nothing

- **Direct taxation:** Nothing

#### **A.5.- Standards for goods and goods production**

- **In general:** R 38/98 (national treatment) + D 58/00 (OTC agreement of WTO)
  
- **Measurements and metrology:** D 4/92 + R 53/92 (repealed by 51/99) + R 57/92 + R 13/93 + R 15/93 + R 91/94 + R 13/95 + R 93/94 + R 94/94 + R 26/97 + R 27/97 + R 51/97+ R 26/99 + R 58/99 + R 17/00 + R 15/01 + R 8/02 + R 9/02
  
- **Phytosanitary:** R 44/92 + R 61/92 + R 62/92 (repealed by R 14/95) + D 6/93 (repealed by D 6/96) + R 30/93 + R 33/93(repealed by R 49/96) + R 34/93 + R 55/93 + R 56/93+ R 23/94 + R 59/94 (modified by R 2/00 and R 32/00, repealed by R 54/01 and 55/01) + R 75/99 + R 61/94 + R 70/94 + R 73/94 + R 74/94 + R 118/94 + R 2/96 (repealed by R 34/02) + R 43/96 (repealed by R 2/00) +R 44/96 (repealed by R 1/00) + R 60/97 (modified by R 69/98, R 53/01 and R 29/00) + D 17/97 (veterinary) + R 28/98 + R 47/96 + R 48/96 (interpreted by R 149/96) + R 87/96 + R 156/96 + R 71/98 + R 11/96 + R 88/96 + from R 89/96 to R 95/96 + 96/96 + 97/96 + 98/96 + 99/96 + 100/96 + 101/96 + 102/96 + 103/96 + 104/96 + 105/96 + 106/96 + 107/96 + 108/96 + 109/96 + 110/96 + 111/96 + 112/96 + 113/96 + from R 60/98 to R 68/98 + R 67/99 a 70/99 + R 30/00 + R 31/00 + Res.: 3/97, 4/97, 19/97, 20/97, 21/97, 17/98, 45/98, 46/98, 70/98, 71/99, 72/99, 74/99, 78/00, 11/02.
  
- **Animal health:** Res.: 11/93, 29/93, 44/93, 66/93 (repealed), 67/93 (repealed by 17/98), 53/94, 57/94, 64/94, 65/94, 66/94 (repealed by 51/01), 67/94, 68/94, 69/94, 75/94 (repealed by 54/00), 3/96 (repealed by 52/01), 4/96 5/96, 6/96, 7/96, 8/96, 9/96 (repealed by 50/96), 10/96, 16/96, 39/96, 40/96, 46/96, 76/96, 77/96, 73/99, 7/00.
  
- **Food and food packaging:**
  
- **Food and packed food:** Res.: 10/91 (repealed by 17/92 and 36/93), 3/92, 18/92, 30/92 (modified by 32/97), 31/92, 36/92, 55/92, 56/92, 14/93, 16/93, 17/93 (modified by

73/93), 18/93, 19/93 (modified by 38/01 and 37/01), 27/93, 46/93, 47/93, 49/93, 59/93, 83/93, 84/93, 85/93, 86/93 (modified by 14/97), 87/93 (modified by 34/97 and actualized by 52/97, 11/99, 13/99, 29/99 y 52/00), 6/94, 18/94, 21/94, 55/94, 95/94 (modified by 36/97) 101/94, 102/94 (modified by 35/96), 104/94, 105/94, 106/94, 5/95, 10/95, 11/95, 12/95, 28/96, , 80/96, 86/96, 140/96, 141/96, 144/96, 15/97, 50/97, 53/97, 54/97, 55/97, 56/97, 72/97, 73/97, 74/97, 15/98 (repealed by 77/00), 16/98, 52/98, 53/98, 54/98, 55/98, 56/98; 9/99, 10/99, 12/99 and 14/99 (all repealed by 50/01); 25/99, 27/99, 28/99, 30/99, 31/99, 32/99, 19/94 (modified by 35/97 and 20/00), 52/99, 55/99, 16/00, 51/00, 67/00, 68/00, 14/01, 57/01, 21/02, 25/02.

- Lactic Products: Res.: 31/93 (repealed by 84/96), 69/93, 72/93.
- Wine and alcoholic beverage: R 45/96 (modified by R 12/02 ) + R 20/94 + R 77/94 + R 143/96 + R 7/02.
- Packaging:
- Identity and quality:

R 70/93 (butter)

R 72/93 (lactic fat)

R 74/93 + 100/94 (onion)

R 71/93 (milk cream)

R 15/94, repealed by 56/99, repealed by 89/99 (honey).

R 16/94 (alimentary caseinates).

R 40/94 (fresh fish)

- R 41/94 (repealed by 98/94) –garlic–.
- R 43/94 (caseine)
- R 63/94 (anhydrate milk fat)
- R 78/94 + 135/96 + 76/94 (milk UAT).

- **R 79/94**, 29/96, 30/96, 31/96, 32/96, 34/96, 42/96, 81/96, 82/96, 83/96, 78/96, 1/97 (cheeses)
- **R 80/94** (fluid milk)
- **R 99/94** (tomato)
- **R 14/96** (cheese Uh7)
- **R 85/96** (strawberry)
- **R 117/96** (apple)
- **R 118/96** (pear)
- **R 136/96** (dust cheese)
- **R 137/96** (milk jam "dulce de leche")
- **R 142/96** (paprika)
- **R 145/96 + 44/98** ( "Minas" frescal cheese )
- **R 5/97** (rice)
- **R 47/97** (fermented milk)
- **R 48/97** (blue cheese)
- **R 82/93**; **R 138/96** and **R 31/93**, repealed by **R 84/96** (powder milk)
  
- **Motor Vehicles: Res. 9/91, 6/92** (repealed by 48/98), 65/92, 26/93, 26/94, 27/94, 28/94, 29/94 (repealed by 49/98), 30/94, 31/94, 32/94, 33/94, 34/94, 35/94, 36/94, 37/94 (repealed by 37/01), 38/94, from **R 82/94** to **89/94** (from **84/94** to **86/94** repealed by 128/96), 29/97, 1/99, 36/01, 40/01, 41/01, 42/01, 43/01, 44/01, 23/02, 24/02, 32/02
  
- **Packaging in general: R 41/92, 58/92, 12/93, 35/93** (repealed by 18/01), 48/93, 60/93, 93/94, 19/00, 22/02
  
- **Medicines, Cosmetics and medical and pharmaceutical inspection: R 4/92, 59/92, 66/92** (repealed by **R 6/93**), 88/93, 92/93, 52/94, 92/94, 96/94 (repealed by **R 33/99**), 110/94 (cosmetic products definition), 4/95, 15/95 (repealed by 12/96), 16/95; 23/95, 24/95, 25/95, 26/95, 27/95, 28/95 (extended all by 28/97 and actualized by 4/99, 5/99, 6/99, 7/99, 8/99, 71/00, 72/00), 29/95, 13/96, 14/96, 22/96, 23/96 , from 51/96 to

53/96, 54/96, R 55/96, 57/96, 66/96, 131/96, 132/96, 133/96, 31/97, 39/97, 21/98, 50/98, 51/98, 72/98, 34/99, 36/99, 37/99, 38/99, 39/99, 46/99, 57/99, 78/99, 79/99, 18/00 (repealed by 17/01), 49/00, 50/00, 61/00, 62/00 (repealed by 74/00 and 66/00), 26/02, 28/02, 29/02.

- **Medical Products:** Res.: 29/95, 36/96 (repealed by R 75/00), 37/96 (repealed by R 40/00), 38/96, 65/96, 79/96, 09/01.
- **Domisaniitary products and production:** Res.: 24/96, 25/96, 26/96, 27/96, 56/96, 30/97 (repealed by R 23/01), 46/97 (repealed by 57/98), 3/99, 35/99, 49/99, 56/00.
- **Textiles:** R 9/00
- **Colorings:** Res. 14/93, 28/93, 45/93, 139/96, 38/97.
- **Other products:** Aerosols: Res.: 80/93, 54/94; Jotters: R 22/94; Toys: R 54/92; Cooking papers: R 47/98; Paper handkerchief: R 2/01; Covering plates: R 16/01.

## **B) OTHER ASPECTS OF THE INTEGRATION PROCESS**

### **B.1.- Macroeconomic coordination:**

D 30/00

### **B.2.- Circulation of persons**

Res.: 44/94 (repealed by R 63/96, repealed by R 75/96), 2/95, 58/96 and 59/96 (repealed by R 74/96).

D: 12/91, 44/00, 46/00, 48/00.

### **B.3.- Procedures in Commercial Borders .**

Dir. 3/95, 6/00.

D: 5/93, 2/99, 11/99, 4/00, 5/00, 12/93.

Res.: 2/91, 3/91, 4/91, 6/91, 1/92.

### **B.4.- Judicial and police coordination**

D: 5/92 (modified by D 7/02), 1/94, 27/94, 1/96, 2/96, 10/96, 1/97, 5/97, 6/97, 9/97, 3/98, 7/98, 14/98, 16/99, 5/98 (repealed by 22/99 (with the complementation introduced by D 13/01, 9/02)), 6/00, 8/00, 10/00, 12/00, 16/00, 18/00, 40/00, 49/00, 53/00, 3/01, 11/02.

### **B.5.- Education and culture and scientific cooperation**

D: 7/92 (extended by 25/97), 4/94, 4/95 (repealed by D 8/96), 7/95, 9/96, 11/96; 3/97, 26/97 (all modified by 11/98 and repealed by 4/99), 13/98, 33/02.

### **B.6- Intellectual property rights**

D: 8/95, 16/98, 1/99 (vegetables)

### **B.7.- Health and Sanitary Services**

Res.: 129/96, 130/96 (repealed by 42/00), 12/97 (repealed by R 41/00), 50/99, 53/99, 80/99 (repealed by 4/01), 6/00, 8/00, 21/00, from 22/00 to 28/00, 55/00, 57/00, 70/00, 34/01, 58/01, 10/02, 30/02.

### **B.8.- Tourism.**

R 41/97

**B. 9.- Employment.**

D 8/92

**B.10.- Environment.**

D 2/01

**C) EXTERNAL RELATIONS**

**C.1.- Agreements with Chile and Bolivia**

- **Horizontal agreements**

Chile: D 3/96 + D 12/97 + R 61/99 + R 62/99

Bolivia: not approved by MERCOSUR

- **Extension to Chile and Bolivia of specific MERCOSUR programs**

Judicial and police cooperation:

D 4/98 (+ D 15/99: error correction), D 6/98 (replaced by D 23/99 + 7/00 + 9/00 + 11/00 + 13/00 + 14/01 + 10/02), 19/00, 12/01, 8/02, 12/02, 8/98, 15/98, 17/99, 17/00, 50/00

Immigration and circulation of persons: D 45/00 and D 47/00

Border neighboring transit: D 19/99 + D 15/00

Education: D 15/01



## **C.2.- Agreement with Mexico**

D 15/02

## **C.3. Agreements with the European Community and its Member States**

### **- 1995 Framework agreement**

never approved by MERCOSUR

### **- Specific agreements**

1993 horizontal administrative agreement with the European Commission: never approved by MERCOSUR

Administrative agreements with the European Commission: **D 23/97**

## **C.4.- Cooperation with international organizations**

- UNESCO: **D 22/97**

- BID: **D 24/97**

- ALADI: **D 53/00**

## **C.5.- Cooperation with specific third countries**

- Canada: **D 14/97**

- South Africa: **D 62/00**

- EFTA: **D 63/00**

- Germany: **D 3/02**

## **C.6.- MERCOSUR coordination in international fora**

D 32/00

D) INSTITUTIONAL ASPECTS.

D 1/91, D 1/98, D 17/98, R 22/98, R 23/98, R 60/00, D 22/00, D 23/00 (extended by D 55/00), R 38/98.

APPENDIX TO ANNEX 1.I

ADDITIONAL LIST OF NORMS NOT REQUIRING INTERNALIZATION  
ACCORDING TO BOM N° 20 (see comment at the end)

Supprimé : ULTIMA LISTA  
DE NORMAS VIGENTES

Decisions:

Year 1991: 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16

Year 1992: 1, 2, 3, 6, 7, 9, 10, 11

Year 1993: 1, 2, 3, 4, 5, 6, 7, 9, 12

Year 1994: 9, 20, 21

Year 1995: 1, 2, 3, 4, 5, 6, 9

Year 1996: 1, 7, 12, 13, 14, 15

Year 1997: 3, 7, 10, 12, 14, 20, 21, 22, 23, 24, 25, 26

Year 1998: 6, 11, 18, 20, 21, 23

Year 1999: 2, 3, 6, 7, 13, 24, 27

Year 2000: 1, 2, 3, 20, 21, 22, 23, 24, 25, 26, 27, 28, 30, 31, 32, 33, 34, 36, 37, 38, 39, 42, 43, 51, 52, 53, 54, 55, 57, 59, 60, 61, 65, 66, 67

Year 2001: 1, 3, 5, 7, 11, 12

### Resoluciones:

Year 1991: 1, 3, 4, 6, 8, 9, 10, 11, 12

Year 1992: 1, 2, 5, 6, 7, 10, 11, 12, 14, 15, 16, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 33, 34, 35, 37, 38, 40, 42, 45, 46, 48, 49, 50, 51, 52, 59, 60, 62, 63, 64, 66, 67

Year 1993: 1, 2, 4, 5, 6, 7, 8, 9, 15, 21, 22, 23, 24, 25, 31, 32, 33, 34, 37, 38, 39, 42, 50, 51, 52, 53, 54, 58, 61, 62, 63, 64, 65, 66, 67, 68, 72, 74, 76, 77, 78, 89, 90, 91, 92, 93

Year 1994: 3, 4, 5, 7, 9, 10, 13, 14, 15, 29, 37, 39, 41, 42, 44, 45, 46, 49, 50, 51, 56, 64, 66, 72, 75, 81, 84, 85, 86, 96, 97, 108, 114, 115, 121, 122, 124, 125, 126, 128, 129, 130

Year 1995: 2, 9, 14, 15, 17, 18, 20, 21, 22, 23, 29, 31, 32, 34, 38, 39, 42

Year 1996: 3, 9, 11, 12, 15, 17, 18, 19, 20, 25, 26, 27, 33, 36, 37, 43, 44, 48, 51, 52, 53, 54, 55, 58, 61, 63, 64, 67, 68, 69, 71, 79, 87, 96, 113, 114, 115, 116, 123, 124, 125, 126, 127, 147, 148, 149, 150, 151, 152, 153, 154, 155, 156

Year 1997: 1, 6, 8, 9, 11, 12, 16, 17, 18, 22, 23, 25, 28, 35, 36, 41, 42, 46, 47, 49, 52, 53, 57, 58, 59, 60, 61, 64, 65, 67, 68, 70, 76, 77, 78, 79, 80, 81

Year 1998: 4, 5, 7, 8, 9, 10, 11, 14, 15, 16, 18, 19, 20, 22, 23, 25, 26, 29, 31, 32, 33, 34, 37, 38, 57, 59, 69, 71, 73, 74, 75, 76, 78

Year 1999: 2, 4, 5, 6, 7, 8, 13, 15, 16, 17, 35, 36, 37, 38, 39, 42, 43, 46, 47, 48, 51, 54, 57, 58, 66, 80, 81, 82, 83, 84, 85, 86, 87, 88

Year 2000: 1, 11, 12, 13, 17, 18, 33, 34, 35, 36, 37, 39, 43, 44, 45, 61, 62, 73, 76, 79, 80, 81, 83, 84, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95

Year 2001: 1, 5, 6, 8, 10, 21, 22, 24, 25, 26, 28, 33, 35, 47, 49, 58, 59, 61, 62, 63, 66

Year 2002: 1, 2, 3, 4, 13, 14, 15, 16, 33, 37, 38

#### Directivas:

Year 1994: 1

Year 1995: 1, 2, 5, 8, 9, 10, 11, 12, 13, 14, 15, 18, 19, 21, 22, 23

Year 1996: 2, 4, 5, 6, 8, 10, 14, 16, 17

Year 1997: 7, 9

Year 1998: 1, 2, 3, 10, 12, 13

Year 1999: 3, 4, 5, 7, 8, 9, 10, 16, 17,

Year 2000: 4, 6, 10

Year 2001: 1

The previous list of norms enforced had been published in Boletín Oficial del MERCOSUR Num 18. When compared to the list published in Boletín Oficial del MERCOSUR Num 20, it would appear that 65% of the total number of norms enforced entered into that category after publication of BOM Num 18. This would suggest an acceleration in the pace of internalization.

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However, while the list published in BOM Num 18 included “norms enforced that have been internalized by the four member states”, the latest list includes “norms enforced that have been internalized by the four member states and those that do not need internalization –including derogations, in accordance to what was established by the Common Market Group as annex XV during its XLVI meeting held in Buenos Aires on June 20 2002” (emphasis ours). In sum, in accordance to what was established by the CMG, the latest list includes all norms that do not require internalization by member states (usually because they are preparatory or organizational) as well as those that, even if not internalized, were later on derogated by new norms (even if the derogation has not been yet internalized). Consequently, the list is useful as a guide to what no longer needs to be internalized, rather than as a guide of how many of the norms have been effectively incorporated.

For clarity, this appendix classifies the norms that show up as additions in the last issue of the BOM. Only those marked in green have been effectively incorporated through a domestic legal or administrative act (and should thus be added to the BOM Num 18 list). Norms marked in black are those that do not need incorporation. Lastly, norms marked in blue have not been incorporated by MERCOSUR member states, but were later derogated by new norms (frequently not internalized either).

**ANNEX 1.II**

**DIRECTORY OF MERCOSUR'S LAW WITH A**  
**SUMMARY OF CONTENTS**

## A) CONSTRUCTION OF THE CUSTOMS UNION AND THE INTERNAL MARKET

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### A.0. Tariff Classification.

#### **Tariff Classification (approved together with the Common External Tariff).**

1. The D 22/94 approved MERCOSUR's Common External Tariff ( CET) , the structure of which is based on the classification of the Harmonized System of Nomenclature. It approved the convergence lists in the capital goods, computer science and telecommunications sector. Likewise, it approved:

- Basic lists of exceptions to the CET by each Member State (which R 47/94 allowed each country to submit)
- Lists of goods exempted of CET by virtue of the application of the Adaptation Method. These exceptions to the CET were additional to the exceptions of the basic lists of exceptions.

And the corresponding convergence schemes until the tariff rate defined in the CET for third parties was achieved.

The CET and all the lists of exceptions would become effective on January 1<sup>st</sup>, 1995. It was also approved that each Member State could advance the convergence process on January 1<sup>st</sup>, May 1<sup>st</sup> and September 1<sup>st</sup>, of each year.

2. Dir. 7/95 established the amendment regime for the common classification of MERCOSUR and its corresponding CET.

R 19/95 approved to ratify D 7/95, implementing the common classification.

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R 65/01 approved the final version of the CET, adapted to the third amendment of the Harmonized System.

### **Internal Procedures for making Decisions regarding Classification problems.**

3. R 81/93 and D 26/94 established, one in a temporary way, and the other in a final way, a regime in order to harmonize the adoption of decisions, criteria and opinions on tariff classification. Thus, they established the procedures for the national administrations of each Member State to make decisions regarding goods classification, how they should be communicated to the other Member States, how to express discrepancies and how to make a decision when there is lack of consent.

### **Specific decisions regarding Classification.**

4. Dir. 6/95, 16/95, 17/95, 1/96, 3/96, 9/96, 13/96, 1/97, 3/97, 6/97, 13/97, 14/97, 16/97, 18/97, 5/98, 10/98, 12/98, 3/99, 4/99, 5/99, 7/99, 8/99, 9/99, 10/99, 16/99, 2/00, 7/00, 8/00, 9/00, 3/01, 5/01, 3/02 approve tariff classification opinions.



## **A.1. Intra-zone Trade Regime**

### **Tariff Elimination and "Adaptation Regime".**

#### General Rules

1. In annex I of the Asunción Treaty, the Member States agreed to eliminate by December 31<sup>st</sup>, 1994 as a deadline, tariffs and other restrictions applied to its reciprocal trade, such term having been extended until December 31<sup>st</sup>, 1995 for the lists of exceptions of Paraguay and Uruguay, initiating a progressive, linear and automatic tariff reduction program for the goods under the tariff classification of ALADI (Latin American Integration Association), thus establishing dates and percentages according to this schedule.

#### **DATE/TAX REDUCTION PERCENTAGE**

30/6/91	31/12/91	30/6/92	31/12/9	30/6/93	31/12/9	30/6/94	31/12/94
			2		3		
47	54	61	68	75	82	89	100

Likewise, a tariff reduction schedule for the preferences granted by the partial scope agreements of ALADI was established.

Lists of exceptions to the tariff reduction schedule were allowed, with amounts of specific items by Member State, which should be reduced in stipulated percentages by the end of each calendar year.

It was agreed that on December 31<sup>st</sup>, 1994 and within the Common Market, all non-tariff restrictions should be eliminated.

However, this annex was not applied to the Partial Scope Agreements of Economic Supplementation Number 1, 2, 13 y 14 and to the commercial and agricultural agreements subscribed within the framework of the 1980 Montevideo Treaty.

2. Through D 22/00 MERCOSUR was re-launched, deciding that Member States could not adopt any measures restricting the reciprocal trade, whatever their nature. Each Member State was required to prepare a listing identifying situations or measures of any nature, which would restrict access to the markets.

“Adaptation regime” (*Régimen de Adecuación*).

3. D 5/94 (and the operative details established in R 48/94), established the possibility that Member States could furnish a reduced list of goods which, as from January 1<sup>st</sup>, 1995, would require a tariff treatment called "adaptation regime", with the possibility to only include in such listings the goods established in the national lists of exceptions to the CET 18, or which had been the object of safeguard measures in the Asunción Treaty.

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The regime established a four-year final tariff reduction term for Argentina and Brazil, a five-year term for Paraguay and Uruguay and a four-year term for all the goods subject to the safeguard regime of the Asunción Treaty.

4. D 24/94 approved the lists of the goods comprising the adaptation regime.

## **Rules of Origin**

### General Regulations.

5. Annex II of the Asunción Treaty establishes the general regime for the origin regulations of goods, determining different criteria according to the raw material and the production and transformation procedure of goods, also empowering Member States to agree upon the specific origin requirements which would prevail over the general classification criteria. Member States are empowered to request the review of the origin requirements. Furthermore, it establishes guidelines for origin statements, certification and verification.

6. D 6/94 (as amended by D 4/02) approved the regulation on rules of origin , specifying the matters related to the qualification and determination of origin; issuance of certificates of origin; and penalties for adulteration or forgery of the certificates of origin or for breach of the verification and control procedures.

7. D 23/94 (as amended by D 16/97) establishes the specific origin requirements for goods included in the lists of exceptions to the CET foreseen in D 7/94 (see A.21).

8. D 3/00 approved the adaptation of some of the aspects contained in the regulations resulting from D 6/94 and 16/97.

9. Through D 21/98 the MERCOSUR Trade Commission was instructed to complete, before 06/31/2000, a list of tariff items subject to the application of differentiated trade policies not included in the XXII Protocol Additional to ACE 18 and which would be subject to the MERCOSUR Origin Regime and the requirements applicable to each of them, as from 01/01/2001, according to the application scope established by the VIII Protocol Additional to ACE 18.

#### Specific lists of goods.

10. There is a listing of goods subject to the MERCOSUR Origin Regime and the requirements applicable to each of them, as arises from Dir. 8/97 (which replaced the listing established in D 5/96), as amended by D 41/00.

#### Bodies authorized to issue certificates and apply penalties.

11. D 2/91 established the bodies authorization regime to issue certificates of origin, the procedures and administrative penalties regime, the system and requirements for the applications for certificates of origin, the requirements which the issued certificates must fulfill, the authenticity control of the certificates and the penalties on issued certificates

which do not comply with the established regime. The regulation includes a specimen of the certificate of origin form.

Certificate Control and Administrative Regulations for the implementation of the origin regime.

12. Dir. 4/00 approved the consolidated text of the guidelines for certificate control by the customs administration offices and for the bodies authorized to issue certificates of origin. It established numerals to consign the different kinds of goods. Thus, it repealed Dir. 12/96 (as amended by Dir. 12/97, 20/97, 11/98 and 15/99), which gave the initial guidelines on the matter.

**Non-tariff restrictions directly applicable to trade.**

Elimination General Program

13. Through D 3/94 a register of non-tariff restrictions (NTB) to imports and exports was prepared, for the purposes of their elimination or harmonization in MERCOSUR, however allowing the possibility of keeping the restrictions for reasons duly justified by the Member State. December 31<sup>st</sup>, 1994 was established as the harmonization and elimination term.

14. Through R 123/94 the MERCOSUR Trade Commission was instructed to constitute a Technical Committee to carry out the NTB elimination and harmonization process, establishing its duties. Member States were ordered to eliminate the NTB appearing in the annex before December 31<sup>st</sup>, 1994, or start the corresponding parliamentary proceedings. R 17/95 added NTB to the list of the R 123/94 annex.

15. D 17/97 ordered the Member States to send, before January 31<sup>st</sup>, 1998, an elimination schedule of the non tariff measures still existing, which as a maximum term, should be eliminated by May 30<sup>th</sup>, 1998, except in case of valid justification. At the same time, a

Technical committee was instructed to establish the NTBs whose elimination was a priority.

Incentives and Subsidies to Exports; temporary admission and draw back.

16. R 7/91 recommended the Member States to administer, during the transition period, the draw back mechanisms (restitution of taxes to imports of the imported goods which are internally transformed and later exported) and temporary admission in the most harmonized possible way, promoting constant consultation. A list of the laws of each Member State, regulating the different terms of said mechanism was prepared.

17. D 10/94 harmonized the application and utilization of the incentives to exports by the MERCOSUR countries, which bound themselves to program incentives to exports subject to the provisions set forth in GATT and to discuss among themselves the creation of any new incentive to exports by any Member State, as from January 1<sup>st</sup>, 1995, and the maintenance of the existing incentives.

18. D 21/98 established that before December 30<sup>th</sup>, 2000, the Member States could request the compliance with the MERCOSUR Origin Regime, according to what is established in the VIII and XXII Protocols Additional to ACE 18 for all the intra-region trade and until said date, the limitations to the concessions of the draw back regimes established in D 10/94 should not be applicable. As from the imposition of the foregoing regulation, D 31/00 envisaged the preparation of a regulation contemplating all the imports special customs regimes applied by the Member States, which imply the total or partial suspension of the customs duties on temporary or final imports of commodities and the objective of which is not to enhance and later re-export the resulting commodities to third countries. In compliance with such provision, D 69/00 repealed the foregoing decision (D 21/98) establishing that the Member States bind themselves to completely eliminate, by January 1<sup>st</sup>, 2006, all the mentioned special customs regimes and the benefits granted by virtue of such regimes exempting the special customs areas. Until that date, it was approved that the Member States may request the compliance with the MERCOSUR origin regime for all

intra-region trade. The MERCOSUR Trade Commission (CCM) (from Spanish: "Comisión de Comercio del MERCOSUR") was instructed to agree upon a reduced list for the purposes of applying the special regimes (a maximum of 25 items per Member State), such products benefiting from the MERCOSUR free trade until January 1<sup>st</sup>, 2006, provided they comply with the MERCOSUR Origin Regime. In short, D 69/00 simply postponed the term during which the origin may be requested to all the trade activities, due to the lack of existence of a common list of exceptions.

### **Tax Exemptions to travelers.**

19. D 18/94 establishes regulations applicable to travelers' luggage, establishing different traveler categories, luggage appraising, franking, prohibitions, regime in case of mislay, etc.

### **Sectorial agreements and regulations.**

#### Iron and steel goods:

20. R 13/92 approved the Iron and Steel Sectorial Agreement subscribed by the representative bodies of this industry of the four Member States of the Asunción Treaty, instructing for its inclusion in ACE 18.

#### Sugar:

21. R 19/94 renewed the mandate of the Ad Hoc Group established by D 7/94 (established by the AEC) to define an adaptation regime until 2001 for the sugar sector, establishing the parameters to be considered in the proposal to be submitted by the group. It was established that until January 1<sup>st</sup>, 1995, and until the final approval of the regime for the sugar sector, Member States may apply their total nominal protection to intra MERCOSUR trade and to imports coming from third countries for the products of that

sector, but in no case can the protection of the intra MERCOSUR scope exceed those applied to third countries.

Automotive:

22. Through D 29/94 it was decided to create an Ad Hoc Technical Committee of the MERCOSUR Trade Commission to prepare a proposal for an Automotive Regime, describing in detail the elements to be considered and the duties of the Committee. The term established for Member States to submit reports on their national regimes was December 31<sup>st</sup>, 1994, Member States being unable to amend such regimes unilaterally from January 1<sup>st</sup> to June 1<sup>st</sup>, 1995. As from June 1<sup>st</sup>, 1995 they may only amend the bilateral agreements in order to increase the intra-region trade flows.

23. D 70/00 approved the agreement on MERCOSUR Automotive Policy which established the bases for free trade in the sector, however empowering Paraguay to continue to apply its national policy. It was recommended to continue with negotiations in order to include Paraguay. Tax rates were imposed to every automotive product imported from other Member States, as well as the CET and the national importation tariffs -establishing differences according to the different Member States- to vehicles and automobile parts of non-member countries. Tariff preferences were established in the intra-MERCOSUR trade.

24. D 4/01 approved the particular provisions for the full inclusion of Paraguay in the agreement on Automotive Policy.

**Trade and competition defense.**

Information and advice exchange for the implementation of the national legislation on trade defense for intra-region trade

25. R 63/93 approved the information exchange procedure for dumping investigations regarding imports from any of the MERCOSUR countries. It was approved that, during the

transition period, the investigations carried out to determine the existence, degree and effects of an eventual damage by imports from any of the member countries, should be started and developed following the national procedures legally established for such purpose. Each country's competent authorities would examine the existence of sufficient evidence which justifies an investigation. They would later notify the government of the exporting country by means of a complete description of the product which is the object of dumping. It was established that the procedure provided for in the regulation would not prevent the importing country's authorities to adopt the preliminary decisions or promptly apply provisional or other measures which they deem appropriate to prevent or repair the damage. Thus, the application of the national legislation was authorized and only a notifications system was regulated. R 129/94 extended the effective term of such regulation.

26. Dir. 5/95 repealed the foregoing regulations by approving a "new version" of the Information Exchange Procedure for the case of dumping investigations for imports from any of the MERCOSUR countries. The actual contents of the procedure previously regulated were not altered, since it was established that until the adoption of a Common MERCOSUR Regulation on Competition Defense, investigations for the purpose of determining the existence, degree and effects of an eventual damage by imports from any of the member countries should be started and developed, following the national procedures legally established for such purpose.

27. D 64/00 regulated the investigation and application process of antidumping measures and countervailing duties in intra-zone trade until 11/30/2000. It was decided that the Member States should carry out the investigations for the application of antidumping or compensation measures on imports of goods from a Member State, also following the usually applicable regulations, the regulations which appeared in the Annex to this Decision. It established terms, notification requirements, evidence elements, the information exchange procedure between Member States during the course of the investigation, how to determine the damage caused, the scope of the term "Domestic Industry", the Antidumping or Compensation Measure application method, price



commitments, antidumping or compensation right, measure duration, monitoring of investigations carried out by MERCOSUR.

28. D 13/02 decided to adopt, within MERCOSUR, the Agreement regarding the Application of Article VI of the General Agreement on Tariffs and Trade (GATT) of the WTO, for the application of antidumping measures in intra-zone trade. It was decided that, in case of disputes in intra-zone trade, the parties may agree upon the forum, and settle the matter within the WTO scope or according to the dispute settlement regime in force in MERCOSUR, at the claimant's option.

D 14/02 decided to approve, within MERCOSUR, the Agreements on Subsidies and Countervailing Duties of the World Trade Organization, in order to deal with subsidies and countervailing duties in intra-zone trade. It was decided that, in case of disputes in intra-zone trade, the parties may agree upon the forum and settle or the matter within the WTO scope, or according to the dispute settlement regime in force in MERCOSUR, at the claimant's option.

#### Competition.

29. D 21/94 approved basic guidelines on competition defense, urging the Member States to submit a detailed report on the compatibility of their respective legislation with said guidelines and, based on such information, approve a "Regulation for Competition Defense in MERCOSUR". It approved a provisional procedure to be applied in case of complaints related to the matter, until said document was approved. According to said procedure the affected State should specify to the Trade Commission the violation of the general guidelines approved by this regulation, and said State may apply the penalties established in its national legislation. In case of disputes due to the existence of a breach, the Decision makes reference to the Brasilia Protocol.

30. D18/96 approved the Competition Defense Fortaleza Protocol. Regarding the investigations of dumping between Member States, it once again referred to the application

of the national legislation until December 31<sup>st</sup>, 2000 (foreseeing that by that date the issue would be regulated by MERCOSUR). Regarding the Protocol for the Defense of Competition, it defined the competition restrictive practices as those whose object or effect is to limit, restrict, falsify or distort the competition or the access to the market or those which take advantage of a dominating position in the relevant market of goods or services within MERCOSUR and which affect trade between Member States. Some conducts (non an exhaustive list) were typified which violated competition law. The Member States were ordered to agree upon a control procedure for acts and contracts within MERCOSUR. The procedure to be followed by the national bodies in case of acts which violate competition law were regulated and penalties were established. D 2/97 supplemented the foregoing decision by adding quantification criteria regarding the value of fines.

### **Specific regimes.**

#### Rental cars and private cars for tourism:

31. R 76/93 approved the temporary exit regime for vehicles owned by car rental companies of the MERCOSUR countries, demanding registration in the customs office, documentation requirements, data to be established, etc.

R 131/94 approved the regulation regarding the circulation of the MERCOSUR community vehicles for personal use, for tourism purposes, determining authorized drivers, formalities regarding circulation, documentation and violations.

R 35/02 repealed the foregoing resolutions (R 76/93 and R 131/94), by approving the "Regulations for the Circulation of Tourist, Private and Rent Vehicles, within the MERCOSUR Member States", allowing the free circulation of community vehicles for tourism purposes. The documentation required to drivers was established, exempting all vehicles from complying with the customs formalities. As from that moment, the steps to be followed in case of theft and/or larceny, the individuals authorized to drive, etc.

Promotion material:

32. R 121/96 (revoking R 115/94) approved a customs treatment regime for all promotional material circulating between the Member States to be used without charges in shows, exhibits, congresses, workshops, etc., establishing the requirements for its liberalization.

Special Customs Treatment for transport including journeys by water (Southern Cone):

33. Dir. 4/97 regulates a special customs treatment for international circulation including journeys by water on a vessel under the roll on - roll off system.

Psychotropic substances :

34. R 27/98 (superseding R 49/97) approved the forms and effective terms of the import and export authorizations and certificates establishing that there are no objections to the terms specified narcotics and psychotropic substances. It established specific time frames for authorizations.

Postal Services:

35. R 117/94 approved an agreement on the customs operation for the transportation of correspondence and packages by passenger buses of regular lines authorized to make international journeys, establishing the customs value of the goods, requirements for the transportation of packages, goods exempted from the regime and liabilities.

R 29/98 approved the provisions regarding Postal Exchange between Cities located in the Border Zone and its Technical and Operational Procedure, only applicable to the objects of correspondence not charged with duties, while R 21/99 (plus the supplementary provisions of R 22/99) approved a regulation on Customs Control of Postal Exchange between Cities located in the Border Zone for customs control for the purposes of preventing and repressing eventual customs illegal acts. It established that customs supervision shall be

preferably carried out within the border Postal Administrations premises, such Postal Administration Offices being responsible for the custody of the correspondence objects and that the correspondence objects which do not comply with the conditions established for the postal exchange set forth in R 29/98 shall continue under custody of the destination Postal Administration Offices and be returned to their origin, except if they are withheld by the destination Customs Administration Offices, in which case, they shall be subject to such Member State's customs legislation.

Border Crossing:

36. D 18/99 (ruled by D 14/00) approved the agreement on circulation through neighboring borders, allowing for the granting of credentials accrediting the quality of resident of the border zone.

Perishable goods:

37. Dir. 20/95 establishes that the obligation imposed on Member States to implement the necessary mechanisms to expedite circulation through border crossings of live animals, embryos or non fertilized eggs, and animal or plant perishable goods transported by vehicles, by establishing a verification preferential area for the purposes of preventing the deterioration of live animals' health, loss of the hygienic and sanitary conditions of goods and/or interruption of the cold chain.

Goods for cultural projects:

38. R 122/96 approved a customs treatment to enable the circulation of property belonging to cultural projects approved by the competent bodies within the MERCOSUR countries.

**Specific Territorial Regime.**

Specific exception for Brazil and Uruguay (Colonia and Manaus Duty-Free Zones):

39. D 9/01 established that as from July 1<sup>st</sup>, 2001 and for the exclusive purpose of bilateral trade between Brazil and Uruguay, certain specified goods of the duty-free zones shall be exempted of the CET and the imports national tariffs.

## A.2. Extra-zone trade regime.

### **Common External Tariff and amendments.**

1. D 7/94 approved the CET project. Withdrew all the objections to rates envisaged in the Project formulated by the Member States and established the following rates:

- The Capital Goods would lineally and automatically converge at a common tariff of 14% on January 1<sup>st</sup>, 2001 (until January 1<sup>st</sup>, 2006 for Paraguay and Uruguay), or less if agreed.
- For Computer Science and Telecommunication goods, there would be a linear and automatic convergence towards a maximum common tariff of 16% on January 1<sup>st</sup>, 2006.
- Argentina, Brazil and Uruguay could maintain, until January 1<sup>st</sup>, 2001, a maximum number of 300 tariff items of MERCOSUR Common Classification as exceptions to the AEC, excluding from said number those corresponding to Capital Goods, Computer Science and Telecommunications.
- Paraguay could establish up to 399 exceptions, excluding from said number those corresponding to Capital Goods, Computer Science and Telecommunications, which should have an origin regime of 50% of regional integration until the year 2001 and, as from said date, and until 2006, the MERCOSUR general origin regime would be applied. In case of the detection of a sudden increase of the exports of these products, which imply serious damage or damage threat, the affected country may adopt duly justified safeguard measures until the year 2001.

It was established that the Member States shall define and submit to the other Member States their proposals of lists of exceptions to the CET.

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It was approved to constitute Ad-Hoc working Groups in order to define, before October 15<sup>th</sup>, 1994, the transition regime of the automotive and sugar sectors for their adaptation to the Customs Union regime.

All goods which were under PEC-CAUCE (the Protocol on Commercial Expansion (PEC) (from Spanish: "Protocolo de Expansión Comercial"), entered into by Brazil and Uruguay, and the Agreement

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between Argentina and Uruguay on Economic Supplementation (CAUCE) (from Spanish: "Convenio Argentino-Uruguayo de Complementación Económica") are partial scope bilateral agreements for economic supplementation within the scope of ALADI, which included preferential treatments and tax reduction schedules), were assured, until the year 2001, the continuity of the existing access conditions, except for: i) Automaticity regime; ii) Re-negotiation of goods; iii) Quantification mechanism of CAUCE.

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2. D 22/94 approved the MERCOSUR Common External Tariff ( CET), the structure of which is based on the classification of the Harmonized System of Nomenclature. It approved the convergence lists in the sector of capital, computer science and telecommunication goods. Furthermore, the following was approved:

- Basic lists of exceptions to the CET by each Member State (which every country was allowed to submit by virtue of R 47/94)
- Lists of goods exempted from the CET by virtue of the application of the respective Adaptation Regime and the convergence scheme until the rate for third parties defined by the CET is met.

The CET and all the lists of exceptions would become effective on January 1<sup>st</sup>, 1995. At the same time it was approved that each Member State could advance the convergence process, on January 1<sup>st</sup>, May 1<sup>st</sup> and September 1<sup>st</sup> of each year.

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**Supprimé :** ' The Protocol on Commercial Expansion (PEC) (from Spanish: "Protocolo de Expansión Comercial"), entered into by Brazil and Uruguay, and the Agreement between Argentina and Uruguay on Economic Supplementation (CAUCE) (from Spanish: "Convenio Argentino-Uruguayo de Complementación Económica") are partial scope bilateral agreements for economic supplementation within the scope of ALADI, which included preferential treatments and tax reduction schedules.¶

3. Dir. 7/95 established the amendment regime for the MERCOSUR common classification and its corresponding CET.

R 19/95 approved to ratify D 7/95, implementing the common classification.

R 65/01 approved the final version of the CET, adapted to the third amendment of the Harmonized System.

#### Horizontal amendment.

4. D 15/97 increases the CET in three percentage points, maintaining the one in force for certain items.

D 67/00 extension of the effective term of the foregoing regulation for two years, reducing the increase to 2,5 percentage points.

D 6/01 reduces one additional percentage point.

Specific amendments.

5. R 1/95, 30/95, 35/95, 60/96, 62/96, 70/96, 72/96, 73/96, 119/96, 120/96, 7/97, 10/97, 11/97, 24/97, 40/97, 44/97, 45/97, 63/97, 82/97, 1/98, 2/98, 3/98, 12/98, 13/98, 35/98, 36/98, 39/98, 41/98, 18/99, 19/99, 20/99, 40/99, 41/99, 64/99, 65/99, 76/99, 4/00, 14/00, 46/00, 47/00, 58/00, 59/00, 63/00, 64/00, 65/00, 3/01, 7/01, 11/01, 12/01, 25/01, 29/01, 30/01, 32/01, 45/01, 46/01, 48/01, 17/02 and 36/02 apply the regime established in Dir. 7/95 and R 19/95, establishing amendments to the AEC, consisting of the elimination of positions, substitution and/or amendment of texts, AEC substitution, code substitution, inclusions, eliminations, aliquot inclusion or code substitution /sic/.

Temporary exceptions for specific Member States.

General Rules:

6. R 22/95 created a system to adopt specific measures in the tariff field in order to facilitate the supply of raw material and inputs. In order to adopt justified measures for such purposes, the rule foresees a specific procedure, establishing as a limit for the benefited goods not to exceed fifty (50) tariff items, at eight (8) digits, of the MERCOSUR Common Classification. The other Member States were allowed to apply the same rates during the effective term of the measure, in order to preserve equivalent competition conditions in the region. The maximum term established for the application of the system was April 28<sup>th</sup>, 1996. R 37/95 established that the aliquot to be applied to goods which tariff reduction was authorized by Res. N° 22/95 of the Common Market Group (GMC) (from Spanish: "Grupo del Mercado Común") could not be of less than 2%.

R 19/96 extended the described regulation's effective term one more year.



R 69/96 specifically empowered the MERCOSUR Trade Commission to adopt the specific tariff measures for the purpose of guarantying the supply, regulating the procedure to be followed for the purpose of authorizing the mentioned measures. R 33/98 extended the effective term of the foregoing resolution until December 28<sup>th</sup>, 2000, introducing further amendments. R 69/00 repealed the two foregoing resolutions (R 69/96 and 33/98), establishing a new procedure and new limits for the adoption of specific measures to be taken by the Trade Commission due to supplying reasons.

All these regulations admit temporary exceptions and for an undetermined term, which cannot be of more than one year.

General exception for Argentina.

7. D 1/01 empowered Argentina to apply, until December 31<sup>st</sup>, 2002, rates of duties on specific imports from countries that do not belong to MERCOSUR (according to R 8/01 and 27/01 of the Argentinean Ministry of Economics).

Specific Exceptions.

8. R 33/95, 37/95, 40/95, 70/96, 64/01 and Dir. 4/96, 7/96, 11/96, 18/96 (as amended by R 2/97 + R 11/97), 19/96, 5/97, 10/97, 15/97, 19/97, 3/98, 4/98, 6/98, 7/98, 8/98, 9/98, 16/98, 1/99, 2/99, 6/99, 11/99, 12/99, 13/99 (extended by 5/00), 14/99, 1/00, 3/00, 11/00, 12/00, 13/00, 14/00, 1/01, 10/01, 11/01, 12/01, 1/02, 2/02, 6/02 constitute temporary regulations which, in accordance with the general rules mentioned in point 6 hereof, authorize one Member State to make tariff reductions for certain specific items in its imports of industrial inputs or to incorporate certain tariff items to the basic lists of exceptions to the CET already existing in each Member State.

## **General Preference System (GSP)**

Access to the GSP/UNCTAD (United Nations Conference on Trade and Development) agreement and to the Second round of negotiations of the GSP/UNCTAD agreement.

9. By virtue of the UNCTAD's Global Trade Preference System and of the convenience of being a party to it, MERCOSUR approved through D 51/00, a project for a Protocol for the access of MERCOSUR to said system with a list of concessions to said system with specific items. In the Second Round of Negotiations, MERCOSUR, through D 52/00, approved a list of offers for their negotiation.

### **Customs code and other legislation on customs matters.**

#### Customs Code:

10. D 25/94 approved the Protocol subscribed by the Member States establishing the MERCOSUR Customs Code. It regulates: the rights and obligations of individuals, the exercise of customs authority, basic elements for the application of tariffs, tariff classification of commodities, origin rules, customs value of commodities, the provisions applicable to the commodities introduced into customs territory until they are assigned a customs destination, the introduction of commodities into customs territory, commodities arrival and unloading statement, obligation to provide a customs destination to the commodities, temporary deposit, customs regime, clearance for consumption, re-importation, import suspension regimes, customs traffic, customs deposit, temporary admission, exportation, export suspension regimes, customs traffic, commodities with prohibitions and restrictions, re-exportation, destruction of commodities which put public health or the environment under risk, abandonment, substitution of commodities, special customs treatments, express remittances, samples -fragments or parts of commodities necessary to know its nature-, postal remittances, luggage, loading units, on board supplies-goods for use within the vessels or airship, border trade, military and police means of transport, duty-free zones and special customs areas, customs tributary obligation, taxable

fact -fact which generates customs duties obligations-, determination and request of customs tributary credit, subject to liabilities, guaranty, termination of customs tributary credit, restitution of duties and cancellation of customs tributary credit, violations to customs provisions, kinds of violations, penalties, infringement proceedings, responsibilities, tax evasion, inaccurate statements, recourses, legal effects of the acts of the Member States, creation of the Customs Code Committee -competent to resolve upon doubts referring to the application of the code-, exchange between Member States and exchanges between Member States and third countries.

#### Customs Clearance:

11. D 16/94 establishes specific regulations regarding customs clearance, referred to customs control of the cargo introduced into MERCOSUR customs territory, the arrival statement, the treatment to be given to the commodities which are the object of the arrival statement, unloading, temporary deposit, previous examination and withdrawal of samples of commodities, the statement for a customs regime, customs control of the cargo to be exported, the departure statement, storage, statement, shipping of commodities, common provisions of the simplified statements, document analysis and verification of commodities, selection for document analysis and verification of commodities, document analysis, physical verification of commodities, requirements arising from customs control, customs circulation.

#### Customs Valuation.

12. D 17/95 and Dir. 4/95 establish guidelines for the valuation of commodities. As well as the applicable procedure.

#### Integral Control / customs station of Uruguayan railway border:

13. Dir. 4/02 approves the regulations for the operation of the integrated control area (ACI) (from Spanish: "Area de control integrado") / Customs station of Uruguayan railway border.

### **Safeguards**

14. D 17/96 and D 4/97 approved the regulations for the application of safeguards - understanding for safeguards those established in Article XIX of GATT 1994 (Urgent measures regarding the imports of determined goods) applicable to imports from countries not belonging to the Common Market of the South (MERCOSUR), according to the interpretation provided in the Agreement on Safeguards of the World Trade Organization (WTO)- to imports from countries not belonging to MERCOSUR, establishing as a general rule that MERCOSUR may adopt such a measure whenever an investigation determines that the importation of a certain product in MERCOSUR or a Member State seriously damages domestic production. The regulations establish various procedures according to the measure to be taken in the name of MERCOSUR or a Member State. In case the measure has to be taken in the whole MERCOSUR, it was established that the companies should file the application before the National Section of the MERCOSUR Safeguards and Trade Defense Committee, which shall notify the other National Sections, to carry out a joint analysis. Once the application is accepted, they shall forward a report to the Commission on the adequacy of the opening. The opening shall be decided by the Commission through a directive. The Pro Tempore Presidency of MERCOSUR shall notify the Directive providing for the opening of the investigation to the Safeguards Committee of the WTO. The investigation shall be carried out by the Trade Defense and Safeguard Committee. The decision of adopting the safeguard must be made by the Commission, through another directive. On the other hand, when the measure is taken in the name of a Member State, the companies shall file the application directly before the competent Technical bodies of the Member State, which shall analyze the admissibility of the request. The opening of the investigation shall be decided by the corresponding authorities of the Member State. The Member State shall inform the Pro Tempore Presidency of the Commission for it to notify the Safeguards Committee of the WTO. The

investigation shall be carried out by the Technical bodies of the Member State. The corresponding authorities shall decide on the application of the safeguard measure.

It was also regulated the formalities of the request, the nature of the investigation, consults, the possibility of adopting provisional safeguards during the procedure, the application of the measures, term duration (maximum four-year term) and the possibility of revision. For the case of agricultural and textile goods it was approved to apply the WTO corresponding agreements to regulate the matter. It was specified that settlement of disputes should be regulated by the general system established in the Brasilia Protocol. The regulations included temporary provisions which were postponed by D 19/98 until December 31<sup>st</sup>, 1999.

### **Trade Defense.**

#### Complaints and Consultation Procedure regarding dumping in imports extra-region made by another Member State:

15. D 3/92 established a complaints and consultation procedure through which any industry located in any of the MERCOSUR member countries may prepare a written complaint whenever it considers it has been damaged or threatened by extra-region imports made by any of the MERCOSUR countries which are the object of dumping or subsidies. It regulated the complaint's requirements, before whom to present it, the procedure to be followed and the requirement to the Member State in question stating that the complaint should be lawful, and it decided to apply the procedure for the Settlement of Disputes foreseen in the Brasilia Protocol.

#### Antidumping Regulations:

16. D 7/93 approved an antidumping regulation. It was repealed by D 11/97, which establishes the new defense regulations against imports from countries not belonging to MERCOSUR and which are the object of dumping. The regulations deal with the antidumping measures of MERCOSUR. It established that each Member Country initiating

an investigation for the application of an antidumping measure against imports from countries not belonging to MERCOSUR, shall report to all the other Member States, for their knowledge, the acts published in compliance with such provisions. Likewise, whenever a Member State considers that another Member State is carrying out imports, from third markets at dumping prices, which are affecting its imports, it may request, through the CCM, to consult for the purpose of knowing the conditions under which said goods are being introduced. At the same time, imports from MERCOSUR Member States of products which are the object of antidumping measures, shall comply with the MERCOSUR Origin Regime. Investigations tending to determine the existence, degree and effects of the eventual dumping shall be initiated upon previous written application by one of MERCOSUR's domestic industries or in its name -understanding that there is "domestic industry" when the application is supported by the regional producers the joint production of which represents more than fifty percent (50%) of the total production of the similar product produced by the domestic industry of MERCOSUR).

Countervailing duties for subsidies granted by non-member countries:

17. Likewise, D 7/93 regulated the defense against subsidies granted by non-member countries. D 29/00 repealed such decision and approved the new defense regulation against said subsidies, establishing that the Member State initiating an investigation for the application of a countervailing duty against imports from countries not belonging to MERCOSUR, shall report to all the other Member States, in order to follow-up and exchange opinions, the acts published in compliance with Article 22 of the [WTO 1994 Agreement on Subsidies and Compensation Measures](#) as well as a copy of the reports furnished before the Committee on Subsidies and Compensation Measures of the WTO, in compliance with Article 25 paragraph 11 of the mentioned Agreement. It was also established that whenever a Member State considers that another Member State is making imports of products from third markets and which are the object of subsidies, which are affecting its exports, it may request, through the CCM, to consult for the purpose of knowing the conditions under which said goods are being introduced.

**Supprimé :** of the 1994 General Agreement on Tariffs and Trade of the Charter of the World Trade Organization (Agreement on the WTO);

### A.3. Other Aspects of the Internal Market.

#### **Services in general**

1.- D 13/97 and D 12/98 approve the Montevideo Protocol. Said Protocol follows the GATTs approach, thus referring to the definition of the ways of providing services (including "commercial presence") and the kinds of obligations. The principles of most favored nation treatment, free access to markets, national treatment and transparency were established. The power to negotiate specific commitments in certain sectors or sub.-sectors was established, such power being specified in schedules of specific commitments, which were later annexed to the Protocol. It establishes the future creation of courts or legal, arbitration or administrative proceedings which will allow to review administrative decisions affecting service trade. Exceptions to the regime and a liberalization program were established, and it was agreed to carry out rounds for the purposes of eliminating unfavorable effects of the measures regarding service trade.

Supprimé : lists

2. D 9/98 approved the sectorial specific provisions regarding the circulation of individuals providing services, financial services, land and water transportation services and air transportation services.

The same regulation established lists of specific commitments of the Member States.

3. D 1/00, 56/00 and 10/01 approved the three rounds of negotiations and the lists of specific commitments.

Through D 11/01, Member States assumed the general future commitment consisting of the fact that, when exercising their right to regulate the sectors which are still unregulated, they shall exempt the services and service providers of the other Member States from access restrictions to market or national treatment restrictions included in the regulations, provided these matters are liberalized in the lists of the other Member States.

## **Services; Specific sectors:**

### Insurance:

4. D 9/99 approved the framework agreement on access conditions for insurance companies, emphasizing subsidiary's access. It establishes the legal nature of companies and the minimum capital required to incorporate them. It establishes a series of requirements for the authorization, as well as an operation plan, requesting that annual reports on the status of compliance with said plan be furnished before the control authority of each State.

5. Likewise, D 8/99 approved the cooperation agreement between the supervisory authorities of insurance companies of MERCOSUR Member States. Through this agreement the insurance supervisory bodies of all Member States bound themselves to closely collaborate for the purpose of supervising the different requirements made to MERCOSUR insurance companies, by the yearly exchange of registers of all the authorized insurance companies in their respective territory, as well as by a fluid exchange of techniques and experience.

### Transportation:

#### Dangerous goods:

##### Substance regulations

6. D 2/94 approved the agreement on dangerous substances. Each Member State reserves the right to forbid the entrance of any dangerous goods into its territory by communicating this in advance to the other Member States and the requirements established by the International Maritime Organization (OMI) (from Spanish: "Organización Marítima Internacional") and the International Organization of Civil Aviation (OACI) (from Spanish: "Organización Internacional de Aviación Civil") are accepted. D 14/94 included an article



to the agreement, which establishes the creation of an experts commission to review and update the Annexes.

Penalties:

7. D 8/97 established a penalty regime for the case of breach of the agreement on transportation of dangerous goods, which add to those foreseen in the partial scope agreement on international land transportation, as well as to the corresponding civil and criminal responsibilities. In order to apply penalties to the carriers or forwarders an administrative procedure must be carried out with the right to intervene before the corresponding bodies of each Member State.

Uniform Control Procedure:

8. R 6/98 establishes a schedule for the purposes of complying with the requirements established in the agreement on transportation of dangerous goods and the uniform procedure to control the transportation of dangerous goods -required documentation, identification of goods and vehicles and security equipment-. R 2/99 amended the schedule approved by R 6/98, extending the terms.

Specific Control Procedure:

9. R 10/00 establishes instructions for the supervision of road transportation of dangerous goods in MERCOSUR -documentation, identification of the required vehicles and security equipment-.

Multi-mode Transportation :

10. D 15/94 approves the agreement on international multi-modal transportation between MERCOSUR Member States. It determines the issuance and requirements of a multi-modal transportation document by the operator, either negotiable or not, as well as the

responsibility of the operator and the forwarder, and the warnings, claims, actions and prescriptions in view of any eventuality occurred during the transportation of the goods. It establishes the means to settle disputes which may arise and the necessary requirements to be come a multi-modal transportation carrier.

TIF/DTA document (application of the Southern Cone Agreement):

11. R 9/92 enforced the TIF/DTA form "TIF international bill of loading / Customs Circulation Statement - DTA (from Spanish: "Declaración de Tránsito Aduanero")

Driving License (application of the Southern Cone Agreement):

12. R 37/92, 120/94 and 63/99 approved the general conditions for the mandatory insurance on civil responsibility of the owners and/or drivers of land vehicles not registered in the country they enter during an international journey, for damages caused to transported individuals or things.

Access to Profession (within the framework of the ALADI agreements):

13. R 58/94 establishes the general principles to access the carrier profession and its exercise within MERCOSUR.

Multi-mode Transportation Insurance:

14. R 62/97 approves the general conditions for the insurance on civil responsibility of the operator of multi-mode transportation in MERCOSUR, for damages to the cargo.

Technical Inspection of Vehicles (applicable in the Southern Cone):

15. R 75/97 ~~approves~~ to submit cargo and passenger transportation vehicles to periodical inspections, according to the partial scope agreement on international land transportation of

Supprimé : resolves

the Southern Cone (ATIT) (from Spanish: "Acuerdo sobre Transporte Internacional Terrestre"). The regulation describes in detail the regularity, inspection methods, defect classification, safety seals, and states that Technical inspections shall be carried out by the Competent Authority according to the internal legislation in force in each Member State.

Automotive Passenger Transportation.

16. R 19 and 20/02 approve the Technical regulations of M3 vehicles for automotive passenger transportation (medium and long distance buses) and M2 vehicles for remunerated international public automotive passenger transportation by road (medium and long distance buses).

Transportation/Traffic Safety:

17. R 8/92 establishes minimum and uniform regulations applicable to international vehicle traffic within the territory of the Contracting Parties, admitting that each Member State may maintain provisions not provided for in the Agreement which do not contradict the provisions established in such Agreement.

Telecommunications:

18. There are a series of Regulations regarding the following aspects:

Interconnection of telecommunications systems in bordering zones, characteristics and supply of border links and service tariffs ( Technical regulations established in R 42/93, repealed by R 66/97, establishing provisions on basic telephony public services in border zones, which must be taken into account when negotiating with the Administrations and service providers). General provisions for the use, installation and maintenance of all basic telephony equipment and data in the integrated control areas, which the bordering country wishes to install in the host country (R 45/99).

- General digital transmission interphase specifications for the plesiochronous hierarchy system (PDU) ( Technical regulations established by R 43/93, plus the inclusion of R 25/94).

Coordination of the effects of the assignation and use of generation and TV repeater stations in channels attributed to the radio broadcasting service in the VHF band. Preparation of lists of assignation to channels to each Member State. Settlement of disputes (through direct negotiations and subsidiarily through the Asunción Treaty system) (agreement approved by R 6/95).

- Acknowledgement of radio-communication station licenses to be used by road transport companies. Administrative procedure to use radio-electric stations within MERCOSUR and requirements in order for them to operate adequately (procedure approved by R 146/96).

- Procedures for the Coordination between Earth Stations within the countries of MERCOSUR, before settling a satellite fixed service earth station reaching the territory of a Member State operating within shared frequency ranges (manual approved by R 64/97, repealed by R 60/01).

Approval of the frequency band types to be used by paging systems, as well as the frequency coordination procedure of said systems; of narrow band personal communication (bi-directional paging); of earth mobile radio-communication systems which, through one or more central radio-electric stations allow to connect the mobile stations of the same net of subscribers or correspondents among themselves, using automatic multiple access techniques ("sistemas troncalizados"), as well as the frequency coordination procedure of said systems; and of the multichannel multipoint signal distribution system (R 68/97, 69/97, 70/97, 71/97, 43/98, 23/99, 24/99, 5/02)

- Band type of allocation of radio-electric channels in maritime mobile service, coordination zone, channel list, settlement of disputes, correspondence exchange (R 30/98).
- Establishment of an assignation code for emergency services, parallel to the existing codes within each Member State (R 44/99).
- Approval of the frequency type and Technical conditions for the use of secondary radio-frequency itinerant stations in MERCOSUR (R 6/02).

- Codification of access numbers for the Telecommunication Services Information Systems with a unified access code for telephony services within MERCOSUR (R 18/02).
- Approval by R 19/01 of general provisions for International Roaming between Cellular Mobile Service Providers within MERCOSUR (superseding R 65/97).
- Approval of a regulatory framework for Frequency Modulation (FM) sound radio broadcasting (R 31/01).

## **Capital Market.**

### General Criterion for Regulation:

19. D 8/93 and D 13/94 established a simple proposal of a minimum regulation regime in the internal regulations of each Member State of the capital market with the object of reaching an agreement in the future. It defined the concepts of "affiliated" and "controlling corporations", registration requirements and requirements to offer securities for public bids, information disclosure, shareholders' rights, regulations on the transparency of common investment or collective investment funds, unification of taxing regulations, stock exchange regulation, information type and principles for the accounting statements.

### Basel Regulations for fixing minimum capital levels:

20. The regulations and basic principles of the Basel Committee for Bank Regulation and supervision practices were established in order to fix minimum capital levels based on risk assets (D 10/93).

### Bank Supervision Principles:

21. Regarding supervision, it was decided to adopt the minimum Global Bank Supervision principles, criteria and parameters internationally consolidated (D 12/94).

Criterion for debt classification and risk weighting.

22. R 1/96 binds Member States to adopt for their financial systems, the basic principles and regulations established by the International Financial Community for debtor classification and minimum provisions regarding bad debts, according to repayment capacity. It imposed obligations in order to harmonize credit risk fractionalization criteria and operations with affiliated companies or individuals, according to the basic regulations of the International Financial Community.

Basel Regulations for Transparency in the Financial Systems.

23. R 53/00 binds the Central Banks of the Member States to request the financial institutions to identify the individuals with whom they contract, demanding "moral" and patrimonial solvency, verifying information sources, lack of anonymity in operations, internal audit systems for crime detection, verification of compatibility between the amount of the operation and the kind of activity and responsibility attribution for the implementation of this resolution regarding hierarchic personnel of the financial entities. Likewise, it urges cooperation between Central Banks.

24. R 20/01 imposes the Member States to adopt for their financial systems the information transparency rules recommended by the Basel Committee.

**Free capital circulation.**

Elimination and limits for Tourism purposes

25. R 43/92 eliminates limits to the attainment of currency and traveler's checks related to tourism and travelling services.

## Effects of the Agreement on Reciprocal Payments and Credits

26. R 52/92 established that the documents with a stated term arising from trade operations carried out between residents of the Member States may be discounted by the institutions of any Member State authorized to operate in the Agreement on Reciprocal Payments and Credits. The regulation was repealed by R 58/98.

### **Intra-region investments**

#### General Regulations with Annex containing exceptions

27. D 11/93 approved the Colonia Protocol, which, regarding investment matters, establishes that each party shall promote investments by investors of the other parties not less favorably than investments by its own investors or than investments by third countries. However, each Member State reserved temporary exceptions in certain sectors. Thus, Argentina will not apply the protocol to real estate matters in border zones; air transport; naval industry; nuclear plants; uranium mining; insurance and fisheries. Brazil will not apply the protocol to mineral exploration and exploitation; hydraulic energy exploitation; health care; sounds and images sound radio broadcasting services and other telecommunication services; acquisition or lease of rural property; participation in the financial intermediation system, insurance, security and capitalization; building, ownership and coasting and inland navigation; government purchases. Argentina and Brazil reserved the right to temporarily maintain their own requirements regarding the automotive sector. Paraguay will not apply the protocol to real estate matters in border zones; social communication media: printed material, radio and television; air, maritime and land transport; electricity, water and telephone; exploitation of hydrocarbons and strategic minerals; imports and refining of oil-derived products and postal service. Uruguay in matter regarding electricity; hydrocarbons; basic petrochemicals; atomic energy; exploitation of strategic minerals; financial intermediation; trains; telecommunications, radio broadcasting; press and audiovisual media.

The protocol follows the approach of bilateral agreements on investments. It regulates fair and equitable treatment, legal protection -reserving preferences or privileges resulting from international agreements on tax matters-, guaranty of compensation in case of expropriation, freedom of profit transfers, subrogation of the exercise of an investor's rights in the territory of a Member State in case another Member State or one of its agencies pays an insurance or guaranty to said investor. Regarding the settlement of disputes between the Contracting Parties, it refers to the procedures established by the Brasilia Protocol. However, should a dispute exist between an investor and the Party to the Contract Receiving the Investment, it establishes that such dispute shall be settled through amiable advice or, in a subsidiary way and at the investor's choice, before the competent courts of the Contracting Party within the territory of which the investment was made; or that it shall be submitted to international arbitration, or to the permanent settlement of disputes system with individuals eventually established in the framework of the Asunción Treaty.

## **Extra-region investments**

### General Regulations

28. D 11/94 approves the protocol for the promotion and protection of investments from states not belonging to MERCOSUR. In said protocol, Member States bound themselves to treat the investments by investors from Third States not more favorably than the one established in said Protocol. Therefore, its contents aim at limiting the favorable treatment to be provided, to extra-region investments without imposing any obligations whatsoever to agree upon a certain favorable treatment standard. Without prejudice to the foregoing, its provisions are written as if it were mandatory to provide a certain level of favorable treatment.

It regulates the same aspects regulated in the Colonia Protocol, but regarding the investments of third states. That is to say: fair and equitable treatment, freedom for each Member State to promote that investments, including a treatment not less favorable than the one given to national or MERCOSUR investments, not to take any expropriation measures without compensations, freedom to transfer profits, subrogation, the same dispute



settlement system -except that, when there are disputes between the Member State in question and a third state, such disputes shall be settled in the first place by diplomatic means and in the second place by international arbitration.

The Member States bound themselves to exchange information on future negotiations and on negotiations being carried out regarding investment reciprocal promotion and protection with Third States.

### **Social Security Provisions**

29. D 19/97 approves the agreement on MERCOSUR Social Security. Such agreement establishes that the Social Security rights shall be acknowledged to workers who render or have rendered services in any Member State, thus acknowledging them, and their families or relatives, the same rights and subjecting them to the same obligations to which the nationals of such Member States are subjected regarding those specifically mentioned in the Agreement. The Agreement also applies to workers of any other nationality residing within the territory of one of the Member States, provided they render or have rendered services in said Member States. Although it is established that workers shall be subjected to the legislation of the Member State within the territory of which they develop their working activities, the following exceptions are provided for:

- a) Workers of companies with headquarters in one of the Member States, who carry on professional, research, scientific, Technical or managing tasks, or the like, and who are transferred to render services within the territory of another Member State during a limited term, shall continue to be subjected to the legislation of the Member State of origin until a twelve-year term, which may be extended under exceptional circumstances, by previous and express consent of the Competent Authority of the other Member State.
- b) Flight personnel of air transport companies and traffic personnel of land transport companies shall continue exclusively subjected to the legislation of the Member State within the territory of which the corresponding company has its headquarters.

- c) Members of the crew of a vessel under the flag of one of the Member States shall remain subjected to the legislation of said State. Any other worker who is employed for vessel loading and unloading, repair and surveillance tasks in port shall be subjected to the legislation of the Member State under the jurisdiction of the vessel's location. Members of the diplomatic and consular and international organizations agencies shall be regulated according to the applicable legislation, treaties and conventions. It is established that workers temporarily transferred to the territory of another Member State, as well as their families and relatives, shall receive health services, provided the Management Entity of the State of origin thus authorizes it. Insurance terms or quoting and provisions, applicable to personal capitalization retirement and pension regimes, were established.

#### **A.4. Taxes**

**Indirect Taxes:** None

**Direct Taxes:** None

#### **A.5.- Standards for goods and production methods**

**General:**

1. R 38/98 approved that the MERCOSUR Technical Regulations -hereinafter RTM (from Spanish: Reglamentos Técnicos del MERCOSUR) approved by a Resolution of the Common Market Group shall be applied within the territory of the Member States to trade activities carried out between them and to extra-region imports.

2. D 58/00 (WTO Agreement on TBTs ( Technical Barriers to Trade) adopted the Agreement on Technical Barriers of the World Trade Organization as regulatory framework for the application of Technical rules, Technical regulations and procedures.

## Measures and Metrology:

3. The following acts, aimed at harmonizing the legislation of the Member States and facilitate the trading of goods, regulate various aspects regarding the Metrological Adaptation:

- Values and tolerance of contents of pre-measured industrial products (D 4/92)
- General use length measures must comply with metrological and Technical regulations (R 53/92 repealed by R 51/99 -RTM general use length measures-)
- Documentation of the corresponding applications for the approval of models of measuring instruments, functional groups, supplementary devices ( R 57/92 )
- Pre-conditioned goods control (R 13/93)
- Gauge certificate (R 15/93)
- Sampling and tolerance of pre-measured products (R 91/94)
- Net weight of meat products (R 13/95)
- Empty spaces in rigid opaque packing (R 93/94)
- Net contents. Products with prizes (R 94/94)
- Verification procedure for net contents of soap (R 26/97)
- RTM on sampling procedure and tolerance of products traded by length units and number of units (R 27/97)
- RTM on general criteria of legal metrology (R 51/97)
- RTM on sampling and tolerance of pre-measured products traded in mass units of unequal nominal value (R 26/99)
- RTM on control of pre-measured products traded in mass and volume units, being the nominal contents of lots of 5 to 49 units at the points of sale (R 58/99)
- RTM on methodology to determine the dry weight (R 17/00)
- RTM on taxis (R 15/01)
- RTM on determination of the net weight in fishes, mollusks and glazed crustaceans (R 8/02)

- RTM on quantitative verification of wheat flour (R 9/02).

### **- Phytosanitary Regulations**

3. Phytosanitary and sanitary agreement (D 6/93, repealed by D 6/96 – WTO agreement on the application of sanitary and phytosanitary measures -)

4. The following acts tend to establish standards to facilitate the commercialization of goods in the region. They adopt certain standard cases pre-established by the international organizations such as FAO and WHO.

- Phytosanitary certificate. Extension of the phytosanitary certificate to exports to third countries and re-exportation phytosanitary certificate. Certification and verification regime at origin/destination points. (R 44/92; R 33/93 (repealed by R 49/96 –wood barking -); R 30/93; R 70/94; R 2/96, repealed by R 34/02).
- Criteria and guidelines for the elaboration of phytosanitary certification standards (R 44/96, repealed by R 1/00 –criteria and guideline standard for the elaboration of standards for production systems of certified propagation materials).
- General and specific principles for plant quarantine (R 61/92).
- Regulations of the FAO/WHO food Codex on pesticide residues for trade of agricultural products (R 62/92, repealed by R 14/95 – pesticide residues in *in natura* agricultural food products)
- Phytosanitary principles for international circulation of plant products ( R 34/93)
- Quarantine requirements (R 55/93)
- Area free of contagious diseases (R 56/93)
- Pesticide residues in *in natura* agricultural products and pesticide residues upper limits (R 23/94; R 74/94)

- Incorporation of Phytosanitary list.– Committee on Plant Health of the Southern Cone (COSAVE, from Spanish: "Comité de Sanidad Vegetal del Cono Sur") and FAO - (R 59/94, as amended by R 32/00 –glossary on phytosanitary terminology- and R 2/00, as amended by R 54/01 –plague risk analysis - and R 55/01 –requirements for determining areas free of plague -)
- Derogation of standard 7.1 “accreditation phytosanitary diagnosis laboratories” (R 75/99)
- Harmonization of essay periods at cultivar fields and registration of cultivars. (R 61/94; R 47/96)
- Technical requirements for evaluating active substances and agrochemical formulated products for MERCOSUR (R 73/94)
- Lists of plant products (R 118/94)
- Plague characterization quality criteria ( R 43/96, repealed by R 2/00 )
- Standard for accreditation, authorization, operation, inspection, audit and reference tests of seed analysis laboratories (R 60/97, as amended by R 69/98; R 53/01; R 29/00)
- Harmonized sanitary excise stamps (Dir. 17/97)
- Regulations on trade of inoculates (R 28/98)
- Requirements regarding free circulation of phytosanitary products in present integration stage. (R 48/96, construed by R 149/96)
- Registration procedure for the free circulation of active substances and/or its formulations of phytosanitary products; second list of free trade active substances and its formulations, between MERCOSUR Member States; third list of free circulation active substances and its formulations, between MERCOSUR Member States ( R 87/96;R 156/96; R 71/98)
- Standard 3.7A intensity of phytosanitary measures per plague kind. Standard 3.7 harmonization of phytosanitary measures, sub-standard 3.7A intensity of phytosanitary measures and sub-standard 3.7B quarantine treatment (R 11/96; R 88/96)
- Sub-standards of general and specific phytosanitary requirements for allium, allium strain, garlic, pepper, tomato, tobacco, cauliflower, sunflower, lollium, lotus, alfalfa, beans, sorghum, clover, peach, grapevine, pine apple, coffee, melon, strawberry, soy, cotton, rice,

cocoa, corn, potato, pea, apple tree, *pears*, wheat, barley, rye, oat, avocado tree, damson, plumb, cherry tree (from R 89/96 to R 113/96 and from R 60/98 to R 68/98 and from R 67/99 to R 70/99 ; R 30/00; R 31/00) These regulations simply compile, without harmonizing, the national regulations applicable by each Member State and describes the different applicable requirements and conditions for each of the Member States regarding the above mentioned food categories.

- Technical Regulation for the registration of antimicrobial compositions for use in veterinary medicine. (R 3/97)
- RTM on production and control of vaccines, antigens and dilutants for poultry farming. (R 4/97)
- Health provisions and zoohealth certificate of swines for exchange between Member States of MERCOSUR (R 19/97)
- Health provisions for region determination of common swine pest in MERCOSUR (R 20/97)
- Conditions to be met by units authorized for animal quarantine in the origin or destination country (R 21/97)
- Zoosanitary requirements for the importation of animals, semen, embryos and fertile eggs from third countries (R 17/98)
- RTM on glossary on terminology and definitions of veterinarian medication residues (R 45/98)
- RTM on sample methods for controlling veterinarian medication residues in animal food (R 46/98)
- MERCOSUR standard of seed terminology (R 70/98 y R 71/99),
- Requirements for accreditation/authorization of samples of seed lots (R 72/99),
- Phytosanitary standard to identify regulated non-quarantine plagues and establish their phytosanitary requirements (R 74/99),
- Code of conduct for importation and liberalization of biological control external agents (R 78/00),
- Guidelines for the notification of the compliance with emergency actions. Regulated by FAO (R 11/02).

## Animal Health:

5. The following procedures seek to eliminate regulation differences of Member States by the approval of MERCOSUR Technical Regulations, MERCOSUR forms and Regulations, on the following subjects:

- Definition of veterinarian products. Regulation framework. Validation system regulation, regulation framework of veterinarian products. Registration of veterinary products. Supplementary regulation of the regulatory framework of veterinary products. (R11/93; R 29/93; R 44/93; R 39/96; R 40/96).
- Quarantine plague (R 66/93 ~~repeals~~ R 60/92)
- Health regulations for importing animal products. Reference form on animal, semen, embryos and fertile eggs of national birds, areas where external diseases are registered. Health regulations for domestic canines and felines from third countries (R 67/93, repealed by R 17/98; R 3/96, repealed by R 52/01; R 5/96).
- Criteria on priority for controlling active compound residues of veterinary medication in animal products. Criteria on changes of analytic methods for determining active compounds residues of veterinary medication in animal products. Upper limits of active compound residues of veterinary medication in animal products. RTM on analytic methodologies, admissible daily consumption and upper limits of residues of veterinary medication in animal food. (R 53/94; R 57/94; R 75/94, repealed by R 54/00).
- Health regulations and zoohealth certificate for regional exchange of ovine. Requirements and zoohealth certificates for exchange of ovine between Member States. Health regulations and zoohealth certificate for bovines, caprine, bovine and bubaline embryos, bovine and bubaline semen banks, equines (R 66/94, repealed by R 51/01; from R 64/94 to R 69/94).
- Reference laboratory and MERCOSUR alternative laboratory requirements and regulations for animal disease diagnosis. (R 73/99 y R 7/00)
- RTM on registration of anti-parasite products for veterinary application. (R 76/96)

Supprimé : supersede

- RTM on vaccine control against symptomatic carbuncle, gaseous gangrene, intertoxemia and tetanus, inactive or frozen for preservation. (R 77/96)
- Health regulations on exchange of domestic canines and felines (R 4/96)
- Health regulations for animal circulation in circus shows. Equine health passport. Health regulations for equine circulation through neighboring borders. Health regulations for importing and exporting bovines and bubalines between Member States. Regulations for animal circulation through the territory of one of the Member State or between Member States according to the epidemiology conditions of the regions and countries of origin and destiny ( R 6/96; R 8/96; R 7/96; R 9/96, repealed by R 50/96; R 16/96)
- Regulatory framework for treating animal genetics of bovines, caprines, ovine, equines and swines in MERCOSUR (R 46/96)
- Hygiene and health safety regulations for the authorization of establishments for bird breeding and incubation plants for exchange (R 10/96)

### **Food and Packaged Food:**

6. The following acts establish, through Technical Regulations, common standards for the identification of food and packing for food products in the region and seek to harmonize the legislation in force in the Member States:

- Labeling of packaged food. Mandatory description on food labels. Labeling of packaged food. Declaration of ingredients in packaged food labels. Nutritional labels in packaged food (R 10/91, repealed by R 17/92 and R 36/93; R 72/97; R 6/94; R 18/94)
- General criteria for packing and food equipment in contact with food. RTM on packing and elastometric equipment suitable for being in contact with food. Essay on full migration of cellulose packing and equipment. RTM on regenerated cellulose films suitable for being in contact with food. Plastic packing and equipment suitable for being in contact with food and simulators. Plastic wrappings and equipment suitable for being in contact with food. Glass and ceramic packing and equipment suitable for being in contact with food. General provisions on plastic packing and equipment in contact with food. Exchangeable plastic packing suitable for being in contact with carbonated non alcoholic beverages. Provisions



on metallic packing and equipment in contact with food. List of polymers and resins for plastic packing and equipment in contact with food. RTM on lists of packing and equipment components in contact with food. RTM on film making compositions based on polymers and/or resins suitable for coating food products. RTM on paraffin in contact with food. RTM on synthetic regenerated cellulose packing in contact with food. Determination of residual styrene monomer. List of polymers and resins for plastic packing and equipment in contact with food. RTM on list of cellulose packing and equipment in contact with food. RTM on reference analytic methodologies for inspection of packing and equipment in contact with food. Cellulose packing and equipment in contact with food. RTM on adhesive substances suitable for being in contact with food. (R 3/92; R 54/97; R 12/95; R 55/97; R 30/92, as amended by 32/97; R 36/92; R 55/92; R 56/92; R 16/93; R 27/93; R 30/99; R 5/95; R 31/99; R 55/99; R 67/00; R 68/00; R 86/93, as amended by R 14/97; R 87/93 extended by R 34/97 and updated by R 52/97, R 11/99, R 13/99, R 29/99 and 52/00; R 56/97; R 32/99; R 19/94, as amended by R 35/97 and R 20/00; 27/99.)

- RTM on control of pre-measured products traded in mass and volume units of equal nominal contents, of lots of 5 to 49 units at the points of sale (R 28/99).
- Net content typification in packed food. (R 18/92).
- Determination of total migration of plastic materials in olive oil as lipid simulator (R 10/95).
- Extension on the use of N-heptane as lipid food simulator in plastic packing and equipment migration essays (R 33/97)
- Definition of ingredient, polluting manufacturing coadjuvant food additive and basic principles for its use. Food additives and technology coadjuvant. Harmonized general list of additives. Inclusion of additives and modifications to the list. Aromatizing and flavoring additives. List of food additives. Transfer of food additives. RTM on the incorporation of food additives to be used according to manufacturing good practices. RTM on attribution and assignment of additives to certain kinds of food products, their functions and limits. RTM on criteria to establish the functions of additives and their maximum concentrations for all food categories. Additive description in list of ingredients. Additives for plastic materials. (R 31/92; R 17/93, as amended by R 73/93; R 18/93; R 19/93, as amended by R 38/01 and R 37/97; R 104/94; R 28/96; R 140/96; R 46/93; 83/93, 84/93, 55/94, 101/94, all

as amended by R 38/01; R 105/94; R 86/96; R 141/96; R 50/97; R 73/97; R 74/97; R 52/98; from R 53/98 to R 56/98; R 16/00; R 51/00; R 21/94; R 95/94, as amended by R 36/97; R 53/97; R 9/99, 10/99, 12/99, 14/99, all repealed by R 50/01).

- Determination of liquid contents of mayonnaise (R 49/93)
- Determination of specific migration of ethylenglycol and diethylenglycol- (R 11/95, as amended by R 15/97),
- RTM on Multi-layer Pet packing –disposable- suitable for packing for non alcoholic carbonated beverages (R 25/99)
- Harmonized general list of coloring agents (R 14/93, as amended by R 38/01)
- RTM on incorporation of Gellian rubber R 144/96)
- Microbiological patterns for food (R 59/93)
- List of botanical species. Equivalencies in the denomination of botanical seeds. MERCOSUR bulletin on seed lots analysis. (R 85/93; R 15/98, repealed by R 77/00; R 16/98)
- Determination of residual vinyl chloride monomer (R 47/93, as amended by R 13/97)
- Maximum tolerance limits for inorganic polluting agents (R 102/94, as amended by R 35/96)
- Modified starch (R 106/94)
- RTM on hygiene and health conditions and manufacturing good practices for food manufacturing/industrializing establishments (R 80/96)
- RTM on recycled cellulose material (R 52/99)
- RTM on brewery products (R 14/01)
- RTM on aflotoxines maximum limits (R 56/94)
- Provisions on the codification of vegetables and plant products to be exchanged (R 57/01)
- RTM on labeling of packed food (D 21/02)
- RTM on maximum limits of aflotoxines in milk, peanut and corn (D 25/02)

**Dairy products:**

7.

- Microbiological requirements for cheese (R 69/93)
- Powdered milk (R 31/93, repealed by R 84/96)
- Milk fat (R 72/93)

**Wines and Alcoholic Beverages:**

8.

- Definitions of alcoholic beverages. Distillation of simple alcohol. MERCOSUR regulation for grape-growing and wine-making products (R 20/94; R 77/94; R 7/02; R 143/96; R 45/96, as amended by R 12/02).

**Identity and Quality :**

9. The following acts regulate and harmonize by RTM the national regulations of the Member States regarding the identity and quality of certain products for the purpose of facilitating its commercialization. Concerning the incorporation of said acts to the national regulations of each Member State, the competent Technical bodies of each State are entrusted with the enforcement of the respective RTM:

- R 70/93 (butter)
- R 72/93 (milk fat)
- R 74/93; R 100/94 (onions)
- R 71/93 (milk cream)
- R 15/94, repealed by R 56/99, repealed by R 89/99 (honey).
- R 16/94 (nutritional caseinates).
- R 40/94 (fresh fish)
- R 41/94, repealed by R 98/94 (garlic).
- R 43/94 (casein)

- R 78/94; R 135/96; R 76/94 (UAT milk type).
- R 79/94; R 1/97; R 29/96; R 30/96; R 31/96; R 32/96; R 34/96; R 42/96; R 81/96; R 82/96; R 83/96; R 78/96 (cheeses)
- R 80/94 (liquid milk)
- R 63/94 (milk anhydrate fat)
- R 99/94 (tomato)
- R 85/96 (strawberry)
- R 117/96 (apple)
- R 118/96 (pear)
- R142/96 (pickle)
- R 5/97 (rice)
- R 47/97 (fermented milk)
- R 48/97 (blue cheese)
- R 145/96; R 44/98 ("minas" fresh cheese)
- R 136/96 (powder cheese)
- R 137/96 (milk sweet cream (from Spanish: "dulce de leche"))
- R 14/96 (Uh7 cheese)
- R 82/93; R 138/96 y R 31/93, repealed by R 84/96 (powder milk)

**Motor vehicles:**

10. The following acts, through harmonized Technical regulations and RTM, coordinate and harmonize the region regulation standards to facilitate and enable automobile or auto parts trade. Likewise, they determine the requirements, common security regulations and quality of automobiles and auto parts.

- Security, noise and emissions requirements for vehicles. (R 9/91; R 6/92, repealed by R 48/98)
- Tyres, bushes and valves (R 65/92)
- Safety glasses (R 26/93)

- Reflective surfaces (R 29/94, repealed by 49/98)
- Seat supports (R 26/94)
- Installation and use of security belts (R 27/94)
- Key locks and hinges of side doors (R 28/94)
- Reflective surfaces (R 29/94)
- Windshield wipers systems (R 30/94)
- Gas tank (R 31/94)
- Rear view mirrors (R 32/94)
- Direction control system, energy absorber system and operative requirements (R 33/94)
- Direction control system displacement and method for testing collision against barriers (R 34/94)
- Classification of vehicles (R 35/94)
- Reference fuel (R 36/94)
- RTM on triangular beacon (R 37/94, repealed by R 37/01)
- Mandatory equipment (R 38/94)
- RTM on maximum limits for the emission of polluting gasses and noise levels for motor vehicles. (from R 84/94 to 86/94 repealed by R 128/96)
- Braking system (R 82/94)
- Light system (R 83/94)
- Vehicle identification and vehicle identification license plate (R 87/94; R 88/94)
- Vehicle homologation (R 89/94)
- RTM on polluting emissions for Otto cycle heavy motor vehicles(R 29/97; R 1/99)
- Technical regulation on material flammability. (R 36/01)
- RTM on detecting H point (R 40/01)
- RTM on vehicle hood catch (R 41/01 )
- RTM on electrically operated windows (R 42/01)
- RTM on windscreen wipers (R 43/01 )
- RTM on identification of manual commands, rear lights and indicators (R 44/01)
- RTM on back fender of cargo vehicles (R 23/02)
- RTM on identification of commands on manual and automatic gear shift (R 24/02)

- RTM on specifications of reference diesel fuel for essays on outlet gas emissions (R 32/02)

**General packing:**

11. The following acts seek the harmonization of the national legislation of Member States regarding industrialized packed products, in order to facilitate their trade and establish common region standards.

- Indication of the nominal amount of product contained for pre-measured products (R 41/92)
- Trading of packed industrialized products (R 58/92)
- Packing of pre-measured products (R 12/93)
- RTM on net contents of pre-measured industrialized products (R 35/93, repealed by R 18/01)
- Packing (R 48/93)
- Net content of pre-measured products (R 60/93)
- Empty spaces in rigid opaque packing (R 93/94)
- Quantitative indication of the product “Hygienic pre-measured pads” (R 19/00)

**Medicines, Cosmetics, Medical and Pharmaceutical inspections:**

12. The following acts define the products to be traded, harmonizing national regulations through RTM, for the purpose of unifying procedures and requirements in the region:

- Appropriate practices for manufacturing and supervising quality of medications (R 4/92)

- Guide for the inspection of pharmaceutical industry establishments. Guide for the inspection of pharmaceutical and chemical industries (R 59/92; R 92/93; R 66/92, repealed by R 6/93)
- Authorization for the operation of pharmaceutical and chemical industries (R 88/93)
- Large parenteral solutions ( R 52/94; R 57/96)
- RTM on production and quality of plasmatic blood derivatives (R 96/94, repealed by R 33/99)
- Manufacturing and control good practices for the hygiene, cosmetics and perfume industry establishments. Medical products manufacturing practices. Good practices for the manufacturing and control of medications. RTM on verification of the compliance with good practices on the manufacturing of medical products. (R 92/94; R 4/95; R 61/00; R 131/96)
- Definition of cosmetic products (R 110/94)
- Listing of authorized UV filter (R 15/95, repealed by R 12/96).
- Requirements for the registration of pharmacy products registered and manufactured in the producer Member State, requirements for registration of cosmetic products in MERCOSUR, UV filter listing, preserving agents listing, listing of forbidden substances and preserving agents. Listing of authorized coloring agents and UV filters (R 16/95, from R 23/95 to R 28/95, extended by R 28/97 and updated by R 4/99, R 5/99, R 6/99, R 7/99, R 8/99, R 71/00, R 72/00; R 39/97)
- Guide on manufacturing pharmaceutical and chemical products (R 13/96)
- Verification of manufacturing and control practices in the pharmaceutical industry establishments (R 14/96)
- Companies owning registrations, listing of required documentation for the registration of pharmaceutical products, stability of pharmaceutical products, validity and cancellation of registers and glossary. (from R 51/96 to R 55/96)
- Inspection and procedures regime applied to the pharmaceutical and chemical industry. (R 23/96)
- Alterations to the operation authorization of companies applying for the registration of pharmaceutical products (R 132/96)
- Inspection regime for medical products manufacturers or importers. (R 31/97)

- RTM on operation authorization of companies manufacturing or importing medical products (R 21/98)
- RTM on disposable sterile hypodermic needles (R 50/98)
- Microbiological control parameters for personal hygiene, cosmetic and perfume products (R 51/98)
- RTM on security and efficiency requirements for medical products (R 72/98)
- Joint re-inspections in MERCOSUR in companies manufacturing pharmaceutical products (R 34/99)
- RTM on specific labeling for personal hygiene, cosmetic and perfume products (R 36/99)
- RTM on control and inspection of narcotics and psychotropic substances at duty free zones and special customs areas (R 37/99)
- RTM on lists of controlled narcotics and psychotropic substances (R 38/99)
- RTM on drug combinations containing anorexigens in medications and magistral preparations (R 39/99)
- Use of reimbursement systems for purchasing and selling narcotics and psychotropic substances (R 46/99)
- Sample distribution for professionals and advertisement of medications containing narcotics or psychotropic substances (R 57/99)
- Mandatory communication to the Member States of MERCOSUR in the event of withdrawing medications from the market (R 78/99)
- Mandatory manufacturing and control self inspections (R 79/99)
- RTM on mercury glass clinic thermometers (R 18/00, repealed by R 17/01)
- RTM on net contents control for quantitative description of cosmetic products and toiletry products traded in nominal amounts of 5G or ML at 20G or ML. RTM on quantitative description of cosmetics (R 49/00, R 50/00)
- Authorization for entrance and exit of medications containing narcotics and psychotropic substances for patients in transit. Inspection of entrance and exit of narcotics and psychotropic substances for special purposes (R 62/00, repealed by R 74/00; R 66/00)
- Inclusion, exclusion and alteration criteria for substance concentration (R 133/96)
- Cosmetic products manufacturing (R 66/96)



- Procedure assessment system for the pharmaceutical and chemical industries (R 22/96)

### **Medical Products:**

13. The following acts define products of medical use in the region for their commercialization and harmonize national regulations through RTM:

- Male latex condom, essential requirements. (R 29/95; R 36/96, repealed by R 75/00)
- Verification of the compliance with manufacturing and control regulations of establishments of products for “in vitro” diagnosis. Inspection regime for intra-region industry of products for “in vitro” diagnosis. (R 38/96; R 09/01)
- Harmonized registration of medical products (R 37/96, repealed by R 40/00)
- Good practices of manufacturing and control for reagents for “in vitro” diagnosis (R 65/96)
- Intra-region registration of products for “in vitro” diagnosis (R 79/96)

### **Domisanitary products and production:**

14. By the following acts RTM were adopted to unify requirements in the region facilitating trade and accelerating integration regarding these products and its production.

- Domisanitary companies registration (R 24/96; R 3/99)
- Domisanitary products registration (R 25/96; R 35/99; R 56/00)
- Domisanitary definitions and glossary (R 26/96)
- Text of domisanitary labels (R 27/96)
- Regulations for verifying BPFs and Cs for domisanitary industries. RTM on BPFs and Cs for domisanitary product industries (R 56/96; R 30/97, repealed by R 23/01).
- RTM for domisanitary products based on hypochlorite with additives (R 46/97, repealed by R 57/98).
- RTM for domisanitary disinfecting products (R 49/99).

**Textiles:**

15. There only exists one harmonization of national regulations through the MERCOSUR Technical Regulations on labeling of textile products (R 9/00)

**Coloring agents:**

16. The following regulations harmonize definitions of coloring agents in food products allowed in regional trade:

- General harmonized list of coloring agents (R 14/93; R 45/93)
- Plastic coloring agents (R 28/93)
- RTM on the inclusion of coloring agents INS 122AZORUBINA (R 139/96)
- Assignment of group 3 additives to eatable ice creams (R 38/97).

**Other products: Notebooks, toys, filter cooking paper, paper for domestic use and coating ceramic plates.**

17. This acts establish, through RTM, common standards and definitions of several products to be commercialized within the region by their name

- Aerosol contents (R 80/93; R 54/94)
- Indication of page numbering on notebooks (R 22/94)
- Toys safety (R 54/92)
- RTM on filter paper for cooking and hot filtration (R 47/98)
- RTM on description of nominal contents of tissue napkins, towels and handkerchiefs (R 2/01)
- RTM on quantitative control of ceramic plates for coatings (R 16/01)

## **B) OTHER ASPECTS OF THE INTEGRATION PROCESS**

### **B.1- Macroeconomic coordination:**

1. D 30/00 decided to advance towards common objectives in macroeconomic areas and financial services. On this grounds, it imposed the Minister of Economics and Presidents of Central Banks to put into place the necessary means for the fulfilling of that aim, by elaborating harmonized statistics based on a common methodology, publishing on a regular basis tax and expenditure indicators –allowing that those countries which could not adopt the agreed methodological basis upon on the mentioned date, should do so progressively-; guidelines on fiscal position, debt and prices were also agreed, as well as the corresponding convergence process-. The decision also envisaged the assessment and comparative analysis of the regulations in force regarding financial and capital market, including the payment systems between countries, for the purposes of advancing on market's integration.

### **B.2- Circulation of persons:**

1. A number of aspects related to the validity of identification documents of each Member State for the circulation within MERCOSUR have been regulated: details about valid documents, entrance and exit card specimen, creation of consulting centers regarding MERCOSUR documents. (R 44/94, repealed by R 63/96, repealed by R 75/96; R 2/95; R 58/96; R 59/96, repealed by R 74/96)

2. D 44/00 approved the agreement on translation exemptions for administrative documents for immigration purposes between MERCOSUR Member States.

1. D 48/00 approved an agreement for the exemption of visas for circulation of national citizens of Member States. However, said agreement only applies to artists, professors, scientists, sportsmen, journalists, professionals and specialized technicians. Said agreement does not apply to freelancers, or workers under contract remunerated in the country they enter. It was agreed that such professionals could access the territory of the

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other Member States without visa, on several occasions, for stays of up to (90) consecutive days, that may be extended to an equal period, with a maximum limit of (180) days per year.

4. D 12/91 established that as of January 1st, 1992, the MERCOSUR Member States should establish, at ports and airports, due to their international traffic, differentiated channels for the exclusive attention of native passengers, natural citizens and permanent residents, national citizens of Member States.

5. D 46/00 established the installation of privileged entrance channels at airports for MERCOSUR citizens.

### **B.3- Procedures in commercial borders:**

1. Dir. 3/95 approved an entrance and exit form.

2. Dir. 6/00 approved a regulation model for the Integrated Control Cargo Area for each integrated control area to have its own regulations, based on this model, with the corresponding adjustments and adaptations. Based on this idea, it regulated a model for basic procedures to control the exit of individuals, transportation means and commodities.

3. D 5/93 (as amended by D 4/00) approved the Recife Agreement for the application of integrated controls on borders of MERCOSUR countries and trade facilitation. This agreement establishes definitions of control, border, integrated control, bordering country, liberation and facilities. It encompasses the general provisions to be considered when establishing controls. It imposes the control jurisdiction and specifies the coordinated duties of the officers of each member country. Likewise, it regulates the collection of taxes, fees and other duties. It establishes the rights and duties of officers and offenses and breaches by officers in the border Integrated Control Areas.

5. D 5/00 approved the First Protocol Additional to the Recife Agreement, establishing provisions related to customs control, regulating the entry and exit of commodities and means of transportation. Likewise, it regulated migration control, establishing the criteria to regulate the entrance and exit of individuals based on the Border Integrated Control.

It also regulated phytosanitary controls, stipulating the types of phytosanitary controls at the entrance, the phytosanitary inspections and the procedure to be carried out by officers. In relation to zoosanitary controls, it established the kinds of animals subject to control, the control procedure, the types of control, certificates and documentation required for animal transportation. Likewise, it regulated transportation controls.

6. D 2/99 (as amended by D 11/99) approves a Program on measures to simplify operations regarding Foreign and Border Trade Proceedings.

7. R 2/91 regulates Border Integrated Control.

8. R 3/91 approved the permanent operation of customs.

9. R 4/91 established a Common Cargo Form

10. R 6/91 establishes that the seals granted in each of the Member States shall be deemed valid by the customs offices of the other Member States for the purposes of international customs circulation operations.

11. R 1/92 established that the integrated controls in borders should become effective 1/1/93

#### **B.4- Police and Judicial Coordination**

1.- D 5/92 (as amended by D 7/02) approved the Protocol on Jurisdictional Cooperation and Assistance in Civil, Commercial, Labour and Administrative matters, establishing equal

treatment to citizens and permanent residents of one of the Member States and regulating several aspects related to the cooperation in formalities and evidence and to the acknowledgement and execution of judicial decisions and arbitration awards. It establishes that public instruments issued by one Member State shall have the same evidentiary weight than its own public instruments and it imposes the authorities of the Member States to provide the necessary information regarding foreign law.

2. D 1/94 approved the Buenos Aires Protocol on International Jurisdiction in Contract Matters, to be applied to the international litigious jurisdiction related to civil or commercial international contracts between individuals and legal entities domiciled and/or with place of business in different Member States of the Asunción Treaty or in the event that at least one of the parties to the contract is domiciled or has a place of business in one Member State of the Asunción Treaty and if an agreement on the election of a forum in favor of one judge of one Member State has been granted and there is a reasonable connection under the regulations of the Protocol regarding jurisdiction. Said protocol did not apply to the following: legal transactions between debtors and their creditors, family rights agreements and inheritance proceedings, social security contracts, administrative contracts, work contracts, consumer sales contract, transportation contracts, insurance contracts and rights pertaining to tangible property.

It regulated the election of jurisdiction, subsidiary jurisdiction and counterclaims. Consultations and settlement of disputes regarding the application of the Protocol (by diplomatic means and subsidiarily, according to the Dispute Settlement System provided for in the Asunción Treaty)

3. D 27/94 approved the Protocol on Precautionary Measures for the purposes of regulating the compliance before the authorities of the Member States, with the precautionary measures decreed by the Judges or Courts of the other Member States with international competence, adopting the necessary provisions according to laws of the place where the property or individuals subject to the measure are located or reside. It establishes the applicable law, it regulates the procedures for the request, the duty to inform, transmit and

diligence, requirements of the required documents applying for the precautionary measure, and the application of the Dispute Settlement System. D 9/97 approved the supplementary Agreement to said agreement.

4. D 1/96 (plus the list of errors in D 6/97) approved the San Luis Protocol on Civil Responsibility Arising from Traffic Accidents between the Member States of MERCOSUR. Civil responsibility for traffic accidents is regulated by the internal law of the Member State within the territory of which the accident took place, except when accidents involve individuals domiciled abroad.

5. D 2/96 approved the Protocol on Reciprocal Legal Advice in Criminal Matters, regulating the scope of the advice, central and competent authorities to request it, the denial of advice, the layout and contents of the request, applicable law (of the requesting State), the transactions, means of assistance, transfer of individuals subject to criminal procedures, safe conduct passes, precautionary measures and settlement of disputes.

6. D 10/96 approved the Santa Maria Protocol on International Jurisdiction regarding Consumer Relations arising from consumer contracts linking suppliers and consumers domiciled at different Member States of the Asunción Treaty or domiciled at the same Member State if the supply that characterizes the relationship between suppliers and consumers takes place in a different Member State. The supplier-consumer relationships arising from transport contracts are excluded. It establishes that in complaints filed by consumers related to supplier-consumer relationships, the judges or courts of the State within the territory of which said consumer is domiciled shall have international jurisdiction, while the supplier of goods or services may sue the consumer before the judge or court of his jurisdiction. It establishes alternative solutions regarding jurisdiction. It regulates the case of plurality of complaints and territorial validity of the judicial decisions. It regulates indirect transactions and jurisdiction. Disputes between Member States related to the application, interpretation or non-compliance of the Protocol provisions shall be settled by direct diplomatic negotiations and subsidiarily, by the Dispute Settlement System

in force between the Member States of the Asunción Treaty. At the same time there is a regulation on counterclaims.

7. D 3/98 approved the MERCOSUR Agreement on International Arbitration as an alternative means of the private sector to settle disputes, with the including requirements:

- a) Disputes must arise from international commerce contracts between private individuals or legal entities, having, at the execution time, regular residence, main place of business, headquarters, subsidiaries, establishments or agencies in more than one Member State of MERCOSUR.
- b) The main contract shall include some objective contact- legal or economic- with more than one Member State of MERCOSUR.
- c) The parties to the contract shall not express an opposed intention.
- d) The court shall have its headquarters in one of the Member States of MERCOSUR.
- e) Establishment of the Autonomy of the arbitration convention.
- f) Procedure and applicable law to the formal validity of the arbitration convention.
- g) Arbitration types, general procedure regulations, headquarters and language, requirements regarding arbitrators, designation, rejection and substitution of arbitrators, precautionary measures, award requirements, correction and extension requirement, request for the nullification of award or arbitration decision, award execution or foreign arbitration decision, arbitration termination.

8. D 14/98 approved the Agreement on Extradition between Member States of MERCOSUR, which regulates: the obligation to grant the extradition; the offenses giving rise to extradition; its origin; that the extradition shall not be granted for political offenses and limitation of criminal liability; extradition of minors; re-extradition to a third State; other matters related to the applicable procedure and to the right of defense; simplified or voluntary extradition procedure; preventive arrest.



9. D 1/97 approved the agreement on reciprocal cooperation and assistance between the Customs Administration Offices of MERCOSUR regarding the prevention and procedures against customs illicit activities.

10. D 5/97 approved the supplementary agreement to the Protocol on Cooperation and Jurisdictional Assistance in civil, commercial, work and administrative matters.

11. D 5/98 approved a reciprocal cooperation and assistance plan for regional security in MERCOSUR, with the purpose of enhancing, in all the region, intelligence, investigation, prevention and control tasks aimed at detecting places and areas of illegal plantations, production, illegal traffic of drugs and related offenses and avoiding entrance or exit and illegal commercialization of chemical substances which may be used for the production of illegal drugs, as well as possible laundering operations of assets laundering from drug traffic. It establishes anti-terrorism actions, illicit associations, common delinquency, illegal traffic in MERCOSUR and training and equipment optimization.

12. D 22/99 (plus the supplementation and adaptation of originally foreseen actions approved by D 13/01 and later by D 9/02) repealed the foregoing decision, approving a new general plan of reciprocal cooperation and coordination for regional security, urging the Member States to destine funds for such purposes and regulating: the scope of the offense (drug traffic, terrorism, traffic of minors, smuggling, motor vehicle theft/larceny, organized crime, environmentally illegal activities); actions; training;

13. D 6/00 approved a supplementation of the reciprocal cooperation and coordination general plan for regional security in matters related to minors.

14 D 8/00 approved a reciprocal cooperation and coordination general plan for regional security in matters related to economic and financial offenses in MERCOSUR.

15. D 10/00 approved a reciprocal cooperation and coordination general plan for regional security regarding the environment.

16. D 12/00 approved a reciprocal cooperation and coordination general plan for regional security regarding radioactive nuclear material.

17. D 3/01 approved an activity program for MERCOSUR against illicit actions in international trade.

18. D 7/98 established a joint mechanism of registration of purchasers and sellers of fire weapons in MERCOSUR.

19. D 16/99 approved the Asunción Treaty on Restitution of Land Motor Vehicles and/or Vessels Illegally Crossing Borders between the MERCOSUR Member States.

20. D 16/00 approved the creation of a police training coordination center between Member States of MERCOSUR.

21. D 18/00 approved supplementation of the definition and configuration of the security and information exchange system between Member States of MERCOSUR.

22. D 40/00 approved a cooperation agreement between Central Banks of Member States of MERCOSUR for the prevention and repression of activities with a tendency to legitimate assets from illicit activities.

23. D 49/00 approved an agreement on the benefits of litigating with no litigation costs gratuitous legal advice within the Member States of MERCOSUR, establishing that national citizens, citizens and regular residents of each one of the Member States shall enjoy, within the territory of the other Member States, the equality of conditions, the benefits of litigating with no litigation costs and the gratuitous legal advice provided to their national citizens, citizens and regular residents.

24. D 11/02 approved the agreement on jurisdiction related to international transport of cargo between Member States of MERCOSUR.

### **B.5- Educational, Cultural and Scientific Cooperation**

1. D 7/92 (extended by D 25/97) approved the Triennial Plan for the Educational Sector in the MERCOSUR context consisting of three Programs. It included a series of principles promoting regional integration, emphasizing its importance and it was agreed that there was a need to promote integration and train human resources for such purposes. Programs, lines of action and work were established.

2. D 9/96 approved the protocol on educational integration for post-graduate training of human resources between Member States of MERCOSUR. The aim established was the training and specialization of university professors and researchers, in order to consolidate and extend the post-graduate curricula in the Region. For these purposes, it was agreed to support the cooperation between research and teaching groups working bilaterally or multilaterally in common research projects in regional interest areas, emphasizing the achievement of doctorates and the consolidation of advanced groups for scientific and technological development, with a view to train human resources.

3. D 4/94 approved the Protocol on educational integration and acknowledgement of certificates, degrees and primary and secondary non Technical studies, for the purpose pursuing further studies.

D 7/95 approved the Protocol on educational integration and diploma, certificate, degree and studies acknowledgement validation methods, secondary Technical studies.

D 3/97 (plus a list of errors in D 11/98) approved the Protocol on the acceptance of university degrees and post-graduate degrees for the exercise of academic activities.

D 26/97 (plus a list of errors in D 11/98) approved the annex to said protocol.

D 4/99 repealed the foregoing decisions, approving a new agreement for the acceptance of diplomas and university degrees to carry out academic activities in the Member States of MERCOSUR.

D 4/95 (repealed by D 8/96, which reviewed the terms of the first agreement) approved the Protocol on University Post-graduate Degrees in MERCOSUR, establishing the possibility to validate diplomas, certificates and grade degrees granted by Universities recognized in each country, for the sole purpose of pursuing post-graduate studies.

4. D 11/96 approved the Cultural Integration Protocol. Member States are committed to:

- a) promote the cooperation and exchange between its respective institutions and cultural agents.
- b) Promote the enrichment and diffusion of cultural and artistic expressions within MERCOSUR.
- c) Promote joint programs and projects in cultural areas.
- d) Give priority to cooperative production, cultural activities expressing historic traditions, common values and varieties of the MERCOSUR member countries.
- e) Promote the exchange of individuals such as artists, writers, researchers, artistic groups and members of public or private bodies linked to different cultural sectors.

5. D 13/98 approved the 1998-2000 Triennial Plan and the Targets of the Triennial Plan for the year 2002 of the Education Sector of MERCOSUR, establishing the following strategies: the relation and coordination of the Education Sector with other sectors of MERCOSUR; to link the activities of the Education Sector of MERCOSUR to education national plans and education reformation and updating processes carried out in the Member States; to promote horizontal cooperation between countries and institutions of the region and with other regional blocs; to carry out actions promoting the circulation of students, academics and researchers and the exchange of experience and work practice.

6. R 33/02 established that the projects on scientific, technological and productive innovation cooperation of the MERCOSUR with extra-region countries, regional associations or international organizations shall contribute to the MERCOSUR integration process. Likewise, it established the criteria for the selection of projects on scientific, technological and productive innovation cooperation of the MERCOSUR with extra-zone countries, regional associations or international organizations.

### **B.6- Intellectual Property Rights**

1. D 8/95 approved the Protocol through which the Member States guaranty a effective protection of the intellectual property in trademark matters, specification of origin and origin denominations, assuring at least the protection arising from the principles and regulations described in the Protocol. Nevertheless, it is allowed to grant a wider protection, provided it is compatible with the regulations and principles of the Treaties described in the Protocol. Said treaties are: *the Paris Convention for the Protection of Industrial Property (Stockholm Act 1967)* and *the Agreement on Trade Related Aspects of Intellectual Property (1994), annexed to the Agreement on the Creation of the World Trade Organization* which the parties bind themselves to obey. Likewise they agreed to grant national treatment to nationals of other Member States in what regards the protection and exercise of the intellectual property rights in matters related to trademarks, specification of origin and denomination. They agreed, "when possible" to legalize documents and signatures in procedures related to intellectual property regarding trademarks, specifications of origin and denomination. The protocol includes provisions for the registration, definitions of trademarks and trademarks that can not be registered, effective terms and registration renewals and other regulations on the matter.

2. D 16/98 approved the Protocol for the harmonization of regulations in Industrial Design matters. This protocol is analogous to the foregoing, but it refers to industrial designs. Thus, the Member State guaranty an effective protection to Intellectual Property regarding Industrial Design matters, assuring al least the protection arising from the principles and

regulations defined in the Protocol. However, Member States may grant a wider protection, provided this is compatible with the regulations and principles of the Treaties described in the Protocol. The effectiveness of pre-existing international regulations: *the Paris Convention for the Protection of Industrial Property (Stockholm Act 1967) and the Agreement on Trade Related Aspects of Intellectual Property (1994)*.

The Member States agreed to grant national treatment to nationals of the other Member States regarding the protection and exercise of the intellectual property rights related to industrial design matters, binding themselves to legalize documents and signatures in the procedures related to intellectual property regarding industrial design matters.

3. D 1/99 approved a cooperation and facilitation agreement on the protection of plant products in the MERCOSUR Member States.

### **B.7- Sanitary and Health Services:**

The following acts harmonize regulations of Member States through the MERCOSUR Technical Regulations, regarding sanitary and health services:

- RTM on verification of good practices in clinical investigation (R 129/96)
- RTM on transfunctional medicine. RTM on complexity levels of transfunctional medicine services (R 130/96, repealed by R 42/00; R 12/97, repealed by R 41/00)
- Mandatory registration lists of diseases between the Member States of MERCOSUR (R 50/99)
- MERCOSUR glossary on epidemiological surveillance terminology (R 53/99, R 6/00 y R 8/00)
- Diseases of mandatory notification between Member States of MERCOSUR (R 80/99, repealed by R 4/01)
- Glossary of common terminology in the MERCOSUR health care services (R 21/00)
- Control and inspection of adormidera seeds. Requirements for imports through Member States (R23/00)
- Control and inspection of the origin of narcotics (R24/00).
- RTM on transportation of infectious substances and samples for diagnosis (R 25/00)

- Surveillance and control measures for preventing yellow fever (R 26/00)
- Glossary of sanitary control at ports, airports, terminals and border crossings (R 27/00)
- Basic requirements for the authorization of dialysis services (R 28/00)
- Quarterly information exchange on narcotics and psychotropic substances (R 55/00)
- RTM on drug combinations in medications and magistral preparations containing tranquilizers (R 57/00)
- Common terminology for narcotics, psychotropic substances and precursors (R 70/00 y 10/02)
- Criteria for sanitary administration of liquid waste and sewage waters in ports, airports, terminals and border crossings (R 34/01)
- Ethical and medical principles of MERCOSUR (R 58/01)
- Control of the concentrations of narcotics and psychotropic substances in magistral formulations and pharmaceutical specialties. R 22/00)
- Criteria for the sanitary management of solid waste in ports, airports, international cargo and passengers terminals and border crossings in MERCOSUR (R 30/02)

### **B.8- Tourism**

1. R 41/97 defines as touristic area the international touristic pole of Iguazú.

### **B.9- Employment**

1. D 8/92 only decides “to instruct competent bodies of every Member State to apply the necessary measures in order to avoid unregistered employment”

### **B.10- Environment**

D 2/01 approved the agreement on environment. In said agreement the Member States reconfirmed their commitment to comply with the principles stated in the Rio de Janeiro Declaration on Environment and Development in 1992, by analyzing the possible

instrumentation in the application of said principles. In general terms, they bound themselves to promote the protection of the environment and to exploit in the best possible way the available resources through the coordination of sectorial policies, based on principles such as gradual progress, flexibility and equilibrium; to include the environmental issue on sectorial policies and to include environmental considerations when making decisions adopted by MERCOSUR, for the strengthening of the integration process; to promote work guidelines in the different areas they determined (for instance: forests, natural fauna and flora, water resources, waste, etc). They established environmental policy instruments (legislation, environmental impact assessment, environmental accounting and management of companies, among others)

## **C) EXTERNAL RELATIONS**

### **C.1. Agreements with Chile and Bolivia.**

#### **Horizontal Agreements**

##### **Chile:**

1. D 3/96 approved the economic supplementation agreement between MERCOSUR and Chile, in which it was agreed to establish the legal and institutional framework for economic and physical cooperation and integration for the creation of an extended economic region in order to facilitate the free circulation of goods and services and the full utilization of productive factors. It was decided to create a free trade area between Contracting Parties within a maximum ten-year term, through the expansion and diversification of trade exchange and the elimination of tariff and non-tariff restrictions affecting reciprocal commerce; to promote the development and utilization of physical infrastructure, particularly emphasizing the establishment of interconnections between oceans; to promote and encourage reciprocal investments between the economic agents of



the subscribing parties; to promote supplementation and cooperation in the areas of economics, energy, science and technology.

To this effect, a program for trade liberalization for products originated in territories of the Contracting Parties was agreed, including progressive and automatic tax reductions applicable to effective encumbrances for third countries at the time of clearing commodities.

Certain products were subjected to a tariff reduction special scheme.

Some tariffs and charges were exempted from the Trade Liberalization Program.

The parties agreed not to apply new non-tariff restrictions, established a regime on origin and treatment regarding internal taxes (with reference to GATT' rules) fair trade practices, competition defense (adopting internationally accepted practices), safeguards, settlement of disputes, customs valuation (with reference to GATT), rules on Technical regulations, sanitary and phytosanitary measures (application of the provisions of the WTO), abstention to incentives to exports (application of WTO agreements), physical integration, services (compliance with GATT agreements), transportation (in reference to International Land Transportation of Southern Cone), investments (the bilateral agreements will continue in force), double taxation (intention to make agreements), intellectual property (they shall abide by the corresponding WTO agreement), scientific and technological cooperation (they bind themselves to stimulate it). They finally named an Administrative Commission to assess the compliance with the agreement.

2. D 12/97 authorized Chile to participate at institutional meetings of MERCOSUR, consultation methods, political consensus, negotiating forum, specialized meetings and meetings of Ministries, debates related to the ACE 35. At the same time, it promotes the coordination of foreign relations of MERCOSUR and of Chile.

3. R 61/99 approved the supplementary agreement on settlement of disputes arising from ACE 35 until the procedure agreed through arbitration becomes effective. In the first place, they established a system of direct negotiations and, in the event of failure, a procedure to be carried out before the Administrative Commission.

4. On the other hand, R 62/99 approved a supplementary agreement to the ACE 35 establishing the final regime for the settlement of disputes. It foresees, firstly, direct negotiations, then the intervention of the Administrative Commission in the event of failure, and finally, arbitration in the event of failure of the Administrative Commission. For the case of a dispute according to art. 15, Title V (application of compensatory or antidumping measures with the object of counteracting the negative effects of unfaithful competition) it is an option to proceed according to the settlement dispute established by the WTO.

### Bolivia

Agreement not approved by MERCOSUR.

### **Extension of Specific MERCOSUR Programs to Chile and Bolivia.**

#### Judicial and Police cooperation:

5. D 4/98 (which extends the program settled between Member States by D 3/98) approved an agreement between MERCOSUR, Bolivia and Chile on international arbitration on trade, for disputes arising between individuals by virtue of commercial contracts (D 15/99 corrects an error).

6. D 6/98 (that extends the plan approved by D 5/98) approved the agreement between MERCOSUR, Bolivia and Chile that established an *understanding* regarding reciprocal cooperation and assistance for regional security, assuring reciprocal cooperation and assistance between all security forces for the prevention and repression of criminal activities (especially drug traffic, terrorism, weapons, explosives, assets laundering). This understanding was replaced by the *general plan* of reciprocal cooperation and coordination for regional security (D 23/99 amended by D 14/01 and D 10/02, respectively extending D 22/99, 13/01 and 9/02), establishing the commitment to create a specialized forum for exchanging information on terrorism and traffic of minors, carrying out

coordinated inspections in borders to prevent and repress smuggling, automobile robbery, organized crime, to elaborate plans of action against environmentally illegal activities, to encourage studies to regionalize training, promote courses and seminars, develop shared activities to test new equipment. D 7/00, supplements the foregoing decision, for the purpose of reassuring the effectiveness of the convention on children's rights and emphasizing on the need to cooperate, exchange information and document control in the borders to control the traffic of minors.

D 9/00, 11/00 y 13/00 (extend D 8/00, 10/00 and 12/00) are also supplementary to 23/99 and emphasize the necessity to cooperate for controlling economic and environmental offenses, and the illegal traffic of nuclear and radioactive material.

7. D 19/00 (extends D 18/00) promotes the interaction between users of SISME, the incorporation of digital signatures and procedures for security and audit.

8. D 12/01 (extends D 2/96) approved the signature between MERCOSUR and Bolivia and Chile of the "Agreement on Legal Advice on Criminal Matters". It is agreed to provide reciprocal assistance for the investigation of offenses, and to cooperate in criminal legal procedures. It regulates the scope of the advice, procedure and contents of the request, applicable procedures, confidentiality, limitations to the use of the obtained information, kinds of advice, transportation of individuals subjected to criminal procedures, safe conduct passes, localization and identification of individuals, delivery of documents, settlement of disputes through direct diplomatic negotiations.

9. D 8/98 (extends D 7/98) approved an agreement between MERCOSUR, Bolivia and Chile on the creation of a joint mechanism to register purchasers and sellers of fire weapons and ammunitions.

10. D 15/98 (extends D 14/98) approved an agreement between MERCOSUR, Bolivia and Chile on extradition for the case of offenses typified by the laws of the complaining state and the defendant's state, for execution of judgments of not less than 6 months, demanding

to prove the jurisdiction of the complaining state. It establishes those cases in which extradition and limitation of criminal liability do not apply.

11. D 17/99 (extends D 16/99) approves an agreement on restitution of vehicles illegally crossing borders, establishing procedures for their expropriation, their legal restitution, for administrative restitution and process for the selection of experts.

12. D 17/00 (extends D 16/00) approves the creation of a coordination center for police training to diffuse and coordinate the educational force, to promote experience exchange and to aim at the highest possible level of professional integration.

13. D 50/00 (extends D 49/00) approved the agreement on the Benefits of Litigating without Costs and Gratuitous Legal Advice between the MERCOSUR States, Bolivia and Chile, that basically established that the national citizens, citizens and regular residents of each of the Member States would enjoy within the territory of the other Member States, the right to the benefits of litigating without any costs and gratuitous legal advice granted to the national citizens, citizens and regular residents, and under equal conditions. It also established the international jurisdiction to comply with the request and the law applicable to the request.

14. D 8/02 (extends D 5/92 and D 7/02) approved the agreement signed by the Member States with Bolivia and Chile, by which they committed themselves to grant reciprocal advice and wide jurisdictional cooperation in civil, commercial, work and administrative matters.

15. D 12/02 (extended D 11/02) approved the agreement between Member States, Bolivia and Chile in reference to the jurisdiction of all the legal proceedings related to international transport of cargo by land –whether by means of route or railway transport- or fluvial, within the scope of the Member States, using exclusively or in a combined way any of these transportation means.

Immigration and circulation of individuals:

16. D 45/00 (extended D 44/00) approved the agreement between MERCOSUR, Bolivia and Chile on the exoneration of translations of administrative documents for immigration purposes between Member States. D 47/00 (extended D 46/00) approved to establish privileged entrance channels in airports for citizens of MERCOSUR, Bolivia and Chile.

Border neighboring circulation:

17. D 19/99 (extended D 18/99) approves an understanding regarding border neighboring circulation, establishing that the citizens living in border areas between Member States, or the associations, may be granted border neighboring circulation cards for a faster border crossing

D 15/00 (extends D 14/00) approves the regulations of the border neighboring circulation regime, those benefited from it, and the way in which the card works.

Education:

18. D 15/01 (extended D 7/92) approved the “Organic Structure of the Meeting of Ministers of Education and its depending bodies, within the Educational Scope of MERCOSUR” and the “Action Plan of the Educational Sector of MERCOSUR for the 2001-2005 period”. This action plan required the establishment of a Regional Coordinating Committee, strategic lines and targets, including basic, CETHnological and higher education.

**C. 2. Agreement with Mexico. D 15/02**

It prorogates the validity of previous bilateral agreements and creates a framework for future negotiations.

### **C.3. Administrative Agreements.**

#### With the European Commission:

1. D 23/97 approves an agreement signed with the European Commission, in which the latter bound itself to contribute, through a subsidy of 4,135,000 ECU, to finance a project on statistical cooperation with the MERCOSUR countries, specifying the procedures carried out to conclude the building, supply or Technical cooperation contracts and the way in which they should be executed. For disputes between beneficiaries and contractors it was decided to refer to the arbitration of the International Chamber of Commerce. Likewise a series of “expected” activities were detailed, such as working group meetings with harmonization proposals to prepare statistics, with the participation of European experts and the organization of specific training courses, benefiting the national statistics institutions of each Member State of MERCOSUR.

#### Cooperation with international organizations.

##### UNESCO:

2.D 22/97 approves a protocol on intentions between MERCOSUR and UNESCO for educational, cultural, scientific and technological cooperation, empowering MERCOSUR to request the UNESCO advice regarding the formulation of cooperation projects, the search of financial aid, the hiring of equipment and investigation of Technical equipment promoting regional integration.

##### IDB:

3. D 24/97 approves a memorandum of understanding IDB-MERCOSUR which establishes a regional Technical cooperation program for the 97/99 period. An agreement was reached,

wherein the IDB approved an amount of US\$ 10,000,000 to define priority projects, CMC urged GMC to continue the negotiations and define the list of priority projects. On the other hand, the Bank stated that it shall remain open to further negotiations.

ALADI (Latin American Integration Association):

4. D 53/00 approved an agreement on administrative cooperation between MERCOSUR-ALADI General Secretariat, consisting of the exchange of public publications, documents and information related to the regional and sub-regional integration processes of MERCOSUR; exchange of experiences in administrative and accounting areas, as well as in the area of systematization and handling of official documentation; exchange of experience and information in the area of computer science, paying special attention to building, maintenance and enrichment of WEB sites; cooperation regarding graphic printing of publications; training programs, research and internships.

#### **C.4. Cooperation with specific third countries:**

CANADA:

1. D 14/97 approves a cooperation understanding project between MERCOSUR and Canada, to promote economic and commercial relations and investments, trade liberalization, the increase in reciprocal understanding in FTAA negotiations, before the WTO and CAIMS. They agreed to make an effort for the creation of favorable conditions to trade and investments, establishing a consulting group to assess the progress of the plan of action. The plan of action, which is part of the understanding, foresees the identification of factors that influence bilateral trade and investments, it defines options, negotiation of protection agreements of foreign investments, a future agreement on customs, environmental and employment cooperation.

2. SOUTH AFRICA: D 62/00 approves the agreement between MERCOSUR and the Republic of South Africa, through which a free trade area would be established, promoting an increase in commercial exchange, establishing two stages: a first stage to identify the mechanisms to increase trade, with the possibility to grant tariff preferences; an a second stage to negotiate a free trade agreement, complying with WTO regulations. A negotiating commission would be established for these purposes.

3. EFTA: D 63/00 approved a “statement and plan of action on cooperation in trade and investments between MERCOSUR and EFTA”, for the purposes of increasing economic relations, creating favorable conditions for the trade of goods and services, and investments, for the purpose of which it was established to create a joint commission and a plan of action consisting of the exchange of information or promotion of Technical cooperation.

4. GERMANY: D 3/02 approved the signature of a project to promote environmental management and a cleaner production in Small and Medium Sized-Companies (PYMES) (from Spanish: Pequeñas y Medianas Empresas”).

#### **C.5. MERCOSUR Coordination in International Fora.**

#### **C.6. Agreement with the European Community and its Member States.**

1. MERCOSUR bodies did not approve:
  - The framework agreement between, on the one hand, the European Community and its Member States, and on the other hand, MERCOSUR and its Member States, although MERCOSUR is a party to this agreement.
  - The exchange of letters for the provisional application of the agreement, although only MERCOSUR (and not its Member States) is a party to this agreement, as well as the European Community.



2.- MERCOSUR bodies did not approve either the 1993 agreement on general collaboration with the European Commission.

#### **D) INSTITUTIONAL ASPECTS**

D 1/91 (and its regulation, approved by D 17/98) approved the Brasilia Protocol on settlement of disputes, to settle disputes between Member States or between an individual of a Member State with other Member State. In first place, direct Negotiations were established and if no settlement is achieved in this way, the protocol establishes the possibility to refer to the GMC. Should the conflict fail to be settled at this stage, the protocol establishes an Arbitration Procedure.

2. D 1/98 regulates the use of the MERCOSUR name, acronym and device/logotype.

3. D 22/00, on Access to markets, establishes that Member States shall not apply any restrictive measure to reciprocal trade, whatever their nature, without prejudice to what is provided for in art.2 literal b) of Annex I of the Asunción Treaty. Said article explains that the term “restrictions” includes any measure, either administrative, financial, related to exchange of currency, or of whatever nature, by which one Member State hinders or impedes, by unilateral decision, reciprocal trade. However it explains that this concept does not encompass the measures adopted by virtue of the situations established in Article 50 of the 1980 Montevideo Treaty. Article 50 of said Treaty establishes that the measures for the actions listed below, cannot be hindered:

**a)** Protection of public moral; **b)** Application of laws and security regulations; **c)** Regulation of imports and exports of weapons, ammunitions, and other war equipment, and under exceptional circumstances, of all other military articles; **d)** Protection of life and health of individuals, animals, and plants; **e)** Import and export of gold and silver; **f)** Protection of national artistic, historic or archeological wealth; **g)** Exportation, utilization and consumption of nuclear materials, radioactive products or any other material which may be used for the development or exploitation of nuclear energy.

Notwithstanding this exception, D 22/00 established that each Member State should produce, before July 30<sup>th</sup>, 2000, a listing identifying situations or measures regarding levy, finances, tax, customs, administrative and other matters, applied by the other Member States hindering present access to the markets. The GMC was entrusted to state, before November 15<sup>th</sup>, 2000, the courses of action for the elimination of difficulties arising from intra –region trade or the elimination of trade restrictive measures not supported by art. 50 of the 1980 Montevideo Treaty. Without prejudice to the measures subject to treatment or questioning within some of MERCOSUR sector, the procedures approached within said scopes shall continue.

4. D 23/00 (and the extension established in D 55/00) establishes that, according to the Ouro Preto Protocol, Decisions, Resolutions and Directives shall be binding on Member States, and when necessary, they shall be incorporated in the national legal systems. It regulates the notification requirements to the SAM, established by the Ouro Preto Protocol as a requirement for the MERCOSUR regulations to enter into force. It establishes exceptions to such incorporation (in the case of rules regulating the internal operation of MERCOSUR, and the regulation itself declares such an incorporation is not needed, or when it is already incorporated in the legislation of the Member State).

Likewise, R 23/98 regulates the formalities that must follow the adoption of every decision, resolution or directive of MERCOSUR, for the purpose of being included by each State Member.

5. R 22/98 established that the Member States shall make their best effort to incorporate, before the XXXI Ordinary Meeting of the Common Market Group takes place, the MERCOSUR regulations not yet incorporated in the national legal system for administrative reasons, and they shall report the progress made regarding such incorporation in the XXXI Ordinary Meeting of the Common Market Group. It also approved to request the MERCOSUR Joint Parliamentary Commission to take care that the Legislative Powers of the Member States will give priority to the different projects being under parliamentary legislative proceedings.

6. R 60/00 established that, when incorporating the Resolutions which modify the MERCOSUR Common Classification System and its corresponding Common External Tariff, adopted during one semester, the Member States shall establish the dates July 1<sup>st</sup> and January 1<sup>st</sup> of each year for them to enter into force in the respective national territories.

In exceptional cases, and for duly justified economic reasons, the Common Market Group may, at the request of any of the Member State, establish other dates in which the incorporated resolutions shall enter into force in the respective territories of Members States.

**ANNEX 1.III**

**DIRECTORY OF MERCOSUR'S LAW**

**(chronological order)**

## **Chronological index of norms and how to find them in the Directory**

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D 40/00 (B4.22)  
D 41/00 (A1.10)



D 44/00 (B2.2)  
D 45/00 (C1.16)  
D 46/00 (B2.5)  
D 47/00 (C1.16)  
D 48/00 (B2.3)  
D 49/00 (C1.13; B4.23)  
D 50/00 (C1.13)  
D 51/00 (A2.9)  
D 52/00 (A2.9)  
D 53/00 (C3.4)  
D 56/00 (A3.3)  
D 58/00 (A5.2)  
D 62/00 (C4.2)  
D 63/00 (C4.3)  
D 64/00 (A1.27)  
D 67/00 (A2.4)  
D 69/00 (A1.18)  
D 70/00 (A1.23)  
D 1/01 (A2.7)  
D 2/01 (B10)  
D 3/01 (B4.17)  
D 4/01 (A1.24)  
D 6/01 (A2.4)  
D 8/01 (A2.7)  
D 9/01 (A1.39)  
D 10/01 (A3.3)  
D 11/01 (A3.3)  
D 12/01 (C1.8)  
D 13/01 (C1.6)  
D 14/01 (C1.6)  
D 15/01 (C1.18)

D 27/01 (A2.7)  
D 65/01 (A2.3)  
D 3/02 (C4.4)  
D 4/02 (A1.6)  
D 7/02 (B4.1)  
D 8/02 (C1.14)  
D 9/02 (C1.6)  
D 10/02 (C1.6)  
D 11/02 (C1.15; B4.24)  
D 12/02 (C1.15)  
D 13/02 (A1.28)  
D 14/02 (A1.28)  
D 21/02 (A5.7)  
D 25/02 (A5.7)

#### Resolutions

R 2/91 (B3.7)  
R 3/91 (B3.8)  
R 4/91 (B3.9)  
R 6/91 (B3.10)  
R 7/91 (A1.16)  
R 9/91 (A5.11)  
R 10/91 (A5.7)  
R 1/92 (B3.11)  
R 3/92 (A5.7)  
R 4/92 (A5.13)  
R 6/92 (A5.11)  
R 8/92 (A3.17)  
R 9/92 (A3.11)  
R 13/92 (A1.20)

R 17/92 (A5.7)  
R 18/92 (A5.7)  
R 30/92 (A5.7)  
R 31/92 (A5.7)  
R 36/92 (A5.7)  
R 37/92 (A3.12)  
R 41/92 (A5.12)  
R 43/92 (A3.25)  
R 44/92 (A5.5)  
R 52/92 (A3.26; A5.12)  
R 53/92 (A5.3)  
R 54/92 (A5.18)  
R 55/92 (A5.7)  
R 56/92 (A5.7)  
R 57/92 (A5.3)  
R 59/92 (A5.13)  
R 60/92 (A5.6)  
R 61/92 (A5.5)  
R 62/92 (A5.5)  
R 65/92 (A5.11)  
R 66/92 (A5.13)  
R 6/93 (A5.13)  
R 11/93 (A5.6)  
R 12/93 (A5.12)  
R 13/93 (A5.3)  
R 14/93 (A5.7; A5.17)  
R 15/93 (A5.3)  
R 16/93 (A5.7)  
R 17/93 (A5.7)  
R 18/93 (A5.7)  
R 19/93 (A5.7)

R 26/93 (A5.11)  
R 27/93 (A5.7)  
R 28/93 (A5.17)  
R 29/93 (A5.6)  
R 30/93 (A5.5)  
R 31/93 (A5.8; A5.10)  
R 33/93 (A5.5)  
R 34/93 (A5.5)  
R 35/93 (A5.12)  
R 36/93 (A5.7)  
R 42/93 (A3.18)  
R 43/93 (A3.18)  
R 44/93 (A5.6)  
R 45/93 (A5.17)  
R 46/93 (A5.7)  
R 47/93 (A5.7)  
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R 49/93 (A5.7)  
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R 63/93 (A1.25)  
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R 67/93 (A5.6)  
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R 71/93 (A5.10)  
R 72/93 (A5.8; A5.10)  
R 73/93 (A5.7)  
R 74/93 (A5.10)

R 76/93 (A1.31)  
R 80/93 (A5.18)  
R 81/93 (A0.3)  
R 82/93 (A5.10)  
R 83/93 (A5.7)  
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R 19/94 (A1.21; A5.7)  
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R 25/94 (A3.18)  
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R 44/94 (B2.1)  
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R 37/95 (A2.6; A2.8)  
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R 146/96 (A3.18)  
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R 7/97 (A2.5)

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R 49/97 (A1.32)

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R 63/97 (A2.5; A3.18)  
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R 6/98 (A3.8)  
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R 15/98 (A5.7)  
R 16/98 (A5.7)  
R 17/98 (A5.5; A5.6)  
R 21/98 (A5.13)

R 22/98 (D5)  
R 27/98 (A1.34)  
R 28/98 (A5.5)  
R 29/98 (A1.35)  
R 30/98 (A3.18)  
R 33/98 (A2.6)  
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R 43/98 (A3.18)  
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R 45/99 (A3.18)  
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R 49/99 (A5.13)  
R 50/99 (B7)  
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R 52/99 (A5.7)  
R 53/99 (B7)  
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R 62/99 (C1.4)  
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R 31/01 (A3.18)  
R 32/01 (A2.5)

R 34/01 (B7)  
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R 37/01 (A5.11)  
R 38/01 (A5.7)  
R 40/01 (A5.11)  
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R 44/01 (A5.11)  
R 45/01 (A2.5)  
R 46/01 (A2.5)  
R 48/01 (A2.5)  
R 50/01 (A5.7)  
R 51/01 (A5.6)  
R 52/01 (A5.6)  
R 53/01 (A5.5)  
R 54/01 (A5.5)  
R 55/01 (A5.5)  
R 58/01 (B7)  
R 60/01 (A3.18)  
R 64/01 (A2.8)  
R 65/01 (A0.2)  
R 5/02 (A3.18)  
R 6/02 (A3.18)  
R 7/02 (A5.9)  
R 8/02 (A5.3)  
R 9/02 (A5.3)  
R 10/02 (B7)  
R 11/02 (A5.5)  
R 12/02 (A5.9)  
R 17/02 (A2.5)

R 18/02 (A3.18)  
R 19/02 (A3.16)  
R 20/02 (A3.16)  
R 23/02 (A5.11)  
R 24/02 (A5.11)  
R 30/02 (B7)  
R 33/02 (B5.6)  
R 34/02 (A5.5)  
R 35/02 (A1.31)  
R 36/02 (A2.5)

### Directives

Dir. 5/93 (B3.3)  
Dir. 3/94 (A1.13)  
Dir. 3/95 (B3.1)  
Dir. 4/95 (A2.12)  
Dir. 5/95 (A1.26)  
Dir. 6/95 (A0.4)  
Dir. 7/95 (A0.2; A2.3)  
Dir. 16/95 (A0.4)  
Dir. 17/95 (A0.4)  
Dir. 20/95 (A1.37)  
Dir. 1/96 (A0.4)  
Dir. 3/96 (A0.4)  
Dir. 9/96 (A0.4)  
Dir. 12/96 (A1.12)  
Dir. 13/96(A0.4)  
Dir. 19/96 (A2.8)  
Dir. 1/97 (A0.4)

Dir. 3/97 (A0.4)  
Dir. 4/97 (A1.33)  
Dir. 5/97 (A2.8)  
Dir. 6/97 (A0.4)  
Dir. 8/97 (A1.10)  
Dir. 10/97 (A2.8)  
Dir. 12/97 (A1.12)  
Dir. 13/97 (A0.4)  
Dir. 14/97 (A0.4)  
Dir. 15/97 (A2.8)  
Dir. 16/97 (A0.4)  
Dir. 17/97 (A5.5)  
Dir. 18/97 (A0.4)  
Dir. 19/97 (A2.8)  
Dir. 20/97 (A1.12)  
Dir. 3/98 (A2.8)  
Dir. 4/98 (A2.8)  
Dir. 5/98 (A0.4)  
Dir. 6/98 (A2.8)  
Dir. 7/98 (A2.8)  
Dir. 8/98 (A2.8)  
Dir. 9/98 (A2.8)  
Dir. 10/98 (A0.4)  
Dir. 11/98 (A1.12)  
Dir. 12/98(A0.4)  
Dir. 16/98 (A2.8)  
Dir. 1/99 (A2.8)  
Dir. 2/99 (A2.8)  
Dir. 3/99 (A0.4)  
Dir. 4/99 (A0.4)  
Dir. 5/99 (A0.4)

Dir. 6/99 (A2.8)  
Dir. 7/99 (A0.4)  
Dir. 8/99 (A0.4)  
Dir. 9/99 (A0.4)  
Dir. 10/99 (A0.4)  
Dir. 11/99 (A2.8)  
Dir. 12/99 (A2.8)  
Dir. 15/99 (A1.12)  
Dir. 16/99 (A0.4)  
Dir. 2/00 (A0.4)  
Dir. 4/00 (A1.12)  
Dir. 6/00 (B3.2)  
Dir. 7/00 (A0.4)  
Dir. 8/00 (A0.4)  
Dir. 9/00 (A0.4)  
Dir. 12/00 (A2.8)  
Dir. 13/00 (A2.8)  
Dir. 14/00 (A2.8)  
Dir. 1/01 (A2.8)  
Dir. 3/01 (A0.4)  
Dir. 10/01 (A2.8)  
Dir. 5/01 (A0.4)  
Dir. 12/01 (A2.8)  
Dir. 1/02 (A2.8)  
Dir. 2/02 (A2.8)  
Dir. 3/02 (A0.4)  
Dir. 4/02 (A2.13)  
Dir. 6/02 (A2.8)



**ANNEX 1.IV.-**

**MERCOSUR'S INTRA- AND EXTRA- REGIONAL**  
**TRADE FLOWS**

**TABLE 1.IV.1**

**Total intra-regional exports (1986-2000)**

US\$bn.

Supprimé : u\$s

	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
<b>Argentina</b>	0,9	0,8	0,9	1,4	1,8	2,0	2,3	3,7	4,8	6,8	7,9	9,1	9,4	7,1	8,4
<b>Brazil</b>	1,2	1,3	1,6	1,4	1,3	2,3	4,1	5,4	5,9	6,2	7,3	9,0	8,9	6,8	7,7
<b>Paraguay</b>	0,1	0,1	0,2	0,4	0,4	0,3	0,2	0,3	0,3	0,5	0,7	0,6	0,5	0,3	0,6
<b>Uruguay</b>	0,4	0,3	0,3	0,5	0,6	0,6	0,6	0,7	0,9	1,0	1,2	1,4	1,5	1,0	1,0
<b>MERCOSU R</b>	2,6	2,5	3,0	3,7	4,1	5,1	7,2	10,0	12,0	14,4	17,0	20,1	20,4	15,2	17,7

**Total intra-regional imports (1986-2000)**

US\$bn

Supprimé : u\$s

	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
<b>Argentina</b>	0,8	1,0	1,1	0,8	0,9	1,8	3,8	4,2	4,8	4,7	5,8	7,6	8,0	6,3	7,2
<b>Brazil</b>	1,3	0,9	1,2	2,2	2,3	2,3	2,2	3,6	4,8	6,9	8,3	9,6	9,4	6,7	7,9
<b>Paraguay</b>	0,3	0,2	0,2	0,3	0,4	0,4	0,5	0,6	0,9	1,2	1,5	1,7	1,4	0,9	1,1
<b>Uruguay</b>	0,3	0,5	0,5	0,5	0,6	0,7	0,8	1,0	1,3	1,3	1,5	1,6	1,6	1,5	1,5
<b>MERCOSU R</b>	2,7	2,6	3,1	3,8	4,1	5,1	7,3	9,4	11,9	14,1	17,1	20,5	20,4	15,4	17,7

(cont.)

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///(cont.)

**Total extra-regional exports (1986-2000)**

US\$bn

Supprimé : u\$s

	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
<b>Argentina</b>	6,0	5,6	8,3	8,1	10,5	10,0	9,7	9,4	11,0	14,2	15,9	16,4	17,0	16,3	18,0
<b>Brazil</b>	21,2	24,9	32,1	33,0	30,1	29,3	32,1	33,3	37,6	40,4	40,4	43,9	42,2	41,2	47,3
<b>Paraguay</b>	0,1	0,2	0,4	0,6	0,6	0,5	0,4	0,4	0,5	0,4	0,4	0,6	0,5	0,4	0,3
<b>Uruguay</b>	0,7	0,9	1,1	1,1	1,1	1,0	1,1	1,0	1,0	1,1	1,2	1,3	1,2	1,2	1,3
<b>MERCOSU R</b>	28,0	31,7	41,8	42,8	42,3	40,8	43,3	44,1	50,2	56,0	58,0	62,3	61,0	59,2	67,0

**Total extra-regional imports (1986-2000)**

US\$bn

Supprimé : u\$s

	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
<b>Argentina</b>	3,9	4,8	4,2	3,4	3,2	6,5	11,1	12,5	16,8	15,3	17,9	22,6	23,4	19,2	18,1
<b>Brazil</b>	14,5	15,7	14,9	16,1	18,3	18,8	18,3	23,7	30,7	42,7	45,0	51,7	48,3	42,5	47,9
<b>Paraguay</b>	0,3	0,3	0,3	0,4	0,8	0,9	0,8	0,9	1,2	1,6	1,3	1,4	1,1	0,8	0,9
<b>Uruguay</b>	0,5	0,7	0,6	0,7	0,9	0,9	1,1	1,3	1,3	1,5	1,9	2,1	2,2	1,9	1,9
<b>MERCOSU R</b>	19,2	21,5	20,0	20,5	23,2	27,0	31,3	38,4	50,0	61,2	66,1	77,8	75,0	64,4	68,8

Source: Data Intal 1.0 and 3.1 (Intal, BID).

**TABLE 1.IV.2****Intra-regional exports/GDP (1986-2000)**

(percentage)

	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
<b>Argentina</b>	0,8	0,7	0,7	1,9	1,3	1,0	1,0	1,6	1,9	2,6	2,9	3,3	3,2	2,5	2,9
<b>Brazil</b>	0,5	0,5	0,5	0,3	0,3	0,6	1,1	1,3	1,1	0,9	0,9	1,1	1,1	1,3	1,3
<b>Paraguay</b>	3,7	3,4	3,9	9,4	7,2	4,1	3,8	4,2	5,4	5,9	6,9	6,1	6,2	4,0	7,4
<b>Uruguay</b>	6,7	4,6	4,1	6,1	6,4	5,0	4,2	4,7	5,1	5,1	5,6	6,2	6,9	4,8	5,1
<b>MERCOSU</b>	0,7	0,6	0,7	0,7	0,7	0,8	1,1	1,5	1,5	1,4	1,6	1,8	1,8	1,8	2,0
<b>R</b>															

**Intra-regional imports/GDP (1986-2000)**

(percentage)

	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
<b>Argentina</b>	0,8	0,9	0,9	1,1	0,6	0,9	1,6	1,7	1,9	1,8	2,1	2,6	2,7	2,2	2,5
<b>Brazil</b>	0,5	0,3	0,4	0,5	0,5	0,6	0,6	0,8	0,8	1,0	1,1	1,2	1,2	1,3	1,3
<b>Paraguay</b>	7,4	6,6	6,1	6,1	7,7	7,0	8,2	9,3	12,5	13,8	16,9	18,2	17,1	12,4	15,5
<b>Uruguay</b>	5,9	6,2	6,0	6,1	6,0	5,8	6,5	7,0	7,8	6,8	7,1	7,4	7,4	7,0	7,6
<b>MERCOSU</b>	0,7	0,6	0,7	0,8	0,7	0,8	1,1	1,3	1,4	1,4	1,6	1,8	1,8	1,8	1,9
<b>R</b>															

Source: Data Intal 1.0 and 3.1 (Intal, BID), database SAM and EIU.





**TABLE 1.IV.3****Intra-regional exports / Total exports (1986-2000)**

(percentage)

	<b>1986</b>	<b>1987</b>	<b>1988</b>	<b>1989</b>	<b>1990</b>	<b>1991</b>	<b>1992</b>	<b>1993</b>	<b>1994</b>	<b>1995</b>	<b>1996</b>	<b>1997</b>	<b>1998</b>	<b>1999</b>	<b>2000</b>
<b>Argentina</b>	13,1	12,1	9,6	14,9	14,8	16,5	19,0	28,1	30,3	32,3	33,3	35,5	35,6	30,3	31,8
<b>a</b>															
<b>Brazil</b>	5,3	5,0	4,9	4,0	4,2	7,3	11,4	13,9	13,6	13,2	15,3	17,1	17,4	14,1	14,0
<b>Paraguay</b>	57,3	36,0	30,4	38,4	39,6	35,2	37,5	39,6	41,7	56,8	63,3	51,3	52,3	41,5	63,5
<b>y</b>															
<b>Uruguay</b>	34,9	27,0	24,1	32,9	34,7	35,4	33,3	41,0	46,8	47,0	48,0	50,1	55,4	45,0	44,6
<b>MERCO</b>	8,5	7,4	6,7	8,0	8,9	11,1	14,3	18,5	19,2	20,4	22,7	24,4	25,0	20,4	20,9
<b>SUR</b>															



**Intra-regional imports / Total imports (1986-2000)**

(percentage)

	1986	1987	1988	1989	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
<b>Argentina</b>	17,6	17,0	21,5	20,1	21,5	21,8	25,3	25,1	22,3	23,6	24,5	25,2	25,3	24,8	28,5
<b>a</b>															
<b>Brazil</b>	8,0	5,5	7,3	12,0	11,2	10,8	10,8	13,1	13,6	13,8	15,5	15,7	16,4	13,7	14,2
<b>Paraguay</b>	45,3	41,4	42,0	38,0	30,8	31,1	38,4	38,6	41,7	41,8	54,3	53,7	56,0	51,6	53,7
<b>y</b>															
<b>Uruguay</b>	40,1	39,4	44,0	42,9	39,6	42,3	43,4	44,9	51,3	46,1	44,0	43,5	43,3	43,6	43,8
<b>MERCO</b>	12,3	10,8	13,2	15,7	15,1	15,9	18,9	19,6	19,2	18,7	20,5	20,9	21,4	19,3	20,5
<b>SUR</b>															

Source: Data Intal 1.0 and 3.1 (Intal, BID), database SAM and EIU

**Table 1.IV.4**

**MERCOSUR: composition of exports by HS section and markets of destination, 1986-2000**

(percentage of total exports to the region, three-years averages)

<i>HS Section</i>	<i>1986- 88</i>						<i>1992- 94</i>						<i>1998- 00</i>					
	<i>MER COSU R</i>	<i>Nafta</i>	<i>Rest of Amer ica</i>	<i>EU</i>	<i>Rest of the world</i>	<i>Total</i>	<i>MER COSU R</i>	<i>Nafta</i>	<i>Rest of Amer ica</i>	<i>EU</i>	<i>Rest of the world</i>	<i>Total</i>	<i>MERC OSUR</i>	<i>Nafta</i>	<i>Rest of Amer ica</i>	<i>EU</i>	<i>Rest of the world</i>	<i>Total</i>
<b>1</b>	5,0%	2,2%	1,9%	6,4%	5,2%	4,7%	4,4%	1,8%	1,5%	8,3%	6,1%	5,4%	4,6%	2,6%	3,6%	8,0%	6,3%	5,5%
<b>2</b>	15,3%	7,5%	10,0%	20,2%	12,5%	13,6%	12,3%	5,3%	5,8%	17,7%	9,0%	11,2%	11,4%	5,3%	4,8%	19,7%	12,1%	12,3%
<b>3</b>	1,8%	1,5%	7,1%	1,5%	5,6%	3,1%	1,5%	1,3%	5,8%	1,3%	7,8%	3,5%	1,2%	0,3%	6,4%	1,1%	10,1%	3,8%
<b>4</b>	4,0%	13,9%	13,9%	27,8%	14,9%	17,5%	5,0%	11,6%	9,8%	27,8%	12,6%	15,3%	6,0%	6,8%	8,9%	22,5%	16,2%	13,4%
<b>5</b>	8,5%	7,9%	5,9%	7,7%	9,0%	8,2%	8,8%	6,5%	14,1%	8,3%	9,3%	8,4%	8,5%	8,8%	12,1%	8,0%	12,4%	9,7%
<b>6</b>	13,8%	4,2%	4,1%	3,8%	3,8%	4,7%	8,0%	4,5%	3,9%	3,0%	4,6%	4,7%	9,3%	5,1%	6,5%	3,3%	5,4%	5,7%
<b>7</b>	6,5%	1,9%	3,0%	0,9%	3,3%	2,5%	6,0%	2,4%	2,8%	1,0%	2,7%	2,7%	5,8%	2,4%	2,1%	1,1%	2,2%	2,8%
<b>8</b>	3,1%	3,3%	0,3%	3,4%	1,4%	2,6%	1,6%	3,4%	1,1%	3,5%	1,9%	2,6%	0,9%	3,4%	0,7%	3,1%	2,2%	2,4%
<b>9</b>	1,0%	1,3%	5,8%	1,9%	0,4%	1,2%	0,8%	2,1%	5,9%	2,6%	0,9%	1,7%	0,8%	3,1%	6,4%	2,8%	1,0%	1,9%
<b>10</b>	2,6%	2,4%	4,2%	3,2%	2,9%	2,9%	3,0%	2,7%	2,4%	3,6%	3,7%	3,3%	3,8%	2,8%	2,9%	3,7%	3,2%	3,4%
<b>11</b>	7,2%	5,1%	2,3%	5,9%	5,6%	5,6%	6,6%	4,5%	3,0%	3,9%	3,7%	4,4%	5,3%	1,8%	1,9%	1,5%	2,1%	2,6%

<b>12</b>	0,5%	9,9%	2,4%	1,7%	0,4%	3,3%	0,7%	11,3%	1,7%	2,0%	0,6%	3,2%	0,9%	6,1%	1,0%	1,0%	0,5%	1,9%
<b>13</b>	1,4%	1,0%	2,1%	0,3%	0,7%	0,7%	1,4%	1,3%	2,8%	0,8%	0,9%	1,1%	1,1%	1,5%	2,7%	0,9%	0,8%	1,1%
<b>14</b>	0,0%	0,4%	0,3%	0,1%	0,3%	0,3%	0,0%	1,3%	0,2%	0,5%	0,6%	0,6%	0,0%	2,3%	0,1%	0,6%	0,5%	0,8%
<b>15</b>	8,2%	12,3%	12,5%	6,2%	19,0%	12,6%	6,8%	12,2%	13,4%	6,3%	22,1%	12,7%	5,2%	12,9%	9,1%	7,8%	9,3%	8,7%
			%															
<b>16</b>	10,9%	15,1%	10,1%	4,1%	5,9%	8,3%	12,8%	17,7%	10,6%	4,8%	6,9%	9,6%	12,7%	15,2%	11,4%	5,5%	6,0%	9,4%
			%															
<b>17</b>	8,8%	8,6%	12,0%	4,4%	8,0%	7,3%	18,6%	8,0%	12,3%	3,4%	5,6%	7,9%	20,6%	16,3%	16,4%	7,5%	4,6%	11,5%
			%															
<b>18</b>	0,6%	0,7%	0,7%	0,2%	0,3%	0,4%	0,5%	1,0%	0,7%	0,3%	0,4%	0,5%	0,6%	1,3%	0,7%	0,4%	0,4%	0,6%
<b>19</b>	0,1%	0,3%	0,1%	0,1%	0,7%	0,4%	0,1%	0,4%	0,2%	0,1%	0,4%	0,2%	0,0%	0,2%	0,1%	0,0%	0,1%	0,1%
<b>20</b>	0,2%	0,3%	1,1%	0,1%	0,1%	0,1%	0,9%	0,8%	2,1%	0,8%	0,3%	0,7%	1,0%	1,6%	1,8%	1,0%	0,3%	0,9%
<b>21</b>	0,4%	0,1%	0,3%	0,1%	0,1%	0,1%	0,0%	0,0%	0,1%	0,0%	0,1%	0,1%	0,0%	0,2%	0,4%	0,2%	4,2%	1,4%
<b>Tot</b>	<b>100,0</b>	<b>100,0</b>	<b>100,0</b>	<b>100,0</b>	<b>100,0</b>	<b>100,0</b>	<b>100,0</b>	<b>100,0</b>	<b>100,0</b>	<b>100,0</b>	<b>100,0</b>	<b>100,0</b>	<b>100,0</b>	<b>100,0</b>	<b>100,0</b>	<b>100,0</b>	<b>100,0</b>	<b>100,0</b>
	%	%	%	%	%	%	%	%	%	%	%	%	%	%	%	%	%	%
<b>US\$</b>	<b>2.715.</b>	<b>9.484.</b>	<b>883.0</b>	<b>10.459.</b>	<b>12.805.</b>	<b>36.347.</b>	<b>9.709.</b>	<b>11.369.</b>	<b>1.186.</b>	<b>15.580.</b>	<b>17.378.</b>	<b>55.223.</b>	<b>17.737.</b>	<b>16.492.</b>	<b>1.623.</b>	<b>19.799.</b>	<b>24.446.</b>	<b>80.098.</b>
thousand s	<b>273</b>	<b>359</b>	<b>90</b>	<b>056</b>	<b>956</b>	<b>733</b>	<b>994</b>	<b>131</b>	<b>016</b>	<b>773</b>	<b>067</b>	<b>981</b>	<b>466</b>	<b>142</b>	<b>019</b>	<b>776</b>	<b>409</b>	<b>812</b>

Supprimé : u\$s

Source: Data Intal 1.0 and 3.1 (Intal, BID).



**TABLE 1.IV.5****MERCOSUR: composition of exports by HS sections and markets of destination, 1986-2000**

(percentage of total exports by HS section, three-year averages)

<i>HS Section</i>	<i>1986- 88</i>						<i>1992- 94</i>						<i>1998- 00</i>					
	<i>MER COSU R</i>	<i>Nafta</i>	<i>Rest of Amer ica</i>	<i>EU</i>	<i>Rest of the world</i>	<i>Total</i>	<i>MER COSU R</i>	<i>Nafta</i>	<i>Rest of Ameri ca</i>	<i>EU</i>	<i>Rest of the world</i>	<i>Total</i>	<i>MERC OSUR</i>	<i>Nafta</i>	<i>Rest of Ameri ca</i>	<i>EU</i>	<i>Rest of the world</i>	<i>Total</i>
<b>1</b>	8,0	12,2	2,6	39,5	37,7	100,0	14,3	6,8	4,4	43,1	31,4	100,0	18,4	9,6%	6,8%	36,0%	29,3%	100,0 %
<b>2</b>	8,4	14,4	4,4	42,8	29,9	100,0	19,4	9,7	6,9	44,6	19,4	100,0	20,6	8,9%	5,9%	39,7%	24,9%	100,0 %
<b>3</b>	4,3	12,6	13,1	13,7	56,3	100,0	7,5	7,6	18,0	10,2	56,7	100,0	7,2	1,8%	13,9%	7,2%	69,9%	100,0 %
<b>4</b>	1,7	20,8	3,5	45,7	28,3	100,0	5,8	15,6	3,4	51,3	23,9	100,0	9,9	10,4%	5,1%	41,4%	33,2%	100,0 %
<b>5</b>	7,7	25,2	4,8	26,8	35,5	100,0	18,4	15,8	9,5	27,7	28,6	100,0	19,5	18,5%	17,4%	20,4%	24,1%	100,0 %
<b>6</b>	22,0	23,6	12,9	23,3	18,1	100,0	30,0	19,5	14,1	18,0	18,4	100,0	36,1	18,3%	16,7%	14,2%	14,7%	100,0 %

<b>7</b>	19,7	20,3	20,5	10,1	29,4	100,0	39,0	17,9	18,3	10,3	14,5	100,0	46,5	17,8%	17,5%	9,8%	8,4%	100,0 %
<b>8</b>	9,0	33,3	1,3	38,8	17,6	100,0	10,6	27,1	3,9	38,2	20,3	100,0	8,8	29,7%	1,8%	32,3%	27,5%	100,0 %
<b>9</b>	6,1	27,6	11,8	44,5	9,9	100,0	8,5	25,3	8,6	42,3	15,4	100,0	8,9	32,7%	8,2%	36,1%	14,1%	100,0 %
<b>10</b>	6,8	22,0	10,7	32,2	28,2	100,0	16,0	16,7	9,0	30,9	27,4	100,0	24,8	17,2%	11,3%	27,2%	19,5%	100,0 %
<b>11</b>	9,6	23,6	6,0	30,1	30,6	100,0	26,3	20,9	12,5	24,8	15,5	100,0	45,0	14,2%	14,5%	14,7%	11,6%	100,0 %
<b>12</b>	1,2	78,4	2,9	14,6	3,0	100,0	3,6	72,1	3,1	17,8	3,4	100,0	10,8	66,8%	5,4%	13,3%	3,7%	100,0 %
<b>13</b>	14,0	34,5	21,9	12,4	17,2	100,0	22,3	23,8	19,7	21,6	12,6	100,0	23,2	29,4%	16,9%	20,1%	10,4%	100,0 %
<b>14</b>	0,3	44,7	4,1	17,0	34,0	100,0	0,8	44,1	2,2	22,7	30,1	100,0	0,8	58,7%	1,4%	19,3%	19,8%	100,0 %
<b>15</b>	4,9	25,5	8,6	14,2	46,8	100,0	9,3	19,8	11,3	14,0	45,6	100,0	13,2	30,3%	11,0%	21,9%	23,6%	100,0 %
<b>16</b>	9,9	47,6	14,7	14,4	13,4	100,0	23,4	37,7	15,0	14,1	9,8	100,0	30,1	33,5%	14,1%	14,5%	7,8%	100,0 %
<b>17</b>	9,0	30,8	21,7	17,4	21,1	100,0	41,4	20,8	16,8	12,1	8,9	100,0	39,7	29,2%	9,3%	16,1%	5,7%	100,0 %
<b>18</b>	11,7	43,9	19,1	11,1	14,2	100,0	16,1	39,6	16,8	15,5	11,9	100,0	19,6	42,1%	15,5%	16,4%	6,5%	100,0 %
<b>19</b>	2,8	20,1	2,4	8,8	65,9	100,0	5,9	36,9	4,8	9,6	42,8	100,0	7,5	56,3%	14,0%	8,7%	13,5%	100,0



																			%
<b>20</b>	9,2	47,6	24,7	12,5	6,0	100,0	23,5	24,2	14,8	33,0	4,6	100,0	24,2	35,3%	10,2%	27,8%	2,5%	100,0	
																			%
<b>21</b>	24,7	25,1	20,6	16,6	13,0	100,0	9,3	6,7	4,7	17,2	62,1	100,0	0,6	3,1%	1,2%	4,0%	91,0%	100,0	
																			%
<b>Tot</b>	<b>7,5</b>	<b>26,1</b>	<b>8,4</b>	<b>28,8</b>	<b>29,3</b>	<b>100,0</b>	<b>17,6</b>	<b>20,6</b>	<b>10,0</b>	<b>28,2</b>	<b>23,7</b>	<b>100,0</b>	<b>u1</b>	<b>20,6%</b>	<b>10,3</b>	<b>24,7%</b>	<b>22,3%</b>	<b>100,0</b>	
															%				%
<b>US\$</b>	<b>2.715.</b>	<b>9.484.</b>	<b>883.0</b>	<b>10.459.</b>	<b>12.805.</b>	<b>36.347.</b>	<b>9.709.</b>	<b>11.369.</b>	<b>1.186.</b>	<b>15.580.</b>	<b>17.378.</b>	<b>55.223.</b>	<b>17.737.</b>	<b>16.492.</b>	<b>1.623.</b>	<b>19.799.</b>	<b>24.446.</b>	<b>80.098.</b>	
thousand s	<b>273</b>	<b>359</b>	<b>90</b>	<b>056</b>	<b>956</b>	<b>733</b>	<b>994</b>	<b>131</b>	<b>016</b>	<b>773</b>	<b>067</b>	<b>981</b>	<b>466</b>	<b>142</b>	<b>019</b>	<b>776</b>	<b>409</b>	<b>812</b>	

Supprimé : u\$s

Source: Data Intal 1.0 and 3.1 (Intal, BID).

TABLE 1.IV.6

**BRAZIL: Composition of exports to MERCOSUR by HS section, 1986-2000**

(percentage, three-years average)

<i>HS Section</i>	<i>1986-88</i>	<i>1992-94</i>	<i>1998-00</i>
1	0,5%	2,1%	1,8%
2	6,2%	2,3%	2,1%
3	0,2%	0,1%	0,3%
4	4,7%	6,3%	6,3%
5	12,0%	5,0%	2,6%
6	14,5%	8,6%	11,1%
7	8,6%	7,9%	7,5%
8	0,1%	0,1%	0,2%
9	0,7%	0,8%	0,9%
10	2,4%	4,4%	4,9%
11	4,8%	5,6%	5,6%
12	0,5%	0,8%	1,7%
13	1,9%	1,9%	1,9%
14	0,0%	0,0%	0,1%
15	13,6%	10,6%	8,7%
16	15,1%	18,5%	20,4%
17	12,1%	22,7%	21,3%
18	1,0%	0,7%	0,8%
19	0,3%	0,1%	0,1%
20	0,3%	1,4%	1,7%
21	0,5%	0,0%	0,1%
<b>Total</b>	<b>100,0%</b>	<b>100,0%</b>	<b>100,0%</b>
<b>Value (US\$ thousands)</b>	<b>1.374.125</b>	<b>5.122.314</b>	<b>7.795.618</b>

Supprimé : u\$s

Source: Data Intal 1.0 and 3.1 (Intal, BID)

**TABLE 1.IV.7**

**ARGENTINA: Composition of exports to MERCOSUR by HS section, 1986-2000**

(percentage, three-years average)

<i>HS Section</i>	<i>1986-88</i>	<i>1992-94</i>	<i>1998-00</i>
<b>1</b>	5,0%	4,9%	4,8%
<b>2</b>	28,1%	25,4%	17,9%
<b>3</b>	4,4%	2,7%	1,8%
<b>4</b>	3,8%	4,1%	5,2%
<b>5</b>	7,1%	16,5%	15,4%
<b>6</b>	13,2%	7,6%	8,4%
<b>7</b>	3,8%	3,4%	4,4%
<b>8</b>	7,5%	3,4%	1,5%
<b>9</b>	0,1%	0,1%	0,4%
<b>10</b>	3,0%	1,2%	2,7%
<b>11</b>	2,5%	3,8%	3,7%
<b>12</b>	0,6%	0,4%	0,3%
<b>13</b>	1,1%	0,7%	0,5%
<b>14</b>	0,0%	0,0%	0,0%
<b>15</b>	3,3%	2,5%	2,6%
<b>16</b>	9,3%	7,7%	7,6%
<b>17</b>	6,6%	14,8%	22,2%
<b>18</b>	0,4%	0,3%	0,4%
<b>19</b>	0,0%	0,0%	0,0%
<b>20</b>	0,0%	0,3%	0,4%
<b>21</b>	0,1%	0,0%	0,0%
<b>Total</b>	<b>100,0%</b>	<b>100,0%</b>	<b>100,0%</b>
<b>Value (US\$ thousands)</b>	<b>845.908</b>	<b>3.589.374</b>	<b>8.293.927</b>

Supprimé : u\$s

Source: Data Intal 1.0 and 3.1 (Intal, BID).

**TABLE 1.IV.8**

**PARAGUAY: Composition of exports to MERCOSUR by HS section, 1986-2000**

(percentage, three-years average)

<i>HS Section</i>	<i>1986-88</i>	<i>1992-94</i>	<i>1998-00</i>
1	10,9%	8,0%	7,4%
2	17,3%	9,2%	37,7%
3	2,5%	12,1%	9,0%
4	3,3%	2,3%	10,7%
5	0,4%	1,2%	0,3%
6	1,7%	2,3%	1,7%
7	0,0%	0,0%	1,0%
8	0,7%	3,0%	2,8%
9	12,0%	12,9%	6,6%
10	0,0%	0,7%	0,7%
11	50,3%	43,8%	19,1%
12	0,0%	0,0%	0,1%
13	0,0%	0,1%	0,2%
14	0,0%	0,0%	0,0%
15	0,8%	2,8%	1,5%
16	0,0%	0,3%	0,7%
17	0,0%	1,1%	0,0%
18	0,0%	0,0%	0,1%
19	0,0%	0,0%	0,0%
20	0,0%	0,1%	0,3%
21	0,0%	0,0%	0,0%
<b>Tot</b>	<b>100,0%</b>	<b>100,0%</b>	<b>100,0%</b>
<b>Value (US\$ thousands)</b>	<b>138.388</b>	<b>289.801</b>	<b>463.803</b>

Supprimé : u\$s

Source: Data Intal 1.0 and 3.1 (Intal, BID).

**TABLE 1.IV.9**

**URUGUAY: Composition of exports to MERCOSUR by HS section, 1986-2000**

(percentage, three-years average)

<i>HS Section</i>	<i>1986-88</i>	<i>1992-94</i>	<i>1998-00</i>
<b>1</b>	20,1%	16,8%	20,3%
<b>2</b>	19,2%	19,9%	17,6%
<b>3</b>	1,2%	1,0%	0,9%
<b>4</b>	1,8%	1,9%	7,3%
<b>5</b>	1,3%	0,4%	2,9%
<b>6</b>	16,9%	8,3%	6,9%
<b>7</b>	7,4%	7,8%	7,3%
<b>8</b>	4,9%	2,1%	1,2%
<b>9</b>	0,0%	0,1%	0,2%
<b>10</b>	3,6%	3,4%	5,2%
<b>11</b>	11,0%	13,0%	9,3%
<b>12</b>	0,3%	1,1%	0,6%
<b>13</b>	0,8%	2,0%	1,0%
<b>14</b>	0,0%	0,0%	0,0%
<b>15</b>	2,0%	2,1%	2,4%
<b>16</b>	3,1%	2,5%	2,9%
<b>17</b>	4,8%	16,2%	12,8%
<b>18</b>	0,1%	0,2%	0,3%
<b>19</b>	0,0%	0,0%	0,0%
<b>20</b>	0,1%	0,7%	1,0%
<b>21</b>	1,3%	0,5%	0,0%
<b>Tot</b>	<b>100,0%</b>	<b>100,0%</b>	<b>100,0%</b>
<b>Value (US\$ thousands)</b>	<b>356.851</b>	<b>708.506</b>	<b>1.184.118</b>

Supprimé : u\$s

Source: Data Intal 1.0 and 3.1 (Intal, BID).

**TABLE 1.IV.10****MERCOSUR: composition of imports by HS sections and markets of origin, 1986-2000**

(percentage of total imports from the region, three-year averages)

<i>HS Section</i>	<i>1986-88</i>					<i>1992-94</i>					<i>1998-00</i>				
	<i>MERC OSUR</i>	<i>Nafta</i>	<i>Rest of America</i>	<i>EU</i>	<i>Rest of the world</i>	<i>MERC OSUR</i>	<i>Nafta</i>	<i>Rest of America</i>	<i>EU</i>	<i>Rest of the world</i>	<i>MERC OSUR</i>	<i>Nafta</i>	<i>Rest of America</i>	<i>EU</i>	<i>Rest of the world</i>
<b>1</b>	5,3	1,8	1,2	2,4	1,7	4,3	0,9	2,3	1,3	2,4	4,6	0,4	1,9	0,6	1,0
<b>2</b>	18,0	5,7	7,2	1,9	1,3	13,9	8,2	12,4	1,3	1,8	11,6	1,6	6,6	0,8	0,8
<b>3</b>	2,0	0,2	0,0	0,5	0,0	1,5	0,4	0,0	0,4	0,6	1,2	0,1	0,0	0,3	0,3
<b>4</b>	1,8	0,4	2,1	1,4	0,1	3,4	2,0	6,2	2,8	1,2	5,1	1,1	5,6	2,1	0,8
<b>5</b>	10,3	12,7	47,9	2,0	55,1	9,8	7,4	32,9	1,6	29,6	9,9	3,4	40,8	1,7	19,1
<b>6</b>	13,4	22,0	10,9	20,7	9,9	7,7	16,9	13,5	17,5	10,3	9,1	19,2	9,9	18,1	13,4
<b>7</b>	5,8	5,4	0,6	4,9	2,4	6,0	6,4	2,1	4,7	2,5	5,9	6,7	3,6	5,0	4,3
<b>8</b>	4,2	0,4	0,4	0,8	0,4	1,6	0,1	0,3	0,2	0,6	1,0	0,1	0,2	0,2	0,7
<b>9</b>	1,4	0,1	1,9	0,2	0,0	1,0	0,1	1,5	0,1	0,1	0,8	0,1	0,9	0,3	0,1
<b>10</b>	2,9	2,7	2,8	2,3	0,4	2,9	3,3	4,8	2,4	0,6	3,7	3,5	6,2	3,4	0,6
<b>11</b>	6,0	1,3	1,3	0,9	0,7	6,2	2,8	4,8	2,7	5,2	5,3	1,7	2,7	1,7	5,3
<b>12</b>	0,2	0,0	0,2	0,0	0,1	0,4	0,2	0,5	0,4	1,1	0,8	0,0	0,2	0,1	0,9
<b>13</b>	1,0	0,8	0,1	1,3	0,3	1,3	0,7	0,5	1,3	0,4	1,0	0,7	0,7	1,3	0,6
<b>14</b>	0,0	0,4	1,6	0,2	0,2	0,0	0,2	1,1	0,2	0,1	0,0	0,1	1,1	0,3	0,3
<b>15</b>	7,2	3,7	16,9	8,2	3,0	6,6	3,6	11,9	5,0	2,6	5,3	4,1	12,4	5,5	4,1

<b>16</b>	11,7	28,2	1,8	39,1	16,0	12,5	36,6	6,1	39,4	27,8	12,2	43,7	4,1	39,0	33,7
<b>17</b>	7,3	8,6	2,0	8,1	2,1	19,4	8,6	4,8	13,3	9,2	20,9	7,4	2,3	14,3	7,1
<b>18</b>	0,7	5,2	1,1	4,4	5,6	0,5	5,5	0,8	4,0	4,0	0,6	5,2	0,3	3,8	4,0
<b>19</b>	0,0	0,0	0,0	0,1	0,0	0,1	0,1	0,0	0,1	0,0	0,0	0,0	0,0	0,2	0,0
<b>20</b>	0,1	0,1	0,0	0,2	0,0	0,9	0,9	0,9	1,3	1,7	1,0	0,9	0,6	1,3	2,2
<b>21</b>	0,6	0,2	0,1	0,3	0,5	0,0	0,0	0,0	0,0	0,0	0,0	0,0	0,0	0,0	0,4
<b>Total</b>	<b>100,0</b>	<b>100,0</b>	<b>100,0</b>	<b>100,0</b>	<b>100,0</b>	<b>100,0</b>	<b>100,0</b>	<b>100,0</b>	<b>100,0</b>	<b>100,0</b>	<b>100,0</b>	<b>100,0</b>	<b>100,0</b>	<b>100,0</b>	<b>100,0</b>

Source: **Data Intal 1.0 and 3.1 (Intal, BID).**

TABLE 1.IV.11

## MERCOSUR: composition of imports by HS sections and market of origin, 1986-2000

(percentage of total imports by HS section, three-year averages)

<i>HS Section</i>	<i>1986-88</i>						<i>1992-94</i>						<i>1998-00</i>					
	<i>MERC OSUR</i>	<i>Nafta</i>	<i>Rest of America</i>	<i>EU</i>	<i>Rest of the world</i>	<i>Total</i>	<i>MERC OSUR</i>	<i>Nafta</i>	<i>Rest of America</i>	<i>EU</i>	<i>Rest of the world</i>	<i>Total</i>	<i>MERC OSUR</i>	<i>Nafta</i>	<i>Rest of America</i>	<i>EU</i>	<i>Rest of the world</i>	<i>Total</i>
<b>1</b>	27,8	18,3	3,1	25,7	25,1	100,0	48,7	5,9	4,0	19,2	22,2	100,0	61,6	5,7	5,7	11,2	15,8	100,0
<b>2</b>	44,4	27,6	9,3	9,8	8,9	100,0	58,8	19,9	8,0	7,2	6,1	100,0	68,5	11,1	8,7	6,5	5,1	100,0
<b>3</b>	56,5	13,3	0,2	27,0	3,0	100,0	54,1	7,6	0,2	20,7	17,3	100,0	57,2	5,3	0,4	21,2	15,8	100,0
<b>4</b>	27,4	10,8	16,0	43,0	2,9	100,0	26,2	17,9	14,5	28,9	12,5	100,0	44,9	12,1	10,9	23,9	8,2	100,0
<b>5</b>	4,8	11,5	11,6	1,9	70,2	100,0	13,8	12,5	14,3	3,1	56,4	100,0	20,9	8,8	19,3	4,6	46,4	100,0
<b>6</b>	10,2	32,8	4,3	32,1	20,7	100,0	11,1	29,1	6,0	33,6	20,2	100,0	12,4	31,5	3,0	32,3	20,9	100,0
<b>7</b>	17,5	31,9	1,0	29,7	19,9	100,0	24,9	32,1	2,7	26,0	14,3	100,0	22,3	30,7	3,1	25,1	18,8	100,0
<b>8</b>	54,1	8,9	2,5	20,3	14,2	100,0	54,0	5,9	2,9	10,3	26,9	100,0	45,7	5,3	2,0	9,8	37,2	100,0
<b>9</b>	46,0	9,2	31,9	10,3	2,5	100,0	56,1	3,8	24,6	10,4	5,0	100,0	51,1	5,3	12,3	23,9	7,4	100,0
<b>10</b>	18,8	34,0	9,6	31,1	6,5	100,0	23,4	31,7	11,9	26,1	6,9	100,0	25,5	29,3	9,6	30,6	5,0	100,0
<b>11</b>	45,9	19,6	5,0	14,7	14,8	100,0	28,7	15,8	6,9	16,4	32,3	100,0	32,4	12,3	3,7	14,1	37,5	100,0
<b>12</b>	32,9	12,0	12,9	11,6	30,5	100,0	15,0	10,0	5,8	17,1	52,1	100,0	40,6	1,4	1,7	4,6	51,7	100,0
<b>13</b>	16,9	24,7	1,1	43,1	14,2	100,0	27,2	18,7	3,7	38,5	12,0	100,0	23,2	18,2	3,6	38,3	16,7	100,0
<b>14</b>	0,3	31,9	33,8	15,6	18,4	100,0	2,2	23,8	34,2	22,8	17,0	100,0	2,8	6,7	24,3	34,1	32,1	100,0



<b>15</b>	14,9	15,1	18,2	34,7	17,1	100,0	26,6	17,4	14,7	26,8	14,4	100,0	21,4	19,6	11,2	28,9	19,0	100,0
<b>16</b>	6,1	28,8	0,5	41,7	23,0	100,0	8,4	29,6	1,3	35,4	25,3	100,0	7,8	33,8	0,6	32,8	24,9	100,0
<b>17</b>	15,3	35,5	2,2	34,8	12,2	100,0	31,6	16,8	2,4	28,9	20,3	100,0	36,5	15,5	0,9	32,8	14,3	100,0
<b>18</b>	2,0	28,4	1,6	25,0	43,0	100,0	2,9	36,4	1,3	29,5	29,9	100,0	3,5	38,1	0,5	30,1	28,0	100,0
<b>19</b>	7,8	15,9	1,4	69,5	5,3	100,0	21,9	33,2	0,6	28,0	16,3	100,0	7,7	13,0	0,4	70,2	8,6	100,0
<b>20</b>	11,8	21,1	0,6	60,4	6,1	100,0	13,7	17,7	4,3	27,8	36,5	100,0	15,0	17,6	2,2	25,4	39,8	100,0
<b>21</b>	17,9	14,7	2,0	18,0	47,4	100,0	18,4	16,7	5,8	23,1	35,9	100,0	0,9	0,9	0,2	4,4	93,6	100,0
<b>Total</b>	<b>12,1</b>	<b>23,7</b>	<b>6,3</b>	<b>24,7</b>	<b>33,2</b>	<b>100,0</b>	<b>19,2</b>	<b>23,1</b>	<b>5,9</b>	<b>25,7</b>	<b>26,1</b>	<b>100,0</b>	<b>20,5</b>	<b>24,6</b>	<b>4,6</b>	<b>26,8</b>	<b>23,5</b>	<b>100,0</b>

Source: Intal 1.0 and 3.1 (Intal, BID).



TABLE 1.IV.12

## ARGENTINA AND BRAZIL: IMPORTS FROM THE EU WITH SIGNIFICANT MARKET SHARE

## LOSSES, 1992-2000

(HS tariff items with EU market share &gt; 0,25% in 1992-94 and a market share loss &gt; 5%)

<i>Ranking #1</i>	<i>Ranking #2</i>	<i>Tariff item</i>	<i>Description</i>	<i>Share of imports from the EU</i>	<i>EU market share 1992-94</i>	<i>EU market share 1998</i>			
78	1	2207	Alcohol etílico	0,30	17,9	1,3			
79	2	8543	Máquinas y aparatos eléctricos con función propia NEP	0,30	32,1	15,5			
60	3	1107	Malta	0,40	42,9	23,7			
30	4	8450	Lavarropas	0,61	84,5	47,4			
97	5	2932	Compuestos heterocíclicos	0,26	43,0	24,5			
89	6	8439	Maq y Ap fabr papel	0,28	76,3	48,1			
40	7	8542	Circ integrados y microestructuras electrónicas	0,50	13,7	9,1			
24	8	8511	Ap y dispo electricos para encendido motores	0,67	56,3	38,5			
1	9	8703	Coches de turismo	6,52	40,8	28,6			
41	10	2930	Tiocompuestos orgánicos	0,50	48,1	34,5			
67	11	3907	Poliacetales y los demás polieteres	0,35	22,3	16,1			
73	12	2921	Compuestos con función amina	0,32	33,5	25,5			
18	13	3104	Abonos minerales o químicos potásicos	0,79	31,6	24,3			
4	14	8536	Ap para cortes circuitos eléctricos	1,55	54,2	41,8			
12	15	3004	Medicamentos	1,06	48,3	37,4			
86	16	8537	Cuadros, paneles, consolas y armarios	0,28	61,3	47,6			
69	17	7210	Productos laminados planos sin alear (determinados)	0,34	45,5	35,9			
58	18	8418	Refrigeradores y congeladores	0,40	30,9	24,5			

90	19	1509	Aceite de oliva	0,28	77,6	63,6			
71	20	3003	Medicamentos	0,34	62,8	51,6			
29	21	8419	Ap y dispo cambio de temperatura	0,64	57,3	47,2			
16	22	4810	Papel y cartón estucados	0,83	69,5	57,3			
57	23	3920	Otras placas y láminas plásticas	0,41	32,8	27,2			
37	24	4016	Ciertas manuf de caucho	0,51	53,8	44,7			
87	25	8474	Maq para varias acciones tierra minerales sólidos	0,28	67,2	56,0			
56	26	7219	Prods laminados planos de acero inox	0,42	63,7	53,3			
3	27	8517	Ap electricos de telefonía o telegrafía	1,75	45,3	38,1			
8	28	8406	Turbinas de vapor	1,38	98,0	83,1			
27	29	8525	Ap emisores radiodif, telev	0,65	17,7	15,3			
45	30	9032	Instr y ap para control autom y regul	0,49	49,2	42,6			
75	31	7318	Tornillos, pernos, tuercas, etc	0,32	43,2	37,6			
64	32	9027	Instr y ap para analisis fisicos y quimicos	0,36	34,0	29,8			
76	33	3206	Otras materias colorantes	0,31	32,6	28,7			
62	34	8540	Lamparas, tubos de vapor	0,37	15,4	13,7			
92	35	9030	Osciloscopios, analizadores de espectro	0,27	31,2	28,0			
28	36	8447	Ciertas maq textiles	0,64	72,2	65,1			
14	37	8482	Rodamientos de bolas	0,93	44,0	40,3			
59	38	2922	Compuestos aminados	0,40	42,7	39,6			
65	39	8501	Motores y generadores electricoas	0,35	34,2	31,9			
31	40	8438	Maq y apa indu alimentos y bebidas	0,59	69,6	65,0			
46	41	8421	Centrifugadores secadoras sep gases	0,49	43,6	40,8			
95	42	8441	Maq y apa indu papel	0,27	55,4	51,8			
11	43	8477	Maq y apa indu caucho	1,30	64,9	60,7			
81	44	8455	Laminadores para metal	0,29	66,2	62,4			
		<b>Total</b>		30,33	nc	nc			

**Ranking #1:** ranking based on the share of each tariff item in total Argentina and Brazilian imports from the EU in 1992-1994.

**Ranking #2:** ranking based on the relative change in EU's market share in the 1992-1994/1998-2000 period.

**Source:** INDEC and SECEX

**ANNEX 1.V**

**MERCOSUR: FOREIGN DIRECT INVESTMENT; INFLOWS**

TABLE 1.V.1

**MERCOSUR: FOREIGN DIRECT INVESTMENT  
INFLOWS; ANNUAL AGGREGATE FIGURES**

Destination	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	Promedio
												o
<b>US\$ million</b>												
<b>Argentina</b>	1.836	2.439	4.179	6.305	3.490	5.609	6.949	9.162	7.281	24.147	11.152	<b>7.504</b>
<b>Brazil</b>	989	1.103	2.061	1.292	2.590	5.475	10.496	18.743	28.480	31.362	33.547	<b>12.376</b>
<b>Paraguay</b>	76	84	137	111	138	98	144	230	336	66	96	<b>138</b>
<b>Uruguay</b>	42	32	1	102	155	157	137	126	164	229	180	<b>120</b>
<b>MERCOSUR</b>	2.943	3.658	6.378	7.810	6.373	11.339	17.726	28.261	36.261	55.804	44.975	<b>20.139</b>
<b>Share in total, percentage</b>												
<b>Argentina</b>	62,4%	66,7%	65,5%	80,7%	54,8%	49,5%	39,2%	32,4%	20,1%	43,3%	24,8%	<b>37,3%</b>
<b>Brazil</b>	33,6%	30,2%	32,3%	16,5%	40,6%	48,3%	59,2%	66,3%	78,5%	56,2%	74,6%	<b>61,5%</b>
<b>Paraguay</b>	2,6%	2,3%	2,1%	1,4%	2,2%	0,9%	0,8%	0,8%	0,9%	0,1%	0,2%	<b>0,7%</b>
<b>Uruguay</b>	1,4%	0,9%	0,0%	1,3%	2,4%	1,4%	0,8%	0,4%	0,5%	0,4%	0,4%	<b>0,6%</b>
<b>MERCOSUR</b>	100,0%	100,0%	100,0%	100,0%	100,0%	100,0%	100,0%	100,0%	100,0%	100,0%	100,0%	<b>100,0%</b>

Supprimé : u\$s

Source: based on UNCTAD, World Investment Reports 1996 and 2001

**TABLE 1.V.2****MERCOSUR: FOREIGN DIRECT INVESTMENT / GROSS DOMESTIC FIXED INVESTMENT (IED / IBIF).**

<b>Destination 1990</b>	<b>1991</b>	<b>1992</b>	<b>1993</b>	<b>1994</b>	<b>1995</b>	<b>1996</b>	<b>1997</b>	<b>1998</b>	<b>1999</b>	<b>Promedio</b>	
<b>Argentina</b>	24,2%	15,1%	41,7%	56,1%	6,8%	12,1%	14,1%	16,1%	12,2%	47,7%	<b>24,6%</b>
<b>Brazil</b>	1,0%	1,4%	3,0%	1,3%	2,3%	3,8%	7,0%	11,7%	18,4%	31,3%	<b>8,1%</b>
<b>Paraguay</b>	6,6%	5,7%	9,7%	7,3%	7,8%	4,7%	6,6%	10,6%	17,7%	3,9%	<b>8,1%</b>
<b>Uruguay</b>	4,7%	2,7%	0,1%	5,7%	6,3%	6,0%	4,8%	4,1%	4,9%	7,5%	<b>4,7%</b>
<b>MERCOSUR</b>	2,7%	3,7%	7,9%	6,9%	3,8%	5,8%	8,7%	12,7%	16,5%	35,9%	<b>10,5%</b>
<b>UR</b>											

*Source: based on UNCTAD, World Investment Reports 1996 and 2001*

TABLE 1.V.3

## MERCOSUR: FOREIGN DIRECT INVESTMENT BY COUNTRY OF ORIGIN

Annual average, 1996-2000.

US\$ million.

Supprimé : u\$s

	Argentina	Brazil	Paraguay	Total
<b>Europe</b>	<b>8.102,0</b>	<b>11.627,4</b>	<b>44,3</b>	<b>19.773,7</b>
Germany	280,3	335,2	0,2	615,7
Spain	5.293,1	4.309,5	5,8	9.608,4
France	768,7	1.580,5	1,2	2.350,4
Italy	352,9	322,6	0,4	675,8
Netherlands	911,8	1.930,0	25,3	2.867,2
United Kingdom	401,4	412,9	5,9	820,2
<i>Others Europe</i>	93,9	2.736,6	5,6	2.836,1
<b>North America</b>	<b>1.847,7</b>	<b>5.127,6</b>	<b>78,4</b>	<b>7.053,7</b>
United States	1.577,8	4.907,3	78,8	6.563,9
<b>Ceentral America and Caribbean</b>	<b>1.087,8</b>	<b>2.935,1</b>	<b>0,0</b>	<b>4.022,9</b>
<b>South America</b>	<b>522,5</b>	<b>197,8</b>	<b>62,3</b>	<b>782,6</b>
Argentina	0,0	106,2	33,4	139,6
Chile	306,1	0,0	5,7	311,9
<i>Others South America</i>	216,3	0,0	0,0	216,3
Brazil	0,0	0,0	12,9	12,9
Colombia	0,0	0,0	0,7	0,7
Uruguay	0,0	91,7	9,5	101,1
<b>Others</b>	<b>244,1</b>	<b>849,7</b>	<b>5,3</b>	<b>1.099,1</b>
<b>Total</b>	<b>11.804,0</b>	<b>20.737,6</b>	<b>190,3</b>	<b>32.731,9</b>

*Sources:*

Argentina: Dirección Nacional de Cuentas Nacionales, Ministerio de Economía

Brazil: Banco Central del Brasil

*Notes:*

1. Uruguay has not been included due to incompatibility of the data. The share of Uruguay in total FDI inflows into MERCOSUR in this period was less than 1%.

2. In the case of Paraguay the annual average covers the period 1996-1999.



**TABLE 1.V.4****MERCOSUR: FOREIGN DIRECT INVESTMENT BY  
SECTOR OF DESTINATION.****Annual average, 1996-2000.****Share (percentage).**

<i>Sector of destination</i>	<i>Argentina</i>	<i>Brazil</i>	<i>Paraguay</i>	<i>Total</i>
Transport and communications	9,7%	22,4%	26,3%	17,8%
Finance	12,0%	16,9%	31,3%	15,2%
Petroleum	38,6%	0,8%	0,0%	14,4%
Electricity, gas and water	7,5%	13,0%	0,0%	11,0%
Trade	3,8%	8,1%	15,2%	6,6%
Chemicals, rubber and plastic	5,5%	3,8%	3,7%	4,4%
Motor vehicles	3,7%	4,6%	0,0%	4,3%
Food, beverages and tobacco	4,8%	3,2%	14,3%	3,8%
Machinery and equipment	1,2%	4,4%	0,0%	3,2%
Metals and metalworks	1,5%	1,3%	0,0%	1,4%
Mining	1,3%	0,7%	0,0%	0,9%
Paper	2,4%	0,0%	0,0%	0,9%
Textiles	0,0%	0,3%	0,0%	0,2%
Other	8,1%	20,4%	9,2%	15,9%
<b>Total</b>	<b>100,0%</b>	<b>100,0%</b>	<b>100,0%</b>	<b>100,0%</b>

**Sources:**

Argentina: Dirección Nacional de Cuentas Nacionales, M. Economía

Brasil: Banco Central del Brasil

**Notes:**

1. Uruguay has not been included due to incompatibility of the data. The share of Uruguay in total FDI inflows into MERCOSUR in this period was less than 1%.

2. In the case of Paraguay the annual average covers the period 1996-1999.

TABLE 1.V.5

BRAZIL: FDI by sector of destination (1996-2000).

US\$ million

Supprimé : u\$s

Sector of destination	1996	1997	1998	1999	2000
<b>Agriculture, livestock and extractive industries</b>	<b>110,5</b>	<b>456,1</b>	<b>142,4</b>	<b>422,5</b>	<b>649,4</b>
Agriculture, livestock and related services	37,9	0,0	0,0	20,0	0,0
Forestry and related services	0,0	108,5	49,8	0,0	0,0
Fishing and related services	0,0	0,0	0,0	0,0	0,0
Petroleum extraction and related services	46,8	10,0	27,0	296,8	480,9
Metal mineral extraction	25,8	337,6	50,6	49,7	133,4
Non-metal mineral extraction	0,0	0,0	15,1	56,0	35,2
<b>Manufacturing</b>	<b>1.740,0</b>	<b>2.036,4</b>	<b>2.766,4</b>	<b>7.002,3</b>	<b>5.087,4</b>
Food and beverages	185,9	322,9	133,1	1.239,4	975,0
Tobacco	250,0	0,0	0,0	168,5	0,0
Textile products	72,8	50,2	22,2	90,1	35,7
Garments and accessories	0,0	10,0	24,0	0,0	14,9
Leather products	0,0	0,0	0,0	0,0	0,0
Wood products	0,0	88,1	16,9	22,5	31,7
Cellulose, paper and paper products	21,9	0,0	0,0	12,5	10,3
Editing and printing	0,0	11,8	11,7	77,1	15,6
Coque, petroleum, nuclear fuels and alcohol	0,0	11,0	10,8	10,8	0,0
Chemical products	221,6	368,2	355,0	1.271,8	1.118,0
Rubber and plastic products	30,2	139,1	157,4	207,4	58,0
Non-metal mineral products	194,9	207,7	84,8	288,8	67,0
Basic metallurgy	30,2	0,0	118,0	112,6	245,6
Metal products	63,7	0,0	40,3	42,3	26,1
Machinery and equipment	179,2	206,6	174,7	87,2	578,9
Office and informatic equipment	10,0	20,0	49,0	630,7	23,0
Electrical machinery and appliances	30,2	138,1	110,9	340,2	65,8
Electronic materials and communication equipments	62,1	185,6	262,9	520,1	655,3
Medical, optical, automat. equipment and watches	57,8	11,0	0,0	0,0	19,5
Motor vehicles	286,1	222,7	1.060,1	1.831,0	960,7

Other transport equipment	0,0	0,0	90,7	49,5	186,3
Miscellaneous industries	43,4	43,4	44,0	0,0	0,0
Recycling	0,0	0,0	0,0	0,0	0,0
<b>Services</b>	<b>5.814,9</b>	<b>12.818,6</b>	<b>20.361,9</b>	<b>20.139,6</b>	<b>24.139,5</b>
Electricity, gas and hot water	1.626,4	3.554,4	2.201,6	2.969,6	2.972,2
Water collection, treatment and distribution.	0,0	0,0	90,4	0,0	73,5
Construction	0,0	53,1	171,4	293,8	12,0
Trade, fuel trade and reparation of vehicles	16,3	176,9	0,0	262,3	88,3
Wholesale trade and trade intermediaries	207,0	690,6	1.089,1	1.549,8	886,4
Retail trade and objects' repair	406,0	84,9	1.108,6	1.113,8	660,1
Lodging and food services	35,9	0,0	20,6	25,7	0,0
Road transportation	208,2	0,0	0,0	84,7	44,1
Water transportation	0,0	0,0	55,0	0,0	0,0
Air transportation	0,0	0,0	0,0	11,1	0,0
Activities auxiliary to transportation and travel agencies	0,0	0,0	24,8	26,9	38,3
Postal services and telecommunications	611,2	831,3	2.565,0	7.797,1	10.896,8
Financial intermediation	379,5	1.596,2	5.916,5	1.676,9	6.352,2
Insurance	148,3	191,0	45,9	63,6	13,9
Activities auxiliary to financial intermediation	36,1	60,0	476,8	534,5	32,2
Real estate	82,9	40,4	25,7	83,6	20,9
Rental of vehicles, machinery and objects	16,7	35,2	0,0	0,0	0,0
Informatic activities and related services	0,0	124,7	353,2	85,9	1.121,5
Research and development	0,0	0,0	0,0	0,0	0,0
Business services	2.015,9	5.350,8	6.217,5	3.327,0	814,7
Education	0,0	0,0	0,0	0,0	0,0
Health and social services	0,0	0,0	0,0	0,0	0,0
Urban cleansing and related activities	0,0	0,0	0,0	0,0	34,0
Associative activities	13,7	0,0	0,0	0,0	24,0
Recreational, cultural and sporting activities	0,0	29,1	0,0	233,3	54,5
Personal services	0,0	0,0	0,0	0,0	0,0
International organizations	0,0	0,0	0,0	0,0	0,0
<b>Total</b>	<b>7.665,4</b>	<b>15.311,1</b>	<b>23.270,8</b>	<b>27.564,4</b>	<b>29.876,4</b>
Inflows of less than u\$s 10 million per year (aggregated)	1.978,6	2.567,9	3.075,2	3.670,6	3.454,6
<b>Grand total</b>	<b>9.644,0</b>	<b>17.879,0</b>	<b>26.346,0</b>	<b>31.235,0</b>	<b>33.331,0</b>

Source: Banco Central de Brasil

TABLE 1.V.6

**BRAZIL: FDI BY SECTOR OF DESTINATION (1996-2000).**  
**Share (percentage)**

<b>Sector of destination</b>	<b>1996</b>	<b>1997</b>	<b>1998</b>	<b>1999</b>	<b>2000</b>
<b>Agriculture, livestock and extractive industries</b>	<b>1,4</b>	<b>3,0</b>	<b>0,6</b>	<b>1,5</b>	<b>2,2</b>
Agriculture, livestock and related services	0,5	0,0	0,0	0,1	0,0
Forestry and related services	0,0	0,7	0,2	0,0	0,0
Fishing and related services	0,0	0,0	0,0	0,0	0,0
Petroleum extraction and related services	0,6	0,1	0,1	1,1	1,6
Metal mineral extraction	0,3	2,2	0,2	0,2	0,4
Non-metal mineral extraction	0,0	0,0	0,1	0,2	0,1
<b>Manufacturing</b>	<b>22,7</b>	<b>13,3</b>	<b>11,9</b>	<b>25,4</b>	<b>17,0</b>
Food and beverages	2,4	2,1	0,6	4,5	3,3
Tobacco	3,3	0,0	0,0	0,6	0,0
Textile products	0,9	0,3	0,1	0,3	0,1
Garments and accessories	0,0	0,1	0,1	0,0	0,0
Leather products	0,0	0,0	0,0	0,0	0,0
Wood products	0,0	0,6	0,1	0,1	0,1
Cellulose, paper and paper products	0,3	0,0	0,0	0,0	0,0
Editing and printing	0,0	0,1	0,1	0,3	0,1
Coque, petroleum, nuclear fuels and alcohol	0,0	0,1	0,0	0,0	0,0
Chemical products	2,9	2,4	1,5	4,6	3,7
Rubber and plastic products	0,4	0,9	0,7	0,8	0,2
Non-metal mineral products	2,5	1,4	0,4	1,0	0,2
Basic metallurgy	0,4	0,0	0,5	0,4	0,8
Metal products	0,8	0,0	0,2	0,2	0,1
Machinery and equipment	2,3	1,3	0,8	0,3	1,9
Office and informatic equipment	0,1	0,1	0,2	2,3	0,1
Electrical machinery and appliances	0,4	0,9	0,5	1,2	0,2
Electronic materials and communication equipments	0,8	1,2	1,1	1,9	2,2
Medical, optical, automat. equipment and watches	0,8	0,1	0,0	0,0	0,1
Motor vehicles	3,7	1,5	4,6	6,6	3,2
Other transport equipment	0,0	0,0	0,4	0,2	0,6
Miscellaneous industries	0,6	0,3	0,2	0,0	0,0

Recycling	0,0	0,0	0,0	0,0	0,0
<b>Services</b>	<b>75,7</b>	<b>83,7</b>	<b>87,5</b>	<b>73,1</b>	<b>80,8</b>
Electricity, gas and hot water	21,2	23,2	9,5	10,8	9,9
Water collection, treatment and distribution.	0,0	0,0	0,4	0,0	0,2
Construction	0,0	0,3	0,7	1,1	0,0
Trade, fuel trade and reparation of vehicles	0,2	1,2	0,0	1,0	0,3
Wholesale trade and trade intermediaries	2,7	4,5	4,7	5,6	3,0
Retail trade and objects' repair	5,3	0,6	4,8	4,0	2,2
Lodging and food services	0,5	0,0	0,1	0,1	0,0
Road transportation	2,7	0,0	0,0	0,3	0,1
Water transportation	0,0	0,0	0,2	0,0	0,0
Air transportation	0,0	0,0	0,0	0,0	0,0
Activities auxiliary to transportation and travel agencies	0,0	0,0	0,1	0,1	0,1
Postal services and telecommunications	8,0	5,4	11,0	28,3	36,5
Financial intermediation	5,0	10,4	25,4	6,1	21,3
Insurance	1,9	1,2	0,2	0,2	0,0
Activities auxiliary to financial intermediation	0,5	0,4	2,0	1,9	0,1
Real estate	1,1	0,3	0,1	0,3	0,1
Rental of vehicles, machinery and objects	0,2	0,2	0,0	0,0	0,0
Informatic activities and related services	0,0	0,8	1,5	0,3	3,8
Research and development	0,0	0,0	0,0	0,0	0,0
Business services	26,3	34,9	26,7	12,1	2,7
Education	0,0	0,0	0,0	0,0	0,0
Health and social services	0,0	0,0	0,0	0,0	0,0
Urban cleansing and related activities	0,0	0,0	0,0	0,0	0,1
Associative activities	0,2	0,0	0,0	0,0	0,1
Recreational, cultural and sporting activities	0,0	0,2	0,0	0,8	0,2
Personal services	0,0	0,0	0,0	0,0	0,0
International organizations	0,0	0,0	0,0	0,0	0,0
<b>Total</b>	<b>99,9</b>	<b>100,0</b>	<b>100,0</b>	<b>100,0</b>	<b>100,0</b>
Disaggregated	79,5	85,6	88,3	88,2	89,6
Not disaggregated	20,5	14,4	11,7	11,8	10,4
<b>Grand total</b>	<b>9.644,0</b>	<b>17.879,0</b>	<b>26.346,0</b>	<b>31.235,0</b>	<b>33.331,0</b>

Source: Banco Central de Brasil

TABLE 1.V.7

## BRAZIL: FDI BY COUNTRY OF ORIGIN (1996-2000).

Country of origin	1996	1997	1998	1999	2000
<b>US\$ million</b>					
Belgium	111,5	135,6	950,4	62,2	384,5
France	970,0	1.235,2	1.805,4	1.982,1	1.909,7
Germany	212,0	195,9	412,8	480,8	374,6
Italy	12,3	57,4	646,6	408,5	488,0
Luxembourg	290,7	57,7	114,5	289,7	1.027,2
Netherlands	526,8	1.487,9	3.365,0	2.042,5	2.228,0
Portugal	202,7	681,0	1.755,1	2.409,4	2.514,8
Spain	586,6	545,8	5.120,2	5.702,2	9.592,9
Sweden	126,0	268,6	239,2	315,3	628,6
United Kingdom	91,5	182,5	127,9	1.268,8	393,7
Switzerland	108,8	81,2	217,1	404,5	306,8
Japan	192,2	342,1	277,8	274,3	384,7
South Korea	63,3	91,3	54,0	47,1	25,0
United States	1.975,4	4.382,3	4.692,5	8.087,6	5.398,7
Canada	118,5	66,2	278,6	445,4	192,8
Virgen Islands	361,4	162,4	157,1	191,8	231,3
Cayman Islands	655,7	3.382,9	1.807,1	2.114,5	2.034,5
Uruguay	81,2	56,1	80,6	41,0	199,5
Bermuda	33,8	241,1	53,6	242,6	315,4
Panama	674,8	904,0	152,7	89,7	21,4
Bahamas	74,3	300,1	143,8	148,6	180,7
Argentina	30,1	186,9	113,3	87,8	112,7
Others	165,8	266,9	705,4	428,1	930,8
<b>Total</b>	<b>7.665,4</b>	<b>15.311,1</b>	<b>23.270,8</b>	<b>27.564,4</b>	<b>29.876,4</b>
Less than <b>US\$</b> 10 million in the year	1.978,6	2.567,9	3.075,2	3.670,6	3.454,6
<b>Grand total</b>	<b>9.644,0</b>	<b>17.879,0</b>	<b>26.346,0</b>	<b>31.235,0</b>	<b>33.331,0</b>

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<b>Share</b>					
<b>(percentage)</b>					
Belgium	1,5	0,9	4,1	0,2	1,3
France	12,7	8,1	7,8	7,2	6,4
Germany	2,8	1,3	1,8	1,7	1,3
Italy	0,2	0,4	2,8	1,5	1,6
Luxembourg	3,8	0,4	0,5	1,1	3,4
Netherlands	6,9	9,7	14,5	7,4	7,5
Portugal	2,6	4,4	7,5	8,7	8,4
Spain	7,7	3,6	22,0	20,7	32,1
Sweden	1,6	1,8	1,0	1,1	2,1
United Kingdom	1,2	1,2	0,5	4,6	1,3
Switzerland	1,4	0,5	0,9	1,5	1,0
Japan	2,5	2,2	1,2	1,0	1,3
South Korea	0,8	0,6	0,2	0,2	0,1
United States	25,8	28,6	20,2	29,3	18,1
Canada	1,5	0,4	1,2	1,6	0,6
Virgin Islands	4,7	1,1	0,7	0,7	0,8
Cayman Islands	8,6	22,1	7,8	7,7	6,8
Uruguay	1,1	0,4	0,3	0,1	0,7
Bermuda	0,4	1,6	0,2	0,9	1,1
Panama	8,8	5,9	0,7	0,3	0,1
Bahamas	1,0	2,0	0,6	0,5	0,6
Argentina	0,4	1,2	0,5	0,3	0,4
Others	2,2	1,7	3,0	1,6	3,1
<b>Total</b>	<b>100,0</b>	<b>100,0</b>	<b>100,0</b>	<b>100,0</b>	<b>100,0</b>
Disaggregated	79,5	85,6	88,3	88,2	89,6
Not disaggregated	20,5	14,4	11,7	11,8	10,4
<b>Grand total</b>	<b>100,0</b>	<b>100,0</b>	<b>100,0</b>	<b>100,0</b>	<b>100,0</b>

Source: Banco Central de Brasil

TABLE 1.V.8

## ARGENTINA: FDI BY SECTOR OF DESTINATION (1992-2000).

Sector of destination	1992	1993	1994	1995	1996	1997	1998	1999	2000
<b>US\$, million</b>									
<b>Petroleum</b>	<b>1.222</b>	<b>277</b>	<b>502</b>	<b>436</b>	<b>1.046</b>	<b>105</b>	<b>1.313</b>	<b>17.830</b>	<b>2.487</b>
<b>Mining</b>	<b>4</b>	<b>(6)</b>	<b>17</b>	<b>140</b>	<b>682</b>	<b>72</b>	<b>11</b>	<b>15</b>	<b>9</b>
<b>Manufacturing industry</b>	<b>634</b>	<b>858</b>	<b>1.798</b>	<b>2.186</b>	<b>2.776</b>	<b>3.308</b>	<b>1.147</b>	<b>1.950</b>	<b>2.404</b>
Food, beverages and tobacco	384	338	1.014	793	405	360	256	1.192	600
Textiles and hides	-	39	(18)	80	15	36	(5)	(49)	19
Paper	(102)	27	31	119	375	335	89	15	580
Chemicals, rubber and plastic	217	350	325	792	937	770	232	762	537
Cement and ceramics	33	47	26	33	20	51	306	0	2
Common metals and elaboration of metals	(120)	26	245	(31)	86	569	96	(18)	130
Machinery and equipment	(152)	(32)	60	8	165	106	111	360	(56)
Motor vehicles and transport equipment	373	64	116	392	774	1.082	65	(313)	591

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<b>Electricity, Gas and Water</b>	<b>2.119</b>	<b>1.116</b>	<b>124</b>	<b>1.111</b>	<b>681</b>	<b>1.527</b>	<b>932</b>	<b>951</b>	<b>361</b>
<b>Trade</b>	<b>82</b>	<b>42</b>	<b>339</b>	<b>318</b>	<b>523</b>	<b>150</b>	<b>699</b>	<b>742</b>	<b>147</b>
<b>Transport and communications</b>	<b>36</b>	<b>(19)</b>	<b>245</b>	<b>634</b>	<b>145</b>	<b>845</b>	<b>260</b>	<b>714</b>	<b>3.739</b>
<b>Finance</b>	<b>191</b>	<b>418</b>	<b>160</b>	<b>512</b>	<b>747</b>	<b>2.366</b>	<b>1.757</b>	<b>746</b>	<b>1.445</b>
<b>Others</b>	<b>143</b>	<b>104</b>	<b>452</b>	<b>271</b>	<b>350</b>	<b>784</b>	<b>1.172</b>	<b>983</b>	<b>1.102</b>
<b>TOTAL</b>	<b>4.432</b>	<b>2.791</b>	<b>3.637</b>	<b>5.610</b>	<b>6.951</b>	<b>9.157</b>	<b>7.291</b>	<b>23.929</b>	<b>11.693</b>

**Share (percentage)**

<b>Petroleum</b>	<b>27,6</b>	<b>9,9</b>	<b>13,8</b>	<b>7,8</b>	<b>15,1</b>	<b>1,2</b>	<b>18,0</b>	<b>74,5</b>	<b>21,3</b>
<b>Minino</b>	<b>0,1</b>	<b>(0,2)</b>	<b>0,5</b>	<b>2,5</b>	<b>9,8</b>	<b>0,8</b>	<b>0,1</b>	<b>0,1</b>	<b>0,1</b>
<b>Manufacturing industry</b>	<b>14,3</b>	<b>30,7</b>	<b>49,4</b>	<b>39,0</b>	<b>39,9</b>	<b>36,1</b>	<b>15,7</b>	<b>8,1</b>	<b>20,6</b>
Food, beverages and tobacco	8,7	12,1	27,9	14,1	5,8	3,9	3,5	5,0	5,1
Textiles and hides	-	1,4	(0,5)	1,4	0,2	0,4	(0,1)	(0,2)	0,2
Paper	(2,3)	1,0	0,8	2,1	5,4	3,7	1,2	0,1	5,0
Chemicals, rubber and	4,9	12,5	8,9	14,1	13,5	8,4	3,2	3,2	4,6

plastic									
Cement and ceramics	0,7	1,7	0,7	0,6	0,3	0,6	4,2	0,0	0,0
Common metales and elaboration of metals	(2,7)	0,9	6,7	(0,5)	1,2	6,2	1,3	(0,1)	1,1
Machinery and equipment	(3,4)	(1,2)	1,6	0,1	2,4	1,2	1,5	1,5	(0,5)
Motor vehicles and transportation equipment	8,4	2,3	3,2	7,0	11,1	11,8	0,9	(1,3)	5,1
<b>Electricity, Gas Water</b>	<b>and 47,8</b>	<b>40,0</b>	<b>3,4</b>	<b>19,8</b>	<b>9,8</b>	<b>16,7</b>	<b>12,8</b>	<b>4,0</b>	<b>3,1</b>
<b>Trade</b>	<b>1,8</b>	<b>1,5</b>	<b>9,3</b>	<b>5,7</b>	<b>7,5</b>	<b>1,6</b>	<b>9,6</b>	<b>3,1</b>	<b>1,3</b>
<b>Transport communications</b>	<b>and 0,8</b>	<b>(0,7)</b>	<b>6,7</b>	<b>11,3</b>	<b>2,1</b>	<b>9,2</b>	<b>3,6</b>	<b>3,0</b>	<b>32,0</b>
<b>Finance</b>	<b>4,3</b>	<b>15,0</b>	<b>4,4</b>	<b>9,1</b>	<b>10,7</b>	<b>25,8</b>	<b>24,1</b>	<b>3,1</b>	<b>12,4</b>
<b>Others</b>	<b>3,2</b>	<b>3,7</b>	<b>12,4</b>	<b>4,8</b>	<b>5,0</b>	<b>8,6</b>	<b>16,1</b>	<b>4,1</b>	<b>9,4</b>
<b>TOTAL</b>	<b>100,0</b>	<b>100,0</b>	<b>100,0</b>	<b>100,0</b>	<b>100,0</b>	<b>100,0</b>	<b>100,0</b>	<b>100,0</b>	<b>100,0</b>

Source: DNCI  
MeyOSP

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TABLE 1.V.9

## ARGENTINA: FDI BY COUNTRY OF ORIGIN (1992-2000).

Country of origin	1992	1993	1994	1995	1996	1997	1998	1999	2000
<b>US\$, million</b>									
<b>Europe</b>	<b>1.681</b>	<b>523</b>	<b>1.274</b>	<b>906</b>	<b>2.731</b>	<b>5.279</b>	<b>4.510</b>	<b>19.815</b>	<b>8.174</b>
Germany	(18)	91	210	30	150	307	486	272	187
Spain	277	102	(172)	271	146	1.792	908	16.830	6.789
France	348	79	483	104	418	168	1.310	1.536	412
Italy	496	(228)	80	163	109	284	339	655	378
Netherlands	181	118	341	245	1.079	1.757	1.073	424	225
United Kingdom	256	272	84	28	864	745	353	(44)	89
Others	140	88	247	64	(33)	227	41	141	94
<b>North America</b>	<b>885</b>	<b>1.607</b>	<b>1.852</b>	<b>2.387</b>	<b>2.349</b>	<b>2.200</b>	<b>646</b>	<b>2.437</b>	<b>1.607</b>
United States	624	1.456	1.674	2.252	2.021	2.017	920	1.307	1.625
Others	261	151	178	134	328	183	(274)	1.130	(17)
<b>Central America and Caribbean</b>	<b>943</b>	<b>336</b>	<b>146</b>	<b>934</b>	<b>913</b>	<b>571</b>	<b>1.630</b>	<b>1.697</b>	<b>629</b>
<b>South America</b>	<b>866</b>	<b>390</b>	<b>226</b>	<b>1.030</b>	<b>885</b>	<b>1.052</b>	<b>391</b>	<b>(195)</b>	<b>480</b>

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Chile	436	306	150	707	438	515	277	201	100
Others	430	84	77	323	447	537	114	(396)	381
<b>Other regions</b>	<b>56</b>	<b>(65)</b>	<b>139</b>	<b>353</b>	<b>73</b>	<b>55</b>	<b>115</b>	<b>175</b>	<b>802</b>
<b>TOTAL</b>	<b>4.432</b>	<b>2.791</b>	<b>3.637</b>	<b>5.610</b>	<b>6.951</b>	<b>9.156</b>	<b>7.291</b>	<b>23.929</b>	<b>11.693</b>

**Share (percentage)**

<b>Europe</b>	<b>37,9</b>	<b>18,7</b>	<b>35,0</b>	<b>16,1</b>	<b>39,3</b>	<b>57,7</b>	<b>61,9</b>	<b>82,8</b>	<b>69,9</b>
Germany	(0,4)	3,3	5,8	0,5	2,2	3,4	6,7	1,1	1,6
Spain	6,2	3,6	(4,7)	4,8	2,1	19,6	12,5	70,3	58,1
France	7,9	2,8	13,3	1,9	6,0	1,8	18,0	6,4	3,5
Italy	11,2	(8,2)	2,2	2,9	1,6	3,1	4,6	2,7	3,2
Netherlands	4,1	4,2	9,4	4,4	15,5	19,2	14,7	1,8	1,9
United Kingdom	5,8	9,7	2,3	0,5	12,4	8,1	4,8	(0,2)	0,8
Others	3,2	3,2	6,8	1,1	(0,5)	2,5	0,6	0,6	0,8
<b>North America</b>	<b>20,0</b>	<b>57,6</b>	<b>50,9</b>	<b>42,5</b>	<b>33,8</b>	<b>24,0</b>	<b>8,9</b>	<b>10,2</b>	<b>13,7</b>
United States	14,1	52,2	46,0	40,1	29,1	22,0	12,6	5,5	13,9

Others	5,9	5,4	4,9	2,4	4,7	2,0	(3,8)	4,7	(0,1)
<b>Central America and Caribbean</b>	<b>21,3</b>	<b>12,0</b>	<b>4,0</b>	<b>16,7</b>	<b>13,1</b>	<b>6,2</b>	<b>22,4</b>	<b>7,1</b>	<b>5,4</b>
<b>South America</b>	<b>19,5</b>	<b>14,0</b>	<b>6,2</b>	<b>18,4</b>	<b>12,7</b>	<b>11,5</b>	<b>5,4</b>	<b>(0,8)</b>	<b>4,1</b>
Chile	9,8	11,0	4,1	12,6	6,3	5,6	3,8	0,8	0,9
Others	9,7	3,0	2,1	5,8	6,4	5,9	1,6	(1,7)	3,3
<b>Other regions</b>	<b>1,3</b>	<b>(2,3)</b>	<b>3,8</b>	<b>6,3</b>	<b>1,1</b>	<b>0,6</b>	<b>1,6</b>	<b>0,7</b>	<b>6,9</b>
<b>TOTAL</b>	<b>100,0</b>	<b>100,0</b>	<b>100,0</b>	<b>100,0</b>	<b>100,0</b>	<b>100,0</b>	<b>100,0</b>	<b>100,0</b>	<b>100,0</b>

Source: DNCI  
MeyOSP

Supprimé : -

TABLE 1.V.10

## PARAGUAY: FDI BY SECTOR OF DESTINATION (1992-1999).

	92/93	94/95	1996	1997	1998	1999
<b>US\$, thousand</b>						
<b>Primary</b>	<b>15.216</b>	<b>6.590</b>	<b>8.114</b>	<b>1.977</b>	<b>15.943</b>	<b>8.706</b>
Agriculture and livestock			8.114	1.977	15.943	8.706
<b>Secondary</b>	<b>63.011</b>	<b>79.296</b>	<b>39.196</b>	<b>23.793</b>	<b>38.123</b>	<b>47.642</b>
Food and beverages	54.330	37.600	22.167	18.797	34.599	21.084
Tobacco	0	0	914	755	5.598	5.044
Chemical industry	2.054	8.766	13.591	1.786	-	19.204
Others	6.628	32.931	2.525	2.454	4.086	2.310
<b>Tertiary</b>	<b>14.656</b>	<b>49.275</b>	<b>92.278</b>	<b>200.013</b>	<b>279.291</b>	<b>6.122</b>
Storage	1.587	23.610	1.595	15.993	77.550	-
River transportatio	0	0	325	16.578	13.102	17.851
Telecommunications	4.387	5.481				

Supprimé : u\$s

			5.418	27.054	75.627	43.988
Trade	187	5.888	26.307	26.186	17.842	9.050
Finance	7.375	9.363	66.860	89.362	86.261	3.986
Others	1.120	4.933	-	8.227	24.840	8.909
<b>Total</b>	<b>92.883</b>	<b>135.161</b>	<b>139.588</b>	<b>225.782</b>	<b>333.357</b>	<b>62.470</b>
<b>Share (percentage)</b>						
<b>Primary</b>	<b>16,4</b>	<b>4,9</b>	<b>5,8</b>	<b>0,9</b>	<b>4,8</b>	<b>13,9</b>
Agricultura and livestock			5,8	0,9	4,8	13,9
<b>Secondary</b>	<b>67,8</b>	<b>58,7</b>	<b>28,1</b>	<b>10,5</b>	<b>11,4</b>	<b>76,3</b>
Food and beverages	58,5	27,8	15,9	8,3	10,4	33,8
Tobacco			0,7	0,3	1,7	8,1
Chemical industry	2,2	6,5	9,7	0,8	-	1,8
Others	7,1	24,4	1,8	1,1	1,2	3,7
<b>Tertiary</b>	<b>15,8</b>	<b>36,5</b>	<b>66,1</b>	<b>88,6</b>	<b>83,8</b>	<b>9,8</b>
Storage	1,7	17,5	1,1	7,1	23,3	-

River transportation			0,2	7,3	3,9	28,6
Telecommunications	4,7	4,1	3,9	12,0	22,7	70,4
Trade	0,2	4,4	18,8	11,6	5,4	14,5
Finance	7,9	6,9	47,9	39,6	25,9	-
Others	1,2	3,6	-	11,0	2,7	-
			5,9			2,7
<b>Total</b>	<b>100,0</b>	<b>100,0</b>	<b>100,0</b>	<b>100,0</b>	<b>100,0</b>	<b>100,0</b>

*Source: Based on:*

**1. Chudnovsky (coord). El boom de inversión extranjera directa en el MERCOSUR, Siglo Veintiuno.**

Masi, Fernando, Capítulo 4. El caso paraguayo

**2. Webpage Banco Central de Paraguay**



TABLE 1.V.11

## PARAGUAY: FDI BY COUNTRY OF ORIGIN (1992-1999)

US\$, thousand

Supprimé : u\$s

Country of origin	of 92/93	94/95	1996	1997	1998	1999
US\$, thousand						
Germany	2.801	13.501	26	3.606	-3.741	987
Argentina	3.547	4.874	20.964	26.145	63.124	23.393
Brazil	45.088	54.860	6.579	17.622	52.180	-24.744
Chile	0	14.401	21.567	2.911	867	-2.400
United States	13.069	12.297	32.326	108.732	158.222	16.056
France	15.403	18.992	510	978	5.189	-1.888
Netherlands	2.707	-1.982	20.753	24.513	26.668	29.401
United Kingdom	2.987	9.179	14.402	3.654	5.845	-313
Japan	560	205	0	0	8.142	3.270
China (Taiwán)	1.400	2.238	4.943	19.094	-14.654	447
Uruguay	467	2.547	5.963	17.178	9.223	5.466
<b>Others</b>	<b>5.321</b>	<b>3.845</b>	<b>11.556</b>	<b>1.350</b>	<b>22.290</b>	<b>12.793</b>
Canada			-4.173	1.245	387	788
Colombia			-34	625	2.216	148
Spain			9.979	2.712	6.637	3.703
Italy			-1.236	568	2.929	-842
Liechtestein			-3.710	-1.118	8.540	-4.008
Portugal			225	1.241	-299	428
Sweden			0	0	5.143	-895
Switzerland			10.505	-3.923	-3.263	13.471
<b>Total</b>	<b>93.350</b>	<b>134.956</b>	<b>139.588</b>	<b>225.782</b>	<b>333.357</b>	<b>62.470</b>
<b>Share</b>						
<b>(percentage)</b>						

Supprimé : u\$s

Germany	3,0	10,0	0,0	1,6	-1,1	1,6
Argentina	3,8	3,6	15,0	11,6	18,9	37,4
Brazil	48,3	40,7	4,7	7,8	15,7	-39,6
Chile	0,0	10,7	15,5	1,3	0,3	-3,8
United States	14,0	9,1	23,2	48,2	47,5	25,7
France	16,5	14,1	0,4	0,4	1,6	-3,0
Netherlands	2,9	-1,5	14,9	10,9	8,0	47,1
United Kingdom	3,2	6,8	10,3	1,6	1,8	-0,5
Japan	0,6	0,2	0,0	0,0	2,4	5,2
China (Taiwán)	1,5	1,7	3,5	8,5	-4,4	0,7
Uruguay	0,5	1,9	4,3	7,6	2,8	8,7
<b>Others</b>	<b>5,7</b>	<b>2,8</b>	<b>8,3</b>	<b>0,6</b>	<b>6,7</b>	<b>20,5</b>
Canada			-3,0	0,6	0,1	1,3
Colombia			0,0	0,3	0,7	0,2
Spain			7,1	1,2	2,0	5,9
Italy			-0,9	0,3	0,9	-1,3
Liechtestein			-2,7	-0,5	2,6	-6,4
Portugal			0,2	0,5	-0,1	0,7
Sweden			0,0	0,0	1,5	-1,4
Suiza			7,5	-1,7	-1,0	21,6
<b>Total</b>	<b>100,0</b>	<b>100,0</b>	<b>100,0</b>	<b>100,0</b>	<b>100,0</b>	<b>100,0</b>

**TABLE 1.V.12**

**URUGUAY: INVESTMENT OF TRANSNATIONAL CORPORATIONS (1990-1999)**

US\$, million

Supprimé : u\$s

1990-1994

1995-1999

**Investment**

777,7

1397,3

Acquisitions

232,1

520,9

Greenfield

545,6

876,4

**By origin (%)**

MERCOSUR

37,0

17,9

Chile

5,9

2,8

Other developing countries

0,1

0,4

United States

19,0

31,1

Europe

37,5

35,0

Other developed countries	0,5
	12,8

**By sector (%)**

<b>Primary</b>	<b>22,7</b>
	<b>12,8</b>

<b>Industry</b>	<b>33,6</b>
	<b>16,7</b>

<b>Services</b>	<b>43,7</b>
	<b>70,4</b>

Electricity, water and gas	-
	4,1

Construction and engineering	9,5
	0,4

Retail and wholesale trade	11,5
	53,3

Transport and storage	8,2
	6,5

Post and telecommunications	0,3
	0,9

TV and multimedia	0,5
	2,8

Others	13,6
	2,4

**Source:**

Chudnovsky (coord). El boom de la inversión extranjera directa en el MERCOSUR, Siglo Veintiuno, Bittencourt, Gustavo y Domingo, Rosario, Capítulo 5, Caso Uruguayo.

**TABLE 1.V.13**

**URUGUAY: FDI BY COUNTRY OF ORIGIN (1990-1998).**

Country of origin	1990	1991	1992	1993	1994	1995	1996	1997	1998
<b>US\$ million</b>									
United States	-9	91	81	12	33	59	39	77	82
Europe	46	25	29	3	113	114	215	70	153
France	30	19	3	12	1	4	13		
Spain	0	2	12	3	15	5	35		
United Kingdom	4	2		-11	14	17	16		
Germany	12	1	4	2	2	4	8		
MERCOSUR and Chile	15	11	32	17	90	95	83	91	54
Others					3	14	22	25	126
<b>Total</b>	<b>98</b>	<b>151</b>	<b>161</b>	<b>38</b>	<b>271</b>	<b>312</b>	<b>431</b>	<b>263</b>	<b>415</b>

Supprimé : u\$s

<b>Share</b>									
<b>(percentage)</b>									
United States	-9,2	60,3	50,3	31,6	12,2	18,9	9,0	29,3	19,8
Europe	46,9	16,6	18,0	7,9	41,7	36,5	49,9	26,6	36,9
France	30,6	12,6	1,9	31,6	0,4	1,3	3,0		
Spain	0,0	1,3	7,5	7,9	5,5	1,6	8,1		
United Kingdom	4,1	1,3	0,0	-28,9	5,2	5,4	3,7		
Germany	12,2	0,7	2,5	5,3	0,7	1,3	1,9		
MERCOSUR and Chile	15,3	7,3	19,9	44,7	33,2	30,4	19,3	34,6	13,0
Others					1,1	4,5	5,1	9,5	30,4
<b>Total</b>	<b>100,0</b>	<b>100,0</b>	<b>100,0</b>	<b>100,0</b>	<b>100,0</b>	<b>100,0</b>	<b>100,0</b>	<b>100,0</b>	<b>100,0</b>

**Source:**

Chudnovsky (coord). El boom de inversión extranjera directa en el MERCOSUR, Siglo Veintiuno.

Bittencourt, Gustavo y Domingo, Rosario, Capítulo 5, El caso uruguayo

**ANNEX 2.I**

**MERCOSUR'S SERVICES LIBERALISATION**  
**WITHIN THE FRAMEWORK OF THE**  
**MONTEVIDEO PROTOCOL ON TRADE IN**  
**SERVICES**



## **THE MONTEVIDEO PROTOCOL ON TRADE IN SERVICES AND ANNEXES**

### **1. Montevideo Protocol**

D 13/97 and D 12/98 approved the Montevideo Protocol. The Protocol applies to all measures enforced by Member State governments (or government institutions to which a member state government have delegated competencies) that may affect the provision, purchase, use or access to services, including commercial presence. The Protocol adopts the principles of national treatment, free market access, most favoured nation and transparency. The protocol also calls for the negotiation of commitments covering specific sectors and subsectors. These will be included in *specific lists of commitments*, to be annexed to the Protocol. The structure and content of the Protocol is similar to the GATS.

Four decisions (D 9/98, D 1/00, D 56/00 y D 10/01) approved annexes to the Montevideo Protocol containing schedules of commitments. Neither the Protocol nor the annexes are still in force because they have not been yet ratified by national legislatures.

The analysis that follows in the following sections has the only goal of providing an easier acces to Annex 2.II by listing the sectors and subsectors for which the situation changes by reference to previous commitments undertaken in GATS or in the framework of the Montevideo Protocol. In many cases, in particular in the Second and Third Rounds of Negotiation, whole sectors are added to the schedules of commiments with very few bindings on market access or national treatment (even in many cases with no binding at all).

## 2. Annexes to the Montevideo Protocol

### **2.1. Decision 9/98. Annexes including specific sector agreements.**

D 9/98 approved annexes to the Montevideo Protocol including sector specific agreements concerning:

- Movement of Services Providers (natural persons).
- Financial Services.
- Water and Surface Transportation
- Air Transportation.

Annex on Movement of Service Providers (natural persons): The Protocol applies to measures affecting service providers that are natural persons or to natural persons employed by a service provider, concerning the provision of services. The protocol establishes that member states can enforce measures regulating the entrance or temporary residence of natural persons, subject to the limits set by specific commitments. The protocol establishes that labor relations will be ruled by the laws of the location where the contract is executed.

Annex on financial services: The annex first defines the terms used in the Montevideo Protocol as far as they concern the provision of financial services. It also authorizes member states to adopt or maintain “prudential measures” aimed at protecting investors and ensuring the solvency and the liquidity of the financial system. The annex commits member states to continue harmonizing regulations concerning the provision of financial services.

Annex on Water and Surface Transportation: It renews existing multilateral and bilateral agreements, establishing that these agreements will be complemented by specific commitments.

Annex on Air Transportation: It states that the Montevideo Protocol does not affect existing bilateral and multilateral agreements.

This decision also approved the initial list of horizontal and specific commitments.

## **2.2. Annex of specific commitments**

### **2.2.1. Sectorial lists**

The following list specifies which services were liberalised through the annexes of the Dec. 9/98, beyond those liberalised for each Member State in GATS.

1) ARGENTINA (sectors of services added to those liberalised in Gats):

- Was added point *1 C, Research and development services (CCP 85)*
- Within point *1 F, Other Business services*, were added *Services related to management consulting . (CCP 8660)*.
- Within point *1 F, Other Business services*, were added *Technical testing and analysis services .(CCP 8676)*.
- Within point *1 F, Other Business services*, were added *Related scientific and technical consulting services .(CCP 8675)*
- Within point *3, Construction Work (CCP 51)* , was added point *B, Construction work for civil engineering . (CCP 513)*
- Was added point *11, Transport services .*

2) BRASIL (sectors of services added to those liberalised in GATS):

- Within point *1 A k, others*, were added *Pharmacy services*.
- Within point *1 A k, others* , were added *Psychology services*.
- Within point *1 A k, others* , were added *Biblioteconomy services*
- Was added point *1 B, Computer and related services (CCP 84)*.
- Was added point *1 C, Research and development services (CCP 85)*.
- Within point *1 F, Other business services*, was added point *e, Technical testing and analysis services (CPC 8676)*.

- Within point 1 F, *Other business services*, was added point m), *Related scientific and technical consulting services (CPC 8675)*.
- Within point 2, *Communications services*, commitments in GATS specify the fact that “*pick up, transport and delivery of letters, postcards and grouped correspondence, as well as issuance of stamps and other postage payments are not included*”, but commitments in MERCOSUR only specify that *they do not include services provided exclusively through Brazil's official Post service*. Concerning market access restrictions in this point, mode 2 was not liberalised in GATS, but in MERCOSUR it has no restrictions.
- Was added point 2 C, *Telecommunications services*.
- Within point 7 A, *All insurance and services related to insurance*, within market access limitations mode 1 has no restrictions and in mode 3 was deleted a foreign participation restriction to 50% and to 1/3 of the votes as maximum. Specifically.
  - In the case of *freight insurance*, in MERCOSUR there are no restrictions for mode 1 concerning National Treatment, except for *transport insurance*, in which there is a restriction for *contracts for import of goods and any obligation stemming from imports*;
  - Were added *re-insurance and retrocession services, work accidents, boat and machinery and boat civil liability*.
- Within point 7.B.1, *Banking services*, was specified, in additional commitments, that for *credit card and factoring services*, national treatment is given to commercial presence, if these services were defined as *financial services* in the future legislation adopted by the *Congreso Nacional*. In the same point, when specifying, in *financial institutions designed services, funds received from the general public*, there is a difference in point iii). While in GATS it is assigned to *funds for the financing of commercial transactions*, in Mercosur it is assigned to *saving deposits for the financing of housing*. Concerning market access restrictions in point B, whereas in GATS is not permitted *the establishment of new agencies and subsidiaries of foreign financial institutions or increases in the participation of foreign nationals in the capital of Brazilian financial institutions*, in MERCOSUR, *it is allowed such an*

*establishment or increase, but only if authorised case by case by a decree of the Executive.* On the other hand, there are no restrictions to national treatment in mode 3.

- Was added point 7 B 2, *Services provided by non-financial institutions.*
- Within point 11, *Transport services*, were included *land, water and air services*, with a reference to *the Annexes on land and water transport services and on air services of the Montevideo*. But it is not clear what are the commitments included in these annexes.

3) PARAGUAY (sectors of services added to those liberalised in Gats):

- Was added point 2 C, *Telecommunications services.*
- Within point 7.A, *insurance (including reinsurance) and pension fund services, except compulsory social security services (CCP 812) and other insurance services n.e.c. (CCP 81299)*, limitations to market access for mode 3 establish restrictions in MERCOSUR, whereas in GATS there wasn't any established. These restrictions concern the condition that *insurance firms must be incorporated as Sociedades Anónimas or be subsidiaries of foreign firms; they will also require the authorisation of the Superintendencia de*
- Within point 7 B, *Banking services*, limitations to market access for mode 3 also establish more restrictions in MERCOSUR than in GATS. *It is required that firms be incorporated as Sociedades Anónimas with nominative shares (except for subsidiaries of foreign banks). Any national or foreign firm must be authorised by the Paraguay Central Bank.*
- Was added point 11, *Transport services, including land, water and air.*

4) URUGUAY (sectors of services added to those liberalised in Gats):

- Was added point 1 A, *Professional services.*
- Within point 1 B, *Computer services and related services*, were added *Maintenance and repair services of office machinery and equipment including computers (CCP 845).*

- Within point 1 F, *Other business services*, was added point a), *Advertising services* (CCP 871).
- Within point 1 F, *Other business services*, was added point o), *Building cleaning services* (CCP 874).
- Within point 1 F, *Other business services*, was added point s) *services for meetings and conventions* (CCP 87909\*).
- Was added point 2 C, *Telecommunications services*.
- Was added point 3, *Building services and related engineering services*.
- Was added point 4, *Distribution services*.
- Within point 7, *Financial services*, was added point A, *Insurance services and related services*.
- Within point 7.B, *Banking services and other financial services*, was added to point a) *Wholesale deposit services and other deposit services* (CCP 81115-81119), , *Other bank deposit services* (CCP 81116).
- Within point 7.B, *Banking services and other financial services*, was added point b), *Personal instalment loan services, credit card services and other credit services* ( factoring is not included) (CCP 81132, 81133, 81139).
- Within point 7.B, *Banking services and other financial services*, was added point d), *Other services auxiliary to financial intermediation* (CCP 81339).
- Within point 7.B, *Banking services and other financial services*, was added point e), *credit and commitments guarantees* (81199\*).
- Within point 7.B, *Banking services and other financial services*, was added point f), *commercial exchanges on one's own account or for commercial clients either in an official exchange or in a non-organised*.
- Within point 7.B, *Banking services and other financial services*, was added point g), *Services related to securities markets* (CCP 8132).
- Within point 7.B, *Banking services and other financial services*, was added point h), *foreign exchange* (CCP 81339\*\*).
- Within point 7.B, *Banking services and other financial services*, was added point i), *assets administration* (CCP 8119\*+81323\*).
- Within point 7.B, *Banking services and other financial services*, was added point j), *payment and compensation of financial assets, including shares, bonds, derivatives and other instruments* (CPP 81339\*\* y 81319\*\*).

- For all *Banking services and other financial services*, a new restriction to market access was added in MERCOSUR: *financial institutions internal rules cannot forbid to uruguayan citizens the access to any position and must be incorporated as Sociedad Anonima with nominative shares or be a subsidiary of a foreign firm.*
- Within point 11, *Transport services*, was added *liberalisation of land, water and air transport in conformity with the specific Annex of the Montevideo Protocol.*

### **2.2.2. Horizontal Commitments**

Through D 9/98, within the lists of specific commitments, horizontal commitments of each Member State were approved. These horizontal commitments act as horizontal limitations, because they include limitations to market access and to national treatment.

- 1) ARGENTINA: includes horizontal commitments identical to those in GATS.
- 2) BRASIL: includes horizontal commitments identical to those in GATS, *but in relation to highly qualified foreign technical personnel, who may work under temporary contracts with Brazilian firms controlled by national or foreign capital, there is a requirement in GATS: that the contract must be approved by the Ministry of Labour and the need for hiring foreign personnel (and not Brazilian personnel) must be justified, whereas in MERCOSUR there is no requirement of proportionality or economic needs test.*
- 3) PARAGUAY: it did not include horizontal commitments in GATS, whereas in MERCOSUR it included horizontal commitments for mode 3, Commercial Presence, establishing a requirement: *authorisation of commercial presence, which will be given to legal entities constituted in conformity with Paraguayan law and main office and representation in the Paraguayan territory. Land acquisition in border territory is not bound. Mode 4 wasn't bound and some positions were defined: Director, Manager and Especialist.*
- 4) URUGUAY: includes horizontal commitments identical to those in GATS

### **3. First Round of Negotiations**

D 1/00 brought to an end the First Round of Negotiations of Specific Commitments in Services, in accordance with Montevideo Protocol provisions. The following list includes the points in which there was some advance in the liberalisation process, as compared to the previous situation:

1) ARGENTINA (sectors of services added to those liberalised in GATS and in the first annex):

- Within point 3 B *Building services for civil works*, limitations to market access for mode 3 establish that *the acces will be allowed two years after the entry into force of the Montevideo Protocol*. Before this round, this mode was not bound.
- Within points 7 A, a), b), c), *Life insurance services, accident and health insureance, insurance services other than life insurance, insurance services for maritime and air transport and reinsurance and retrocession services*, there are no restrictions to market access. *Before, the authorisations for new entities were suspended..*

2) BRASIL (sectors of services added to those liberalised in GATS and in the first annex):

- Within point 2 C, *Telecommunications services*, were added *business network services and data and message transmission services (CCP 7522) + (CCP 7523)*. A restriction to mode 1 in market access was deleted (*that international communications should be provided through a Brazilian “Gateway” duly approved to this effect*). Mode 3 was bound, with the following limitation: *until 31-12-2001, in the case of telephone services for the general public at most two operators would be authorised in the local, long distance interregional and*



*international service. And up to four operators in the long distance intraregional service. Mode 3 of national treatment was bound.*

3) PARAGUAY:

There wasn't any advance in the liberalisation process in this round.

4) URUGUAY:

There wasn't any advance in the liberalisation process in this round.

#### **4. Second Round of Negotiations**

Decision 56/00 brought to an end the Second Round of Negotiations of Specific Commitments in Services. The following list includes all the points in which there was some advance in the liberalisation process, as compared to the previous situation.

1) ARGENTINA (sectors of services added to those liberalised in GATS and in previous annexes):

- Was added point *1 A c), Tax advisory services.*
- Within point *1 A f), Engineering integrated services,* national treatment for modes 1 and 2 were bound.
- Was added point *1 A h), Medical and dental services (CCP 9312).*
- Was added point *1 A i), Veterinary services (CCP 932)*
- Was added point *1 A j), Deliveries and related services, nursing services, physiotherapeutic and para-medical services (CCP 93191)*
- Within point *1 A k), Psychology services,* market access and national treatment for modes 1 and 2 were bound.

- Within point *1 C a*), were added *Research and experimental development services on natural sciences and engineering (CCP 8510)*.
- Was added point *1 C b*), *Research and experimental development services on social sciences and humanities (CCP 8520)*
- Was added point *1 C c*), *Interdisciplinary research and experimental development services (CCP 853)*
- Was added point *1 D*, *Real state services*.
- Was added point *1 E*, *Renting services without workers*.
- Within point *1 F d*), market access for modes 1, 2 and 3 and national treatment for mode 1 were bound..
- Within point *1 F e*), national treatment for mode 1 and 2 was bound.
- Was added point *1 F f*), *Services incidental to agriculture, hunting, forestry and fishing (CCP 881)*
- Was added point *1 F g*), *Services incidental to fishing (CCP 882??)*
- Was added point *1 F i*), *Services incidental to manufacturing (CCP 884+ 885, except those of code 88442)*
- Was added point *1 F j*), *Services incidental to energy distribution (CCP 887)*
- Was added point *1 F k*), *Labour market services (CCP 872)*
- Was added point *1 F l*), *Investigation and security services (CCP 873)*
- Was added point *1 F n*), *Repair services of personal and household goods (except boats, planes and other transport equipment) (CCP 633 + 8861, 8866)*
- Was added point *1 F p*), *Photographic services (CCP 875)*
- Was added point *1 F q*), *Packaging services (CCP 876)*
- Was added point *1 F r*), *Publishing services (CCP 88442)*.

2) BRASIL (sectors of services added to those liberalised in GATS and in previous annexes):

- Was added point *1 A a*), *Legal services (CCP 861)*.
- Within point *1 A b*), *Accounting, auditing and bookkeeping services (CCP 862)* market access for mode 1 was bound with the following requirement: *establishment in the domestic market of a foreign service provider in order to allow its*

*professional name to be used by Brazilian professionals* National treatment for modes 1 and 2 was bound. Within national treatment for mode 3, the condition of *registarion for auditing professionals, insurance coompanies and open capital firms* was deleted.

- Within point 1 A d), *Architectural services (CCP 8671)*, market access for modes 1 and 2 was bound with the following requirement: *foreign providers will be able to operate in the domestic market only if they are associated through consortia to Brazilian providers and the Brazilian associates are the leading directors of the activity*. National treatment for modes 1 and 2 was bound.
- Within point 1 A e), *servicios de ingeniería*, market access for modes 1 and 2 was bound with the following requirement: *foreign providers will be able to operate in the domestic market only if they are associated through consortia to Brazilian providers and the Brazilian associates are the leading directors of the activity*. National treatment for modes 1 and 2 was bound.
- Within point 1 a f), *Integrated engineering services (CCP 8673)*, market access for modes 1 and 2 was bound with the following requirement: *foreign providers will be able to operate in the domestic market only if they are associated through consortia to Brazilian providers and the Brazilian associates are the leading directors of the activity*. National treatment for modes 1 and 2 was bound.
- Within point 1 A g), *Urban planning and landscape architectural services (CCP 8674)*, market access for modes 1 and 2 was bound with the following requirement: *foreign providers will be able to operate in the domestic market only if they are associated through consortia to Brazilian providers and the Brazilian associates are the leading directors of the activity*. National treatment for modes 1 and 2 was bound.
- Was added point 1 A h), *Medical and dental services (CCP 9312)*.
- Was added point 1 A i), *Veterinary services (CCP 932)*.
- Was added point 1 A j), *Deliveries and related services, nursing services, physiotherapeutic and para-medical services. (CCP 93191)*.
- Within point 1 A k), were added *Biology services*.
- Within point 1 C a), *Research and experimental development services on natural sciences and engineering (CCP 8510)*, market access for mode 3 was not bound, while in previous rounds there were no restrictions.

- Was added point *1 C b*), *Research and experimental development services on social sciences and humanities (CCP 8520)*.
- Was added point *1 C c*), *Interdisciplinary research and experimental development services (CCP 853)*.
- Was added point *1 D*, *Real estate services*.
- Was added point *1 E*, *Renting/ leasing services without workers*.
- Within point *1 F a*), *Advertising services (CCP 871*, market access for mode 2 was bound with the following requirement: *foreign participation must be limited to one third of advertising films , but higher proportions will be admitted if Brazilian artistic resources are used*. It is also required that *advertising films must be spoken in Portuguese except if the advertisement itself requires otherwise*. National treatment for mode 2 was bound.
- Within point *1 F b*), *Market research and public opinion polling services (CCP 8640)* market access for modes 1 and 2 was bound.
- Within point *1 F c*), *Management consulting services (CCP 8650)*, market access for modes 1 and 2 was bound.
- Within point *1 F d*), *Management consultancy related services except building projects management*, market access for modes 1 and 2 was bound. The condition of *registration for firms* for mode 3 was deleted. National treatment for mode 1 was bound.
- Within point *1 F e*), *Technical testing and analysis services (CCP 8676)*, market access for modes 1 and 2 was bound with the following requirement: *foreign providers will be able to operate in the domestic market only if they are associated through consortia to Brazilian providers and the Brazilian associates are the leading directors of the activity*. National treatment for modes 1 and 2 was bound.
- Was added point *1 F f*), *Services incidental to agriculture, hunting and forestry (CCP 881)*
- Was added point *1 F g*), *Services incidental to fishing (CCP 882)*
- Was added point *1 F h*), *Services incidental to mining (CCP 8837, 5515)*.
- Was added point *1 F i*), *Services incidental to manufacturing .*
- Was added point *1 F n*), *Repair services of personal and household goods (no incluye equipamientos de transporte y radiodifusión (CCP 633, 8861, -8866)*

- Within point *1 K o*), market access and national treatment for modes 1 and 2 were bound.
- Was added point *1 F p*), *Photographic services (CCP 875)*.
- Was added point *1 F q*) *Packaging services (CCP 876)*
- Was added point *1 F r*), *Publishing services (CCP 88442)*
- Was added point *1 F s*), *Other business services n.e.c. (CCP 87909)*.

### 3) PARAGUAY:

There was no advance in the liberalisation process in this round

### 4) URUGUAY(sectors of services added to those liberalised in GATS and in previous annexes):

- Within point *1 A*, *Professional services*, in the regulation of market access were added *las leyes N° 5566, 12997, 15982*. In the regulation of national treatment, *ley N° 16226* was added.
- Was added point *1 A a*), *Legal services (CCP 861)*
- Within point *1 A b*), *Accounting, auditing and bookkeeping services (CCP 862)* *decreto N° 103/991, el dec 105/991, el dec 240/993, la ley 12802 y el código de comercio (art 1532)* were added.
- Was added point *1 A c*), *Taxation services (CCP 863)*
- Was added point *1 A f*), *Integrated engineering services (CCP 8673)*
- Was added point *1 A g*), *Urban planning and landscape architectural services (CCP 8674)*.
- Was added point *1 A h*), *Medical and dental services* .
- Was added point *1 A i*), *Veterinary services (CCP 932)*
- Was added point *1 A j*), *Deliveries and related services, nursing services, physiotherapeutic and para-medical services (CCP 93191)*.
- Was added point *1 A k*), *otros*.
- Was added point *1 C*, *Research and development services*.
- Was added point *1 E c*), *Leasing or rental services concerning private cars without operators , leasing or rental services concerning goods transport vehicles without*

*operator, leasing or rental services concerning other land transport equipment without operator. (CCP 83101- 83102- 83105)*

- *Was added point 1 E d), Leasing or rental services concerning agricultural machinery and equipment without operator, leasing or rental services concerning other machinery and equipment without operator. (CCP 83106/ 83109).*
- *Was added point 1 F e), Technical testing and analysis services (CCP 8676)*
- *Was added point 1 F f), Services incidental to agriculture, hunting and ????. (CCP 881)*
- *Was added point 1 F g), Services incidental to fishing (CCP 882)*
- *Was added point 1 F h), Services incidental to mining (CCP 883-5115)*
- *Was added point 1 F i), Services incidental to manufacturing (CCP 884- 885, except those of code 88442)*
- *Was added point 1 F j), Services incidental to energy distribution (CCP 887).*
- *Was added point 1 F l), Investigation and security services (CCP8730)*
- *Was added point 1 F m), Related scientific and technical consulting services (CCP 8675).*
- *Was added point 1 F n), Repair services of personal and household goods (con exclusión de las embarcaciones, aeronaves y demás equipos de transporte)(CCP 633- 8861- 8866).*
- *Was added point 1 F p), Photographic services (CCP 875)*
- *Was added point 1 F q), Packaging services (CCP 876)*
- *Was added point 1 F r), Publishing services (CCP 88442).*

### **5. Third Round of Negotiations**

Decision 10/00 brought to an end the Third Round of Negotiations of Specific Commitments in Services. The following list includes the points in which there was some advance in the liberalisation process, as compared to the previous situation:

- 1) ARGENTINA (sectors of services added to those liberalised in GATS and in previous annexes):
  - *Within point 1 A c), Taxation services (CCP 863), market access for modes 1 and 2 and national treatment for mode 3 without restrictions were bound.*

- Within point 1 A f), *Integrated engineering services (CCP 8673)*, market access for modes 1, 2 and 3 without restrictions was bound.
- Within point 1 A g), *Urban planning and landscape architectural services (CCP 8674)*, market access for modes 1, 2 and 3 and national treatment for modes 1 and 2 without restrictions were bound.
- Within point 1 A h), *Medical and dental services (CCP 9312)*, market access and national treatment for mode 2 without restrictions were bound, and market access and national treatment for mode 3 were bound without any restriction at national level.
- Within point 1 A i), *Veterinary services (CCP 932)*, market access and national treatment for mode 2 without restrictions were bound; market access and national treatment for mode 3 were bound without any restriction at national level.
- Within point 1 A j), *Deliveries and related services, nursing services, physiotherapeutic and para-medical services (CCP 93191)*, market access and national treatment for modes 1, 2 and 3 were bound.
- Within point 1 C a), *Research and experimental development services on natural sciences and engineering (CCP 8510)*, market access for modes 1, 2 and 3 and national treatment for modes 1 and 2 without restrictions were bound. National treatment for mode 3 was bound *but availability of subsidies is reserved to domestic service providers*.
- Within point 1 C b), *Research and experimental development services on social sciences and humanities (CCP 8520)*, market access for modes 1, 2 and 3 and national treatment for modes 1 and 2 without restrictions were bound. National treatment for mode 3 was bound *but availability of subsidies is reserved to domestic service providers*.
- Within point 1 C c), *Interdisciplinary research and experimental development services (CCP 853)*, market access for modes 1, 2 and 3 and national treatment for modes 1 and 2 without restrictions were bound. National treatment for mode 3 was bound *but availability of subsidies is reserved to domestic service providers*.
- Within point 1 D a), *Real estate services involving own or leased property (CCP 8210)*, market access for modes 1 and 3 was bound without restrictions. National treatment for modes 1 and 3, that had been bound without restrictions, became

conditioned by a requirement: *auctionneers must be registered and brokers (corredores) must have been domiciled in the jurisdiction at least for a year*

- Within point 1 D b), *Real estate services on a fee or contract basis (CCP 822)*, market access for modes 1 and 3 was bound without restrictions. National treatment for modes 1 and 3, that had been bound without restrictions, became conditioned by a requirement: *auctionneers must be registered and brokers (corredores) must have been domiciled in the jurisdiction at least for a year*
- Within point 1 E a), *Leasing or rental services concerning vessels without operator (CCP 83103)* national treatment for modes 1, 2 and 3 was bound without restrictions. Market access for modes 1 and 2 was bound with restrictions when it deals with *rental of vessels for internal transport and for transport for which domestic flag vessels or assimilated are required*. Market access for mode 3 was bound with the following requirement: *constitution of a domestic maritime company and import of vessels registered under the domestic flag*, with restrictions when it deals with *rental of vessels for internal transport and for transport for which domestic flag vessels or assimilated are required*
- Within point 1 E c), *Leasing or rental services concerning private cars without operator and Leasing or rental services concerning goods transport vehicles without operator (CCP 83101 y 83102)*, national treatment and market access for modes 1, 2 and 3 were bound without restrictions.
- Within point 1 E e), *otros (CCP 832)*, national treatment and market access for modes 1, 2 and 3 were bound without restrictions.
- Within point 1 F e), *Technical testing and analysis services (CCP 8676)*, market access for modes 1, 2 and 3 was bound.
- Within point 1 F f), *Services incidental to agriculture, hunting and forestry*, market access for modes 1, 2 and 3 was bound without restrictions only with reference to agriculture. National treatment for mode 1 referring to *hunting and forestry* was not bound although it had been previously bound.
- Within point 1 F i), *Services incidental to manufacturing (CCP 884 + 885, except 88442)*, national treatment and market access for modes 1, 2 and 3 were bound without restrictions.
- Within point 1 F k), *Placement and supply services of personnel (CCP 8720)*, market access for modes 1 and 3 was bound without restrictions.



- Within point 1 F l), *Investigation and security services (CCP 873)*, market access for mode 2 and national treatment for modes 1 and 2 were bound without restrictions. Market access for mode 1 was bound with the obligation of *constituirse en el territorio nacional*. Market access for mode 3 was bound requiring *that managing personnel and employees of security and custody firms must be Argentinian nationals and security firms must have Argentiniean*. National treatment for mode 3 was bound requiring *that managing personnel and employees of security and custody firms must be Argentinian nationals*.
- Within point 1 F n), *Repair services of personal and household goods (CCP 633 + 8861 hasta 8866)*, market access and national treatment for mode 1 were not bound, although they had been bound without restrictions in previous rounds.
- Within point 1 F o), *Building cleaning services (CCP 874)*, market access and national treatment for mode 1 were not bound, although they had been bound without restrictions in previous rounds.
- Within point 1 F p), *Photographic services (CCP 87501 + 87502 + 87503 + 87505 + 87507 y 87509)*, market access and national treatment for modes 1, 2 and 3 were bound without restrictions.
- Within point 1 F q), *Packaging services (CCP 876)*, market access for modes 2 and 3 was bound without restrictions and national treatment for mode 1 was not bound although it had been bound without restrictions in previous rounds.
- Within point 1 F r), *Publishing and Printing services (CCP 88442)*, market access for modes 1 and 2 and national treatment for modes 1, 2 and 3 were bound without restrictions. Market access for mode 3 was bound requiring *ownership of newspapers is reserved to Argentinian nationals*.
- Within point 2 *Communications services, in rented networks for telephone services*, the limitations to point 3 of market access remained, but the *preference for the installation of firms authorised to provide telephonic services* was deleted.
- Was added point 2 D, *Audiovisual services*.
- Within point 3 A, *Construction work for buildings (CCP 512)* market access and national treatment for mode 1 were not bound, although they had been bound without restrictions in previous rounds.

- Within point 3 B, *Construction work for civil engineering (CCP 513)*, market access for modes 2 and 3 and national treatment for mode 2 were bound without restrictions.
- Within point 3 C, *Assembly and erection of prefabricated constructions and installation work (CCP 514 y 516)*, market access for mode 1 was not bound, although it had been already bound.
- Within point 3 D, *Building completion and finishing work (CCP 517)*, market access for mode 1 was not bound, although it had been already bound.
- Within point 3 E, *Other (CCP 511, 515, 518)*, market access for mode 1 access was not bound, although it had been already bound.
- Was added point 4, *Distribution services*.
- Was added point 5, *Educational services*.
- Was added point 6, *Services related to the environment*.
- Was added point 8, *Social and Health services*.

2) BRASIL: (sectors of services added to those liberalised in GATS and in previous annexes):

- Horizontal commitments undertaken in the Annex of the Montevideo Protocol (which were almost identical to those of GATS) were rewritten, but all restrictions related to market access of investments and commercial presence were excluded.
- Within point 1 A of *Professional services, Legal services (a) (CCP 861)*, restrictions to market access and national treatment for mode 1 were deleted; some requirements for lawyers societies were established in market access for mode 3, whereas previously *commercial presence was limited to those persons accepted as lawyers*; national treatment for mode 3 was limited by a requirement: *law firms of foreign lawyers will only provide advise on foreign law and foreign lawyers will not be allowed to act as legal representatives (procuradores) before a court of law*. This limitation did not exist in previous commitments.
- Within point 1 A b), *Accounting, auditing and bookkeeping services (CCP 862)* the limit to mode 1 was reduced to just one requirement: *establishment in the local market*; the restriction in market access for mode 3 related to the fact *that a foreign provider will not be allowed to act on his own* was deleted; the restriction in

national treatment for mode 3 related to the fact *that accounting and auditing rules will be respected* was deleted (this elimination is not legally relevant because, obviously, this obligation is still in force).

- Was added point *1 A c), Taxation services (CCP 863)*.
- Within points *1 A d), e), f) y g), Architectural services, engineering services, integrated engineering services and urban planning and landscape architectural services. (CCP 8671, 8672, 8673, 8674)*, market access for modes 1, 2 and 3 was bound without restrictions.
- Within point *1 A h), Medical and dental services (CCP 9312)*, market access and national treatment for modes 1 and 2 were bound without restrictions; market access for mode 3 was bound with the following requirement: *to forbid the direct or indirect participation of firms with foreign capital in health assistance within the country*.
- Within point *1 A i), Veterinary services (CCP 932)*, market access and national treatment for modes 1, 2 and 3 were bound.
- Within point *1 A j), Deliveries and related services, nursing services, physiotherapeutic and para-medical services (CCP 93191)*, market access for mode 1 and national treatment for modes 2 and 3 were bound; market access for mode 3 was bound with the following requirement: *to forbid the direct or indirect participation of firms with foreign capital in health assistance within the country*
- Within point *1 C a), Research and experimental development services on natural sciences and engineering (CCP 8510)* market access for modes 2 and 3 and national treatment for mode 2 were bound without restrictions.
- Within point *1 C b) y c), Research and experimental development services on social sciences and humanities and Interdisciplinary research and experimental development services (CCP 852 y 853)*, market access and national treatment for modes 2 and 3 were bound without restrictions.
- Within point *1 D a) Real estate services involving own or leased property (CCP 821)* market access for modes 1 and 3 was bound.
- Within point *1 D b) Real estate services on a fee or contract basis (CCP 822)*, market access for modes 1 and 3 was bound.
- Within point *1 E a) Leasing or rental services concerning vessels without operator (CCP 83103)*, market access for modes 1 and 2 was bound without restrictions;

market access for mode 3 was bound with the following requirement: *rental firms must be incorporated as Sociedad Anónima.*

- Within point 1 E c), *Leasing or rental services concerning private cars without operator, Leasing or rental services concerning goods transport vehicles without operator, Leasing or rental services concerning other land transport equipment without operator (CCP 83101, 83102 y 83105)* market access for modes 1 and 2 was bound without restrictions; market access for mode 3 was bound with the following requirement: *rental firms must be incorporated as Sociedad Anónima.*
- Within point 1 E d), *services concerning other machinery and equipments without operator (CCP 83106, 83107, 83108, 83109)*, the following requirement was added for mode 3: *rental firms must be incorporated as Sociedad Anónima..*
- Was added point 1 E e) *others (CCP 832).*
- Within point 1 F a) *Advertising services (CCP 871)* the following restriction to market access for modes 1 and 2 was deleted: *that advertising films must be spoken in Portuguese*; the following requirement for mode 3 was deleted: *fulfillment of the obligations of the ethical code of Brazilian advertising professionals.*
- Within point 1 F e), *Technical testing and analysis services (CCP 8676)*, market access for modes 1, 2 and 3 was bound without restrictions.
- Within point 1 F f), *Services incidental to agriculture, hunting and forestry*, market access for modes 2 and 3 was bound without restrictions.
- Within point 1 F g) y 1 F h), *Services incidental to fishing (CCP 883) and Services incidental to mining (CCP y 5115)*, market access and national treatment for modes 2 and 3 were bound without restrictions.
- Within point 1 F i), *Services incidental to manufacturing (CCP 884 y 885, excepto 88442)*, market access for modes 2 and 3 and national treatment for modes 1, 2 and 3 were bound without restrictions.
- Within point 1 F k), *Placement and supply services of personnel (CCP 872)* market access for mode 1 was bound without restrictions; market access for mode 3 was limited only by this requirement: *evidence of the constitution of the firm and the Brazilian nationality of its partners*
- Within point 1 F m), *Related scientific and technical consulting services (CCP 8675)*, market access and national treatment for modes 1 and 2 were bound without restrictions; some limitations were added to market access for mode 3: *that research*

of mineral resources and use of hydraulic energy are reserved to Brazilians or firms constituted in Brazil having in Brazil the main office and the administration. In border areas, 51% of capital must be owned by Brazilians and the majority of managing positions must be held by Brazilians. The following requirement was deleted: *the consortium's goal must be defined clearly in the contract establishing it*

- Within points *1 F n), 1 F o) y 1 F q)*, *Repair services of personal and household goods, Building cleaning services and Packaging services (CCP 633, 8861, 8862, 8863, 8864, 8865, 8866, 874, 876)* there was a step back in market access and national treatment for mode 1 because they had been bound without restrictions and in this round they weren't bound.
- Were added within point *1 F p)*, *Photographic services*, los CCP 8704 y 8705.
- Within point *1 F r)*, *Publishing services (CCP 88442)*, market access for modes 1 and 2 was bound without restrictions; mode 3 was bound with the following requirement: *ownership of newspapers is limited to Brazilians*.
- Within point *1 F s)*, *Other business services*, (CCP 87909), market access for modes 1, 2 and 3 was bound without restrictions.
- Within point *1 F t)*, *Translation and interpretation services (except official translators) (CCP 87905)*, market access for modes 1 and 2 was bound without restrictions.
- Was added point *2 A*, *Postal services (CCP 7511)*, but with nearly no binding.
- Was added point *2 D*, *Audiovisual services*, but with nearly no binding.
- Within point *3*, *Building services related to engineering*, market access for modes 2 and 3 and national treatment for mode 2 were bound without restrictions.
- Was added point *3 D*, *Building completion and finishing work (CCP 517)*.
- Was added point *4 A*, *Commission agents' services (CCP 621)*
- Within points *4 B, 4 C y 4 D*, *Wholesale trade services (CCP 622)*, *Food retailing services and Non-food retailing services (CCP 631 y 632)*, *Other non-financial intangible assets (CCP 8929)* market access and national treatment for modes 1 and 2 were bound without restrictions.
- Were added *CCP 6111, 6113 y 6112* within point *4 C*, *comercio al por menor*.
- Were added *Educational services (point 5)*.
- Were added *Services related to the environment (point 6)*.
- Were added *Social and Health services (point 8)*.

- Within point 9 A, *Hotel and Restaurant services*, was added *Beverage serving services for consumption on the premises (CCP 643)*.
- Was added point 9 B, *Travel agency and tour operators services (CCP 7471)*
- Was added point 9 C, *Touristic guide services (CCP 7472)*.

3) PARAGUAY (sectors of services added to those liberalised in GATS and in previous annexes):

- Was added point 1 A, *Professional services*, but without any binding on market access and national treatment.
- Was added point 1 B, *Computer services and related services*, but only by reference to code *CCP 84* there is no restriction in market access and national treatment for modes 1, 2 and 3..
- Was added point 1 C, *Research and development services*.
- Was added point 1 D, *Real estate services*.
- Was added point 1 F, *Other Business services*.
- Was added point 2 A, *Postal services*.
- Was added point 2 B, *Courier services* .
- Was added point 2 C a), *Telephone services.(CCP 7521)*
- Was added point 2 C d), *Telex services.(CCP 7523\*\*)*
- Was added point 2 C e), *Telegraph services*.
- Was added point 2 C b), *Data transmission (packages)*.
- Was added point 2 C c), *Data transmission (networks)*.
- Was added point 2 C f), *Fax services*.
- Was added point 2 C g), *Rented private networks services*.
- Was added point 2 C m), *Codes and Protocols translation services*.
- Was added point 2 C n), *Data processing services (CCP 843)*
- Within point 2 C o) point 1, *Mobile phones* , there is a requirement in market access for mode 1: *to provide the service a firm must be incorporated in Uruguay and have a licence from CONATEL* (this requirement didn't exist in previous rounds)
- Within point 2 C o), point 2, *personal communications* there is a requirement in market access for mode 1: *to provide the service a firm must be incorporated in*

*Uruguay and have a licence from CONATEL (this requirement didn't exist in previous rounds). This requirement was deleted from market access for mode 3: to provide the service in Duopolic modality.*

- Within point 2 C o), point 3, *Radio-search services* there is a requirement in market access for mode 1: *to provide the service a firm must be incorporated in Uruguay and have a licence from CONATEL (this requirement didn't exist in previous rounds).*
- Was added point 2 C , *Trunking services.*
- Was added point 2 D, *Audiovisual services.*
- Was added point 2 E, *others .*
- Was added point 3, *Building services and related services.*
- Was added point 4, *Distribution services.*
- Was added point 5, *Educational services.*
- Was added point 6, *Services related to the environment.*
- Was added point 8, *Social and Health services.*

4) URUGUAY (sectors of services added to those liberalised in GATS and in previous annexes)

- Within point 1 A a), *Legal documentation and certification services (CCP 86130)*, market access and national treatment for mode 2 were bound without restrictions. Concerning National Treatment for modes 1 and 3, two requirements were added: *citizenship (natural or legal) during two years and residence within the country.*
- Within point 1 A c), *Taxation services (CCP 863)*, market access and national treatment for mode 2 were bound without restrictions.
- Within point 1 A f), *Integrated engineering services (CCP 8673)*, market access and national treatment for mode 2 were bound without restrictions.
- Within point 1 A g), *Urban planning and lanscape architectural services (CCP 8674)*, market access and national treatment for mode 2 were bound without restrictions.
- Within point 1 A h), *Medical and dental services (CCP 9312)*, market access and national treatment for mode 2 were bound without restrictions.

- Within point *1 A i*), *Veterinary services (CCP 932)*, market access and national treatment for mode 2 were bound without restrictions.
- Within point *1 A j*), *Deliveries and related services, nursing services, physiotherapeutic and para-medical services (CCP 93191)*, market access and national treatment for mode 2 were bound without restrictions.
- Was added point *1 A k*), *Pharmacy services*.
- Was added point *1 E a*), *Leasing or rental services concerning vessels without operator (CCP 83103)*
- Was added point *1 E b*), *Leasing or rental services concerning aircraft without operator (CCP 83104)*
- Within point *1 E d*), *Leasing or rental services concerning agricultural machinery and equipment without operator and Leasing or rental services concerning other machinery and equipment without operator (CCP 83106/83109)*, market access and national treatment for modes 2 and 3 were bound without restrictions.
- Within point *1 F e*), *Technical testing and analysis services (CCP 8676)*, market access and national treatment for mode 2 were bound without restrictions
- Within point *1 F j*), *Services incidental to energy distribution (CCP 887)* the following requirement was added to market access for mode 1: *that the area of the distribution services be the geographical area where la ADMINISTRACIÓN NACIONAL DE USINAS Y TRANSMISIONES ELECTRICAS acts as distributor.*
- Within point *1 F m*), *Related scientific and technical consulting services (CCP 8675)*, market access and national treatment for mode 2 were bound without restrictions.
- Within point *1 F n*), *Repair services of personal and household goods (CCP 633 – 8861-8866)* market access and national treatment for mode 2 were bound without restrictions
- Within point *1 F o*), *Building cleaning services (CCP 874)*, market access and national treatment for mode 1 were bound without restrictions
- Within point *1 F p*), *Photographic services* , market access and national treatment for modes 1, 2 and 3 were bound without restrictions (except for *CCP 87504 y 87506*, which are not bound ).
- Within point *1 F q*), *Packaging services (CCP 876)*, market access and national treatment for modes 2 and 3 were bound without restrictions.



- Within point 1 F s), *Services for meeting and conventions (CCP 87909)*, market access and national treatment for mode 1 were bound without restrictions
- Was added point 2 A, *Postal services (CCP 7511)*.
- Within point 2 B, *Courier services (CCP 7512)* the following requirement was deleted from market access for mode 1: *that the National Direction for Posts gave temporary permits for three years that could be cancelled at any time*. This requirement remains for mode 3.
- Was added point 2 C o), *Other, Trunking services*.
- Within point 2 C, *Paging services*, market access and national treatment for mode 2 were bound without restrictions
- Was added point 2 D, *Audiovisual services*.
- Was added point 2 E, *Others* .
- Was added point 3 A, *Construction work for buildings (CCP 512)*
- Within point 3 B, *Construction work for civil engineering (CCP 513)*, market access and national treatment for mode 2 were bound without restrictions.
- Was added point 3 C, *Assembly and erection of prefabricated constructions and Installation work. (CCP 514 + 516)*
- Was added point 3 D, *Building completion and finishing work (CCP 517)*
- Was added point 3 E *Pre-erection work at construction sites, Specific trade construction work and Renting services related to equipment for construction or demolition of buildings or civil engineering works, with operator (CCP 511 + 515 + 518)*
- Was added point 4 A, *Commission agents' services (CCP 621)*
- Was added point 5, *Educational services*.
- Was added point 6, *Services related to the environment*.
- Was added point 8, *Social and Health services*.

## **6. Last decision on Services**

Through D 11/01, the following general commitment was approved for all Member States: when Member States enact new legislation in sectors not previously regulated, they will not establish restrictions to market access or to national treatment for services

and service providers from the other Member States if these sectors are already liberalised in the schedules of the other Member States. The meaning of this provision is wholly unclear in so far as the premise for its applicability is also unclear: indeed, no sector is “not regulated” because all sectors fall under the scope of horizontal provisions (on company law, or taxation, for example).

## **7. General comments.**

Concerning the commitments undertaken by MERCOSUR member states within the framework of the Montevideo Protocol, our examination confirms that each round of negotiations has served to include broadly the same sectors. The result is that after three rounds of negotiations there is a broad similarity in the sectors included in each national list of commitment. This is not tantamount to a similar degree of liberalization. In effect, many sectors are included with no binding commitments made on any of the four modes of supply. This is most evident in the case of Paraguay, which in the last round of negotiations included a large number of sectors but undertook no commitments. The logic seems to be to include new sectors in national lists, even if no binding commitment is made. Eventually, member states may undertake binding commitments in some of these sectors. In particular, that seems to be the case of Argentina, which during the third round of negotiations bound professional services included in previous rounds in its specific list of commitments.

Specific commitments include references to the sector annexes of the Montevideo Protocol, such as in the case of Transportation. However, it is unclear what the content of the commitments undertaken in such annexes is, or which are the limitations concerning Market Access and National Treatment. The Annex on Water and Surface Transportation clearly states that this activity can be regulated through specific commitments. In other words, there seems to be a circular cross-reference between the Annexes and the Schedules of Commitments.

In principle, it does not seem very useful to include full sectors (see especially the case of Paraguay during the third round of negotiations) with no binding commitment on National Treatment and Market Access. The only possible justification of such

approach is that the inclusion of a sector is seen as a previous step to undertake binding commitments in the future.

Commitments undertaken within the Montevideo's Annex of Specific Commitments include in some cases (of minor importance, certainly) restrictions that are greater than those included in parallel GATS commitments. This is the case for Paraguay in the following sectors:

- *punto 7.A, Insurance (CCP 812) and reinsurance and retrocession (CCP 81299), for mode 3. The limitations relate to the fact that insurance firms must be incorporated as Sociedades Anónimas or be subsidiaries of foreign companies. It is also required the authorisation of the Superintendencia de Seguros.*
- *punto 7 B, Banking services, for market access in mode 3. It is required that financial institutions must be incorporated as Sociedades Anónimas and have nominative shares (except for subsidiaries of foreign companies. All firms must be authorised by the Paraguay Central Bank*

In the successive Rounds of Negotiations, there are also some steps back in the liberalisation process.

This is the case for Brazil in the Second Round concerning *point 1 C a), Research and Development Services in Natural Sciences (CCP 851)*, where market access for mode 3 is unbound while it was previously without restriction.

This is also the case for Argentina in the following sectors:

- *punto 1 D a), Real estate services (CCP 821es).*
- *punto 1 D b), Real estate services on contract (CCP 822)*
- *punto 1 F f), Services incidental to agriculture, forestry and hunting*
- *punto 1 F n), Maintenance and Repair services (CCP 633 + 8861 hasta 8866)*
- *punto 1 F o), Building cleaning services (CCP 874)*
- *punto 1 F q), Packaging services (CCP 876)*
- *punto 3 A, General building services (CCP 512)*
- *punto 3 C, Assembly and erection of prefabricated constructions and installation work (CCP 514 y 516)*
- *punto 3 D, Building completion and finishing work (CCP 517)*

- *punto 3 E, Others (CCP 511, 515, 518)*

For Paraguay, this is the case, in the Third Round, for *point 2 C o) points 1 and 2 Mobile phone and personal communications* and *point 2 C o) point 3 Radio-search services*.

For Uruguay, this is also the case in the Third Round, *point 1 A a), Legal documentation and certification services (CCP 86130)* and *point 1 F j), Services related to energy distribution (CCP 88)*.

## **ANNEX 2.II**

# **MERCOSUR MEMBER STATES COMMITMENTS** **IN THE MERCOSUR FRAMEWORK. EVOLUTION** **AND COMPARISON WITH COMMITMENTS IN** **THE GATS FRAMEWORK**

Annex 2. II (189 pages) contains a detailed analysis of MERCOSUR Member States' schedules of commitments in the initial annex to the Montevideo Protocol and in the decisions with the results of the three rounds of negotiations. It is only available in hard copy because it has been hand made. In each case, and on photocopies of the relevant pages of the MERCOSUR Official Journal (BOM), changes are highlighted by reference to pre-existing GATS commitments and previous MERCOSUR commitments.

This Annex highlights the liberalization of services produced by the Montevideo Protocol and three successive rounds of negotiations. The baseline was pre-existing GATS' commitments. Marks in yellow (\*) indicate inclusion of new service activities in MERCOSUR liberalization commitments as well as the elimination or reduction of pre-existing restrictions. Marks in green (\*) highlight various types of reversion in the level of liberalization committed. Yellow marks at the end of a paragraph indicate the elimination of some sentence (in most cases this will mean the elimination of some restriction, but this depends also of the content of the whole paragraph).

**ANNEX 2.III**

**TEMPORARY EXCEPTIONS TO MERCOSUR'S**  
**COMMON EXTERNAL TARIFF**  
**AUTHORISED FOR SPECIFIC MEMBER STATES**

This annex includes a series of tables describing the temporary exceptions that have been authorised for specific Member States. It is only available in photocopies. As it contains some elements of reserved information, it should not be made public.



**ANNEX 2.IV**

**TAX HARMONISATION IN MERCOSUR**

## TAX HARMONISATION IN MERCOSUR

From an economic integration viewpoint, tax harmonization touches on four major issues. First, there is the issue of export subsidies. “Direct” export subsidies must be eliminated for all intra-regional trade. “Indirect” export subsidies must likewise be either eliminated or harmonized, but this is normally the result of a lengthy process involving tough negotiations and a significant convergence of preferences and policy systems. The second issue concerns the implementation of the national treatment principle (GATT’s Art. III). This principle must be applied more strictly at the regional level than multilaterally. The third question is linked to ensuring that the reimbursement of indirect taxes on exports does not become a hidden subsidy on intra-regional exports. The indirect taxation principle clearly states that such taxes must be applied to the consumer and therefore they cannot be levied on exports. For this to take place effectively and transparently, it is necessary to be able to identify precisely the amount of indirect tax paid throughout the production chain. In order to do so a value added tax system is the most efficient vehicle. Lastly, there is the complex issue of investment subsidies and aids. In the EU, this issue was managed through competition policy and a long time elapsed before it became reasonably effective.

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### **I. Tax structures in MERCOSUR**

#### **I.1. Tax Burden**

The total tax burden (considering the sum of those levied by the Central or Federal Government, the States or Provinces and the Municipalities) differs widely among the countries of the region. Data for 1999 shows that Argentina and Uruguay apply similar tax pressure (21.2% and 23.9% of GDP, respectively), whereas Brazil and Paraguay are at the two extremes (31.7% and 9.5% of GDP, respectively). This results in a simple average of 21.6% for MERCOSUR, i.e. higher than the average for Latin America (14%) and lower than that prevailing in the OECD countries (37.2%). The conclusion is

that each MERCOSUR member state has very different concepts of the use of fiscal policy, which is confirmed when tax structures are reviewed.

## **I.2. Relationship between the Central Government and sub-national governments**

Among the four MERCOSUR countries, two of them –Argentina and Brazil- have a federal government. This has important implications for their tax structure. In Argentina the central government collects 77% of total tax revenue, while the provinces raise 17% and the Municipalities 6% (1999 data). In Brazil the Federal Government collects 69% of total tax revenue, the States 26% and the Municipalities almost 4%. While in Argentina the revenue of the Provinces and the Municipalities accounts for almost 4% of GDP, the Brazilian States and Municipalities collect more than double that amount (10% of GDP). This shows that Brazil has a more decentralized and federal fiscal structure than Argentina. The counterpart is that the Central Government of Argentina shares more tax resources with the Provinces. Precisely one of the greatest difficulties in coordinating indirect taxation regimes within MERCOSUR is the overlap of jurisdictional levels entitled to levy taxes. This is the case in the two largest countries: in Argentina the provinces collect a tax on gross income –of the cascade type, while in Brazil the states collect the ICMS –consumer tax- and the Municipalities the ISS –tax on services.

## **I.3. Revenue by Type of Tax: Tax Structure**

The main source of taxation in all four countries is consumer taxes, ranging between a maximum of 55.3% in Argentina and a minimum of 40.5% in Brazil (which gives a simple average of 47.2% for the region as a whole). The second most important tax is payroll taxes, except in Paraguay where they rank fourth. Payroll taxes account for a regional average is 23% of total tax revenues (although there are significant differences across countries: 10.2% in the case of Paraguay, 17% in Argentina and about 30% in Brazil and Uruguay). The third largest contributor is income taxes, with a regional average of 15.5%. Taxes on capital, at last, contribute with the lower share of total tax

revenues: 3.1% on average. Argentina is the Member Country where they are more significant from the revenue point of view.

The four taxes account for 88% of Argentina's total tax revenues. Argentina stands out as the Member Country in which consumption taxes make the largest contribution to total tax revenue (55.3% of the total). Argentina is also the country in which capital taxes make the largest contribution to total taxes (with a 5.8% share). By contrast, the contribution of payroll taxes is comparatively low (17% of total revenue).

In the case of Brazil, this same group of taxes account for 92% of total tax revenue. However, the difference between the contribution made by consumer taxes and payroll taxes is merely 9 percentage points. Brazil is the Member Country where the income tax makes the largest contribution to total tax revenue. Payroll and income taxes in Brazil account for 51% of total tax revenues, making the system comparatively more progressive than in the rest of the region. By contrast, the share of capital taxes in total tax revenue is remarkably low, a meager 0.3% of total revenue.

~~Paraguay is the least typical case, and probably the country with the most inequitable tax structure: next to consumer taxes (that accounts for 48.2% of total tax revenue), foreign trade taxes account for an additional 20%. Hence, 68% of total tax revenues stem from regressive taxes. The income tax ranks third with a 16.5% contribution. Payroll taxes account for only 10.2%.~~

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The case of Uruguay is quite similar to that of Brazil: consumer taxes contribute 44.6% of total tax revenues, while income and payroll taxes account for 43.3%. However, the income tax contributes with a modest 10% of total tax revenues.

This data suggests that the four countries differ in their approaches to the equity of the tax system. While Brazil and Uruguay show up as having the most progressive tax structures, Argentina and Paraguay look quite regressive<sup>40</sup>.

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<sup>40</sup> The absence of comparable studies on the equity of the tax systems makes it necessary to resort to general estimates such as those mentioned here, but it would be advisable to have a more accurate and overall estimate on this feature of the fiscal policy before discussions begin on policy coordination, because these disparities may have an impact on the distribution of the benefits derived from the integration scheme.

A way to assess the impact of tax distortions on the free movement of goods and services consists of calculating the relative importance of consumer and foreign trade tax revenues as a share of GDP: in Brazil they account for 12.8% of GDP, in Argentina 12.8%, in Uruguay 11.8% and in Paraguay only 7.1%. This means that, in aggregate terms, the latter is the Member Country whose tax structure causes the least distortions in relative prices.

## **II. Symmetries and Asymmetries in Indirect Taxation within MERCOSUR<sup>41</sup>**

### **II.1. General Consumer Taxes**

General consumption taxes provide the main revenue source in the four MERCOSUR countries. All four have adopted the added value tax modality (multiphase and not cumulative), following the method of debit minus credit and applying the destination principle. In the case of Argentina, Paraguay and Uruguay this tax is applied by the Central Government, while in Brazil they pertain to the jurisdiction of the States, in addition to other differences which are described hereinafter. Argentina and Brazil, besides the VAT, apply other general consumer taxes: the tax on gross income (IIB) levied by the Provinces in Argentina and the tax on services (ISS) levied by the Municipalities in Brazil.

#### ***II.1.1. Value Added Tax (VAT)***

Argentina, Paraguay and Uruguay have broadly similar VATs: they are collected by the National Governments, they are applied on both goods and services and they have few exemptions. In all cases it is possible to deduct the purchase of goods (including capital goods). Services are taxed and there is hardly any incentive granted to local production in such a manner that there is a discrimination against imported products (the latter is a significant difference compared to the case of Brazil).

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<sup>41</sup> This section is based on comprehensive studies made by different authors who have compared the tax laws in force in the four MERCOSUR countries.

Brazil, on the other hand, enforces the ICMS which is levied by the States, and could be described as a partial VAT since it is applied to all goods but only to two services (communications and intermunicipal and interstate transportation). All the other services are taxed with the ISS by the Municipalities. Due to the reform carried out in 1996, the ICMS has been considered as similar to the VAT applied in the other MERCOSUR Member Countries. Since then exports are not taxed and purchases of capital goods can be deducted. Several proposals are being considered to reform the ICMS, basically geared to solving the problem of the “tax war” and the distortions that arise from accumulation with the ISS levied by the Municipalities. The rest of the services are subject to the payment of the ISS (which is a single phase tax) applied independently from the VAT. This also causes accumulation since one tax becomes part of the tax base of the other, producing distortions on exports. Exports are not exempt from payment of this tax.

In Argentina the general VAT rate is 21% (with special 27% rates for certain public services provided to individuals not registered as VAT agents and 10.5% for a small number of goods). In Brazil the general rate of the ICMS may be 20.48% or 21.95% (this is so because the nominal 17% and 18% rates are computed over the price, including the VAT)<sup>42</sup>. In Paraguay a single 10% rate applies, while in Uruguay the general rate is 23% (with a reduced rate at 14% for a set of goods which make up the basic consumption basket).

In the late 1990s Argentina and Brazil adopted special systems governing the tax treatment of small taxpayers. The unified tax regime in force in Argentina makes it possible for small taxpayers to substitute the VAT, the incomes tax and social security contributions for a fixed payment, the amount of which depends on the invoicing of the company and other indicators (e.g. number of employees). In Brazil, a similar mechanism is in force in the case of Federal taxes (IPI, COFINS, PIS/PASEP among others), while the States have set up their own concerning the ICMS. Paraguay and

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<sup>42</sup> ICMS rates are lower when we are dealing with Inter-State transactions from rich States to the less developed States, with the purpose of benefiting the poorer States with higher tax revenues.

Uruguay have also set similar systems, although these do not include social security contributions, in contrast to Argentina and Brazil.

Consequently, the main asymmetry with regard to the VAT arises in Brazil, not only because of its structure, but also due to the fact that these taxes fall within the sphere of State rather Federal legislation. The Brazilian Federal Constitution stipulates that the Central Government is incompetent to modify State taxes. The possibilities of restructuring the ICMS in order to harmonize it with the VAT applied in Argentina, Paraguay and Uruguay therefore depend on an institutional arrangement between the different government tiers of Brazil (Federal, State and Municipal). This can only be achieved through a federal covenant among them or by means of a constitutional reform concerning taxation powers, which seems rather unlikely. The case of the IIB applied by the Provinces of Argentina is similar to a certain extent, as explained below.

### ***II.1.2. Other***

Argentina also applies an IIB collected by the Provinces. In contrast to the VAT, this is a multi-phase and accumulative tax (the tax paid on purchases is not deductible), and hence its effects on exports are distorting. During the 1990s there were several attempts at reforming this tax, but no consensus was reached between the Central and Provincial Governments. Specifically, the proposals were geared to replace the IIB with a provincial VAT, a VAT shared with the federal government or else a sales tax.

Brazil has a single-phase municipal tax called the Tax on Services of Any Nature (ISS), which applies to the provision of services (including exports) except for transportation and communications which pay the ICMS. Only in a few cases may the tax paid to suppliers be deducted, so in general it is a cascade (or accumulative) tax. The tax is actually harmonized to a large degree at the national level, but since it is applied separately from the ICMS, accumulation effects arise.

In Brazil there are also two social security contributions which act as general consumer taxes because they tax mainly corporate invoicing. Moreover, there is the Contribution for the Social Investment Fund (COFINS), which is a multi-phase and

accumulative tax on sales (of the cascade type). Its tax base is primarily sales and the rendering of services by corporations or other entities with a similar legal status (it works as a tax on gross earnings). Another multi-phase cascade levy is the Contribution for the Social Integration Schemes/Public Workers' Asset Fund (PIS/PASEP) which taxes salaried work by corporations and other liable subjects. Although it adopts several taxable items (i.e. gross invoicing, payroll, gross earnings and a few presumed items), it may be considered as an accumulative multi-phase sales tax, since invoicing is the prevailing criterion that determines the amount to be paid.

## **II.2. Excise Taxes**

Excise taxation seems to be quite similar in Argentina (internal taxes), Paraguay (excise taxes) and Uruguay (IMESI – specific domestic tax). The similarities arise from the technical form of the levy (single-phase and applied to producer or importers) and the main products affected by it (with a restrictive tax base, it is imposed on cigarettes, spirits, soft drinks, fuels and luxury goods). However, excise taxes differ in the rates applied (ranking from 4.17% and 166% in Argentina, 8 and 50% in Paraguay, and 0.5% and 265% in Uruguay) and the tax base (factory price, end consumer price, etc.).

The Federal Government of Brazil applies a tax on industrialized products (IPI), and although it is technically less distorting (because it is multi-phase and non-accumulative as is the case with the VAT), it taxes a far larger number of goods with much higher rates (up to 365%). This in principle would render the tax harmonization process more difficult.

In addition to the differences mentioned above, there are tax discrimination problems on certain imported products subject to selective taxes in Uruguay. Imports are levied a heavier tax burden than similar national products. A similarity that should be highlighted is that in all cases the destination principle applies, which makes exports exempted and imports taxed.



### II.3. Tax Incentives on Exports

There are mechanisms for VAT reimbursement to exporters in Argentina, Paraguay and Uruguay. The reimbursement operates when there are surplus balances generated by credits for the purchase of taxed inputs which are not offset by the debits on the taxes collected for sales made in the domestic market. In Brazil, ICMS credits can be recovered for the purchase of inputs used in their manufacture, which are offset by other taxes or by selling such credits to other taxpayers residing in the same State. However, it is not possible to obtain the reimbursement of the amount paid. However, in the case of the Brazilian IPI it is possible to obtain a reimbursement of the tax credit for purchases made to produce goods for export, which is not case with internal taxes in Argentina.

Cascade type taxes make it difficult to determine the actual tax burden accumulated by goods for export. This may give rise to subsidies through excessive reimbursements, or it may negatively affect international competitiveness as a result of insufficient recovery of the taxes paid. VAT reimbursement to exports is relatively easy to compute, because these levies are not accumulative and because, at the time of export, it is possible to clearly identify the tax credit. However, this is not the case with other indirect taxes with a cascade effect, because no record is kept of the credits and debits arising from these taxes. This makes it impossible to quantify precisely how much was actually paid. This is the case with selective taxes. For this reason the authorities reimburse fixed amounts usually calculated as a percentage of the product's export price. Decision 10/94 of the CMC (Common Market Council) prohibited these reimbursements on intrazone trade, but enforcement has been subject to debate.

Argentina provides a reimbursement on indirect taxes (other than VAT) paid at the different production stages of goods for export<sup>43</sup>. This reimbursement is computed as follows: the FOB value of the goods exported minus the CIF value of imported inputs

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<sup>43</sup>. In the case of gross earnings, there is no recovery of the taxes paid by the exporters in their purchases, because the actual tax burden incorporated in the exported good cannot be determined, and therefore it is not reimbursable according to multilateral provisions.

incorporated in those goods minus the sum paid for commissions, fees and brokerage charges, on which the rates in force are applied. The rates range from 0% to 10%. Likewise, in Argentina goods exported from ports in the Patagonia benefit from an additional reimbursement. This measure is clearly an export subsidy, for which reason Argentina is in the process of removing it. Nevertheless, current provisions establish rates between 4% and 9% according to the port concerned, following a phase-down calendar involving one percentage point a year until it disappears.

Brazilian exports are exempt from payment of both the COFINS and the PIS/PASEP, but they suffer the impact of tax accumulation. In view of the administrative difficulties involved in determining the actual incidence of these taxes, a reimbursement of the tax burden is granted through a fiscal credit for a presumed amount in favour of IPI taxpayers. This credit may be used to deduct the fiscal liabilities of the company on any tax, it may be transferred to another facility of the same company, or, in the case of an outstanding balance in their favour, it may be collected in cash.

In Paraguay export incentives have fallen so that they have practically disappeared. In Uruguay there are two types of incentives: some products benefit from a reimbursement based on the FOB value of the goods (e.g. wool knitwear), whereas others receive a flat rate in dollars per unit.

#### **II.4. Tax Incentives on Production and Investment**

Tax incentives on production and investments are quite asymmetrical between Argentina, Paraguay and Uruguay on one hand, and Brazil on the other. Whereas the former have reduced them, Brazil has maintained numerous incentive programs. Moreover, there has been significant subsidy competition between individual states.

Argentina has been reducing its tax incentives (by industry and by region) since the late 1980s. These systems –which used to include exemptions on the tax on profits, the VAT, the tax on corporate assets, the tax on gross earnings, etc.– no longer benefited new industrial projects since 1989. Since 1993, the amount of fiscal benefits

to be granted each year under each of the regimes still in force –i.e. non-industrial promotions (agriculture and tourism), industrial promotion in the City of Cutral-Co (Province of Neuquen), the special system in force in Tierra del Fuego, the law on mining promotion, forestry promotion and promotion of wind and solar power- is set in the National Budget. The benefits for green-field projects only consist of a tax deferral on earnings.

Last year, two new promotional systems were implemented. On one hand, to set off the lowering of import tariffs on its products, it established a reimbursement which benefits manufacturers of capital goods, computers and computer applications and telecommunications goods which have set up industrial facilities in Argentine territory. This benefit consists of receiving a fiscal bond to be used in the payment of national taxes, worth 14%<sup>44</sup> of the amount resulting from subtracting from the sales price the value of the imported goods incorporated on the item manufactured, which had been internalized with a 0% import duty. This bond may be used by the recipients for the payment of different taxes (Taxes on Earnings and on the Presumed Minimum Gains, Value Added Tax and Internal Taxes, as well as any advance payments thereon or tax returns). This measure covers primarily goods which are not produced in the region but, otherwise, it becomes a discriminatory treatment against similar products from the other Member Countries.

Moreover, a number of “Agreements to enhance competitiveness and employment” were made, enabling companies operating in certain industries to enjoy differential benefits. These benefits include exemptions on the Tax on Interests Paid and Financial Cost of Corporate Debt, and exemptions on the Tax on Minimum Presumed Earnings. In some cases, even VAT and Social Security Contributions were reduced. Thirty-three of these Sectoral Agreements have been signed, some of which are in force until March 31st, 2003 and others until December 31st, 2003. The fiscal cost of these Agreements seems to have been considerable.

**Supprimé :** and create jobs

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<sup>44</sup> This rate is that of the Common External Tariff established for MERCOSUR. The Government decided to lower the tariff to a zero rate to encourage investment in capital goods and compensate local producers with an equivalent rate in the form of a fiscal bond.

In the case of Brazil, the Central Government has gradually reduced tax incentives since 1998 (mainly as far as the income tax is concerned), in the context of fiscal adjustment programs. But State and Municipal governments have increased them in order to attract investments to their own territories, thus threatening to trigger a “fiscal war”.. Tax benefits are granted basically through reductions or exemptions from payment of the ICMS collected by the States, and of the ISS and urban real estate rates (IPTU) collected by the Municipalities.<sup>45</sup>

Concerning the ICMS, there are mechanisms in place which provide reductions of the base and/or the rates (and even exemptions), which benefit locally produced goods. This usually brings about a discrimination against goods originating in other States (and, of course, abroad). An example of this can be found in the tax incentives granted by the States of Bahia and Minas Gerais for the settlement of automotive assembly plants in their territory, or the reduction of the tax base on wheat flour when the ICMS is applied in the State of Ceara.

The growing use of these incentives by Brazilian States has given rise to the adoption of safeguard measures to avoid the fiscal cost transfers of such benefits. This happens when a company residing in one State buys its inputs from a company in another State, the output of which enjoys a lower ICMS. This company will benefit because its output is more competitive and this leads to an increase in its sales; consequently it pays less in taxes as a result of the fiscal incentive. But this lower tax burden is not borne only by the State granting the benefit. Since the company procuring its inputs in another State pays the taxes contained therein, which it shall later discount from the taxes charged for its sales, the sum of the taxes paid in the State where it actually produces its output also decreases. Even though this State did not grant any benefit, its tax collection is eroded by the incentives granted by other States.

These mechanisms imply a discrimination against imports of similar goods from other States and other partners in MERCOSUR (and also from third countries), thus distorting competition in the internal market. Likewise, they erode the tax base of the States. All of this has led to several attempted reforms which basically consisted in

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<sup>45</sup>. Additionally, other types of non-fiscal benefits are granted, i.e. subsidised loans from State owned banks and the use of municipal land.

eliminating the ICMS and establishing a federal VAT and a shared State VAT, with a standardized rate and legislation.

In Paraguay, Law No. 60/90 is in force, which grants tax incentives to capital investments and also customs exemptions for capital good imports. But the most important law is the “Maquila Industry for Export Act” (passed in 1997 and regulated in 2000) pursuant to which tax incentives are given through a reduction of the VAT rate to 1% and the exemption of all other taxes and tariffs collected by the central, regional or municipal authorities.

In Uruguay, incentives used to exist for a few industries (tourism, citrus fruit forests and woods, sacchariferous crops, alluvial islands, graphic arts and book printing, naval activities, etc.), consisting in benefits on the income tax (IRIC), employer contributions to the social security system, VAT and the property tax, among others. These regimes –the enjoyment of which was granted prior assessment by the Executive which if approved issued a Decree for such purpose– have decreased over the last few years.

However, in 1998 the Investment Promotion and Protection Act was passed, which led to new incentives. This Law gives benefits with regard to the IRIC, the tax on income from farming and the tax on the sale of agricultural and livestock goods. Pursuant to this system, benefits of a general nature are granted for investments in certain goods and it operates automatically, enabling the exemption of one or several of these taxes: property, VAT or excise (IMESI). Moreover, there are specific stimuli for certain investments which fulfil objectives set forth in this Act, and which operate when they are declared as promoted by the Executive. It is the latter which decides in each case which shall be the benefits enjoyed, among the following: full or partial exemption of all taxes; up to 60% exemption in the employer contributions to social security; exemption of port fees and additional charges on imports; deferred fiscal liabilities on imports.

In short, the asymmetries existing in the tax structures of the four MERCOSUR Member Countries, concerning their magnitude and the type of incentives granted, seem to be extremely important since they could adversely affect any symmetry which might

exist among the same structures. That is why nowadays this is one of the issues worthy of more attention when it comes to starting the talks geared to making progress in the harmonization process and eliminating distortions due to the location of investments, which are brought about by these incentives systems.

### **III. Tax Harmonization in MERCOSUR: Status.**

The Treaty of Asunción (1991) certainly includes some provisions regarding the coordination of tax policies within MERCOSUR, although it does not define any specific mechanisms through which these goals are to be attained (different to the case of the trade liberalization program). Indeed, when defining the objectives for the establishment of the common market, the four Partner States realized the need to coordinate macroeconomic and sectoral policies, and the “fiscal” area can be found among the latter.

*The coordination of macroeconomic and sectoral policies among the Party States: i.e. foreign trade, agricultural, industrial, fiscal, monetary, currency exchange and capitals, on services, customs, transportation and communications, and others to be agreed upon, so as to ensure suitable competitive conditions among the Party States;*

Among the other objectives initially proposed, there is one related to the commitment to harmonize legislation in the relevant areas in order to strengthen the integration scheme. This commitment may be construed as including tax legislation.

There is an article in the Treaty which specifically provides for national treatment concerning taxation, as can be seen it less complete and comprehensive than the GATT provisions in this regard.

*Art. 7 “With regard to taxes, rates and other internal levies, the products originating in the territory of a Party State shall enjoy, in the other Party States, the same treatment as that applied to the national product.”*

At the Ouro Preto Summit, the CMC adopted Decision 10/94 which harmonizes the implementation and use of incentives to exports by the Member Countries of MERCOSUR<sup>46</sup>. This decision authorizes the Party States to “reimburse, in full or in part, the indirect taxes paid by exporters or accumulated over previous stages of production of the exported goods, according to the provisions of the General Agreement on Tariffs and Trade – GATT”. They can likewise direct exempt goods for export from the payment of indirect taxes. Moreover, this decision restricts the use of these mechanisms as hidden subsidies, since it provides that “the level of the reimbursement shall not exceed the incidence of indirect sales or consumer taxes actually paid by the exporters or accumulated in earlier stages”.

The reimbursement of exemption of indirect taxes is one of the three incentives to exports permitted for intrazone trade, “until the conditions which ensure equal tax treatment to outputs located within the sphere of MERCOSUR are harmonized”.<sup>47</sup>

Within the framework of the relaunching of MERCOSUR, in mid 2000, the CMC instructed the CMG to prepare a proposal to establish common disciplines related to the use of incentives favouring investments, production and exports, with the purpose of limiting distortions in the allocation of resources at the subregional level. The proposal shall include disciplines to eliminate the use of intrazone export incentives. Furthermore, instructions were given to carry out a survey and exchange information concerning the incentives used in the Party States which have an impact on intrazone trade. No concrete results are known as yet. In fact, it was decided to extend the term to update the survey of incentives in force until October 31st, 2002 and to prepare the proposal of common disciplines until May 31st, 2003.

Progress regarding the treatment of tax asymmetries within MERCOSUR have been really scarce, practically nil. During the transition period, the tax measures were part of the list of non-tariff hindrances to imports prepared as part of the duties entrusted to CMG SWG 8. In 1994 a TC was set up within the CCM charged with identifying the measures of a tax and credit nature connected with Government procurement systems involving exceptions to the common trade regime and those that regulate State-owned

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<sup>46</sup> Strictly, it may be considered that indirect tax reimbursement is not an incentive to export.

<sup>47</sup> The other exceptions are related to the long-term financing of capital goods exports and the special customs systems, in both cases in a limited manner.

or monopolistic enterprises. The objective was for the TC to evaluate whether the measures were compatible and to eliminate those which were incompatible. This Committee failed to make progress in the treatment of the asymmetries in public policies as a result of political sensibility and the complexity of the issues, consequently, the subject was sent up to be analyzed within the sphere of an *ad hoc* group by the CMG. However, this *ad hoc* group also failed to gain much ground, and thus in late 2000 the CMC decided to discontinue the *ad hoc* group.

#### **IV. Conflicts due to Tax Asymmetries: Consultations, Claims and Disputes submitted to the CCM and the CMG.**

##### **IV.1. Consultations on Tax Issues submitted to the CCM**

When we analyze the queries put forth to the CCM, it is possible to identify the problems which have been appearing during the process leading to the MERCOSUR integration scheme. The consultation mechanism at the CCM was set up in 1995 to facilitate the exchange of information among the Partners with regard to intrazone trade liberalization and the implementation of common trade policies, seeking to expedite the settlement of trade conflicts which were, in principle, not significant enough to put into operation the settlement of disputes procedure.

For such purpose, the main consultations concerning taxation issues which arose between 1995 and 2002 (data until June) were grouped based on the information found in the minutes of the meetings of the CCM. 460 were submitted in all and about 14% (i.e. 63 queries) specifically regard tax matters (see Table 1), and is one of the main subjects of concern together with technical barriers to trade and tariff preferences (Vaillant 2001 presents a table which shows that technical barriers, tax discrimination and tariff preference were, in that order, the most frequency reasons to submit a query during the 1995-June 2001 period).

Most consultations on taxation matters (and also overall) were submitted between 1995 and 1997, after which year their number started to drop. This decrease could be interpreted as responding to the fact that the Party States have become



familiarized with the operation of a customs union, but from a more pessimistic viewpoint some argue that it is due to a growing mistrust of the consultation mechanism as an instrument to overcome trade conflicts. Nevertheless, we must highlight that the fall was less significant if measured in relative terms (i.e. the significance of the consultations on taxation issues compared to total consultations), which dropped from 14.5% in the 1995-97 period to 12.4% in the remainder of the term considered.

**Table 1**

**Total Consultations and Consultations on Taxation Issues submitted to the CCM (1995-2002\*)**

	<b>Total</b>	<b>Taxation Issues</b>	<b>Taxation</b>	<b>issues/total</b>
	<b>(1)</b>	<b>(2)</b>	<b>consultations (%)</b>	
			<b>(2/1)</b>	
1995	128	13	10.2	
1996	84	17	20.2	
1997	71	11	15.5	
1998	32	2	6.3	
1999	39	6	15.4	
2000	54	8	14.8	
2001	42	5	11.9	
2002*	10	1	10.0	
<b>Total</b>	<b>460</b>	<b>63</b>	<b>13.7</b>	

\*Data to June 2002

Source: Based on the minutes of CCM meetings

Argentina appears as the most active country as far as consultations are concerned, with 39 submittals on taxation issues, followed by Brazil with 15. These two Member Countries account for 83% of submittals (see Table 2). On the other hand, most of the consultations were addressed to Brazil (47.6%) and Uruguay ranks second as recipient with almost 30%. This would indicate, in principle, that Brazil and Uruguay are those which have caused the most distortions to intrazone trade due to taxation reasons.

**Table 2****Consultations on Taxation Issues by Consulting and Recipient Country**

(1995/2002\*)

	<b>Consulting</b>	<b>%</b>	<b>Recipient</b>	<b>%</b>
	<b>Country</b>		<b>Country</b>	
<b>Argentina</b>	39	60.0	11	17.5
<b>Brazil</b>	15	23.1	30	47.6
<b>Paraguay</b>	5	7.7	3	4.8
<b>Uruguay</b>	6	9.2	19	30.2
	65	100.0	63	100.0

Source: Based on the minutes of CCM meetings

Additionally the consultations submitted on tax matters were divided into two large groups: tax discrimination and tax incentives. Consultations related to tax discriminations include internal taxes (primarily indirect taxes), whereas tax incentives comprise the systems which, by means of the exemption or reimbursement of taxes, seek to promote exports, production or investments. The first of the above are clearly more numerous, since they account for about three quarters of the queries submitted in the period under consideration, and the disputes focused mainly on the ICMS of Brazil and the IMESI of Uruguay, with regard to tax discrimination of products in the food, beverages and tobacco sectors. This is the reason why Brazil and Uruguay are at the top of the ranking among the countries who received the most consultations on tax issues. The consultations concerning tax incentives were mainly addressed to Argentina (60% of the total consultations of this kind).

**Table 3****Tax Consultations classified by Subject (1995/2002\*)**

Subject	Consultations	Percentage Structure
<b>Tax Discrimination</b>	<b>49</b>	<b>75.4</b>
Tax Discrimination - ICMS (Brazil)	19	29.2
Tax Discrimination - IMESI (Uruguay)	15	23.1
Tax Discrimination – VAT (Argentina)	5	7.7
Tax Discrimination - IPI (Brazil)	4	6.2
Tax Discrimination – not specified (Brazil)	3	4.6
Tax Discrimination – Excise (Paraguay)	1	1.5
Tax Discrimination – Income Tax (Argentina and Brazil)	2	3.1
<b>Tax Incentives</b>	<b>16</b>	<b>24.6</b>
Total	65	100.0

Note: The total differs from that of Table 1 because one of the queries concerned two subjects.

Source: Based on the minutes of CCM meetings.

It should be pointed out that, although a large portion of the consultations have reached their conclusion, only a few were resolved in a manner satisfactory to the consulting country. This gave rise, on occasion, to the filing of procedures for the settlement of disputes foreseen in MERCOSUR.

#### **IV.2 Recent Consultations on Tax Issues**

Likewise, a more detailed analysis was undertaken in the case of some consultations related to tax matters which have been dealt with by the CCM between mid 2000 and June 2002, with the purpose of having a better understanding of the conflicts and

evaluating the allegations of the parties. In the first place the consultations concerning tax discrimination are analyzed and then those connected with tax incentives.

#### *IV.2.1. Tax Discrimination*

As mentioned above, the consultations which had tax discrimination as a basis were mainly directed at Brazil (ICMS applied by the States) and Uruguay (because of its excise tax IMESI), and in general they concerned certain products. Argentina was also questioned for discriminatory treatment, but because of the general procedures used in implementing tax advance payments to be made by the importers. Paraguay and Uruguay, however, received one consultation each for which they were asked to explain bills to be considered by Parliament which would have discriminatory tax effects.

Argentina submitted several consultations to Brazil concerning tax discrimination in the implementation of ICMS to products imported by some of the States of that country. One of the consultations concerned the sale of noodles and biscuits in the State of Ceara which, according to the position of Argentina, was discriminatory against its sales. In particular, it was argued that the imported products had to bear a surcharge when this tax was applied and that such surcharge did not give rise to any fiscal credit for the purchaser, thus breaching the principle of national treatment stipulated in Article 7 of the Treaty of Asuncion. Brazil, as the other party, argued that this differential rate set off the lack of a tax on intermediate inputs of the imported end product, different from the case of products of national origin (tax substitution). Brazil presented technical evidence proving that the tax burden on the foreign product is lower than that which is levied on the same product originating in Ceará.

The other consultation is connected with the implementation of a discriminatory rate for wheat flour coming from abroad to the State of Bahia. According to the delegation from Argentina, this State sets a value on flour over which the ICMS is applied to imported flour (or to flour coming from other Brazilian States) which is detrimental to sales to that country, when in actual fact, local mills pay taxes on the basis of the market prices whenever they import wheat (tax substitution). The argument made by Argentina was that the mechanism used by the State of Bahia detracts from the

transparency of the tax substitution system, thus rendering a comparison with the actual incidence of the ICMS difficult, and lacks the necessary agility to ensure that “the density of the ICMS contained in wheat flour processed with imported wheat is equal to that of wheat flour imported from abroad or from other States”, since it requires regular updates to be made by the implementing authority. For this reason Argentina recommended that an *ad valorem* ICMS be applied on the invoice values, so as to achieve not only greater transparency but also be similar to the mechanisms adopted by the other States of Brazil.

A third consultation for tax discrimination reasons in applying the ICMS to Inter-State sales, in which Argentina requested that the products imported from MERCOSUR by the less industrially developed Brazilian States receive the same fiscal treatment through the ICMS than that in force for Brazilian manufactures bought in the industrialized States. Specifically, it claimed that the payment of the ICMS be distributed between the State through which the goods enter the country and that of the State in which the imported goods are to be consumed. The reply by Brazil was that it was not possible to standardize the time frames or the payment terms as requested by Argentina because, in conformity with international practices, this is governed by the principle of destination. The product manufactured in the State through which the imported goods enter the country would be paying the full ICMS, in compliance with the legislation of that State, whereas the imported item pays less. According to Brazil, ensuring that the imported goods receive inter/State treatment would imply putting the importers in a privileged situation to the detriment of the national product.

Again in the field of tax discrimination, Argentina filed a consultation to Uruguay concerning the implementation of the IMESI to imported *fernet*, considering that the rate is considerable greater than that which is levied on similar beverages such as *whisky*. Uruguay replied that it has exclusive competence to determine the goods on which the IMESI is applied in its own territory, as long as the manner in which it is determined is the same for imported products compared to national products. The argument was that the difference in the tax base for these products has not hindered intrazone trade in any way, whereas Argentine producers claimed precisely the opposite, skating that the low consumption in that country is explained by the amount to be paid for the IMESI on imported *fernet*. The consultation did not conclude in a

satisfactory manner. Uruguay also received a consultation from Paraguay, also for tax discrimination, but regarding the IMESI rate applied on imported cigarettes, the conflict was later taken to arbitration (see below).

Lastly, Argentina received a consultation from Brazil for the collection or advance payment of the tax on earnings applied to imports at a rate of 3% of the value of the product at the time it was dispatched. Since this is applied only to imported goods, Brazil considered that it was discriminatory and violated Article 7 of the Treaty of Asunción. Argentina sustained that the collection of the tax on earnings was a payment on account, a tax collection mechanisms which is not subject to the provisions of the Treaty of Asuncion, and that the difference in the rates of the advance payments was due to collection considerations (and not aimed at protecting the national industry). It was alleged that the tax rate is the same, and the collection does not involve any financial cost because the local importers and brokers may obtain an exemption from the system of payment on account if they have credits in their favour.

It should be mentioned that in 1999 Brazil had filed a consultation questioning the implementation of the concept of advance payment of the VAT on importers, and which they construe as an additional rate which creates for them financial costs for permanent fiscal credits that are difficult to recover.<sup>48</sup> According to Brazil, this mechanism discourages carrying inventories due to the high financial cost it involves for the importers. Moreover, it argues that there is an excessive bureaucracy a high degree of discretionality in granting the system of total or partial exemption of this task. It claims that VAT collection regimes on imports are contrary to the principle of no tax discrimination. Unless the importers hold a data validation certificate, this VAT collection rate amounts to 20% (i.e. double).

Argentina alleged that the collection of VAT on imports does not constitute an additional rate, that a total or partial exemption of the collection systems has been foreseen, that the additional collection is only required of importers who do not fulfil

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<sup>48</sup>. The implementation of the VAT and the tax on earnings in the case of imports was also challenged before a WTO panel, at the request of the European Union in the case on "measures on the export of bovine hides and the import of finished leather", arguing violation of Article III:2 of GATT1994. The final ruling of the panel was adopted in February 2001 and concluded that both measures were inconsistent with those provisions.

the requirements to obtain the Data Validation Certificate of Importers, and that the request from Brazil to exclude imports coming from Brazil from paying the additional VAT payment should be considered in future discussion concerning the harmonization of indirect taxes within MERCOSUR. It is not discriminatory because local brokers are also subject to this collection system.

Uruguay was also questioned by Brazil for a similar measure, when the Uruguayan Government decided, in mid 2001, to raise the rate for advance payment of the VAT in the case of imports and until the end of that year, although a calendar had been set for its phase down. The query concluded in an unsatisfactory manner.

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Brazil furthermore requested explanations concerning a Bill to be approved by Parliament which modified the excise tax applied to the car industry, because presumably there were differences between the basis for calculation for imported goods and national goods. The tax base is formed by a customs value plus the tariff on imports (although this is zero in the case of MERCOSUR), excluding VAT. Likewise, it includes an additional charge for presumed profits on the cost of imported goods. The response given by Paraguay was that in order to avoid distortions, a presumed amount for profits is included in computing the tax base for the settlement and collection of the tax on imported goods, and with this the query concluded.

Argentina also consulted Uruguay and questioned a Bill which, if enacted, would a contribution for the funding of social security (COFIS), through which the rate set for imports would be increased as a result of transferring the impact of the tax to the advance payment of the VAT in force for imports, whereby the computation base of the advance payment was equal to the tax base of the VAT. Unless it is considered a payment on account similar to an advance payment of the VAT, Argentina was in doubt as to whether the tax burden is the same, whatever the origin of the product. In the case of domestic operations, the rate would be applied on the total net amount invoiced, excluding VAT, whereas in the case of imports, the tax base would be the sum of the customs value plus the tariff, increased by up to 21.75%. The delegation from Argentina requested the Uruguayan authorities to eliminate the tax discrimination in the implementation of the COFIS to intrazone imports, as well as to eliminate the possibility that said contribution be deducted in the case of exports.



#### **IV.2.2. Tax Incentives**

Additionally, a consultation was submitted with regard to tax incentives to exports presumably incompatible with GATT/WTO provisions and another one concerned a promotion system whose incentives distorted competitive conditions in the sub region.

Argentina filed a consultation to Brazil concerning a constitutional amendment approved in December last year (No. 33), which modified Article 149 of the Constitution and establishes that social contributions do not have an incidence on exports. It alleges that the WTO agreement on subsidies and countervailing measures expressly forbids the exemption or reimbursement of social security contributions, as well as direct taxes. Argentina claimed that Brazil applies the COFINS, which is an indirect tax simultaneously with a contribution to fund social security, which gives rise to an inconsistency with the commitments adopted vis-à-vis WTO.

The reply given by Brazil argues that the social contributions are taxes on the invoicing of firms and therefore on the business volume, and as such fall within the scope of what WTO considers indirect taxes. They are not directly related to the number of employees or the payroll, as are social security contributions.

Argentina, in turn, received a consultation from Uruguay with regard to the implementation of the industrial promotion regime for the Provinces of La Rioja, San Luis, Catamarca and San Juan. According to the Uruguayan delegation, this system places its companies at a disadvantage when competing in the Uruguayan and Argentine markets, compared to their peers who benefit from the promotional regime, and that they were set up after approval of Decision 10/94. The query did not conclude satisfactorily.

### **IV.3 Review of the Claims and Disputes filed before the CCM and CMG**

Argentina has been the most active among the Member Countries in using the claims and disputes procedures within MERCOSUR. And, specifically with regard to taxation issues, it has filed four out of the five claims and disputes; the fifth was submitted by Paraguay. Half the claims subsequently gave rise to disputes which were resolved by arbitration.

Three claims were submitted to the CCM concerning taxation matters, in all case they were filed by Argentina and in 1997. Two of them questioned the tax discrimination of Uruguay in applying the IMESI to imported cigarettes and beverages (spirits and soft drinks). Regarding cigarettes, Uruguay was then challenged by Paraguay in early 2001, and this case was the subject of an arbitration procedure.

The other claim from Argentina was against Brazil, questioning the subsidies on the production and export of pork, a conflict which escalated and reached the arbitration instance within the framework of the procedures foreseen for the settlement of disputes. And last year Argentina filed for a dispute in view of the presumed incompatibility of the wool industrialization system granted by Uruguay pursuant to MERCOSUR rules, which governs the implementation and use of intrazone trade incentives.

## Claims and Disputes regarding Taxation Issues

### Claims

#### **Argentina vs. Uruguay**

Tax discrimination, IMESI on cigarettes (1997)

Tax discrimination, IMESI on spirits and soft drinks (1997)

#### **Argentina vs. Brazil**

Subsidies to the production and export of pork (1997)

### Disputes

#### **Argentina vs. Brazil**

Subsidy to the production and export of pork (it reached the arbitration instance) (1999)

#### **Argentina vs. Uruguay**

Incompatibility of the wool industrialization fostering regime with MERCOSUR rules on intrazone incentives (2001)

#### **Paraguay vs. Uruguay**

Tax discrimination, IMESI on cigarettes (it reached the arbitration instance) (2001)

#### **By subject:**

Tax discrimination on the application of IMESI to the import of cigarettes and soft drinks in Uruguay

Subsidies to exports granted through a presumed IPI credit to reimburse PIS/COFINS in the case of Brazilian exports

Tax bonuses for wool exports in Uruguay

Source: We prepared it ourselves based on the minutes of CCM AND CMG meetings

The regulation of the excise tax (IMESI) which taxes cigarettes and beverages (spirits and soft drinks) in Uruguay implies a discriminatory treatment against imported products because of the formula used to compute the tax base in those cases. In order to determine the amount of the IMESI to be paid by imported products, presumed values are set as a basis for the market prices, over which then a rate is applied, and this rate differs according to the country of origin of the goods. In fact, national products pay the simple IMESI rate, whereas those manufactured abroad are taxed with a single rate but multiplied by a factor which is greater than the unit. An example of this tax discrimination can be found in the differential rates applied to beverages containing natural juices which, if manufactured with national juices pay 13.5%, whereas otherwise the rate is 25.5%.

In the case of cigarettes, an additional discrimination has been identified, since the tax applicable to non-neighbouring countries is higher than that in force for those coming from neighbouring countries, and in turn these are greater than those taxing the national product. Indeed, the tax burden is computed based on a coefficient of 1.3 set in advance for bordering countries and of 2 for non-bordering countries. Thus, only cigarettes from Paraguay, among the MERCOSUR countries, are treated as coming from outside the zone for tax purposes.

In response to insistent claims from its partners in MERCOSUR, the Uruguayan Government has analyzed the possibility of phasing down the double IMESI but, for the time being, no initiative of this nature has been realized. The MERCOSUR partners have filed several queries on this subject before the CCM, and also –as explained earlier– claims were filed and disputes were invoked which reached the CMG instance, but no consensus has been arrived at to settle the issue. This led the Government of Paraguay to request that an arbitration tribunal be set up, and the award found that Uruguay was responsible for engaging in tax discrimination.

The double taxation of the IMESI on cigarettes breaches commitments assumed by Uruguay within MERCOSUR (and also WTO), since it violates the principle of national treatment and restricts the access of products coming from its partners into its market. However, the solution of the problem is systematically delayed because the Government of this country tries to avoid a fall in tax revenue and the negative impact

this would have on national production. Uruguay has promised, on several occasions, that it would study alternatives which would make the legislation in force compatible with its fiscal needs and the commitments it has undertaken under the Treaty of Asuncion.

The Uruguay position vis-à-vis these claims submitted by Argentina and the dispute procedure initiated by Paraguay consists in acknowledging a discriminatory treatment but rejecting the legitimacy of the claim considering that the principle of national treatment set forth in Article 7 of the Treaty of Asuncion is not immediately binding (as is the case with trade liberalization). Consequently, it should follow principles of gradual, flexible and balanced implementation, as foreseen in the preamble of the Treaty in the transition towards a common market. Tax neutrality does not have to be reached instantaneously, in its opinion, but rather according to a set of programmatic rules, general guidelines and guiding principles which are not immediately translated into an obligation for the Party States. Likewise, it sustains that if the principle of reciprocity is not respected, arguing that the other partners also engage in discriminatory treatment in the case of imported cigarettes.

According to Uruguay, the MERCOSUR provisions have not been violated, since these rules state that the measures classified as “public policies which distort competitiveness”, and which include taxation, are subject to a multilateral harmonization and phase down process which is not over yet. It specifically sustains that “while a process set up by the parties in a unanimous and legally binding manner is still under way, the unilateral roll-back of internal tax measures, subject to this collective process, by one of its Members cannot be demanded”.

It is certain that these issues had to be dealt with by a technical committee of the CCM in charge of analyzing public policies which distort competitiveness. Mention should be made of the fact that this committee could not make any progress in the treatment of public policy asymmetries in view of the political sensibility and the complexity of the matters, and hence it was decided that they should be reviewed by an *ad hoc* group within the CMG. However, the latter was also unable to fulfil its terms of reference and, consequently, the CMC decided to discontinue the AHG in late 2000. At its meeting last June, the CMG created the “Ad Hoc Group on Trade in Cigarettes

within MERCOSUR”, and charged it with analyzing, among other subjects, the conditions regarding taxation issues related to intrazone trade.

The arbitration panel which ruled on the dispute invoked by Paraguay –which reached an award in ~~May 2002~~– considered that the implementation of the IMESI in Uruguay is incompatible with the principle of national treatment contained both in MERCOSUR and in GATT/WTO and LAIA. This is a double discrimination in the case of Paraguay because it imposes on its cigarettes a relatively greater tax burden compared to those whose origin is Uruguay and its neighbouring countries. In response to the argument put forth by Uruguay concerning the non self-implementation of Article 7 of the Treaty of Asunción, the arbitration panel found that this is certainly so when an immediate modification of the legislation of the parties is required. But that self-implementation is, however, the case because it imposes on the Party States the duty to amend their legislation and adapt it to the provisions of said Article (“the Law does not accept antinomies in its logic”).

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The *ad hoc* tribunal unanimously decided that Uruguay should put an end to the discriminatory effects it causes with regard to cigarettes from Paraguay because it is not a bordering country, and by a majority it ruled on the other discriminatory effects which result from implementing it through administrative channels. It should be pointed out that regarding the latter issue, the arbitration award is rather imprecise since it does not clearly rule that the cigarettes from Paraguay must be treated just like the national ones, in fact Paraguay requested explanations on this. The term to comply with the award reached by the tribunal was set at six months.

Subsequently, Paraguay submitted a request for explanation of the arbitration award to make quite clear the issue of discriminatory effects stemming from the implementation by “administrative channels” and whether it should be construed that cigarettes from Paraguay would be taxed with the same legal scope and in the same way and following the same criteria (computation of the tax base, IMESI rates, settlement) as those in force for Uruguayan cigarettes. It likewise requested the Tribunal to compel Uruguay to submit a calendar of compliance with the relevant obligations.

In reply to the above, the Tribunal stated that its intention was to make a distinction between a rule the purpose of which is discriminatory from another where that is not the case but which has such effects when implemented. It explains that the IMESI should be applied on Paraguayan cigarettes in the same manner as it is implemented in the case of Uruguayan cigarettes, but that the Tribunal is not the proper body to determine how this obligation should be realized.

The challenge to Brazil filed by Argentina covered several measures which are incentives to the export and production of pork. But with regard to taxes, it focused, according to Argentina, on the fact that the Brazilian Government returned to the exporter amounts equal to the value of the PIS/COFINS contributions on input purchases to produce goods for export, a reimbursement which is made through a “presumed IPI credit” equivalent to 5.27% of the cost of the inputs used in the production chain, which is higher than the amount paid for social contributions (a credit greater than the debit). Moreover, Argentina alleged that, according to multilateral provisions, it is not possible to reimburse these levies because they are social contributions, and were not included Esther among the exceptions foreseen in Article 12 of Decision 10/94. According to Nofal calculations (2000), the fiscal incentive involved a difference in favour of Brazil ranging from 2.3% and 2.7% of the export price.

The response given by Brazil consisted in denying the existence of such a subsidy, arguing that the PIS and COFINS contributions were indirect taxes, and therefore contemplated by WTO and MERCOSUR. It also replied that the presumed credit operation was made by means of a record of debit/credit, and consequently it was not possible to grant a reimbursement higher than the payment actually made. Due to reasons of form, the Argentine claim linked to this tax was left out of the subject of the proceedings (it was not formally introduced in the initial claim), and therefore the Tribunal did not rule on this matter in particular.

Last year, Argentina invoked a dispute concerning a presumed lack of compatibility in the wool industrialization regime granted by Uruguay pursuant to the MERCOSUR rules which governs the implementation and use of incentives in intrazone trade. This system had set a 22% bonus on the FOB value of exports of wool knitwear in the form of pieces or garments, but this percentage was phased down since

1988, and for several years has stood at 9%. The Banco de la República Oriental del Uruguay issues a certificate to the companies enjoying this benefit, and the holders or endorsees thereof may use them to pay taxes. According to the Uruguayan position, this bonus is not accumulative with indirect tax reimbursement for exports because of budget constraints. Since the CMG did not reach a consensus on this, its intervention ended.



**ANNEX 2.V**

**MACROECONOMIC COORDINATION IN**  
**MERCOSUR**

## **2.V.1. Growth of trade, macroeconomic liberalization and coordination in MERCOSUR.**

For most of the 1990s MERCOSUR made remarkable progress towards the elimination of tariffs. As a result, since 1999 all products compliant with the rules of origin (except motor vehicles and sugar) have been traded at a 100% preference margin over most favoured nation tariff rates. Preferential tariff elimination, facilitated by a context of unilateral trade opening, also led to a significant increase in intra-regional trade flows. In effect, between 1991 and 1998 intra-regional exports experienced a four-fold increase, growing more than six times faster than sales to the rest of the world. Tariff elimination and rapid intra-regional trade growth occurred in the absence of macroeconomic policy co-ordination and very limited policy convergence. On the one hand, while the Convertibility Plan brought Argentine inflation to a halt in 1991, Brazil struggled for years to reach single-digit rates of prices' increase. On the other, exchange rate policies differed radically for most of the 1990s. Only between 1994 and 1998, when the Brazilian government adopted the *Plano Real*, exchange rate policies experienced *de facto* convergence. Abundant liquidity in international financial markets further helped to sustain preferential trade liberalization and rapid intra-regional trade growth in a context of divergent macroeconomic policies and performances.

Although Article 1 of the Treaty of Asuncion established the coordination of macroeconomic and sector policies, it set no procedures or mechanisms to that end. Therefore, trade liberalization (implemented according to the procedures set by the Trade Liberalization Program) took place in a context in which each member state continued pursuing its own independent macroeconomic objectives. During this whole period cooperation, and even the exchange of information, were very limited. When there were periods of macroeconomic convergence, these occurred *de facto* and due to reasons independent from inter-governmental cooperation.

This approach was compatible with liberalization and higher intra-regional trade while there existed favorable conditions, be it due to the *de facto* convergence of the macroeconomic policies (as between 1994 and 1998) or due to a favorable international environment (as during the period between 1991 and 1994, in which external financing was readily available). However, the external environment faced by MERCOSUR

changed remarkably in the late 1990s following the East Asian crisis. External finance became less readily available, Argentina plunged into a four years depression and Brazil devalued the domestic currency in January 1999. The result was a significant increase in macroeconomic instability and a restoration of significant policy (particularly exchange rate) divergences. Intra regional trade flows suffered as a result. Between 1998 and 2000 intra-MERCOSUR exports fell by 13%, while extra-MERCOSUR exports expanded by 10%. Simultaneously, restrictions on intra-regional commerce mushroomed, the implementation of a common external policy faced increasing obstacles, and the process of intra-regional negotiation entered a phase of stagnation.

*Pari passu* with a worsening macroeconomic environment the issue of macroeconomic coordination gained heightened relevance in the public policy agenda. The Acta de Ushuaia of 1998 established that in order to continue advancing towards a customs union it was necessary to set a framework for tax and investment discipline, to work towards economic harmonization and to move towards a single MERCOSUR currency. This statement was the outcome of an unexpected proposal made by the Argentinean government that involved studying the possibilities of establishing a common currency. Actually, the Argentinean initiative was directed more at promoting the extension to the region of the currency board regime in force in that country since the beginning of the 90's, rather than at setting off a macroeconomic coordination process (and eventually monetary unification) preserving some degree of flexibility in monetary policy. According to the unofficial view of the Argentinean government, that process should end in the formal "dollarization" of MERCOSUR economies.

In spite of the Acta de Ushuaia, the idea of a "single currency" was skeptically received by the Brazilian government, which did not look with friendly eyes at the loss of flexibility implicit in the adoption of Argentina's exchange rate regime. For the Brazilian authorities the target of a common currency was seen as meaningful as a long term initiative and in the context of a monetary and exchange rate regime more flexible than of the currency board in force in Argentina. The implicit "dollarization" proposal was even more bluntly rejected in Brazil. Similarly, the prevailing professional view was that the initiative of a common currency was too early, and even eccentric, in view of the limited progress made in the coordination of other key policies, including the common external tariff and exchange rate policy.

In 2000, during the XIX meeting of the Common Market Council, MERCOSUR member countries agreed on a set of indicative medium-term targets for a number of selected indicators (the inflation rate, the public sector deficit/GDP ratio and the public sector debt/GDP ratio). This was a rather ineffectual compromise, as targets merely indicative with no enforcement mechanism put in place. The rationale behind this approach was in a context of divergent exchange rate regimes, the best that governments could aspire to was a convergence of nominal variables. Eventually, this would lay the basis for more substantive macroeconomic co-ordination. The Argentine crisis of late 2001 played havoc both with the targets and the approach. Although the collapse of the currency board in Argentina has removed one of the biggest obstacles to regional policy co-ordination (the disparate exchange rate regimes that prevailed in MERCOSUR's two largest partners), the ensuing Argentine crisis has exponentially raised the potential for regional macroeconomic instability.

The macroeconomic turmoil that has prevailed in the region since the East Asian crisis suggests that deepening economic integration will demand more explicit efforts aimed at promoting policy convergence (particularly in the realm of exchange rate policy). Enhanced macroeconomic co-ordination seems not only a pre-requisite for deepening economic integration, but also to maintain the existing levels of integration. In effect, a worsening macroeconomic environment and synchronic economic cycles have led to a significant increase in non-tariff measures and other *ad hoc* policies (such as export voluntary restraint agreements) aimed at reducing market disruption. Altogether, they have severely impaired intra-regional market access conditions.

Despite this evident need, the prospects for macroeconomic co-ordination in MERCOSUR are not promising. Economic interdependence is still low, volatility potentially high and there is no prospective regional leader capable to provide the public goods required for macroeconomic convergence. In addition, MERCOSUR's institutional arrangements seem poorly suited to promote and ensure common policies (not only at the macro-economic level, but also at the level of trade). The difficulties that MERCOSUR has faced to enforce a common external tariff (CET) are suggestive of such difficulties.

## 2.V.2 Structural conditions for macroeconomic coordination

Despite the significant increase of intra-regional trade flows during the 1990s, regional economic interdependence is still low. Aggregate demand interdependence (defined as the contribution of regional exports to regional GDP) is nearly 2%, significantly below the level reached by the European Union in the early 1970s (9%). This is the result of a relatively low share of intra-regional trade in total foreign trade (see below) and more closed economies (as measured by the foreign trade coefficient) in the case of MERCOSUR (particularly its two largest members). In effect, although it has increased remarkably in the 1990s (from 11.1% in 1991 to 20.4% in 2000), the aggregate “trade encapsulation index” (measuring the share of exports to the region in total exports) is still modest.

In addition, aggregate demand interdependence in MERCOSUR is very asymmetric. Whereas this indicator in the case of Germany has remained close to the EU’s average in the last few decades, in the case of MERCOSUR this indicator shows a significant disparity between the largest economy (Brazil) and the rest (which are both more open economies and have their trade flows more concentrated in the region). In effect, the share of intra-regional trade on total foreign trade differs widely across countries: while in 2000 exports to MERCOSUR accounted for 63.5% of total Paraguay exports, 44.5% of Uruguay and 31.8% of Argentina, it contributed with only 15.4% of total Brazilian exports. These structural features mean that the incentives to co-ordinate diverge significantly across members.

**TABLE 1**  
**MERCOSUR: economic interdependence, 1991/2001**

	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001
<b>Exports to MERCOSUR as % of total exports:</b>											
<b>Argentina</b>	16.5	19.0	28.1	30.3	32.3	33.3	36.2	35.6	30.3	31.8	28.2
<b>Brazil</b>	8.0	12.5	15.4	15.0	14.6	16.8	18.8	19.1	15.5	15.4	10.9
<b>Paraguay</b>	35.1	37.4	39.6	52.0	57.1	63.6	51.3	52.4	41.4	63.5	n/a
<b>Uruguay</b>	35.5	33.6	43.5	47.0	47.1	48.1	49.7	55.4	45.0	44.5	n/a
<b>MERCOSUR</b>	11.1	14.3	18.6	20.0	20.5	22.7	24.7	25.0	20.4	20.9	n/a
<b>Exports to MERCOSUR as % of the GDP:</b>											
<b>Argentina</b>	1.04	1.02	1.56	1.92	2.78	3.08	3.45	3.27	2.51	2.94	n/a

<b>Brazil</b>	0.57	1.05	1.22	1.08	0.87	0.94	1.12	1.14	1.28	1.32	n/a
<b>Paraguay</b>	4.14	3.82	4.17	5.43	5.88	6.91	6.13	6.21	3.97	7.16	n/a
<b>Uruguay</b>	5.56	4.59	5.06	5.53	5.50	6.03	6.86	7.60	5.01	5.14	n/a
<b>MERCOSUR</b>	0.83	1.13	1.44	1.47	1.48	1.61	1.85	1.86	1.80	1.97	n/a

Source: Own calculations based on official information.

**TABLE 2**

**MERCOSUR: total and intra-regional exports, 1991-2001**

US\$million

<b>To MERCOSUR</b>	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001
Argentina	1.978	2.327	3.684	4.804	6.770	7.916	9.558	9.414	7.065	8.391	7.512
Brazil	2.309	4.097	5.395	5.921	6.154	7.305	9.043	8.878	6.778	7.731	6.363
Paraguay	259	246	287	425	528	663	586	531	307	553	n/a
Uruguay	558	544	699	899	992	1.153	1.355	1.533	1.007	1.022	n/a
MERCOSUR	5.104	7.214	10.065	12.049	14.444	17.037	20.542	20.356	15.157	17.697	n/a

<b>Totals</b>	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001
Argentina											



	11.975	12.235	13.118	15.839	20.963	23.760	26.430	26.441	23.333	26.409	26.655
Brazil	31.622	35.976	38.597	43.558	46.506	47.747	52.986	51.140	48.011	55.085	58.222
Paraguay	737	657	725	817	925	1.043	1.143	1.014	741	871	n/a
Uruguay	1.574	1.620	1.607	14	2.106	2.397	2.726	2.769	2.237	2.295	n/a
MERCOSUR	45.908	50.488	54.047	60.228	70.500	74.947	83.285	81.364	74.322	84.660	n/a

Source: CEI

Apart from trade flows, investment interdependence is also modest. All MERCOSUR member states are capital-importing countries with very limited integration of regional financial markets. During the FDI boom of the 1990s all member countries have been net recipients, mainly from the rest of the world. According to official estimates, only 2% of total inward FDI flows during the 1990s had their origin in the region (mainly Argentina and Brazil). Again, the share is significantly higher for Paraguay and Uruguay. Similarly, the initiative to establish a customs union in MERCOSUR has had a limited stimulus on FDI inflows. Where the effect has been most remarkable is in the motor vehicles industry, where an administered trade regime has led to a regional division of labour between Argentina and Brazil.

Financial markets integration is also modest. Except in the case of Uruguay and Argentina, where the former has been acting for long as an off-shore banking center, portfolio flows are limited. Moreover, even in the case of Uruguay, local *off-shore* banks have played the role of a transit facility rather than a final location for portfolio investment. The product diversification and the economies of scale of other *off-shore* banking centers limit the ability of Uruguay to benefit from portfolio inflows from abroad. Cross investment in public sector bonds and equity has also remained very limited. However, “contagion effects” have been far from negligible. As far as investors have a “regional” perception, strengthened by MERCOSUR, events in one of the largest countries tend to influence perceptions on the rest. As a matter of fact, during the Brazilian crisis of 1999 and the Argentine financial collapse of late 2001, the local authorities have made great efforts to try to disentangle national economies from negative events in one of MERCOSUR member states. Indeed, the Brazilians seem to have succeeded in doing so during the heights of the Argentine crisis.

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Finally, labour market integration remains very limited. Although the Treaty of Asuncion established in Article 1 the free circulation of productive factors, this commitment lacked operative content. At present there are no special plans for labor movement within the region and domestic labor markets are still strongly segmented. The large gap in real labour costs and the sizable asymmetries in the structure of domestic labour markets (e.g., the incidence of informal employment) suggest that deeper labour market integration will take a long time to come. There are also important

differences in per capita income levels among MERCOSUR countries (measured as the ratio between the income of the richest and poorest country in the region). Thus, while in the case of the European Union the difference in per capita incomes between Germany and Portugal is two and a half, in MERCOSUR the difference between Argentina and Paraguay (measured in PPC exchange rates) is four and a half times.

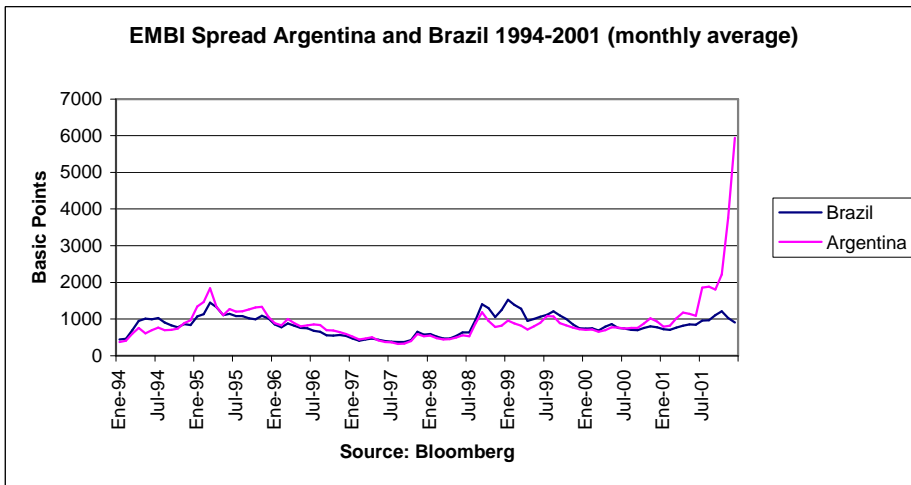
### **2.V.3 Empirical evidence regarding macroeconomic interdependence in MERCOSUR**

The empirical evidence on the depth of economic interdependence in MERCOSUR and its recent changes confirms what could be expected from the structural features reviewed in the previous section. Carrera, Levy Yeyati and Sturzenegger (2000) found that until the second half of the nineties Argentina and Brazil showed cyclic patterns which were much shorter and more volatile than those of developed countries. They also found that cycles in Argentina were longer than those in Brazil, that cyclic diversion was larger in the 80's than in the 90's, and that while prior to the stabilization of the early 1990s cycles were not synchronized, after stabilization they increased remarkably their synchrony. Such convergence in synchrony occurred in the context of convergent growth trends.

Although aggregate trade interdependence has been low, regional trade flows have been very sensitive to domestic macroeconomic conditions. As a result, macroeconomic impulses transmitted through trade flows have been significant in the case of Argentina and not negligible in that of Brazil. For MERCOSUR smaller economies, Paraguay and Uruguay, they have been far more relevant. Regional macroeconomic spillovers, consequently, have mattered. One consistent feature in most econometric studies is the asymmetry in the effects on trade flows of conditions prevailing in the exporting and importing country: regularly, the latter (aggregate demand and real exchange rate) are far more significant than the former. This finding was confirmed by the behavior of bilateral trade flows after the devaluation of the Real in January 1999: although exports from Argentina to Brazil decreased, exports from Brazil to Argentina decreased even more. Consequently, by the end of 2001 Argentina still enjoyed a trade surplus with Brazil (although trade values were much lower than before the crisis).

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**Graph 1**  
**Country-risk premiums (Argentina and Brazil), 1994-2001**



Another outstanding feature in Argentine/Brazilian bilateral trade flows is the elastic response of trade flows, particularly to changes in activity level in the importing country. According to estimates by Heymann and Navajas (1998), the aggregate effect (considering the lags) of a 1% increase in Brazil’s real GDP is a 2.5% expansion in Argentine exports that country. The (“long term”) elasticity of exports from Argentina to changes in the real exchange rate of the Brazilian currency is about 0.9%. These estimates show that changes in activity levels in the importing country is a much more important determinant of exports than changes in the real exchange rate. This carries important implications regarding the convenience of preventing wide output fluctuations as the criteria to adopt an exchange regime.

Regarding financial indexes, Graph 1 which shows the spread for the EMBI in Argentina and Brazil during the 1994-2001 period, provides some interesting data. The graph shows that until 1998 there was a strong correlation in the performance of both indexes, suggesting that shocks are usually external to both countries. Such result is consistent with the structural datum that intra-regional capital flows are not

quantitatively significant as compared to those coming from outside the region. In view of the strong correlation between national risks, we can understand why diversification of portfolios based on regional financial assets has been very limited.

#### **2.V.4 Macroeconomic spillovers during the nineties**

The increase in economic interdependence in MERCOSUR has raised the relevance of spill-over effects, especially from the large economies to the smaller ones, but also from Brazil to Argentina and viceversa. Even if interdependence is still modest and the incentives to coordinate relatively low, there is quite enough evidence that negative spill-over effects create very strong tensions in regional integration. These tensions not only hinder its development, but threaten to reverse the level of market access conditions already reached.

During the 90's, regional macroeconomic spillovers were dealt with using a combination of "good luck" and *ad hoc* policies. The first significant spill-over occurred at the beginning of the decade, when aggregate demand recovered fast and the peso experienced a real appreciation in Argentina. The result was larger Argentinean trade deficits, both bilateral and global, which stimulated *ad hoc* measures (such as the increase in export tax rebates and higher tariff surcharges), and managed trade initiatives (such as the Brazilian official decision to stimulate the purchasing of wheat and oil in Argentina. It must be pointed out that the conflictiveness of the period was very much reduced by the fact that there was abundant availability of foreign finance, thus reducing the pressure to finance current account deficits.

The second episode took place in the mid-1990s, when the strong economic recovery which followed the implementation of the Plan Real in Brazil (together with the real appreciation of its currency) benefited Argentina with an export boom that helped it to overcome the "tequila crisis". As a result, in 1995 and 1996 exports from Argentina to Brazil grew 49% and 21% respectively, rates which doubled those of

exports to the world. Uruguay also benefited from the rapid growth in aggregate demand in Brazil and from the real appreciation of its currency. Although size asymmetries mean that the effects of regional competitors on the Brazilian economy were more moderate, the worsening aggregate trade balance led that country to enforce trade protection measures, frequently extended into its MERCOSUR partners.

The most recent and politically troublesome example of a regional macroeconomic spill-over was the exchange crisis of the late nineties. Although Argentina had entered into a recession in 1998 after a series of negative external shocks (such as the crisis in East Asia, the nominal appreciation of the dollar, falling terms of trade, and international credit rationing), the Real's devaluation in January 1999 severely worsened the external environment (Brazil was Argentina's major trading partner). The combined effects of a strong reduction in domestic aggregate demand in Argentina and relative price changes placed pressure on import-competing sectors. Once again, the outcome was a proliferation of *ad hoc* trade measures (such as the application of antidumping duties and the imposition of new non-tariff barriers or voluntary export restriction agreements). The tensions that followed this conflictive period even questioned the feasibility and desirability of implementing a common external tariff and a customs union. In March 2001 Argentina unilaterally increased tariffs on consumer goods up to its bound level in the World Trade Organization (35%), and reduced tariffs on capital goods to zero (below the agreed common external tariff). After the peso's devaluation in January 2002 Argentina reestablished the common external tariff, once again proving how volatile and subordinated tariff policies have been to the comings and goings of the macroeconomy.

#### **2.V.5 Stimuli for convergence**

Growing spillovers create incentives for macro-economic co-operation. As real and monetary shocks can more easily be transmitted from one country to the next, the potential benefits of enhanced co-operation tend to increase. Closer co-operation can reduce the vulnerability to foreign trade shocks, limit opportunistic behaviour, facilitate

information sharing over possible and/or desired states of the world and reduce the microeconomic efficiency costs of large exchange rate changes. However, MERCOSUR has made very modest progress in this road. Information sharing and mutual knowledge has advanced very poorly, as the Economy Ministers and Central Banks' presidents meetings have been at best a photo-opportunity. Efforts to differentiate one country from the next at bad times have also conspired against closer co-ordination. As mentioned before, only in 2000 MERCOSUR member countries agreed on a set of indicative medium-term targets for a number of selected indicators (the inflation rate, the public sector deficit/GDP ratio and the public sector debt/GDP ratio). The Argentine crisis of late 2001 played havoc both with the targets and the approach.

The limited progress in macroeconomic co-ordination in MERCOSUR can be explained by the severe obstacles faced by substantive co-operation and the asymmetric incentives faced by each member state. As explained before, the relatively low and asymmetric level of interdependence affects differently the distribution of costs and benefits across partners, limiting the incentives to co-ordinate faced by larger members (e.g., Brazil). Moreover, even if the smaller partners were ready to converge towards Brazil's macroeconomic preferences or performance rather than to co-ordinate, the fact is that Brazil has scarcely been an attractive focal point. The macroeconomic performance of the Brazilian economy in the 1990s has been volatile (although less so than in the 1980s) and the policy approach has varied considerably. In terms of exchange rate policy, for example, Brazil shifted from a crawling-peg in the early 1990s to a fixed nominal exchange rate in the 1994/98 period (the *Plano Real*) and to a floating rate thereafter. This volatile policy pattern has reduced its ability to act as a focal point and it has reduced the attractiveness of being a follower. Moreover, Brazil has also shown very limited inclinations to act as a "regional" benign leader, as suggested in the self-interested policy stance that followed the devaluation of the Real in January 1999.

## 2.V.6 A gradualist approach to macroeconomic coordination

Macroeconomic co-operation generally makes headway in a gradual manner. At a first stage partners exchange views and information, thus reducing uncertainty over others' actions and raising mutual knowledge and understanding. In a second stage, the prospective partners may engage in mutual consultation and discussions. At this stage, they may be ready to co-ordinate a response to perceived common threats ("dilemmas of common aversion"). Eventually, common policy instruments or explicit targets may be agreed. This represents the deepest form of macroeconomic co-ordination.

Macroeconomic co-ordination may increase in MERCOSUR at best at a very slow pace. Low and asymmetric interdependence, a volatile macroeconomic environment, divergent policy preferences and weak institutions suggest that progress will be moderate. However, if economic integration is to deepen or even maintain its current intensity, *de facto* or *de jure* coordination will be needed. Macroeconomic spillovers have increased considerably the use of non-tariff barriers and other *ad hoc* trade policy measures to compensate for shocks and lower tariff rates. Since MERCOSUR has no effective mechanism to deal with NTBs, the consequence has been an increase in market fragmentation.

The discussion over monetary union put forward by Argentina's president Carlos Menem in 1998 seems premature. On the one hand, MERCOSUR does not seem to fit to the pre-requisites of an optimum currency area. Trade interdependence is still low and factor market integration is very limited. The limited prospective benefits, however, could be more than compensated by credibility considerations (as it was the case with monetary unification in the euro zone). However, the supplier of enhanced credibility is simply not there. Paraguay is the MERCOSUR member country with the more stable macroeconomy, but hardly an anchor for convergence. The likeliest candidate, e.g.: Brazil, is hardly an example of macroeconomic stability and institutional strength. The pre-conditions, consequently, are simply not there.



The abandonment of the currency board by Argentina in January 2002 removed one of the major obstacles to enhanced macroeconomic co-ordination. However, by raising the potential for macroeconomic instability in the region, it has made co-ordination more difficult to attain than before. All said, economic integration in MERCOSUR is most likely to advance at the pace set by broader economic integration processes (such as the FTAA) or *de facto* convergence, facilitated by a favourable external environment. The prospects are not good in any of the two accounts. On the one hand, the FTAA process seems to be in a stalemate. On the other, the external environment does not look promising for the region. Consequently, economic integration in the region and macroeconomic co-ordination will advance at best at a slow pace. Governments should focus on giving content to the basic steps (increasing information sharing and analysis) and building credible institutions to promote regional co-operation. This may seem modest steps, but they are more likely to contribute to regional co-operation more substantially than either the *status quo* or innovative –but non-implementable– ideas.

**ANNEX 2.VI**

**SECONDARY NORMS THAT APPROVE**  
**AGREEMENTS EXPANDING THE TREATY OF**  
**ASUNCION**

<b>Decisions:</b>
1/91 Brasilia Protocol on Dispute Resolution
5/92 Protocol on Civil, Commercial and Administrative Jurisdictional Assistance and Cooperation.
5/93 Recife Agreement on “Integrated Border Controls”
11/93 Colonia Protocol. Promotion and Protection of intra-regional investment.
1/94 Buenos Aires Protocol on the International Jurisdiction of Contracts.
2/94 Agreement on the Transportation of Dangerous Materials.
4/94 Education Protocol. Official recognition of first and mid-level (non-technical) degrees.
11/94 Protocol on Investment Protection and Promotion (third parties).
15/94 Multimodal transportation
25/94 Customs code.
27/94 Cautionary measures
4/95 Protocol. Education. Official recognition of post-graduate degrees.
7/95 Protocol. Education. Certification and official recognition of mid-level technical degrees.
8/95 Protocol. Intellectual Property. Harmonization.
1/96 San Luis Protocol. Civil liabilities. Public transit.
2/96 Protocol. Judiciary Assistance.
8/96 Protocol. Education. Post-graduate education.
9/96 Protocol. Education. Human resource formation at the post-graduate level.
10/96 Santa María Protocol. International jurisdiction on consumer issues
11/96 Protocol. Cultural integration.
18/96 Protocol. Competition defense.
2/97 Annex. Protocol on Competition defense.
3/97 Protocol. Education. Official recognition of degrees to undertake academic activities in member states.
5/97 Complementary Agreement to the Protocol on Civil, Commercial and Administrative Jurisdictional Assistance and Cooperation

<p>9/97 Complementary Agreement to the Protocol on Cautionary Measures.</p> <p>13/97 Montevideo Protocol. Trade in Services.</p> <p>19/97 Social Security Multilateral Agreement.</p> <p>23/97 Agreement. Funding for Statistical Cooperation among the EEC and MERCOSUR.</p> <p>26/97 Annex. Education Protocol. Official recognition of degrees to undertake academic activities in member states.</p>
<p>3/98 Agreement. Commercial Arbitration in MERCOSUR.</p> <p>9/98 Montevideo Protocol. Trade in services. Annex with specific commitments.</p> <p>11/98 Corrections on Decisions 3/97 and 26/97.</p> <p>12/98 Montevideo Protocol. Trade in services.</p> <p>14/98 Agreement. Extradition.</p> <p>16/98 Protocol. Industrial designs. Harmonization of norms.</p>
<p>1/99 Asunción Agreement. Cooperation and protection of new vegetal varieties.</p> <p>4/99 Agreement. Education. Admission of graduate degrees to undertake academic activities.</p> <p>9/99 Agreement on access conditions for insurance firms.</p> <p>16/99 Asunción Agreement. Motor vehicles and boats. Restitution for illegal transfers.</p>
<p>4/00 Agreement. Recife. Modifications. 5/00 Additional Protocol to the Recife Agreement.</p> <p>48/00 Agreement. Visa waiver.</p> <p>49/00 Agreement. Free legal assistance and cost-free litigation among member states.</p>
<p>2/01 Agreement. Environment.</p>
<p>3/02 Agreement on a Project to assist SMBs towards environmental friendly production practices</p> <p>7/02 Amendment to the Protocol on Civil, Commercial and Administrative Jurisdictional Assistance and Cooperation</p> <p>11/02 Agreement on jurisdiction concerning transportation contracts.</p>

<b>Resolutions:</b>
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6/95 Agreement. TV. Allocation and use of stations.
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30/98 Mobile Maritime Service. VHF airwave.
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<b>Directives:</b> -----
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**ANNEX 2.VII**

**MERCOSUR'S INSTITUTIONAL AND DISPUTE**  
**SETTLEMENT SYSTEM**

## MERCOSUR'S INSTITUTIONAL AND DISPUTE SETTLEMENT SYSTEM

### **1. Decision-making bodies in MERCOSUR: an evaluation of their performance**

The institutional model originally adopted by MERCOSUR granted a high degree of control over decision-making and implementation onto national governments, ensuring both gradualism and flexibility. This approach proved initially very effective, at a time when economic interdependence was low and political commitment was at its highest point. However, in recent times this model began to show evidence of decreasing returns. Thus, in the second half of the 1990s MERCOSUR's institutional weaknesses multiplied *pari passu* to the increasing complexity of the integration process. Certainly, MERCOSUR's performance cannot be explained by its institutional bodies and attributes. Rather, it has been the result of deeper-rooted factors that have also influenced the nature of institutions and procedures. Indeed, the procedures and regulations currently in force in MERCOSUR have proved inadequate even for a shallow integration process. They are even more inadequate if the goal is to set up a customs union and, eventually, a common market.

#### *The Common Market Council*

The Common Market Council (from Spanish, CMC) is the highest political and decision-making body. Its main role is to implement the Common Market. The members of CMC are the Ministers of Economy and Foreign Affairs. The goal of the explicit and active participation of the Ministers of Economy was to ensure that the integration process would be more than just a mere diplomatic exercise, effectively engaging economic authorities in decision-making. The meetings of CMC are coordinated by the Ministers of Foreign Affairs, but other ministers or minister-rank officials can be invited to participate. CMC has the authority to create, modify or eliminate bodies and to create new rules and institutions, as it deems necessary. The CMC is also in charge of negotiating and signing agreements with third countries, groups of countries and international organizations on behalf of MERCOSUR, an attribute that can be expressly delegated upon the GMC. CMC meets once every six

months and its activities are coordinated by a rotating presidency shared by the Member States (Pro Tempore Presidency). The heads of State take part in CMC meetings at least once a year.

Out of practice, CMC meetings have been semi-annual and always followed by presidential summits. They were originally conceived as the key decision-making event.

~~Since~~ the members of CMC are ministers who normally work on a tight schedule, the effectiveness of each meeting was critically dependent on the quality and the extension of preparatory work. They, in turn, were influenced by the different priority assigned by each national administration to the establishment of a regional regime, the initiative and the resources of the Member State exercising the pro-tempore presidency and, even more important, the nature of the issues under discussion. In the first decade of MERCOSUR's history the effectiveness of CMC meetings was also influenced by national economic conditions, to the extent that they either promoted or reduced the interest of top political actors vis-à-vis the evolution of the integration process.

**Supprimé :** Given the fact that

Since 1991, CMC passed an average of 23.5 decisions a year, with a peaks of seventy in 2000 (when the “re-launching” agenda was agreed) and twenty-nine in 1994 (many of them relating to the implementation of the customs union after the end of the “transition period”) (Table 1). Three main conclusions arise from an analysis of CMC's performance. First, during the first few years trade and institutional issues were the focus of most decisions. In contrast, during the second half of the 1990s these issues faded giving way to topics related to justice, culture, education and security.

The second conclusion points out at a significant increase in the number of Decisions passed in the second half of the nineties (an annual average of twenty-nine), as compared to the “transition period” (seven decisions per year). This was particularly the case in the year 2000, when seventy decisions were passed, most of which dealt with issues related to the “re-launching” of MERCOSUR. Argentina's critical economic conditions in 2001 and a deteriorating political climate in the two major partners of MERCOSUR led to a dramatic reduction in the number of decisions during passed that year.



The third conclusion is that, whereas initially CMC produced detailed working instructions and set forth precise guidelines to lead the activities of its subordinate bodies (such as the “Las Leñas Schedule” in 1992, or “MERCOSUR Program 2000” in December 1995), since the mid-1990s no detailed “road instructions” were produced to guide the work of the lower ranks. The “Re-Launching Agenda”, agreed in June 2000, is an exception to this, as it instructs subordinate bodies to identify and enforce the decisions that need to be carried out in order to strengthen the customs union, setting a time frame for it. However, in a context of apparent weakness in the decision-making and implementing process, the “Re-Launching Agenda” proved to be more a list of pending matters than an effective mechanism to solve them.

As time went by, the effectiveness of CMC’s meetings decreased evidently. An increasing difficulty to settle disputes at lower decision-making levels (due to the nature of these controversies) led to an overloaded agenda in higher ranks. Additionally, since the mid-90s, presidential summits, which had started as important signaling events, began to lose credibility as deadlines failed to be met and as Member States had to deal with an increasing number of disagreements. Regular intervention by the heads of State to solve commercial and political disputes (something that came to be known as “presidential diplomacy”) was used in critical moments to unlock negotiations, limit conflict or reduce tensions. However, this led to an excessive exposure of the presidents and a loss of credibility, as many of these interventions suffered from poor follow-up. Indeed, the “presidential diplomacy” was not a tool used by MERCOSUR as a whole, but rather a bilateral method put into practice essentially by its two major partners (Argentina and Brazil), eventually subject to ratification by the rest of the members.

**TABLE 1****Common Market Council:****Decisions adopted between 1991 and 2001**

	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	Total
<b>NUMBER OF DECISIONS:</b>	16	11	13	29	9	18	26	23	27	70	16	258
<b>PERCENTAGE:</b>												
<i>Trade policies</i>	18.8	18.2	30.8	62.1	0.0	27.8	30.8	13.0	3.7	22.9	31.3	25.2
<i>Culture, Justice, Education &amp; Security</i>	0.0	27.3	0.0	10.3	22.2	38.9	23.1	43.5	37.0	28.6	31.3	25.6
<i>Institutional affairs</i>	81.3	27.3	30.8	6.9	33.3	16.7	3.9	26.1	11.1	22.9	12.5	21.7
<i>Other issues</i>	0.0	9.1	23.1	20.7	0.0	0.0	15.4	4.4	14.8	10.0	0.0	10.1
<i>External negotiations</i>	0.0	9.1	0.0	0.0	11.1	11.1	23.1	0.0	25.9	10.0	6.3	9.7
<i>“Deepening”</i>	0.0	0.0	0.0	0.0	33.3	0.0	3.9	8.7	3.7	4.3	18.8	5.0
<i>Technical standards</i>	0.0	9.1	15.4	0.0	0.0	5.6	0.0	4.4	3.7	1.4	0.0	2.7
<b>Total</b>	100	100	100	100	100	100	100	100	100	100	100	100

Source: Author's calculations based on CMC decisions.

### *The Common Market Group*

The Common Market Group (from Spanish, GMC "Grupo Mercado Común") is made up of four officials (and four deputies) from the Ministries of Foreign Affairs and Economy, and the Central Bank from each member. As with the CMC, representatives from other institutions may be invited to participate. GMC is an executive body entitled to bring forward initiatives. Its duties are to implement CMC decisions, develop and oversee the technical work required to foster integration, to issue resolutions in its areas of competence, and to make recommendations to the CMC. The GMC is also responsible for undertaking international trade negotiations following CMC guidelines. It also takes part in the dispute settlement mechanism and the complaints procedures (see section 1.3). In order to develop technical work, the Asuncion Treaty established ten Work Subgroups (from Spanish, SGT) under GMC supervision. As time passed, SGTs underwent several modifications such as suppressions, mergers, creation of new groups, and other changes. Other technical and negotiation fora were created under its oversight, such as specialized meetings, *ad hoc* groups, committees, and commissions, thus forming a complex network of auxiliary bodies.

The effectiveness of GMC to develop technical negotiations, lay the ground for CMC substantive meetings, and implement GMC resolutions also changed as time passed by. SGTs were originally created to deal with routine technical issues necessary to meet the goals and deadlines established by hierarchically superior bodies. SGTs were also conceived as institutional vehicles to involve national bureaucracies in the implementing process, engaging negotiations and technical work as firmly as possible in national agencies competent for each sector. Since MERCOSUR lacked an effective procedure to automatically implement decisions, an active commitment of national officials with capacity to implement was deemed necessary to ensure compliance. In practice, SGTs became simultaneously technical and negotiating fora (Zalduendo, 1998).

At the beginning, GMC and SGTs activities fostered acquaintance between national officials and helped to motivate and create teamwork, encouraging

commitment and facilitating the consolidation of negotiations in national competent agencies. However, by the late 90s the effectiveness of GMC had decreased substantially, as an ever-increasing number of issues failed to be dealt with at higher levels and disagreements pervaded lower technical and negotiating groups. Frequently, disagreements at higher decision-making bodies translated into imprecise instructions or goals. This was simply mirrored by technical groups, who lacked the authority to bridge the underlying differences. The result was a credibility and effectiveness crisis. Problems were aggravated because national officials were often overburdened with responsibilities: due to budget constraints and overlapping responsibilities. The effectiveness of SGTs was also negatively affected because most negotiating for a remained largely disconnected.

The difficulties encountered by GMC to reach consensus at that decision-making level and to set forth precise guidelines and goals to manage the activities of the technical-negotiating forums (SGTs) were an important factor to account for its decreasing effectiveness. Thus, the informal talks that during the first years laid the foundations for subsequent important GMC meetings were gradually substituted by formal plenary meetings (specially during the critical period in 1998/99) that simply reproduced disagreement.<sup>49</sup> During such period, GMC “national sections” were not even able to meet regularly, as they did before (usually once a month). During the crisis year 2001, GMC held seven sessions (never so often before), but with very little results. From a quantitative point of view, only 66 Decisions were adopted during that critical year (the lowest number in the history of MERCOSUR, except for 1991 and 1995). The results were even poorer in terms of Decisions per-GMC meeting, which fell to match the lowest level ever recorded in 1995 (Table 2).

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<sup>49</sup> Peña (1999).

**TABLE 2****Common Market Group:****Resolutions adopted between 1991 and 2001**

	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001
<i>Resolutions Adopted</i>	12	67	93	131	42	156	82	78	89	95	66
<i>Ordinary meetings</i>	1	4	3	5	4	4	4	4	4	4	4
<i>Extraordinary meetings</i>				1	2	1		1			3
<i>Total number of meetings</i>	1	4	3	6	6	5	4	5	4	4	7
<i>Resolutions per meeting</i>	12.0	16.75	31.0	21.83	7.0	31.2	20.5	15.6	22.3	23.75	9.43

Source: Authors' calculation based on the GMC Resolutions.

GMC also encountered obstacles to undertake the demanding agenda of MERCOSUR's foreign trade negotiations. Indeed, after the signing of the free trade agreements with Chile and Bolivia very little progress was effectively recorded (Bouzas, 1999). The Member State in charge of the Pro-Tempore Presidency has regularly taken the representation of the group, but actual coordination and arbitration among different national positions has been limited to meetings that take place just prior to the negotiation sessions with third-parties. This working methodology has hindered the

identification of common interests and acceptable trade-offs, as well as inhibited the development of technical work required to serve as the foundation for common negotiating positions. This weakness is particularly evident in the negotiations with the European Union and in the Free Trade Area of the Americas (FTAA) process, where MERCOSUR members face experienced and relatively solid bureaucracies. To partly compensate this deficiency, a Technical Secretariat will be created as of 2002.

#### *MERCOSUR Trade Commission*

The organs created by the Asunción Treaty (CMC and GMC) were complemented in 1994 with the creation of the Trade Commission (from Spanish, CCM), the Joint Parliamentary Commission (from Spanish, CPC), and the Social and Economic Consultative Forum (from Spanish, FCES). These bodies were established by the Ouro Preto Protocol, which also broadened the duties of the Administrative Secretariat and redefined the role and the powers of the rest of the organs. Just like CMC and GMC, the other bodies (except for the Administrative Secretariat, which was assigned a small staff and a modest budget) were collegiate organs that would meet periodically. Among the new bodies, only CCM was empowered to make decisions, keeping the inter-governmental characteristic of the decision-making process.

The decision-making capacity conferred to CCM consisted in the issuing of Directives. CCM is made up of four officials of every Member State (with their corresponding deputy officials) who are in charge of implementing common trade policies, managing all issues related to intra-regional trade, running the new consultation procedure, and taking part in the complaints procedures. The Technical Committees (from Spanish, CT) were also created within the scope of CCM. These CTs were in charge of conducting technical negotiations, providing advice (without decision-making powers) on the design and implementation of the common trade policy instruments, as well as managing intra-regional trade affairs.

The CCM was established to deal with the daily affairs of intra-regional trade as well as with the implementation and monitoring of common trade policy instruments.

Conceptually, CCM would be the institutional *locus* in which national foreign trade officials would regularly meet and interact. However, despite the internal regulations establishing that that CCM would hold ordinary sessions at least once a month, this never happened. CCM (as well as the Technical Committees under its scope) faced the same problems as GMC and the STs. Particularly, although the Technical Committees combined the tasks of developing technical negotiations and settling trade disputes, the latter actually took up most of the energy. An evident sign of this was the fact that, after reaching a peak in 1995, the number of Directives issued by CCM rapidly declined.

The flexibility and the gradualist spirit of the institutional design of MERCOSUR were manifest, among other things, in an organic structure that developed through different stages and included modifications, combinations, and the creation and suppression of GMC and CCM auxiliary bodies. Such an institutional creation made it necessary to periodically revise the consistency of the resulting structure, which was done twice (in 1995 and in 2000).

**TABLE 3****MERCOSUR Trade Commission:****Directives approved between 1994 and 2001**

	<b>1994</b>	<b>1995</b>	<b>1996</b>	<b>1997</b>	<b>1998</b>	<b>1999</b>	<b>2000</b>	<b>2001</b>
<i>Approved Directives</i>	1	23	19	20	16	17	14	12
<i>Ordinary Meetings</i>	1	8	7	7	8	5	7	5
<i>Extraordinary Meetings</i>			1			1		
<i>Total number of meetings</i>	1	8	8	7	8	6	7	5
<i>Directives per meeting</i>	1	2,88	2,38	2,86	2	2,83	2	2,4

Source: Author's calculations based on GMC decisions.

*Consultative Bodies*

As opposed to CCM, the two other bodies created by the Ouro Preto Protocol (the Economic and Social Consultative Forum –FCES- (from Spanish “Foro Consultivo



Económico y Social”) and the Joint Parliamentary Commission- CPC (from Spanish: “Comisión Parlamentaria Conjunta”) were exclusively consultative and advisory. The aim of the FCES was to represent non-governmental actors. Its maximum authority is a plenary of delegates of the four “national sections”. The Plenary shall meet twice a year to elaborate and propose recommendations aimed at decision-making bodies, These recommendations can be put forward either at the FCES own initiative or as result of consultations made by the GMC or other bodies of MERCOSUR. Each “national section” is composed of nine business, workers and consumers representatives. The Joint Parliamentary Commission is integrated by eight congress members of each Member State, who are elected according to the procedures established by each legislature. Its duty is to analyze matters at the request of the CMC, offer recommendations to GMC and CMC, oversee and ask for reports to other decision-making bodies of MERCOSUR and facilitate the legal procedures required to implement decisions.

At the beginning of the integration process MERCOSUR was quite a flexible organization. However, the fact that governance rested mainly in the hands of Executive Powers meant that they remained significantly isolated. This limited the permeability of the decision-making process to the influence of non-governmental actors, and even to other public agencies (such as Congress and province and local governments). Indeed, participation of the latter in negotiations was formal rather than substantial. This is illustrated by the fact that, until 1996, when the Economic and Social Consultative Forum (FCES) began to operate, the only MERCOSUR body including business and union representatives (jointly with governmental representatives) was SGT 11.

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The establishment of a regional consulting body (FCES) in 1995 and its effective operation as from 1996 did not close the gap. As a matter of fact, private sector actors continued to perceive, accurately, that it was more effective to influence results by aiming at national authorities than by acting at the regional level. The fact that there was no budget to finance the operation of FCES also conspired against adequate representation, as participation was made dependant on members own funding. Indeed, only those organizations capable of financing a continuous participation were prepared to become active members. The FCES also had problems of formal representation, since

the criterion to choose representatives was independently set by each “national section”. The result was that with the exception of Uruguay, non-union, non-business non-governmental organizations (NGOs) are under-represented.

According to Nofal (1998), in practice, FCES has been more an *ex post* vehicle to communicate decisions to the private sector, than an *ex ante* instrument to participate in the decision-making process. In this sense, the experience of FCES contrasts with that of ALCA, in which the participation of the private sectors is institutionalized in workshops and fora previous to ministerial meetings. The scarcity or lack of participation of non-governmental actors may breed opposition to the integration process, not so much because of a fundamental conflict but for reasons regarding isolation and limited participation. Private sector participation at decision-making stages (defined by Mattli (1999) as the horizontal dimension of institutions) may be an alternative to deal with issues such as technical standards.

In any case, there have been wide differences in the degree of participation of different social actors in the organic and decision making structure of MERCOSUR. An explanatory factor may be their position within the institutional hierarchy. In this sense, Von Bulow and Fonseca (2000) make a distinction between actors with organic participation in the institutional framework and those without it. A typical case of the first group is the SGT in charge of labor issues, which provides a case of direct and tripartite participation of government officials, union and business representatives. This structure has determined that in practice a tripartite decision making procedure has prevailed. There has been also sporadic participation of union representatives and entrepreneurs in other SGTs dealing with issues such as industry, health, or the environment. However, none of the agreements reached at SGTs have decision-making force unless they become Resolutions or Decisions of the GMC or CMC, respectively. On the other hand, there is an heterogeneous group of actors (governmental and non-governmental) that do not participate in the organic structure of MERCOSUR and that have created different fora to participate in the process or profit from synergies (it is the case of the Women’s Forum, Merco-cities (from Spanish “Mercociudades”) and universities).

The performance of the consultative legislative body has been equally modest: The Joint Parliamentary Commission has not been successful at making propositions or giving advice to the technical, negotiating or decision-making bodies. Moreover, the CPC has not been able to oppose (or even react to) unilateral measures adopted by national parliaments, as in the case of the exclusion of sugar from free trade commitments on the part of the Argentine parliament. The CPC did not succeed either at accelerating or facilitating the incorporation of MERCOSUR norms into domestic legal regimes. Indeed, national Parliaments constitute the “last trench” for sector and/or regional interests negatively affected by the integration process.

### *The Administrative Secretariat*

Finally, the Ouro Preto Protocol also broadened the role of the Administrative Secretariat over the limited duties established in the Asunción Treaty. The Administrative Secretariat should give operational support to all MERCOSUR bodies (and not exclusively to the GMC as was established in article 15 of the Asunción Treaty) and should assist with the logistics at all MERCOSUR meetings. The Administrative Secretariat was also designated as the institution in charge of receiving all the official information and responsible for publication and diffusion of all norms.

The Administrative Secretariat is the only MERCOSUR body with a small budget (to which Member States contribute) and a reduced full-time staff. However, the activities of the Administrative Secretariat have remained very modest. In year 2002 the Administrative Secretariat was turned into a Technical and Administrative Secretariat in charge of providing technical advice to the negotiations. In spite of these new responsibilities the new Secretariat was not given additional funding.

## **2. Operation of MERCOSUR Dispute Settlement Mechanism**

Jackson (1997) classifies dispute settlement mechanisms (MSC) in those oriented towards diplomatic or negotiated solutions or those in which solutions are based on

rules and legal principles. The MSC of MERCOSUR shares features of both, but in practice it has leaned towards the former. The procedures to settle disputes in MERCOSUR were established by the Brasilia Protocol for the Settlement of Disputes (PBSC) (from Spanish: “Protocolo de Brasilia para la Solución de Controversias”) in December, 1991, less than a year after the signature of the Asunción Treaty. The PBSC was established as a transitory agreement to be in force during the “transition period”, after which permanent dispute settlement institutions and procedures would be enforced. The Ouro Preto Protocol extended the procedures of the PBSC and postponed the implementation of a permanent mechanism until full implementation of the common external tariff, scheduled to take place in year 2006. The Ouro Preto Protocol also defined a complaints procedure, to be carried out before the Trade Commission of MERCOSUR.

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The Olivos Protocol on Dispute Settlement System was signed on February, 2002. The Olivos Protocol -which supersedes the Brasilia Protocol- established a number of innovations over PBSC but maintained the commitment of Member States to carry out a revision of the present system to adopt a permanent mechanism before the year 2006.

#### *Procedures of the Brasilia Protocol*

In general terms, the dispute settlement mechanism of MERCOSUR includes three alternative procedures. The first two are diplomatic (consultations and claims) and the third one is arbitral.

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Consultations provide a mechanism to settle disputes through direct negotiations subject to predetermined procedures and terms. This mechanism allows the Member States to exchange information through the request of explanations and clarifications. It also serves to manage commercial conflicts that are not worth a claim or the initiation of a “judicial” proceeding. Consultations may be initiated by Member States on behalf of the central or local administrations, or the private sector.

Claims constitute the second mechanism for the settlement of disputes. Claims may be filed by Member States, individuals or legal entities, but must be initiated by a “national section”. Claims should refer to trade matters under the authority of the MERCOSUR Trade Commission. If a claim is not solved at a plenary session of the CCM, it shall be forwarded to a technical committee that shall decide in a 30-day term. The report of the committee will not be binding and may include more than one recommendation. If there is no consensus at the CCM, the claim may be forwarded to the GMC, which has an additional 30-day term to settle the dispute. If this is not so, the claiming Member State may directly activate the arbitration mechanism of the PBSC.

Finally, the PBSC established a third sequential procedure, limited to the participation of States, but that may be initiated either by Governments or private agents (with specific provisions in each case). Also in this third procedure the prevailing principle is that of consensus and diplomatic cooperation, except in the case of arbitration proceedings (in which case decision will be mandatory). Member States may initiate a dispute regarding interpretation, implementation or violation of regulations established in the Asunción Treaty or any other legal instrument (such as protocols, agreements, Decisions, Resolutions and Directives). The formal procedures include three stages: direct negotiations, participation of GMC and the arbitral mechanism, each one subject to relatively flexible terms. All disputes shall necessarily undergo the two first stages (direct negotiations and intervention of GMC) before arbitration proceedings can be activated (except when the issue has already been subject to a claim). The proceedings take part under an “*ad-hoc* tribunal” composed of three members that make “mandatory and final determinations”. Retaliation is the ultimate response available in the event of non-compliance.

The private sector cannot directly activate the dispute settlement mechanism. Their case must be taken up by a Member State. Moreover, individuals cannot claim against regulations established by decision making bodies which they consider do not comply with the Asunción Treaty and/or other legal sources. All disputes must be first analyzed by the “national section” of the GMC, which may in turn subject it to the plenary session of the GMC (after attempting to negotiate with the “national section” of the respondent State). ~~Provided~~ the GMC does not ~~find~~ the claim ~~improcedent~~ (which

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must be done by consensus), it shall call a three-member expert's committee to decide on its substantive content. The committee (selected from previously agreed national lists) must unanimously agree upon an established term. If the committee decides that the claim lacks grounds, or the committee does not reach unanimous agreement, the claiming State may initiate the dispute settlement procedure established by the Brasilia Protocol. On the other hand, if there are grounds for the claim and the respondent party does not apply the measures necessary to solve it, the claiming State may directly activate the arbitration proceeding for the dispute settlement mechanism.

In sum, the mechanism established in the Brasilia Protocol grants flexibility to the parties and encourages compliance based on the potential benefits of continued and predictable interaction. Its greatest fragility is its limited capacity to settle disputes, which in turn leads to a relatively high rate of unsettled disputes. Ruiz Díaz Labrano (1996) has underlined that one of the problems with direct negotiations is that Member States may reach agreements that allow for practices contrary to regulations in force or for acts that do not comply with the legal sources of MERCOSUR

#### *Practical application of the Brasilia Protocol*

Member States have intensely used consultations as a first step before initiating a claim or activating the dispute settlement mechanism established by the Brasilia Protocol. However, after the PBSC was fully enforced Member States began make more active use of dispute settlement procedures. The claims mechanism unduly extended the time necessary to solve disputes. However, as a general rule MERCOSUR has leaned towards diplomatic negotiation, including the direct participation of the highest political authorities ("presidential diplomacy"). One example is the dispute concerning the changes introduced to the Brazilian automotive regime in 1997.

The option to submit consultations to the CCM was created in 1995 and the procedures to start, carry out and conclude such consultations were fully implemented one year later. At the end of 1999 a Directive was issued establishing new procedures to accelerate the process and shorten too lengthy consultation procedures. Consultations

were actively used as a mechanism to exchange information and promote adaptation, usually regarding non fundamental trade issues. Most of the consultations submitted concern agricultural and food products (40% of the total). When classified according to the kind of hindrance involved, nearly half of them are related to technical standards, tax discrimination, tariff preferences and import licenses (Vaillant, 2001).

During the first years this mechanism was intensely used. However, the amount of consultations decreased significantly after 1998 (table 4). Some have attributed this decrease to more familiarity with the operation of the customs union. An alternative explanation, perhaps more plausible, is that the less frequent use of consultations is part of a broader crisis of credibility and the perceived utility of self-help mechanisms to solve disputes. This pattern of behavior repeated concerning claims (between 1999 and 2001 only two claims were initiated, as compared to nine in the previous three year period). The lower number of claims is surprising considering that it took place during a period of mounting trade disputes.

The new procedures implemented by the end of 1999 successfully reduced the number of pending consultations. While nearly 80% of pending consultations at the end of 1999 were consultations initiated during previous years, two years later this category did not amount to 10% of total pending consultations. The relatively low level of pending consultations has been considered an indicator of effectiveness. However, it should be remembered that the conclusion of a consultation is not equivalent to the effective resolution of the underlying dispute.

**TABLE 4**  
**MERCOSUR Trade Commission:**  
**Regulations on Consultations, 1995/2001**

	1995	1996	1997	1998	1999	2000	2001	Total
<i>Total number of Consultations</i>	128	84	71	32	39	54	42	450
<i>Pending consultations initiated in years different from the current year*</i>	0	7	25	41	25	4	2	NC
<i>Pending consultations initiated in years different from the current year regarding total pending consultations</i>	0	26	51	75	78	16	9	

\* Consultations which still have not been concluded are not computed as pending if they were initiated in that same year.

Source: Authors' calculations based on CCM information.

As with the incorporation of norms, the consultations mechanism has been questioned due to its lack of transparency. In effect, it is not possible to publicly access technical information on a proceeding (CCM public reports include only the status of the consultation with no details on substance). This lack of transparency is considered by



some authors as a negotiation technique, based on the assumption that "if facts are more concealed, there are lesser possibilities for the success of claims" (Vaillant, 2001). Tussie, Labaqui and Quiliconi (2001) have criticized the limited participation of the private sector in the consultative procedure, since its role is limited to the submission of the claim to their government representatives.

The Ouro Preto Protocol also established a General Procedure for raising Claims before the CCM, directed at trade matters falling under the orbit of the CCM. Between 1995 and 2001 the mechanism was used twelve times (table 5). Argentina was the Member State which most frequently used this procedure (eight times), followed by Brazil (three times) and Paraguay (one time). The claims submitted refer to measures regarding market access restrictions, tax discrimination, subsidies and lack of compliance with MERCOSUR regulations. None of these claims was solved within the scope of the CCM and were consequently forwarded to the GMC. In all cases this body was unable to reach a decision based on consensus. In some cases the original claim was taken to the dispute settlement mechanism established by the Brasilia Protocol. The claims procedure presupposes that the parties shall reach consensus, either at the CCM or GMC stage. The "self-assistance" character of this procedure is reinforced by the fact that technical committees do not act as third parties, as they are integrated by national officials. The claim mechanism has proved to be slower than was expected.

**TABLE 5****Claims filed before the CCM****1995/2001**

	<b>Argentina</b>	<b>Brazil</b>	<b>Paraguay</b>	<b>Total per year</b>
<i>1995</i>				0
<i>1996</i>	<b>1. To Uruguay:</b> sanitary restrictions to imports (19 months)			1
<i>1997</i>	<b>2. To Uruguay:</b> tax discrimination against cigarette imports (4 months) <b>3. To Uruguay:</b> tax discrimination against imports of alcoholic and non- alcoholic beverages (9 months) <b>4. To Brazil:</b> subsidies to the production and exports of pork meat (3 months) <b>5. To Brazil, Paraguay and Uruguay:</b> non-			4

	fulfillment of the obligation to incorporate MERCOSUR regulations regarding pharmaceutical products (1 month)			
<b>1998</b>	<p><b>6. To Brazil, Paraguay and Uruguay:</b> non-fulfillment of the obligation to incorporate MERCOSUR regulations on phytosanitary products (2 months)</p> <p><b>7. To Uruguay:</b> non-fulfillment of the obligation to incorporate MERCOSUR regulations regarding pharmaceutical products (2 months)</p> <p><b>8. To Brazil:</b> import licenses (5 months)</p>	<p><b>9. To Argentina:</b> application of antidumping regulations to imports of aluminum cable (4 months)</p> <p><b>10. To Argentina:</b> adaptation of the sugar sector to the customs union (23 months)</p>		5
<b>1999</b>				0
<b>2000</b>		<b>11. To Paraguay:</b>		1

		minimum specific import duties (4 months)		
<i>2001</i>			<b>12. To Brazil:</b> prohibition to import re- manufactured pneumatic tires (5 months)	1
<i>Total per Country</i>	8	3	1	12

Source: Internal elaboration based on CCM and GMC acts.

In December, 1998, after two years of negotiations, the Member States finally agreed upon a code to regulate the implementation of the Brasilia Protocol. The code defined key terms, notification and confidentiality procedures, establishment of terms, qualifications required to judges and experts, and the conditions to be met for the private sector to make presentations. The member States started using the dispute settlement mechanism shortly after the code was approved: five dispute cases have been already settled by the mechanism in less than three years (two initiated by Argentina and Brazil and one by Uruguay). Fourteen disputes did not reach the arbitration stage (table 6).

**TABLE 6**

**Disputes filed before the GMC**

**1995/2001**

	<b>Argentina</b>	<b>Brazil</b>	<b>Paraguay</b>	<b>Uruguay</b>	<b>Total per year</b>
<i>1995</i>					0
<i>1996</i>				1. <b>To Argentina:</b> paper sector (settled by an agreement between private firms)	1
<i>1997</i>					0
<i>1998</i>	2. <b>To Brazil:</b> interpretation of MERCOSUR regulations regarding PBSC and PR applicability to antidumping cases regulated by national legislation (without consensus of GMC) 3. <b>To Brazil:</b>				2

	import licenses (arbitral decision; previous claim)				
<i>1999</i>	<p>4. <b>To Brazil:</b> subsidies to the production and export of pork meat (arbitral decision; previous claim; individual proceeding)</p> <p>5. <b>To Brazil:</b> non-fulfillment of the obligation to include MERCOSUR regulations regarding pharmaceutical products (previous claim; without consensus of GMC)</p>	<p>6. <b>To Argentina:</b> restrictions to footwear imports (without consensus of GMC)</p> <p>7. <b>To Argentina:</b> textile safeguards (arbitral decision)</p>			4
<i>2000</i>	8. <b>To Brazil:</b> non-fulfillment of the obligation to	9. <b>To Argentina:</b> application of antidumping duties			2

	include MERCOSUR regulations regarding phytosanitary products (previous claim; without consensus of GMC)	to exports of meat from Brazil (arbitral decision)			
<b>2001</b>	<p>10. <b>To Uruguay:</b> incompatibility of the incentives regime for wool industrial products (without consensus of GMC)</p> <p>11. <b>To Brazil:</b> restrictions on the access of packed beverages and food products, non-fulfillment of regulations (without consensus of GMC)</p>	<p>12. <b>To Argentina:</b> criteria for the application of the convergence factor to certain products</p> <p>13. <b>To Paraguay:</b> minimum specific duties on imports (previous claim)</p>	<p>14. <b>To Uruguay:</b> tax discrimination against cigarette imports (without consensus of GMC)</p>	<p>15. <b>To Paraguay:</b> special imports temporary measure (individuals)</p> <p>16. <b>To Brazil:</b> approval of regulations with restrictive effect on imports of tobacco, its derivatives and accessories (individuals)</p> <p>17. <b>To Paraguay:</b> minimum specific duties on imports (without consensus of GMC)</p> <p>19. <b>To Brazil:</b></p>	10

				prohibition of imports of re-manufactured pneumatic tyres (without consensus of GMC; individuals)	
<i>Total per country</i>	7	5	1	19. To Argentina: restriction of access to Uruguayan bicycles (arbitral decision)	6
					19

**Note:** (without consensus of GMC) means that the GMC declared its intervention concluded; (previous claim) means that the dispute was the first object of a claim; (arbitral decision) means that an arbitral award was the result of the dispute; (individuals) means that the dispute was filed by individuals. Several disputes filed in the year 2001 are still pending.

**Source:** Based on GMC acts.



The operation of the PBSC has faced several problems. One of them has been prolonged negotiations: if the member States thus decide, they may extend the compulsory fifteen-year term to develop bilateral negotiations within the GMC framework almost indefinitely. This means that the beginning of the arbitral proceedings may be postponed and the proceedings replaced by political and diplomatic negotiations. Although it is acceptable that a MSC should offer the possibility of direct negotiations, the possibility of long delays before the starting of adjudication proceedings may create uncertainty to the private sector. A related problem has been the demand of consensus at the GMC stage, which has been a hindrance to the settlement of disputes once the bilateral negotiation stage was concluded.

A second source of problems has been the *ad-hoc* character of the arbitral panels, which has conspired against the development of a "common interpretation body". Although there is nothing similar to "jurisprudence" within MERCOSUR legal corpus, a permanent tribunal (as opposed to *ad hoc* tribunals) would have facilitated the development of a commitment regarding previous determinations. The PBSC mechanism did not contemplate any appeal stage, except for the possibility of asking for clarification, including issues of compliance. The competence of the arbitral mechanism is limited to the settlement of the disputes filed, a fact which inhibits it from any kind of control of legality.

Finally, there is the issue of the implementation of determinations. Although determinations are formally final (until the approval of the Olivos Protocol they were not subject to any appeal procedure) and mandatory, the practical meaning of their mandatory nature is different in each Member State according to the internal constitutional framework. Since these verdicts do not have "supremacy" regarding domestic legislation, their applicability is subject to different national legal practices. A limit case is the case of Argentina, where international agreements are of a higher hierarchy than national legal provisions and their effects may be demanded by individuals before local judges. The effective "mandatory" character of determinations has also been undermined by awards that lack operative content.

An inherent feature of the nature of the mechanism adopted consists in the possibility of retaliation as a form of compensation in the event that a Member States fails to fulfill an arbitral decision. This "an eye for an eye" alternative is particularly disadvantageous for the smaller countries (Sabsay, 1999), apart from the fact that it does not make sure that the measures questioned in the arbitration award shall be removed. An alternative may be to empower all member States -be they a party in the dispute or not- to adopt compensation measures (Palma, 1997). Another suggestion includes adding to the attributions of the tribunal the imposition of fines in case of unfulfillment of an arbitral award (Redrado, 2000)

#### AWARDS OF ARBITRAL TRIBUNALS: REMARKS THEREON

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##### *First arbitration award*

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Argentina versus Brazil: Communications Number 37 of December 17, 1997 and Number 7 of February 20, 1998 of the Foreign Trade Operations Department (DECEX) of the Foreign Trade Secretariat (SECEX): application of restrictive measures on reciprocal trade (import licenses). 28/04/1999.

In its evaluation of the Brazilian import regime and of its compatibility with MERCOSUR regulations, the tribunal maintained that the situation cannot be tackled through the mere mechanical application of directives from a set of codes or regulations. Furthermore, it adds that "the carrying out of a vast interpretative task is necessarily implied, in order to identify the rights and obligations issuing from a set of regulations which was built up gradually...". In other words, according to the *ad hoc* tribunal it is necessary to take into account the aims and objectives of the set of regulations.

The *ad hoc* tribunal unanimously decided that the controversial system of licenses should be adjusted according to the criteria agreed, that the trade liberalization program included tariff and non-tariff restrictions, that the postponement of the date of the common market did not eliminate the obligation to end tariff and non-tariff restrictions, and the need to comply with the ruling of Art. 50 of the Treaty of Montevideo on non-tariff measures.

*Second arbitration award*

Argentina versus Brazil: Subsidies on pork production and exports. 29/09/1999.

The most important issue of this award is that it maintained the first finding of the previous one. It allowed for one part of the Argentine claim (export subsidies), but not the other (production subsidies).

*Third arbitration award*

Brazil versus Argentina: Application of safeguard measures on textile products (Res. 861/99) of the Ministry of Economy, Public Works and Services. 10/03/2000.

The tribunal agreed to evaluate the dispute due to the standing disagreement between the parties regarding a certain measure embraced by one of them, whereby Argentina requested to declare the non-existence of jurisdiction (based on there being no regulations applicable to intra-region safeguard regulations within MERCOSUR). The tribunal maintained that the absence of regulations which explicitly permit safeguard measures for intra-region importation does not constitute a lack of regulation, since there are no rules specifically authorizing the application of intra-region safeguard measures. Argentina had invoked the OMC multilateral agreement on textiles and clothing to justify the measure. The tribunal ordered its annulment.

*Fourth arbitration award*

Brazil versus Argentina: Application of antidumping measures with respect on poultry imports from Brazil. Resolution 574/00 of the Ministry of Economy (Finance) of the Argentine Republic. 21/05/2001.

Argentina had considered a foregone conclusion that the tribunal should terminate its actions, given that MERCOSUR has no regulations granting competence on antidumping practices, which are regulated by national legislation. Moreover, Argentina maintained that Decision 11/97 (referring to extra-region antidumping measures) had not been adopted by member States. The tribunal declared itself competent, and deemed it correct to apply the Brasilia Protocol, for the mere fact that there were discrepancies with respect to the existence or not of MERCOSUR regulations on the subject.

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The award recognized the system of internalization of MERCOSUR regulations (the measure having been accepted and become applicable simultaneously in the four member States) as opposed to the system of direct application of European community law. It states that even so the mandatory nature of the regulations is still valid because it creates an obligation of incorporation in the member States. Therefore if not incorporated it might give rise to a non-fulfillment dispute. Nevertheless, the obligation to adopt a common regulation implies neither that such regulation is up-to-date nor that its stipulations are applicable

The tribunal also pointed out that the existence in all the member States of the same international trade regulations, arising from the GATT/OMC agreements, does not mean that they are essentially MERCOSUR regulations. The application of multilateral regulations in the MERCOSUR regulatory framework is only possible if expressly dictated by a MERCOSUR regulation.

The tribunal also held that the absence of specific regulations on the matter of the dispute (namely intra-region antidumping duties) does not imply that the subject is foreign to the MERCOSUR regulatory framework, invoking the general principles contained in the Asunción Treaty, whereby there is an agreement of free trade of merchandise. The tribunal unanimously declared that it was empowered to deal with and resolve the matter of the stated dispute, but did not accept Brazil's request that Argentina's measure be revoked. The reason was that the regulatory framework was not valid.

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*Fifth arbitration award*

Uruguay versus Argentina: Restrictions of access to the Argentine market of bicycles of Uruguayan origin. 29/09/2001.

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In its considerations, the award brings forth the conclusions and interpretations of all the previous verdicts, in particular interpreting the matter in the light of the objectives and aims of the integration process. The tribunal's unanimous decision was

to declare that the Argentine resolution by which an extra-region tariff treatment was applied to bicycles exported by a Uruguayan firm violated MERCOSUR regulations, and proceeded to revoke and annul the measure. There was no verdict with respect to the second Uruguayan demand relative to selective customs control procedures.

### *The Olivos Protocol reforms*

The so-called “Olivos Protocol” was signed at the extraordinary meeting of the CMC held in February 2002. The major innovations were the choice of forum to settle disputes, the establishment of an expedite mechanism to deal with technical matters, the reduction of the time limit to initiate the arbitration phase, the creation of a permanent appeal tribunal, and the possibility of allowing it to issue opinions for reference.

For those controversies subject to the application of the Olivos Protocol, and which may also be submitted to the WTO dispute settlement system (or other preferential trading schemes in which the MERCOSUR countries may participate), a forum may be chosen by common agreement among the parties involved, or by choice of the demanding member State. Once proceedings are under way the parties agree to refrain from requesting assistance from other fora. On the other hand, should it be necessary, other expedite mechanisms may be worked out to solve controversies regarding technical aspects regulated by common trade policy instruments.

Should the direct negotiation stage come to a fruitless end, once the Olivos Protocol is in force any of the participating member States may initiate directly the arbitrating procedure, skipping the intervention of GMC (as was required by the PBSC). If by common agreement they decide to submit the dispute to the GMC, the latter will evaluate the situation and if necessary request the advice of a group of experts (selected from a predetermined list). The dispute may also be taken to the GMC if another uninvolved member State justifiably requests it, although the arbitrating proceedings will not be interrupted (unless agreed upon among the parties).

Any of the parties in the dispute may appeal before the permanent appeal tribunal (seating in the city of Asunción), the intervention of which will be limited to legal matters (and legal interpretations) contained in the judgements of the *ad hoc* arbitrating tribunal. The permanent character of the appeal court aims at contributing to a uniform interpretation of law.

The permanent tribunal may confirm, modify or revoke the legal grounds, and its judgement will be definite, mandatory, not subject to appeal and prevalent over that emitted by the *ad hoc* tribunal. Furthermore, the member States involved in the dispute may –if agreed- submit their dispute directly to the permanent tribunal for a single appeal, in which case the verdict will be mandatory and with no possibility of recourse or revision. The CMC may establish mechanisms to make consultations to the permanent court of appeal, defining their extent and procedures. This matter raised differences of opinion during the protocol negotiations, due to the lack of agreement about the conditions under which the requests for consultations might be submitted (for example, whether they should only be requested jointly by all member States).

The Olivos Protocol also reviews procedures in the case of divergent opinions concerning the implementation of awards, and the adoption of compensatory measures. With reference to the latter it specified that the member State shall first endeavor to withdraw concessions (or equivalent obligations) in the same affected sector, and only when deemed impracticable or unproductive should the member State act in another sector, making the necessary justifications. The discretion of the dispute mechanism for private parties was also reduced, since the PO established that Member States “should” (and not “could” as the PBSC read) lodge consultations with the other party and if necessary raise the claim directly to the GMC.

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The modifications introduced in the dispute settlement system with the approval of PO constitute a substantial progress in the dispute settling institutions of MERCOSUR. The creation of a permanent court of appeal (and the possibility that in the future it may issue consultative opinions) will contribute toward the building of a *de facto* jurisprudence, thus guaranteeing a more uniform interpretation, application and carrying out of standing regulations. Although some MERCOSUR member States are

reluctant to adopt a jurisdictional regime similar to that of the European Union, it was inexplicable that they had a less effective dispute settlement mechanism than that which they had accepted at the WTO (or even than the NAFTA panels on antidumping and countervailing duties).

The regulations referring to the election of forum also filled a vacuum of the PBSC. This legal vacuum was made evident when Brazil triggered simultaneously the dispute settlement mechanism of MERCOSUR and the procedures envisaged in the ATV (WTO) concerning Argentina's textile safeguards in July 1999. In addition to establishing an effective mechanism to deal with technical controversies (a matter which is still pending regulation), member States created a fast track to reach the arbitration instance (thus avoiding the stage where the need for consensus hampers the resolution of the dispute), and even opened the door to skip the first instance altogether and raise the dispute directly to the permanent revision tribunal. However, some problems remain unsolved, particularly concerning the first stages of the procedure (direct negotiations and GMC intervention) and the methods to make sure the fulfillment of verdicts. Before issuing a definitive opinion on the Olivos Protocol, it should be given a chance to work.

## **ANNEX 3.I**

### **A COMPARISON OF MULTILATERAL (GATS) AND SUB-REGIONAL COMMITMENTS IN SELECTED SECTORS**



**TABLE 3.I.1**

**A COMPARISON OF MULTILATERAL (GATS) AND SUB-REGIONAL COMMITMENTS IN SELECTED SECTORS**

**BRAZIL / COMMUNICATIONS**

Sectors	Included in the lists (Yes / No)		Number of sub-sectors (CPC 3 - digit) included in the lists		Number of commitments / National Treatment + Market access					
	GATS	MERCOSUR	GATS	MERCOSUR	GATS			MERCOSUR		
					None	Unbound	Restriction	None	Unbound	Restriction
Postal	N	Y	0	1	0	0	0	0	6	2
Courier	Y	Y	1	1	4	2	2	6	0	2
Telecom	N	Y	0	7	0	0	0	35	14	7
Audiovisual	N	Y	0	1	0	0	0	0	6	2
Others	N	Y	0	8	0	0	0	48	0	16
<b>Total</b>	<b>1</b>	<b>5</b>	<b>1</b>	<b>18</b>	<b>4</b>	<b>2</b>	<b>2</b>	<b>83</b>	<b>26</b>	<b>29</b>



**TABLE 3.I.2**

**A COMPARISON OF MULTILATERAL (GATS) AND SUB-REGIONAL COMMITMENTS IN SELECTED SECTORS**

**BRAZIL / CONSTRUCTION AND ENGINEERING**

Sectors	Included in the lists (Yes / No)		Number of sub-sectors (CPC 3 – digit) included in the lists		Number of commitments / National Treatment + Market access					
	GATS	MERCOSUR	GATS	MERCOSUR	GATS			MERCOSUR		
					None	Unbound	Restriction	None	Unbound	Restriction
General construction work for buildings	Y	Y	1	1	2	4	2	4	2	2
General construction work for civil engineering	Y	Y	1	1	2	4	2	4	2	2
Installation, assembly work	Y	Y	2	2	2	4	2	4	2	2

and maintenance and repair of fixed structures										
Building completion and finishing work	N	Y	0	1	0	0	0	4	2	2
Others	Y	Y	1	3	2	4	2	4	2	2
<b>Total</b>	<b>4</b>	<b>5</b>	<b>5</b>	<b>8</b>	<b>8</b>	<b>16</b>	<b>8</b>	<b>20</b>	<b>10</b>	<b>10</b>

**TABLE 3.I.3**

**A COMPARISON OF MULTILATERAL (GATS) AND SUB-REGIONAL COMMITMENTS IN SELECTED SECTORS**

**BRAZIL / DISTRIBUTION**

Sectors	Included in the lists (Yes / No)		Number of sub-sectors (CPC 3 – digit) included in the lists		Number of commitments / National Treatment + Market access					
	GA TS	ME RC OS UR	GA TS	ME RC OS UR	GATS			MERCOSUR		
					None	Unboun d	Restrictio n	None	Unboun d	Restrictio n
Commission agents' services	N	Y	0	1	0	0	0	6	0	2
Wholesale services	Y	Y	1	1	2	4	2	6	0	2
Retailing services	Y	Y	2	5	2	4	2	6	0	2
Franchising	Y	Y	1	1	2	3	3	6	0	2
<b>Total</b>	<b>3</b>	<b>4</b>	<b>4</b>	<b>8</b>	<b>6</b>	<b>11</b>	<b>7</b>	<b>24</b>	<b>0</b>	<b>8</b>

**TABLE 3.I.4**

**A COMPARISON OF MULTILATERAL (GATS) AND SUB-REGIONAL COMMITMENTS IN SELECTED SECTORS**

**BRAZIL / FINANCIAL SERVICES**

Sectors	Included in the lists (Yes / No)		Number of sub-sectors (CPC 3 – digit) included in the lists		Number of commitments / National Treatment + Market access					
	GA TS	ME RC OSU R	GA TS	ME RC OSU R	GATS			MERCOSUR		
					None	Unbound	Restrictions	None	Unbound	Restrictions
All insurance and insurance-related services	Y	Y	7	10	12	23	21	13	34	33
Banking and other Financial Services	Y	Y	15	15	5	60	55	15	60	45
<b>Total</b>	<b>2</b>	<b>2</b>	<b>22</b>	<b>24</b>	<b>17</b>	<b>83</b>	<b>66</b>	<b>21</b>	<b>80</b>	<b>67</b>

**TABLE 3.I.5**

**A COMPARISON OF MULTILATERAL (GATS) AND SUB-REGIONAL COMMITMENTS IN SELECTED SECTORS**

**ARGENTINA / COMMUNICATIONS**

Sectors	Included in the lists (Yes / No		Number of sub-sectors (CPC 3 – digit) included in the lists		Number of commitments / National Treatment + Market access					
	GA TS	ME RC OSU R	GA TS	ME RC OSU R	GATS			MERCOSUR		
					None	Unbound	Restrictions	None	Unbound	Restrictions
Postal	Y	Y	0	1	0	0	0	0	6	2
Courier	Y	Y	1	1	6	0	2	6	0	2
Telecom	Y	Y	11	11	65	0	23	65	0	23
Audiovisual	N	Y	0	5	0	0	0	6	18	16
Others	Y	Y	8	8	48	0	16	48	0	16
<b>Total</b>	<b>3</b>	<b>5</b>	<b>20</b>	<b>26</b>	<b>119</b>	<b>0</b>	<b>41</b>	<b>125</b>	<b>24</b>	<b>59</b>

**TABLE 3.I.6**

**A COMPARISON OF MULTILATERAL (GATS) AND SUB-REGIONAL COMMITMENTS IN SELECTED SECTORS**

**ARGENTINA / CONSTRUCTION AND ENGINEERING**

Sectors	Included in the lists (Yes / No		Number of sub-sectors (CPC 3 – digit) included in the lists		Number of commitments / National Treatment + Market access					
	GATS	MERCOSUR	GATS	MERCOSUR	GATS			MERCOSUR		
					None	Unbound	Restriction	None	Unbound	Restriction
General construction work for buildings	Y	Y	1	1	6	0	2	6*	0	2
General construction work for civil engineering	N	Y	0	1	0	0	0	6*	0	2
Installation, assembly work and maintenance and repair of fixed structures	Y	Y	2	2	6	0	2	6*	0	2
Building completion and finishing work	Y	Y	1	1	6	0	2	6*	0	2
Others	Y	Y	3	3	6	0	2	6*	0	2
<b>Total</b>	<b>4</b>	<b>5</b>	<b>7</b>	<b>8</b>	<b>24</b>	<b>0</b>	<b>24</b>	<b>30</b>	<b>0</b>	<b>10</b>

\* Unbound\* inscriptions were assimilated to None.

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sectors



**TABLE 3.I.7**

**A COMPARISON OF MULTILATERAL (GATS) AND SUB-REGIONAL COMMITMENTS IN SELECTED SECTORS**

**ARGENTINA / DISTRIBUTION**

Sectors	Included in the lists (Yes / No)		Number of sub-sectors (CPC 3 – digit) included in the lists		Number of commitments / National Treatment + Market access					
	GATS	MERCOSUR	GATS	MERCOSUR	GATS			MERCOSUR		
					None	Unbound	Restriction	None	Unbound	Restriction
Commission agents' services	N	Y	0	1	0	0	0	0	6	2
Wholesale services	Y	Y	1	1	6	0	2	6	0	2
Retailing services	Y	Y	5	5	6	0	2	6	0	2
Franchising	Y	Y	1	1	6	0	2	6	0	2
<b>Total</b>	<b>3</b>	<b>4</b>	<b>7</b>	<b>8</b>	<b>18</b>	<b>0</b>	<b>6</b>	<b>18</b>	<b>6</b>	<b>8</b>

**TABLE 3.I.8**  
**A COMPARISON OF MULTILATERAL (GATS) AND SUB-REGIONAL COMMITMENTS IN SELECTED SECTORS**

**ARGENTINA / FINANCIAL SERVICES**

Sectors	Included in the lists (Yes / No)		Number of sub-sectors (CPC 3 – digit) included in the lists		Number of commitments / National Treatment + Market access					
	GATS	MERCOSUR	GATS	MERCOSUR	GATS			MERCOSUR		
					None	Unbound	Restriction	None	Unbound	Restriction
All insurance and insurance-related services	Y	Y	4	4	12	8	12	16	8	8
Banking and other Financial Services	Y	Y	18	18	73	35	36	73	35	36
<b>Total</b>	<b>2</b>	<b>2</b>	<b>22</b>	<b>22</b>	<b>85</b>	<b>43</b>	<b>48</b>	<b>89</b>	<b>43</b>	<b>44</b>

**TABLE 3.I.9****A COMPARISON OF MULTILATERAL (GATS) AND SUB-REGIONAL COMMITMENTS IN SELECTED SECTORS****URUGUAY / COMMUNICATIONS**

Sectors	Included in the lists (Yes / No)		Number of sub-sectors (CPC 3 – digit) included in the lists		Number of commitments / National Treatment + Market access					
	GATS	MERCOSUR	GATS	MERCOSUR	GATS			MERCOSUR		
					None	Unbound	Restriction	None	Unbound	Restriction
Postal	N	Y	0	1	0	0	0	0	8	0
Courier	Y	Y	1	1	4	0	4	5	0	3
Telecom	N	Y	0	13	0	0	0	8	32	64
Audiovisual	N	Y	0	6	0	0	0	0	42	6
Others	N	Y	0	1	0	0	0	0	8	0
<b>Total</b>	<b>1</b>	<b>5</b>	<b>1</b>	<b>22</b>	<b>4</b>	<b>0</b>	<b>4</b>	<b>13</b>	<b>90</b>	<b>71</b>

**TABLE 3.I.10**  
**A COMPARISON OF MULTILATERAL (GATS) AND SUB-REGIONAL COMMITMENTS IN SELECTED SECTORS**

**URUGUAY / CONSTRUCTION AND ENGINEERING**

Sectors	Included in the lists (Yes / No)		Number of sub-sectors (CPC 3 – digit) included in the lists		Number of commitments / National Treatment + Market access					
	GATS	MERCOSUR	GATS	MERCOSUR	GATS			MERCOSUR		
					None	Unbound	Restriction	None	Unbound	Restriction
General construction work for buildings	N	Y	0	1	0	0	0	4	2	2
General construction work for civil engineering	N	Y	0	1	0	0	0	6*	0	2
Installation, assembly work and maintenance and repair of fixed structures	N	Y	0	2	0	0	0	4*	4	0
Building completion and finishing work	N	Y	0	1	0	0	0	4*	4	0
Others	N	Y	0	3	0	0	0	4*	4	0
<b>Total</b>	<b>0</b>	<b>5</b>	<b>0</b>	<b>8</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>22</b>	<b>14</b>	<b>4</b>

\* Unbound\* inscriptions were assimilated to None.

**TABLE 3.I.11**

**A COMPARISON OF MULTILATERAL (GATS) AND SUB-REGIONAL COMMITMENTS IN SELECTED SECTORS**

**URUGUAY / DISTRIBUTION**

Sectors	Included in the lists (Yes / No)		Number of sub-sectors (CPC 3 – digit) included in the lists		Number of commitments / National Treatment + Market access					
	GATS	MERCOSUR	GATS	MERCOSUR	GATS			MERCOSUR		
					None	Unbound	Restriction	None	Unbound	Restriction
Commission agents' services	N	Y	0	1	0	0	0	3	2	3
Wholesale services	N	Y	0	1	0	0	0	6	0	2
Retailing services	N	Y	0	5	0	0	0	6	0	2
Franchising	N	Y	0	1	0	0	0	6	0	2
<b>Total</b>	<b>0</b>	<b>4</b>	<b>0</b>	<b>8</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>21</b>	<b>2</b>	<b>9</b>

**TABLE 3.I.12**  
**A COMPARISON OF MULTILATERAL (GATS) AND SUB-REGIONAL COMMITMENTS IN SELECTED SECTORS**

**URUGUAY / FINANCIAL SERVICES**

Sectors	Included in the lists (Yes / No)		Number of sub-sectors (CPC 3 – digit) included in the lists		Number of commitments / National Treatment + Market access					
	GATS	MERCOSUR	GATS	MERCOSUR	GATS			MERCOSUR		
					None	Unbound	Restriction	None	Unbound	Restriction
All insurance and insurance-related services	N	Y	0	10	0	0	0	28	26	24
Banking and other Financial Services	Y	Y	3	16	16	0	8	36	44	48
<b>Total</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>26</b>	<b>16</b>	<b>0</b>	<b>8</b>	<b>64</b>	<b>70</b>	<b>72</b>

**ANNEX 4.1**

**STYLIZED LONG -TERM SCENARIOS FOR**  
**MERCOSUR**

Hardly anyone has tried to foresee long-term scenarios for MERCOSUR. The reason for this is that it is not easy to identify “heavy” trends, as MERCOSUR has only existed for a relatively short period of time. However, just over a decade after it started, the sub-regional integration process already shows a few regular patterns that could be used as a basis to build on. The level of interdependence has increased significantly - ~~albeit~~ asymmetrically- and both state and private corporate interests connected with, and/or affected by, the integration process have grown apace. Moreover, tensions have arisen as a result of structural differences between the member-countries, clashing political biases, conflicting administration mechanisms, and an uneven distribution of the costs of, and benefits from, the integration process.

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In order to foresee long-term scenarios it is necessary to identify political, economic, and social structural variables that may impact the evolution of each society and act as shaping factors for MERCOSUR. It is essential to identify such variables for prospective analysis, as MERCOSUR’s structural dilemmas basically stem from the relationship between the integration process and, on the one hand, (i) the prevailing trends in the major countries in the sub-region that entail certain criteria and approaches in the management of both economic and political sovereignty, and, on the other hand, (ii) the choice of specific development patterns.

#### **4.1.1. Scenarios of MERCOSUR’s evolution: methodological approach**

The drafting of stylized long-term scenarios for MERCOSUR was based on the interaction of three major variables. Two of the variables selected are of “internal” nature and are related to the alternative ways in which the two main member-countries of MERCOSUR will operate from the economic, political, and social points of view.<sup>50</sup> We believe that the compatibility -though not necessarily the convergence- of those approaches will be critical in determining the long-term profile and the viability of the integration process.

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<sup>50</sup> The cases of Paraguay and Uruguay have been excluded from this analysis as the prevailing trends for the two main partners are of the utmost importance in determining the context in which the smaller



Since MERCOSUR member-states are peripheral countries whose political options depend to a large extent on the global context, the third major variable analyzed has to do with the international scenarios the integration process might be immersed in. In this way, we sought to grasp the global tensions and pressures the block and its individual member-countries are subject to regarding their economic organization, their regulatory framework, and their structure of power.

The prospective scenarios for the evolution of the major member-countries of MERCOSUR (Argentina and Brazil) were drafted on the basis of various combinations of four features reflecting alternative ways to address the economy, politics, and society in the long term. The four features selected were: a) *conditions of 'governability' (possibility to govern)*, b) *level of social cohesion*, c) *intensity of international integration*, and d) *degree of economic adaptability*. Since none of these features can be assigned discrete values, we have opted for broad qualitative grades (high, medium, low).

Based on alternative combinations of such four features we construed an analogous number of plausible and clearly differentiated scenarios for Argentina and Brazil. In the case of Brazil, we identified four stylized scenarios which we gave the following denominations: a) Participative modernization; b) National *neo-developmentalism*; c) Crisis and social disintegration; and d) Triumphant markets. In the case of Argentina, on the other hand, we identified four other alternative scenarios that we named: a) Equitable growth; b) Mighty Argentina; c) *Latinia*; and d) *Dollarization*. Table 1 outlines the main characteristics inherent to each one of the national scenarios.

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economies in the region will evolve. This notwithstanding, MERCOSUR's identity is shaped by its four member-states.



<i>ARGENTINA</i>				
<i>Equitable growth</i>	<i>High</i>	<i>High</i>	<i>High</i>	<i>High</i>
<i>Mighty Argentina</i>	<i>Medium</i>	<i>Medium</i>	<i>Low</i>	<i>Low</i>
<i>Latinia</i>	<i>Low</i>	<i>Low</i>	<i>Low</i>	<i>Low</i>
<i>Dollarization</i>	<i>Medium</i>	<i>Low</i>	<i>High</i>	<i>High</i>

The scenarios regarding external evolution were drafted on the basis of three global features, namely; a) the depth and scope of the globalization process (*market integration*); b) the way in which such process and its effects are addressed (*international coordination*); and c) the structure of world power (*hegemony*). Based on various combinations of such features, we drafted three plausible “global order” scenarios, namely: a) New Rome, b) Post-Westphalian condominium, and c) Post-Imperial Anarchy. The features of each one of these scenarios are briefly described in Table 2.

TABLE 2

THE “EXTERNAL” VARIABLE: WORLD ORDER

<i>Features</i> <i>Scenarios</i>	<i>Market integration</i>	<i>International coordination</i>	<i>Hegemony</i>
<i>New Rome</i>	<i>High</i>	<i>Low</i>	<i>High</i>
<i>Post – Westphalian Condominium</i>	<i>Medium</i>	<i>High</i>	<i>Medium</i>
<i>Post-Imperial Anarchy</i>	<i>Low</i>	<i>Low</i>	<i>Low</i>

On the basis of the above variables we undertook a sequential exercise that consisted of: 1) identifying alternative combinations of the “internal” variables distinguishing those combinations wherein regional integration appears as dysfunctional to the prevailing national projects and those that can coexist with different variants of MERCOSUR; and 2) making plausible scenarios for MERCOSUR by integrating various world order evolution hypotheses to the relevant combinations identified in (1). Our exercise led us to construct four stylized scenarios for MERCOSUR in the year 2010, each depicting sufficiently differentiated paths. We gave these scenarios the following denominations: i) *MERCOSUR Communitas*; ii) *MERCOSUR Fortis*; iii) *MERCOSUR Levis*; and (iv) *MERCOSUR Finitus*. A brief summary of each of these is presented in Table 3. They are further discussed in depth in Section 4.1.2 below.

**TABLE 3**  
**PROSPECTIVE SCENARIOS FOR MERCOSUR IN 2010**

<i>Variables</i>	<i>Brazil</i>	<i>Argentina</i>	<i>World order</i>
<i>Scenarios</i>			
<i>Communitas</i>	<i>Participative modernization</i>	<i>Equitable growth</i>	<i>Post-Westphalian Condominium</i>
<i>Fortis</i>	<i>National neo-developmentalism</i>	<i>Mighty Argentina (Latinia)</i>	<i>Post-Imperial anarchy (Post-Westphalian Condominium)</i>
<i>Levis</i>	<u><i>Triumphant markets</i></u>	<i>Dollarization (Equitable growth)</i>	<i>New Rome (Post-Westphalian Condominium)</i>
<i>Finitus</i>	<i>Crisis and social disintegration</i>	<i>Equitable growth</i>	<i>New Rome (Post-Westphalian Condominium)</i>

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Note: The scenarios in brackets also render compatible configurations.

#### **4.1.2. MERCOSUR in 2010: scenarios**

In the above section we briefly described the procedure whereby we construed four stylized long-term evolution scenarios of MERCOSUR. In this section we shall discuss their main characteristics, describing the features of each one of the three variables selected and their impact on the way the integration process operates.

##### *a. MERCOSUR Communitas*

The *MERCOSUR Communitas* scenario results from the fact that in both Brazil and Argentina the prevailing development patterns combine growth with equity, political legitimacy, administrative efficiency, high levels of international integration, and economic structures that can be easily adapted and modernized. “Externally”, this configuration operates within the framework of what we have denominated “Post-Westphalian Condominium”.

In the Western Hemisphere, such configuration entails moderate hegemony on the part of North America. This provides the major Latin American countries with a wider scope of action and favors a more dynamic diplomatic and economic presence of the EU in the south of the region. The FTAA negotiations are expected to conclude in the year 2005 with an agreement to liberalize the trade of goods and services with prolonged transition periods that do not hinder, however, the more comprehensive sub-regional integration projects, as is the case of MERCOSUR.

In the case of Brazil, this scenario is based on an open-door economy that is strongly focused on regional integration and gradual political and administrative decentralization. Thus, the states and municipalities are to play an increasingly important role, in accordance with the demands of society to have a say in the decisions

of the government and help solve the problems they face. As regards the economy, within the framework of social cohesion criteria, there is a tendency to favor the market, private initiative, and competition. The country sets out to experiment new ways to organize economic activity, with the creation of a wide network of small enterprises that benefit from IT developments and can act aggressively in both the domestic and foreign markets. Direct foreign investment plays a dynamic role, particularly in the case of medium-sized businesses working in advanced technology areas. The commercial policy is liberal yet pragmatic: adherence to liberalism does not preclude participation in preferential liberalization initiatives in the hemisphere -mainly within the sub-region.

In Brazil, MERCOSUR is regarded as a functional process to materialize new aspirations and achieve economic, political, and social objectives. Brazil becomes a benevolent leader of MERCOSUR, gradually spreading its influence throughout South America. In addition to leading a more balanced project of economic and social integration, Brazil includes in its regional agenda such issues as criminality, the environment, and social rights. At the same time, Brazilian foreign policy turns to block diplomacy at multilateral forums. In various international bodies, Brazil and Argentina act jointly through one representative. As far as defense policies are concerned, measures are taken to build up confidence among neighbor countries and a coordination mechanism is implemented to confront chronic security problems in the Andean region.

Parallel to this, Argentina undergoes a process of modernization and increasing social cohesion after the crisis in the early 2000s. Economic efficiency is enhanced by a more equitable and integrated society. Argentina succeeds in recovering the performance levels it boasted during the first half of the Twentieth Century. The sharp improvement in the standard of living helps mitigate *governability* problems and public institutions manage conflicts adequately. Representation mechanisms become more transparent through the advent of a new generation of leaders and the fall in disgrace of the old, “politicized” behaviors.

Argentina joins the international economy with no imbalances between the productive and the financial sectors. Its pattern of international specialization includes manufactures intensive in natural resources and other goods and services that use intensively skilled labor. A dynamic, state-of-the-art service sector consolidates that is closely related to information and know-how, including education and health care. The rise in the foreign trade coefficient helps improve solvency indicators and reduce the dependence on external savings. Direct foreign investment continues to grow steadily benefiting from the comparative dynamic advantages offered by Argentina. New investments are further promoted by a domestic market with a growing *per capita* income but, most important, by the possibility to have preferential access to the sub-regional market. Argentine international policy plays a major role in both regional and global scenarios. Strategic bonds with Brazil are strengthened by means of common positions in the FTAA.

*MERCOSUR Communitas* represents the kind of evolution that most resembles the European Community paradigm, as it entails a gradual process of creating a common market based on the consolidation of sub-regional rules and regulatory bodies. This scenario ultimately leads to the elimination of non-tariff barriers, free circulation of goods, liberalization of the service trade, limitation of national incentive policies, and implementation of horizontal policies at regional level. Starting from 2006, MERCOSUR officially adopts a common external tariff and uniform customs procedures, and further implements a mechanism to redistribute the funds collected by the Customs. It eventually consolidates a process of institutionalization by establishing an executive, assigning certain exclusive competences to a supra-national body, and creating a permanent court that may act in case of controversy between the member-states and between these and the executive. Such court plays an increasingly important role in juridical matters, thus guaranteeing strict adherence to the rules and regulations in force. MERCOSUR grows stronger by enhancing the role of society as the actual foundations of the regional agreement.

In summary, after the crash of the second half of the 1990s and the early 2002s, “re-launching” gathers momentum and newly boosts MERCOSUR integration. The initial difficulties to harmonize the continuity of the block with FTAA negotiations



result in political moves –with a strong impact on parliamentary agendas– that consolidate the pro-MERCOSUR consensus in both countries. Common projects in the areas of education, culture, and social policies promote the exchange of both professionals and services, and this further boost migratory flows.

Within this context, the two major countries –but particularly Brazil– gradually overcome the political and ideological obstacles that hinder the “deepening” of the sub-regional integration project. In this way, they can fully comply with the Customs Union agenda and advance to the next stage –the construction of the Common Market and the Economic and Monetary Union. MERCOSUR takes significant steps toward the design of a common environmental policy; moreover, by the end of the decade the member-countries deepen macroeconomic convergence commitments so as to adopt a common currency in 2015. Such convergence is mainly driven by two factors: greater predictability and Brazil’s leadership as a result of the favorable evolution of its economy and its internal polity. MERCOSUR internal rules enforcement represents a powerful incentive for the smaller members to participate in a “more thorough” integration process.

#### ***b. MERCOSUR Fortis***

The ***MERCOSUR Fortis*** scenario is mainly characterized by the fact that regional integration is closely linked to the state-oriented policies prevailing in the two major countries and that a defensive strategy is implemented to confront the international environment. In this context, the national “neo-developmental” option prevailing in Brazil represents the driving force. At the same time, this context is compatible with the predominance of the “Mighty Argentina” or “Latinia” scenarios in Argentina. Externally, while ***MERCOSUR Fortis*** is compatible with the “Post-Westphalian Condominium”, it seems more realistic in a “Post-imperial anarchy” context.

In Brazil, the reactivation of a developmentalist strategy defines a path of recovery of the political, economic, and social conditions of governability based on the strengthening of the National State. The major tension in this process lies, on the one hand, in the movements advocating a modernizing State based on an “illustrated consensus”, and on the other hand, the regional, sector, and corporate reluctance to those changes as these appear to challenge their *status quo*. This process is driven by a “pact of elites” that takes place at the beginning of the century whereby centrist and leftist segments united around a national developmentalist project. While on the one hand such project provides for partial, gradual integration to an increasingly globalized world, on the other hand it does not give up macroeconomic disciplinary standards and emphasis on efficiency. In this scenario, the centralizing role of the state is played within a framework of even more restrictive internal and external conditions than at earlier stages.

In terms of development pattern, the scenario suggests the consolidation of a more cosmopolitan *neo-developmentalism* that proves more open to both the market and the society than the autarchic, authoritarian pattern of the 1970s. The economy remains relatively open to the world, yet the commercial policy is characterized by an active pro-export approach and the rather frequent use of commercial defense instruments. Under the industrial policy in force, the privileged sectors are the large national groups and industries either technology- or skilled-labor driven.

The foreign policy follows a “post-autonomist” approach that tends to maximize both independence and initiative, especially in respect to North-American pressures. Brazil’s diplomatic agenda focuses on economic-commercial, environmental, and scientific-technological matters. Highly critical positions are adopted with regard to the interventionist attitudes advocated by the industrialized countries, with the support of international NGOs working in areas related to the environment, human rights defense, and combat against organized crime.

In this scenario, Brazil considers that the major use of MERCOSUR is its capacity to contribute to the “national project” both economically and in international negotiations. Its dominant position within MERCOSUR makes it practically impossible to put forward any initiatives that may affect its economic and/or political sovereignty.

Yet Brazil acknowledges the importance of further deepening the customs union and taking steps to consolidate the South-American infrastructure network.

*MERCOSUR Fortis* is compatible with two alternative configurations in the case of Argentina. In the “Mighty Argentina” scenario, this country shares the neo-developmental characteristics of the pattern prevailing in Brazil. In the “Latinia” hypothesis, on the other hand, steady deterioration eliminates any chance to share responsibilities regarding regional leadership. In “Mighty Argentina”, after the traumatic globalization and open-market experience of the 1990s that led to a virtual crash in the 2000s, Argentina attempts to perform experiments of “national autonomy” again and again, adapting them to the new global scenarios.

In “Mighty Argentina”, public institutions become stronger, yet representation mechanisms show strong neo-corporate characteristics. Formally, the political regime consists in a representative democracy, yet there exist intermediation procedures and procedural conventions that alter the traditional role of the political parties and Congress. Exceptional political mechanisms such as extraordinary executive powers, temporary suspension of Congress activities, and pressure on the Judicial Power are adopted all too often -presumably to guarantee “*governability*”.

There is no significant change in Argentina’s international specialization pattern.. As a result, its vulnerable economy continues to be exposed to exogenous shocks –mainly the terms of trade and the availability of finance. The periods of “external bonanza” promote the illusion of “Mighty Argentina”, yet the country soon falls into deep crises characterized by the aggravation of internal discrepancies, political confrontations, and conflicts over the uneven distribution of wealth. MERCOSUR widens the market for Argentine production within a context of State intervention and collusion with the private sector. Argentine foreign policy regains a strong nationalist rhetoric with a defensive approach regarding globalization. The relations with the United States continue to be as controversial as it was during most of the 20<sup>th</sup> Century, with serious clashes in the areas of trade and defense.

In the case of Argentina, the *MERCOSUR Fortis* scenario is also compatible with the domestic framework we called “Latinia” wherein local economic and social conditions deteriorate steadily. In this scenario, a precarious political system of representation consolidates, social disintegration and inequality aggravate, integration to the international economy is passive and rather stifled, and a rigid economy prevails with but a few patches of modernity.

In “Latinia” Argentina’s international integration is passive and somewhat subdued. This precarious mode of integration does not result from political obstacles or barriers (Argentine economy is remarkably open to the world), but to the weak links between the Argentine economy and the world economy. The international specialization pattern of Argentina remains focused on natural-resource-intensive commodities with low added value, such as agricultural products, energy, and minerals.

Characterized as a “defensive status-quo” scenario, *MERCOSUR Fortis* corresponds to an integration process that seeks to protect domestic interests, facilitated by a context of international fragmentation where the national room for manouver increased while, at the same time, the potential benefits of global integration tend to fall. Within this framework, *MERCOSUR Fortis* reproduces the neo-developmental pattern prevailing in Brazil and possibly in Argentina. MERCOSUR tends to consolidate as a Customs Union regulated by an inter-governmental structure rather than as the gradual process of consolidation of a common market. Its strong links with Brazilian industrial development further increases dependence on the part of other members-countries. Brazil politically manages such dependence by taking focused economic promotion initiatives. The precarious juridical mechanisms enforced in *MERCOSUR Fortis* make intra-block commercial conflict a daily occurrence. Thus, the prospects of addressing common interests in non-commercial matters are not good at all. Nevertheless, the restrictions imposed as a result of the conflict with the industrialized countries –particularly the United States– and the international perception of these countries as marginalized make them realize that joint positions in multilateral economic fora serve their interests better.

In the hypothesis combining the neo-developmental pattern in Brazil and the crisis in Argentina, Brazil becomes the unquestionable leader of the integration process. However, this predominance does not translate into significant advances as the Argentine crisis discourages Brazil from putting forward proposals to consolidate the Customs Union. Ultimately, this scenario tends to evolve into a dysfunctional framework for the national development projects of the MERCOSUR member-countries.

### *c. MERCOSUR Levis*

This scenario is compatible with the consolidation of the “Triumphant markets” pattern in Brazil, which can coexist with either its symmetric “Dollarization” or the “Equitable Growth” pattern in Argentina. In the first variant, the two countries clearly opt for liberal patterns of growth. Such convergence leads them to give up the more thorough integration projects, including the Customs Union itself. In this context the international integration of MERCOSUR is associated with increasingly low social cohesion, which tends to create tensions within both Brazil and Argentina.

At hemispheric level, the *MERCOSUR levis* pattern translates into a comprehensive commercial agreement in the year 2005. Under such agreement, restrictions to the trade of goods are eliminated within a period of ten years with a number of exceptions related to sensitive products. Furthermore, the agreement includes liberalization commitments in the areas of service activities, principles of transparency and uniform national treatment of purchases by the government, and a comprehensive agreement on investment that includes fast, efficient, and independent mechanisms to solve controversies. The success of the FTAA negotiations is part of a new context of hemispheric relations. Summit meetings are held on a regular basis, including in the agenda all those issues related to the area of defense. In addition to implementing a large package of measures for the purpose of building up confidence, it should be remarked that most of the countries in the region adhere to a “hemispheric

doctrine of cooperative security” that provides for the establishment of a pluralist security community.

The *MERCOSUR Levis* scenario is associated with the consolidation of the “Triumphant markets” pattern in Brazil. The essential characteristics of such scenario are (i) the consolidation of a US-type liberal capitalism model; and (ii) the breaking away from the traditional interventionist and paternalist tradition that characterized the prevailing Brazilian development pattern during almost all the second half of the 20<sup>th</sup> Century. State intervention focuses mainly on regulatory activities.

In the economic area, Brazil boasts high rates of growth based on a thriving foreign trade and enhanced productivity. The participation of transnational companies in the economy increases significantly, without any legal or regulatory restrictions whatsoever. At international level, Brazil adopts wide commercial and financial liberalization, allowing for the integration of the local credit and capital markets with their North American counterparts.

In addition to economic liberalization and domestic deregulation –even in the area of labor relations– there is nothing akin to an industrial policy, let alone sector policies. The government’s social investments in education and infrastructure are small, private health care services prevail, and only the public health network provides free medical care. Economic growth helps reduce poverty, yet the development pattern maintains, and even aggravates, income inequalities. Regional disparities also deepen and the sub-national governments compete against one another to attract investments, basically through strong deregulatory measures even in environmental matters.

Brazil’s international relations are in accordance with the new world order. The desire to participate more actively in the major international economic and political fora is the natural result of its status as a “successful emerging country”. Together with Mexico, the full integration of the Brazilian economy to the international market has a remarkably revitalizing effect on the rest of the continent.

Brazil’s hegemony within MERCOSUR is viewed as less important than its

multilateral and financial integration with the countries in the North. According to this approach, the FTAA becomes critical for achieving the country's economic objectives. While reaping the fruits of its full adherence to hemispheric integration, Brazil advances toward a cooperative agenda with the United States in the area of security. Convergent and coordinated policies designed to control *narcoguerrilla* in Colombia pave the way to a process of peace and reconstruction in this country. With the full support of the United States, the Brazilian Government promotes the transformation of South America into an area of peace.

In the case of Argentina, on the other hand, the *MERCOSUR Levis* scenario is compatible with both the "Equitable growth" and the "Dollarization" models. In the latter, the collapse of the currency board and the aggravation of economic and political instability lead to the elimination of the *peso* and to the adoption of the US dollar as official currency in the first decade of the 21<sup>st</sup> Century. This initiative is part of a process of pro-market reforms that deepens the approach adopted during the 1990s.

However, the lack of mechanisms to deal with the emerging social tensions brings about governability problems and paradoxically promotes the appearance of "strong governments". Political participation shrinks and society splits into a small sector that is strongly integrated to the world and a majority sector that has no access to the benefits of such integration. The economy also goes through a process of "dualization" where there is a modern and integrated sector and a wide, relatively marginal sector of basically informal workers or people who produce just enough to meet survival needs. Social fractures aggravate.

In the political and military areas, Argentina consolidates its automatic alignment with the United States. In addition to leading to a close military and police cooperation, such alignment entails voting with the American government at multilateral forums. In the case of Brazil, the agenda is "FTAA-nized" within a range of more or less convergent positions in hemispheric arenas. While common political issues are limited, there is an attempt to keep at a prudent distance from the security problems in the Andean region.

*MERCOSUR Levis* corresponds to an area of free trade. In the variant that combines the “Triumphant markets” model in Brazil with the “Equitable growth” model in Argentina, the latter’s interest in deepening integration is hampered by the Brazilian economic project and a free trade area is the “political solution” that overcomes this tension. Meanwhile, the coexistence of the two development models may not be peaceful. This may lead MERCOSUR to lose functionality, especially with regard to Argentina, and may further lead the latter to give up the sub-regional integration project. Should the scenario of neo-liberal reform consolidation generalize in both countries, the integration project becomes relatively unimportant as the focus lies on market mechanisms and full integration to the world economy.

#### *d. MERCOSUR Finitus*

Actually, the MERCOSUR dissolution scenario (*MERCOSUR Finitus*) does not correspond to a single configuration of variables. As stated above, the integration process can lose functionality for its members under different evolution circumstances in Brazil and Argentina, creating various hypotheses of disfunctionality. Such dysfunctional scenarios basically arise when the models diverge in such a way that the expectations of one of the member-states to maintain and deepen integration bonds with its neighbor are drastically reduced. Thus, MERCOSUR is unlikely to survive, for example, in a scenario of "National neo-developmentalism" in Brazil and "Dollarization" in Argentina. Likewise, MERCOSUR appears to be incompatible with an “Equitable growth” model in Argentina and a “Crisis and social disintegration” model in Brazil.

However, the convergence of models may also lead to MERCOSUR’s loss of functionality for its major member-countries. This would be the case whenever they are plagued by crises and endemic social and political unrest (for example, when, at one time, “Crisis and social disintegration” prevails in Brazil and "Latinia" prevails in Argentina).



In this section we explore one of the possible scenarios where MERCOSUR could lose functionality: “Crisis and social disintegration” in Brazil versus a process whereby Argentina consolidates a pattern characterized by a reasonable degree of political legitimacy and economic success, as reflected by the “Equitable growth” model and, to a lesser extent, the “Dollarization” model.

While in principle, *MERCOSUR Finitus* is compatible with any international environment, a “Post-imperial anarchy” framework may reduce Argentina’s interest in seeking alternatives to the integration project. Hence, the possibility that a sub-regional scenario may prove dysfunctional increases in an atmosphere of international order and equilibrium (“New Rome” or “Post-Westphalian Condominium”).

In general, the three scenarios discussed described alternative paths for Argentina in the “Equitable growth” and “Dollarization” hypotheses. Likewise, we have already described the two world order scenarios that are compatible with the one we are now describing. We should therefore discuss a scenario of Brazilian crisis and its possible impact on the regional integration process. In the “Crisis and social disintegration” scenario, the Brazilian economy loses status in respect to the rest of the world. There is a slow but steady decline in the opening process as a result of both the reaction against globalization and an attempt to confront external restrictions on growth. State intervention in the economy increases.

At the same time, during the first decade of the century the country goes through a process of institutional deterioration and the State is increasingly unable to enforce law and order. Violence grows both in the countryside and in the cities. Particularly, the lack of political legitimacy resulting from a low growth rate, inequality, and failure to find solutions to structural problems favors the development of corruption and organized crime. Essentially, the deterioration process of the past two decades gains momentum with a qualitatively significant change: illegal and criminal activities become an economic alternative for relatively large portions of the population and, what is even worse, such activities take up a remarkable share of the *entrepreneurship* existing in society.

The main reason for the poor performance of Brazil during that period is the difficulty to generate a consensus in order to advance rapidly and with determination in the reforms of both the State and the institutions, whether taking a liberal approach or imitating a neo-developmental paradigm. Though slowly and in a somewhat “patchwork” fashion, the reforms are made. Failure to grow and looming crisis end up creating a vicious circle where problems tend to aggravate requiring more drastic solutions, which are hardly ever taken fast and efficiently enough, thereby bringing about still other problems.

In that scenario, the investment rate remains low, restricting production capacity growth. Non-productive, rent-seeking activities expand. At the same time, anti-productive -or downright destructive- activities, such as various modes of organized crime, tend to mushroom. This situation limits productivity growth, which is further affected by policies and measures aimed at reducing unemployment. Competitiveness remains low affecting the expansion of exports. The industrial and commercial policy proves inconsistent. There is a heterogeneous group of initiatives mainly from certain sectors, resulting from corporate and regional lobbies, and specific protection claims. Foreign investment plummets and the economy’s opening to the world is adversely affected by fluctuating industrial and foreign trade policies.

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Brazil assumes an essentially defensive position in international matters. Its so-called “national interest diplomacy” foreign policy is characterized by hostility toward the United States at multilateral fora. Bilateral relations are cold and distant. Because it has fragile institutions and economy, Brazil is constantly criticized and penalized. Campaigns denouncing violation of human rights, generalized corruption and environmental affronts often launched by local and international NGOs further hamper negotiations with multilateral financing bodies.

At the regional level, a limited network of bilateral agreements replaces a South-American policy. The relations with Argentina reach the lowest point in the past decades and Brazil gradually loses interest in MERCOSUR. Actually, this is just a sign of Brazil’s proneness to isolate itself from the rest of the world as the latter is blamed

for a good share of the country's domestic problems.

Brazil's increasing isolation can be easily detected within the MERCOSUR sub-region, yet it also becomes apparent throughout the whole American continent. For its hitherto preferential clients –mainly Argentina– Brazil is seen as an unstable market and an unreliable economic and political partner. In an international scenario where the United States boasts absolute hegemony, Brazil's current MERCOSUR partners strengthen their economic and political alliances with other countries in the continent, especially the US. In those scenarios where there exists a multi-polar equilibrium, Argentina broadens its scope of alliances in the Northern Hemisphere and joins the OECD together with Chile –thereby further increasing Brazil's isolation.

#### **4.1.3. Conclusions and implications for the European Union**

One remark that should be made regarding this drafting of likely scenarios is that the three key variables we have identified are as uncertain as they are unpredictable. In fact, the present is far more linked to the future than is the present to the past. In contrast with the situation in the European Union countries (mainly its founding states) and the NAFTA members, the degree of unpredictability when construing likely scenarios for the next decade in either Argentina or Brazil is particularly high. Amid deep economic and social transformation processes, both countries have uncertain horizons. Needless to say, this affects our capacity to anticipate integration scenarios. The domestic options related to the *governability* and *social cohesion* features represent chapters that are open to the political and social future of Argentina and Brazil. To a certain extent, such features are less predictable than those affected by external factors –such as *economic adaptability* and *degree of international integration*.

Most probably, the MERCOSUR of the year 2010 will not bear much resemblance to the stylized scenarios we have drafted in this paper. For the sake of clarity, the scenarios are presented as mutually excluding options. However, these

could be construed as a *continuum* of likely equilibria with the actual future path situated half way between different scenarios.

The recent evolution of the MERCOSUR member-countries appears to draw the integration process away from the most virtuous, European-type scenario – *MERCOSUR Communitas*. In the light of this evolution, the options open to MERCOSUR focus on two mutually opposing scenarios: *MERCOSUR Fortis* and *MERCOSUR Levis*. The chances that the integration process faces a terminal crisis is also higher.

For the European Union, only two to four scenarios would be interesting and compatible with viable bi-regional negotiations: *MERCOSUR Communitas* and *MERCOSUR Fortis* (in this case, mainly if the *Mighty Argentina* rather than the *Latinia* scenario prevails in Argentina). Both scenarios are compatible with advances in the consolidation of the Customs Union and, in particular, with the establishment of a minimum set of rules for administering the flows of goods, services, and investments between the member-countries and between these and the rest of the world. The *MERCOSUR Fortis* scenario can be identified as the minimum level of Customs Union consolidation required to carry out effective negotiations with the European Union and, in particular, to materialize the economic and regulatory results potentially associated with such negotiations. On the other hand, both the *MERCOSUR Finitus* and the *MERCOSUR Levis* scenarios are compatible with the consolidation of a FTAA. Actually, an successful FTAA increases the chances of survival of the sub-regional block in the *MERCOSUR Levis* modality.

## **BIBLIOGRAPHY**

Almeida, P.R. (1998), “Brasil y el futuro del MERCOSUR: dilemas y opciones”, in *Integración y Comercio*, vol 2 num 6, september-december

Araújo, J.T. (1998), “Aprotecao a industria automobilística na Europa e no MERCOSUR”, *Revista de Economia Política*, vol. 18, num.4 (72), outubro-dezembro

Baptista, L.O. (1998): *El MERCOSUR, sus instituciones y su ordenamiento jurídico*, Editorial LTR, San Pablo.

Bekerman, M., Sirlin, P, Correa, P.G. Laens, S. e Osimani, R. (1999) – Impacto del proceso de integración del MERCOSUR sobre el sector farmacéutico, Texto para discussão interna n. 148, Funcex.

Berlinski, J. (2001), “El comercio de servicios en el MERCOSUR” en D. Chudnovsky y J.M. Fanelli (editores), *El Desafío de Integrarse para Crecer*, Buenos Aires: Siglo XXI, 2001

Bittencourt, Gustavo “El boom de la inversión extranjera directa en el MERCOSUR, Siglo Veintiuno, capítulo 5, El caso uruguayo.

Boldorini. M.C. y S. Zalduendo (1995), “La estructura jurídico-institucional del MERCOSUR después del Protocolo de Ouro Preto”, *Boletín Informativo Techint* No 283, julio-septiembre.

Botto, M. (2001): “La participación de la sociedad civil en los procesos de integración comercial: los casos del Tratado de Libre Comercio de América del Norte, del Mercado Común del Sur y del Área de Libre Comercio de las Américas”, in: *serie Brief FLACSO/PIEI* N3, Bs. As.

Bouzas, R (1999): “Las Perspectivas del MERCOSUR: Desafíos, Escenarios y Alternativas para la Próxima Década”, in CAMPBELL, J. (ed), *MERCOSUR. Entre la Realidad y la Utopía*, Buenos Aires: CEI-Editorial Nuevohacer.

Bouzas, Roberto; Paula Gosis and Emiliano Pagnotta (2002), “Interdependence and Macroeconomic Coordination in MERCOSUR”, *Latin American Regional Overview*, Economist Intelligence Unit, March

Bouzas, R. (2001), “El MERCOSUR diez años después. ¿proceso de aprendizaje o deja vu?”, en *Desarrollo Económico*, Vol. 41 Nro. 162, julio-septiembre, Buenos Aires.

Bouzas, R. y J.M. Fanelli (2002), *MERCOSUR. Integración y Crecimiento*, Buenos Aires. Editorial Anagrama

Carrera, Jorge; Eduardo Levy Yeyati y Federico Sturzenegger, “Las Perspectivas de la Coordinación Macroeconómica en el MERCOSUR”, en Jorge Carrera y Federico Sturzenegger (compiladores), *Coordinación de Políticas Macroeconómicas en el MERCOSUR*, Buenos Aires: Fundación Gobierno y Sociedad y Fondo de Cultura Económica, 2000

Chudnovsky, D e Erber, F., (1999).

Chudnovsky (coord). El boom de inversión extranjera directa en el MERCOSUR, Siglo Veintiuno. Masi, Fernando, Capítulo 4, El caso paraguay

Chudnovsky (coord). El boom de inversión extranjera directa en el MERCOSUR, Siglo Veintiuno. Bittencourt, Gustavo y Domingo, Rosario, Capítulo 5, El caso uruguay

Dancet, G. (1998), El papel de las ayudas de Estado en la restructuración de la industria europea de automoveis, *processed*

Dancet, G. and M. Rosenstock (1996), “State aid control by the European Commission: the case of the automobile sector”, in J. Stuyck, F. Abraham and C. Goemans (org), *Subsidies and Competition in the European Union*, Leuven, Leuven University Press

De la Balze, F. (2000): “El destino del MERCOSUR: entre la unión aduanera y la “integración imperfecta””, in: De la Balze, F. (comp.): *El Futuro del MERCOSUR. Entre la retórica y el realismo*, CARI-ABA, Buenos Aires

Domingo, Rosario “El boom de la inversión extranjera directa en el MERCOSUR, Siglo Veintiuno, capítulo 5, El caso uruguayo.

- Chudnovsky, D e Erber, F., (1999) – MERCOSUR’s impact on the development of the machine tools sector, in *Integration & Trade 7/8*, INTAL, january / august, volume 3 .
- Fanelli, José María “Coordinación Macroeconómica en el MERCOSUR: Balance y Perspectivas”, en D. Chudnovsky y J.M. Fanelli (editores), *El Desafío de Integrarse para Crecer*, Buenos Aires: Siglo XXI, 2001
- Fanelli, José María “*Coordinación de Políticas Macroeconómicas en el MERCOSUR*”, Buenos Aires: Siglo XXI, 2001
- Ferrer, A. (1991), “Argentina e Brasil: ajuste, crecimiento e integracao”, in P Motta Veiga (org), *Cone Sul: a economia politica da integracao*, Rio de Janeiro: FUNCEX
- Grandi, J. (1998): “Déficit democrático y social en los procesos de integración”, in: *Integración & Comercio*, Nro. 6, Año 2, septiembre-diciembre, Buenos Aires
- Hasenclever, L. Lopez, A. e de Oliveira, J.C. (1999) – The impact of MERCOSUR on the development of petrochemical sector, in *Integration & Trade 7/8*, INTAL, january / august, volume 3 .
- Heymann, Daniel “Interdependencia y Políticas Macroeconómicas: Reflexiones sobre el MERCOSUR”, en J. Campbell (editor), *MERCOSUR. Entre la Realidad y la Utopía*, Buenos Aires: Editorial Nuevohacer, 1999
- Heymann, Daniel y F. Navajas, “Coordinación de Políticas Macroeconómicas en MERCOSUR: algunas reflexiones”, en CEPAL (1998), “Ensayos sobre la Inserción Regional de la Argentina”, *Documento de Trabajo Núm. 81*, Buenos Aires: CEPAL
- Jackson, J. (1997): *The World Trading System*, Cambridge, Mass: The MIT Press.
- Láidi, Z. (1998), “Le temps mondial“, in Smouts, M.C., *Les nouvelles relations internationales*, Presses de Sciences Po, 1998.
- Lavagna, R. (1997); Integración, economía e instituciones, en *Temas del MERCOSUR* Nro. 3, Instituto de Economía y Organización – Fundación Andina, Buenos Aires.

Lavopa, J. (1997), “Dimensión jurídica de la integración del MERCOSUR”, in: *Temas del MERCOSUR* Nro. 3, Instituto de Economía y Organización – Fundación Andina, Buenos Aires

Lucangeli, J. (1998), “La inserción de la Argentina en el MERCOSUR: antecedentes, logros y perspectivas del acuerdo de integración regional”, *Serie de Estudios* Num 26, Buenos Aires: CECE

Masi, Fernando (2001), *El boom de inversión extranjera directa en el MERCOSUR*, Siglo Veintiuno, capítulo 4, El caso paraguayo.

Mattli, W. (1999): *The Logic of Regional Integration. Europe and Beyond*, Cambridge: Cambridge University Press

Motta Veiga, P. (1999), “Brasil y el MERCOSUR: economía y política en el proceso de integración”, in J. Campbell (org), *MERCOSUR. Entre la Realidad y la Utopía*, Buenos Aires: Editorial Nuevohacer

Motta Veiga, P. y R. Iglesias (1997), “A evolucao do MERCOSUR no periodo de transicao: hipótesis alternativas e cenários”, paper prepared for the OECD Development Centre, *processed*

Motta Veiga, P. (1999), “Brazil in MERCOSUR: Reciprocal Influences”, in R. Roett (ed), *MERCOSUR. Regional Integration, World Markets*, Boulder, Col: Lynne Rienner Publishers Inc.

Nofal, M.B. e Wilkinson, J. (1999), “Production and trade in diary products in MERCOSUR”, in *Integration & Trade* 7/8, INTAL, january / august, volume 3.

O’Keefe, T. and J. Haar (2001), “The Impact of MERCOSUR on the Automobile Industry”, *The North South Agenda Papers* Num 50, Miami: North-South Center

Olarreaga, M. e I. Soloaga (1998), “Endogenous Tariff formation: the case of MERCOSUR”, *The World Bank Review* 12



Palma, L.M. (1997): “Solución de controversias en el MERCOSUR: actualidad y futuro. La necesidad de crear un tribunal de justicia”, in: *Temas del MERCOSUR* Nro. 3, Instituto de Economía y Organización – Fundación Andina, Buenos Aires

Supprimé : é

Supprimé : ?

Peña Félix (1999): “Contribución al Análisis de la Experiencia Institucional del MERCOSUR”, in: Informe para IRELA, *mimeo*

Pérez Antón, R (2001); “Proceso de toma de decisiones en el MERCOSUR”, en D. W. Benecke y A. Loschky (ed), *MERCOSUR: desafío político*, Konrad Adenauer-CIEDLA, Buenos Aires.

Redrado, M. (2000): “De la institucionalidad a la convergencia”, in: DE LA BALZE, F. (comp.): *El Futuro del MERCOSUR. Entre la retórica y el realismo*, CARI-ABA, Buenos Aires

Ruiz Díaz Labrano, R. (1996): “Mecanismos de solución de controversias: enfoques alternativos”, *processed*, Seminario-Taller Estrategias de Articulación y reforzamiento de las capacidades de gestión de una unión aduanera: opciones para el MERCOSUR, CEFIR, Montevideo

Sabsay, D. (1999): “Integración y Supranacionalidad sin considerar los desarrollos europeos recientes. Bases constitucionales y límites. La experiencia del MERCOSUR”, *processed*, Simposio “Process of European and Global Constitutionalization”, Berlín

Smouts, M.C. – La mutation d’une discipline, in *Les nouvelles relations internationales*, Presses de Sciences Po, 1998.

Tigre, P.B., Laplane, M., Lugones, G. e Porta, F. (1999) – Technological change and modernization of MERCOSUR automotive industry, in *Integration & Trade* 7/8, INTAL, january / august, volume 3.

Torrent, R. (2002) ”Regional integration instruments and dimensions: analytical framework”, *processed*.

Torrent, R (2002), ”Regional Cooperation within the Multilateral System of Rules”, *processed*

Tulchin, R. and R. Espach (eds), *Paths to Regional Integration. The Case of MERCOSUR*, Washington DC: Woodrow Wilson Latin American Program

Tussie, D./ I. Labaqui / C. Quiliconi (2001): Disputas comerciales e insuficiencias institucionales: ¿de la experiencia a la esperanza?, in: Chudnovsky, D. y J.M. Fanelli M. (comp.), *El desafío de integrarse para crecer. Balance y perspectivas del MERCOSUR en su primera década*, Red de Investigaciones Económicas del MERCOSUR-Siglo XXI-BID, Madrid

Vaillant, M. (2001): “Profundización del proceso de integración económica de bienes”, in: Chudnovsky, D. y J.M. Fanelli (comp.), *El desafío de integrarse para crecer. Balance y perspectivas del MERCOSUR en su primera década*, Red de Investigaciones Económicas del MERCOSUR-Siglo XXI-BID, Madrid

Von Bulow, M.C. / Da Fonseca, C. (2000): “Los desafíos de la participación de la sociedad en procesos de integración regional: el caso del MERCOSUR”, *processed*, Seminario Internacional “La Globalización y las Nuevas Corrientes Integracionistas”, Ministerio de Relaciones Exteriores de Colombia, Cartagena de Indias

Yeats, Alexander (1998), “Does MERCOSUR’s trade performance raise concerns about the effects of regional trade arrangements?”, *The World Bank Economic Review*, vol 12 num.1