

The MERCOSUR: a model for regional economic integration?

by C Chatterjee and Enrique Hernandez Sierra

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1. INTRODUCTION

On March 26, 1991, Argentina, Brazil, Paraguay and Uruguay signed the Treaty of Asuncion establishing MERCOSUR (Mercado Común del Sur) which came into force on December 31, 1994. Venezuela joined MERCOSUR later. The primary purpose of this Treaty was to establish a common market and eliminate trade barriers. MERCOSUR was preceded by the Latin American Free Trade Association (LAFTA) in 1960. In 1980, the Treaty of Montevideo (text reproduced in 20 *International Legal Materials* (1981) 172) replaced LAFTA with the Latin American Integration Association (ALADI). This was again preceded by a number of bi-lateral treaties and attempts at integration, the Declaration of Buenos Aires, 1986 and the Agreement on Argentine-Brazilian Integration, 1988 (text reproduced in 27 *International Legal Materials* (1988) 901) which was also joined by Paraguay and Uruguay. The Uruguay and Paraguay authorities expressed their willingness to participate and the result was the creation of a common market among the four countries.

MERCOSUR possesses international legal personality by virtue of which it can sign contracts, buy and sell personal and real property, represent the organisation before judicial institutions, and hold funds and effect transfers of them whenever necessary. Decisions of the MERCOSUR organs are taken by consensus and the presence of all the states parties.

As to the issue of compliance with the decisions adopted by MERCOSUR with the decisions adopted by MERCOSUR organs, the states parties have undertaken the obligation to take all necessary measures to ensure compliance with the decisions adopted by these bodies (see Arts 2 and 38 of the Protocol). All the decisions of the MERCOSUR institutions and the dispute settlement arbitration rulings are published

in the Portuguese and Spanish languages in the MERCOSUR Official Journal.

This Protocol has developed a procedure for the implementation of the decisions which the MERCOSUR organs may adopt:

The Decision enters into force simultaneously in the States Parties 30 days after the date of communication made by the Secretariat

After all States Parties have reported incorporation of the decision in their respective legal systems, the MERCOSUR Administrative Secretariat informs each State Party accordingly

After a decision has been adopted the States Parties are required to incorporate it in their domestic legal system and to inform the MERCOSUR Administrative Secretariat

States parties are required to publish within the time-limit mentioned above the fact that the decision has come into force in their respective official journals.

The legal structure of MERCOSUR has been developed as follows:

- the Treaty of Asuncion of 26 March 1991, the Protocols and the additional or supplementary instruments;
- the Agreement concluded within the framework of the Treaty of Asuncion and Protocols; and
- the decisions of the Council of the Common Market, the resolutions of the Common Market Group and the directives of the MERCOSUR Trade Commission which may be adopted by these institutions (see Art 41 of the Protocol);
- the Borasilin (BRASILIA) Protocol on Dispute Settlement 1991, which introduces an arbitration mechanism;

- the Ouro Preto Protocol, 1994 which is considered to be the MERCOSUR's constitution;
- the Olivos Protocol on Dispute Settlement, 2002 which created a Permanent Protocol (a new protocol dated on 2007 has modified it); and
- The MERCOSUR Parliament which was established on December 9, 2005.

It has to be emphasised however that the decisions adopted by the MERCOSUR organs are binding, and must be incorporated into the domestic legal systems in accordance with the procedures provided for in each country's legislation (see Art 42 of the Protocol); however, their enforcement is subject to the constitutional provisions available in each Member State, meaning thereby they require legislative approval and ratification by the executive.

2. GENERAL PROCEDURE FOR COMPLAINTS TO THE MERCOSUR TRADE COMMISSION

All complaints submitted by the National Sections of the MERCOSUR Trade Commission and originated by states parties or individuals, whether natural or legal persons, will be governed by the procedure laid down in the Annex to the Protocol of Ouro Preto:

The Complainant is to submit its complaint to the Pro-Tem Chairman of the MERCOSUR Trade Commission who shall include it in the Agenda for the next meeting of the Trade Commission. In the event of no decision being taken at the meeting the Trade Commission shall pass the dossier to a Technical Committee.

Within a maximum period of 30 calendar days, the Technical Committee is required to prepare and submit to the Trade Commission a joint opinion on the question. This opinion, or the conclusions of the experts, if there is no joint opinion, shall be taken into consideration by the Trade Commission when ruling on the complaint; but the Annex to the Protocol provides for an extraordinary meeting, presumably for meeting a satisfactory conclusion, if necessary.

If no consensus has been reached at the first meeting, the Trade Commission then shall submit to the Common Market Group the various alternative proposals, together with the joint opinion or the conclusions of the experts on the Technical Committee in order that an appropriate decision is taken. The Common Market Group shall give a ruling within 30 calendar days of the receipt by the Pro-Tem Chairman of the proposals submitted by the Trade Commission.

If the complaint is found justified, the State Party against which

it is made, shall adopt the measures approved by the Trade Commission or the Common Market Group, as the case may be, by the period of time fixed by either of these institutions. If the State concerned should fail to implement the decision by the stipulated period, the complainant state may directly resort to the procedure provided for in Chapter IV of the Brasilia Protocol.

However, if no consensus may be reached, by the Trade Commission or the Common Market Group, or if the State against which the decision has been made, fails to comply with the Decision of the said institutions, the Complainant State may directly resort to the procedure established in Chapter IV of the Brasilia Protocol and shall notify the MERCOSUR Administrative Secretariat accordingly.

Before giving its ruling, within 15 days of its being set up, the Arbitral Tribunal shall announce the interim measures it may consider appropriate under the conditions laid down in Article 18 of the Brasilia Protocol, which provides that:

1. *The Arbitral Tribunal can, at the request of the interested party and to the extent that there exist well-founded presumption that a continuation of the current situation will cause severe and irreparable damage to one of the State Parties, issue provisional measures which it considers appropriate according to the circumstances and pursuant to the conditions that the Tribunal itself establishes, in order to prevent such damages.*
2. *The Parties to the controversy shall immediately or within the time limit determined by the Arbitral tribunal, comply with whether provisional measure, until such time as the decision that is referred to in Article 20 is issued.*

Article 20 simply details the formalities to be observed for rendering an arbitral award. Currently, the following countries are Associate Members of MERCOSUR: Bolivia, Chile, Columbia, (Colombia) Ecuador and Peru. The ultimate aim, as it seems, is to form a comprehensive preferential trade between MERCOSUR and the Andean Area, which might eventually form a South American Free Trade Area. Again, Article 2 of the Asuncion Treaty aims, inter alia, for the following:

- a gradual elimination of all custom duties among its signatory states;
- the execution of a common external tariff;
- the adoption of a common trade policy; and
- the harmonisation of the economic policies of the signatory states.

Article 1 of the MERCOSUR Agreement provides for a broader obligation than that embodied in the Asuncion Treaty:

The co-ordination of macroeconomic and sectoral policies

between the States Parties in the areas of foreign trade, agriculture, industry, fiscal and monetary matters, foreign exchange and capital, services, customs, transport and communications and any other areas that may be agreed upon, in order to ensure proper competition between the States Parties.

On December 17, 1994, the Protocol of Ouro Preto set up the institutional structure of MERCOSUR, and the institutions under it started functioning as from 1995. The institutional structure and the functions of the institutions have received attention in a separate section of this work.

MERCOSUR represents the third largest trading bloc in the world followed by the European Union and NAFTA (The Latin American Free Trade Area). It has significantly dismantled the trade barriers among its members, and inter-regional trade, by virtue of having a significantly large market, has also increased. Indeed, with the creation of this large market foreign direct investment (FDI) flow has also increased. Privatisation of the telecommunication services, in particular, combined with booming automobile industry, seem to have attracted the attention of private foreign investors. Currently Argentina has an ambitious programme of trade liberalisation than any other member of MERCOSUR.

It is the purpose of this article to examine the organisation structure of MERCOSUR and its impact on the market as well as the contribution the regional economic integrations may make to the international trade liberalisation movement.

3. A BRIEF ACCOUNT OF THE ECONOMIC STANDING OF MERCOSUR MEMBER STATES

3.1 Argentina

Argentina is one of the largest economies in Latin America. The country has valuable natural resources, and is one of the main producers of food and beef among the agricultural products in the world.

In so far as the industrial sector is concerned, Argentina has experienced record growth within its domestic industry, and in particular in the automobile, textile and appliances industries. Between 2005 and 2009 the middle class, which is usually regarded as an important part of the consumer society, doubled from 9.3 million to 18.6 million (equivalent to 45% of the population).

In recent years, as from 2008 Argentina's external debts have risen significantly, but the current administration has been making efforts to improve the domestic economy. The World Bank is currently working with the Argentinian Government in developing a new country partnership strategy, paying particular attention to the following key areas:

- sustainable growth with equity;
- social inclusion; and
- improved governance.

Poverty reduction, improvement in the health sector, upgrading of infrastructure and the strengthening the effectiveness, efficiency, transparency and accountability of the public sector, among others, have been prioritised.

3.2 Brazil

Brazil is not only the world's seventh wealthiest economy but also the largest country in Latin America and the Caribbean. Although owing to domestic and external factors the Brazilian economy slowed significantly over 2011 and 2012, Brazil's strong domestic market is less vulnerable to external crisis; indeed, the country has been witnessing stable economic growth, a relatively low inflation rate, and the improvements in social well-being which are the symptoms of a reliable economy. Brazil's banking system is sound and resilient; foreign direct investment flow has remained high, indicating the attractiveness of the economy, and her overall microeconomic framework is social and sustainable at least in the foreseeable future.

The World Bank is also working closely with the Brazilian government to help her secure long-term sustainable growth; the Bank's 2012-15 partnership strategy guaranteed US\$ 5-8 billion in investments for the first two years with a strong emphasis on the sub-national entities (states and large municipalities) and an eradication of poverty in the North Eastern area, the poorest region.

A large number of projects are being financed by the International Bank for Reconstruction and Development (IBRD – popularly known as the World Bank Group) which has committed US\$ 9.1 billion to the country. The very pillars of the partnership strategy are to:

- strengthen public and private investment;
- strengthen regional and territorial development;
- support the effective management of natural resources and the environment; and
- improve services to the poor.

Family health programmes, financial support to poor families (the Bolsa Familia programme), and projects on law carbon study have, in addition to providing assistance to small scale agriculture in innovative ways, received the country's attention. Societal inequity remains at a relatively high level in Brazil, but the government has plans to tackle this problem too.

3.4 Paraguay

The Paraguayan economy is small, and highly dependent on foreign trade. Inequality and high levels of poverty are the two major social problems in Paraguay, which have an adverse impact on the economy of the country. On the other hand, it is a country with many natural resources and a highly mechanised agricultural sector with its attendant benefits. The country is thought to have one of the largest reserves of fresh water.

Over the last decade, the government has however made significant progress in the macroeconomic front with the aim of reforming fiscal, monetary and socio-legal issues. The current financial and technical assistance programmes of the World Bank focus on three major issues:

- modernisation of public administration;
- equity and opportunities for disadvantaged people; and
- job creation and sustainable economic growth.

With the assistance fund from the World Bank, the country is currently engaged primarily in the following projects: sustainable rural development; modernisation of the water and sanitation sector; strengthening of the electric sector; bio-diversity conservation; and sustainable management of land in the Eastern Atlantic Forest of Paraguay.

3.5 Uruguay

According to the World Bank: “With average annual growth of 5-8% between 2004 and 2012, Uruguay’s strong economic programme has enabled it to consolidate structural improvements made since the crisis of 2002.”

Uruguay has also a democratic system of government marked by political and social stability, a high literacy rate and an advanced social security system. By virtue of her dynamic social and economic expansion programme, substantial progress in poverty reduction has taken place. The export market has also been diversified in order to reduce dependency on the country’s traditional trade partners, but Uruguay is still very dependent on Brazil which accounts for a major share of exports.

Uruguay has rightly accorded priority to achieving higher investment levels and improving the competitiveness of her economy. The World Bank has supported the development process in Uruguay for more than 60 years, and the Bank’s 2010-15 country partnership strategy has placed emphasis, inter alia, on:

- management of climate risk in the agricultural sector; and
- capacity building.

The programmes for 2010-15 are based on the following

objectives, which are to:

- strengthen macroeconomic foundation and public sector administration;
- improve competitiveness and infrastructure;
- provide even more protection of the environment and to mitigate the adverse effect of climate change; and
- ensure greater inclusion and social equity.

Uruguay has implemented structural changes and short-term stabilisation policies which eventually reduced her vulnerability to external shocks. The financial sector has been strengthened, local capital markets have been developed, and external debts have been reduced. With the help of the World Bank programmes, Uruguay has achieved macroeconomic stability, enhanced social inclusion and health reforms.

The World Bank’s 2010-15 country partnership strategy plans to reform the economy of Uruguay by preparing the country for greater competitiveness and enhancing further social inclusion. Overall, Uruguay enjoys a stable democracy with its attendant benefits.

3.6 Venezuela

Venezuela is a country which is rich in natural resources, with one of the largest oil and mineral resources in Latin America and the Caribbean. Indeed, the country benefited from the high international oil prices of the past decade, which allowed the Chavez government to spend money on social programmes called missions. These efforts have led to a decline in poverty from 50 per cent in 1998 to approximately 30 per cent in 2012.

However, the government also nationalised a number of private companies in sectors such as banking, cement hydrocarbons, metallurgy, mining and telecommunications. It is still early to assess the impact of nationalisation on the Venezuelan economy.

It must be emphasised that the Venezuelan economy is very much linked to the volatile market prices of oil, and oil accounts over 96 per cent of the country’s exports. Thus, diversification of the economy is essential. It is to be noted too that by the end of 2013 the rate of inflation in Venezuela rose up to 56.3 per cent.

Venezuela social programmes – namely the Caracas Slum upgrading project, endemic disease control project, and the urban transport project – are being assisted by the World Bank.

4. SOME USEFUL DATA IN RELATION TO THE MERCOSUR MEMBER STATES

At this stage it would be appropriate to consider the nature of the business interaction both current and future in the MERCOSUR area, based on the country profiles of its members. The information below has been obtained from the British Broadcasting Corporation, and relates to the period 2010-12.

Argentina:	Population:	40.6 million
	Area:	2.8 million sq km
	Main exports:	Food and live animals, mineral fuels, cereals and machinery
Brazil:	Population:	196.6 million
	Area:	8.55 million sq km
	Main exports:	Manufactured goods, coffee, oranges and other agricultural products
Paraguay:	Population:	6.6 million
	Area:	406.752 sq km
	Main exports:	Soybeans, cotton, meat, edible oils and timber
Uruguay:	Population:	3.4 million
	Area:	176.15 sq km
	Main exports:	Meat, rice, leather products, vehicles, dairy products, wood and electricity
Venezuela:	Population:	29.4 million
	Area:	881.050 sq km
	Main exports:	Petroleum, gas and aluminium, steel, chemicals, agricultural products and basic manufactured products

Thus, the total population currently for the entire area stands at over 276 million, which is a large market. However,

there is no doubt that Argentina and Brazil will dominate the market unless of course the other members of the area have special expertise in certain industries and/or services. However, the economies of each of the members are primarily agricultural in nature.

5. THE INSTITUTIONAL STRUCTURE OF MERCOSUR

Article 18 of the MERCOSUR Agreement provided that:

Prior to the establishment of the common market on 31 December 1994, the States Parties shall convene a special meeting to determine the final institutional structure of the administrative organs of the common market, as well as the specific powers of each organ and its decision-making process.

This provision was implemented by the Additional Protocol to the Treaty of Asuncion on the Institutional Structure of MERCOSUR, commonly known as the Protocol of Ouro Preto of December 17, 1994. Article 1 of this Protocol states that the institutional structure of MERCOSUR shall be comprised of the following organs:

- The MERCOSUR Parliament;
- The Council of the Common Market (CCM);
- The Common Market Group (CMG);
- The MERCOSUR Trade Commission (MTC);
- The Joint Parliamentary Commission (JPC);
- The Economic-Social Consultative Forum (ESCF); and
- The MERCOSUR Administrative Secretariat (MAS).

Of course, ancillary organs may also be established if necessary to attain the objectives of the integration process. There are also certain inter-governmental organs with decision-making powers: the Council of the Common Market, the Common Market Group and the MERCOSUR Trade Commission. Each of these institutions is now being discussed.

6. THE MERCOSUR PARLIAMENT

The Parliament is a representative body of the citizens of the states parties to MERCOSUR. Its predecessor was the Joint Parliamentary Commission. One of the aims of that Parliament is to develop and apply the popular dimension to the integration process and to facilitate the incorporation of MERCOSUR's laws by the states parties to it. According to the Protocol establishing the Parliament, its other main objective is to promote the permanent defence of democracy (Art 2). It is an advisory body, and not a law-making body, but its advice carries weight in formulating legislation. One of the problems

with the composition of the Parliament is the domination of the larger Member States (Argentina and Brazil) over the smaller Member States (Paraguay and Uruguay).

The Parliament is the representative body of the people of MERCOSUR. It is located in the city of Montevideo, Eastern Republic of Uruguay. It will eventually replace the first Parliamentary Committee. Despite transitional provisions in the Protocol, the parliamentarians still belong to their respective Parliaments. In the fullness of time, the Parliament shall be composed of representatives elected by universal suffrage in accordance with the domestic law of each state party to the Protocol. It will be a unicameral organ. The following are the purposes of the Parliament:

- a. to represent the peoples of MERCOSUR;
- b. to promote and defend democracy, freedom and peace with the geographic area;
- c. to promote sustainable development of the region maintaining the principle of said justice and respect for cultural diversity in the region;
- d. to ensure that the civil society actors are allowed to participate in the integration process;
- e. to encourage development of a collective conscience of citizens for integration and community values;
- f. to consolidate Latin American integration through vertical and horizontal processes;
- g. to promote solidarity within the region and to develop co-operation both at regional and international levels.

The guiding principles of the Parliament are:

- a. Pluralism and tolerance of the diverse political, social and cultural rights of peoples within the region.
- b. Transparency of information and decisions with a view to building confidence and facilitating the participation of its citizens.
- c. Co-operation with other organs of MERCOSUR and citizen representations at regional levels.
- d. Respect for human rights in all manifestations.
- e. Rejection of all forms of discrimination, especially those related to gender, colour, ethnicity, religion, nationality, age and socio-economic status.
- f. Promotion of cultural, institutional, heritage and co-operation in the Latin American integration status.
- g. Promotion of sustainable development in MERCOSUR and special and differential treatment of small economies

and less developed regions; and

- h. Fairness and justice in regard to regional and international affairs, and promotion of peaceful settlement of disputes.

The Parliament shall have the following powers:

- a. To determine the scope of its jurisdiction over the observance of the norms of MERCOSUR (presumably those which have been identified in the guiding principles of the Parliament).
- b. To preserve the democratic regions in the Member States, in accordance with the rules of MERCOSUR, in particular, with the Protocol of Ushuaia on Democratic Commitment in MERCOSUR, the Republic of Bolivia and the Republic of Chile.
- c. To publish an annual report on the situation of human rights in the Member States taking into account the principles and norms of MERCOSUR.
- d. To carry out orders for information or opinions, in writing (within 180 days) to the decision-making and advisory bodies of MERCOSUR in relation to the progress of the integration process.
- e. To invite representations of the organs of MERCOSUR to inform and/or evaluate the development of the integration process, exchange views and discuss issues pertaining to the continuing activities of MERCOSUR.
- f. To receive at the end of each semester progress reports on MERCOSUR.
- g. To receive at the beginning of each semester the current work programme which would be in conformity with the objectives of MERCOSUR.
- h. To hold bi-annual meetings with the Economic and Social Advisory Forum to exchange information and opinions on the development of MERCOSUR.
- i. To organise public meetings on issues relating to the progress on the integration process with organisations of civil society and various relevant productive sectors.
- j. To receive and consider requests of any Member State in regard to acts or omissions of any of the organs of MERCOSUR.
- k. To provide opinions in response to requests made on all draft MERCOSUR rules requiring legislative approval in the Member States, and in the event of draft being approved by the decision-making body of MERCOSUR, in accordance with the Parliament's opinion, it should be sent by each national executive to the Parliament of the state party concerned, and national Parliaments shall

take appropriate measures for the implementation of the Parliament's opinion. If however, the Parliament of the Member State shall reject that opinion, it must be forwarded to the Executive Member for reconsideration by the appropriate body of MERCOSUR.

- l. To propose to MERCOSUR to develop standards of treatment every six months (to all its members) for consideration by the Common Market Council.
- m. To conduct studies and draft national regulations in order to harmonise national legislation of the parties to MERCOSUR which will be eventually considered by each national Parliament.
- n. To develop joint projects with national Parliaments in order to ensure compliance with the objectives of MERCOSUR particularly in regard to Member States' legislative activities.
- o. To maintain institutional relations with Parliaments of third States and other legislative institutions.
- p. To develop, with the advice of competent organs of MERCOSUR agreements of co-operation with or technical assistance to public and/or private organisations at both national and international levels.
- q. To encourage the development of instruments for strengthening participatory democracy within MERCOSUR.
- r. To receive during the first half of each year a report on how the budget of the Secretariat of MERCOSUR of the previous year has been implemented.
- s. To develop and approve the budget and to report on its implementation to the Council of the Common Market with the first semester of the following financial year.
- t. To approve and amend its rules of procedures; and
- u. To perform all necessary actions coming within the remit of its powers.

Article 5 of the Constitution of the MERCOSUR is entitled "Integration", but it actually refers to its constitution – citizens' representation is one of the primary elements of its constitution, and the Members of this Parliament will have the quality of being parliamentarians of the Member States of MERCOSUR.

Parliamentarians shall be elected by the citizens of the states parties to MERCOSUR through direct, universal and secret ballots. Elections shall be governed by the provisions of the electoral law of each state party ensuring adequate representations of peoples of different origins, and regions. Representations should reflect non-discrimination notion

between genders. Alternates will also be elected alongside the parliamentarians according to the electoral law of the states parties to MERCOSUR.

The Parliament may invite the MERCOSUR associate members to participate in its public sessions through members of their national Parliaments; they will be allowed to express their opinions on issues but with no right to vote.

The members of the Parliament shall be independent in the exercise of their functions. The initial duration of the mandates of parliamentarians will be four years, but they may be re-appointed.

The remit of the privileges and immunities of the parliamentarians will be governed by the provisions of Article 21 of the Headquarters Agreement. No civil or criminal proceedings may be brought against parliamentarians in the territory of the Member States of MERCOSUR at any time during or after the termination of his/her mandate for opinions expressed or votes cast in the exercise of their functions.

The Parliament may seek advisory opinions from the Permanent Review Tribunal at appropriate issues. The Parliament shall adopt decisions by simple, absolute or special or qualified majority. These have been defined in the following ways;

- for a simple majority, vote of more than half of the MPs present are required;
- for an absolute majority, vote of more than half of the total MPs is required;
- for a special majority, vote of the two-thirds of the MPs, including those of the parliamentarians of all the Member States shall be required, and
- for a qualified majority, affirmative votes of the majority of the members of the Parliament of each Member State is required.

The internal regulations of the Parliament shall establish the majority required for the approval of various issues.

6.1 Organisational Structure: Article 16

As to the organisational structure of the Parliament, it shall have a Board which would be responsible for conducting legislative work and administrative services. It shall also consist of a Chairman and Vice-Chairman; the latter shall be appointed from the Member States in accordance with the provisions of the rules of procedure, which will be adopted by the MERCOSUR Parliament. Furthermore, it will be assisted by a Parliamentary Secretary and an Administrative Secretary.

The Members of the Parliament shall be appointed for two

years, but they may be re-appointed for one more term. In the event of the President of the Parliament being incapable of being present, the Vice-President may be allowed to officiate, in accordance with the provisions of the Rule of Procedure. The Parliamentary Secretariat and the Administrative Secretariat will work permanently in the Parliament. Standing and temporary committees may be set up by the Parliament, which would include representations from the Member States. The technical and administrative staff of Parliament shall be composed of nationals of the Member States who will be chosen by international public tenders but with an equivalent staff of the Secretariat of the MERCOSUR. All labour disputes that may arise between the Parliament and its staff shall be settled by the Labour Administrative Tribunal of MERCOSUR.

6.2 Meetings: Articles 17 and 18

The Parliament shall meet in regular sessions at least once every month. Special sessions may be held to request the Council of the Common Market, or at the request of Parliamentary sessions, to discuss urgent or special matters. Meetings of the Parliament and of its committees shall be held in public except where they may be declared confidential. One third of the members may constitute the quorum. Each parliamentarian shall have one vote.

The acts of the Parliament may take the following forms: opinions, draft standards, proposed or otherwise, statements, recommendations and reports. It is the Parliament's duty to prepare and adopt its budget which is funded by the contributions of each state party. These contributions are based on the GDP and the national budget of each state party. Determinations of the contributions are made by the Common Market Council taking into consideration the Parliament's proposal.

The issue of accession or withdrawal of states will be governed by the rules prescribed by the Treaty of Asuncion. Adhesion to or denunciation of the Protocol of Ouro Preto would also mean adhesion to or denunciation of the Treaty of Asuncion.

The transition period entailed two stages: the first for the period from December 31, 2006 to December 31, 2010; and the second from January 1, 2011 to December 31, 2014. However, the Parliament is still in its first stage of transition, and the parliamentarians still belong to their respective Parliaments.

7. THE COUNCIL OF THE COMMON MARKET

This is the highest organ of MERCOSUR. It is responsible for practical leadership for integration purposes, and for materialising the objectives for which the Treaty of Asuncion

stands. It is also responsible for leading the establishment of the proposed common market.

The Council of the Common Market consists of the Ministers of Foreign Affairs and the Ministers of Economy of the Member States or their alternates /equivalents. The presidency of this institution shall rotate among its Member States in alphabetical order for every six months. It shall meet whenever necessary, but at least once every six months, and the Presidents of the Member States are required to participate in the meetings.

The meetings of the Council of the Common Market are to be co-ordinated by the Minister for Foreign Affairs and other ministers or ministerial authorities may be invited to participate in these meetings. The following have been identified by the Additional Protocol to the Treaty of Asuncion as the duties and functions of the Council of the Common Market (CCM) (Art 8):

1. To supervise the implementation of the Treaty of Asuncion, its protocols and agreements signed under the Treaty.
2. To formulate policies and promote the development of the Common Market with the application of appropriate measures.
3. To accord legal personality to MERCOSUR.
4. To negotiate and sign agreements on behalf of MERCOSUR with third countries, groups of countries and international organisations. These functions may however be delegated to the Common Market Group.
5. To give its decision on proposals which may be submitted to it by the Common Market Group.
6. To arrange meetings of ministers and to give its decisions on issues which those meetings may refer to it.
7. To establish organs it may consider appropriate and to abolish them where deemed appropriate.
8. To provide clarification on the substance and scope of its decisions, when it may consider it so necessary.
9. To appoint the Director of the MERCOSUR Administrative Secretariat.
10. To adopt financial and budgetary decisions; and
11. To approve the rules of procedure of the Common Market Group.

The rulings of the Council of the Common Market Group shall be rendered in the form of decision which are binding on its Member States. From the nature of the duties and

functions detailed above, one can conclude that the Council of the Common Market, which is principally a political body, has been provided with powers which are usually accorded to such institutions. Law-making by the Council may be described as its political law-making power, and its law-making power is expressed through its decisions, the binding nature of which may not be questioned.

8. THE COMMON MARKET GROUP

This is the executive organ of MERCOSUR. It consists of four members and four alternates for each Member State, who are appointed by their respective governments. These members and alternates must include representatives of the following:

- the Ministry of Foreign Affairs;
- the Ministry of the Economy (or its equivalent); and
- the Central Bank.

The Common Market Group shall be co-ordinated by the Ministries of Foreign Affairs. Given the objectives of MERCOSUR, the provision for extracting representatives from the above-mentioned institutions seems to be appropriate. Furthermore, when drafting or proposing measures of specific nature the Group can call on representatives of other organs of government or from the relevant institutions of MERCOSUR if it deems appropriate. It has the authority to hold ordinary or extraordinary meetings, as and when necessary.

The following are the duties and functions of the Common Market Group (Art 14):

- To monitor, within the limits of its competence, compliance with the Treaty of Asuncion, its Protocols and agreements signed within its framework.
- To propose draft decisions to the Council of the Common Market.
- To ensure enforcement of the decisions by the Council by taking appropriate measures to that end.
- To establish organs such as working groups and special meetings for the purpose of achieving its objectives; it can also modify the objectives of these organs or even abolish them altogether.
- To express its views only on any proposals or recommendations which may be submitted to it by other MERCOSUR organs.
- To negotiate with the representatives of all the Member States, when expressly so delegated by the Council of the Common Market, in accordance with the latter levels of competence, agreements on behalf of MERCOSUR with

third countries, groups of countries, and international organisations. It may also be authorised by the Council to sign these agreements on behalf of MERCOSUR. The Common Market Group, on the other hand, may delegate these powers to the MERCOSUR Trade Commission.

- To approve the budget and the annual statement of accounts presented to it by the MERCOSUR Administrative Secretariat.
- To adopt financial and budgetary resolutions in accordance with the guidelines laid down by the Council.
- To organise the meetings of the Council and to prepare reports and studies requested by the latter.
- To choose the Director of the MERCOSUR Administrative Secretariat; and
- To approve the rules of precedence of the Trade Commission and the Economic Social Consultative Forum.

At this point it would be apposite to mention a few matters in relation to the powers of the Council of the Common Market and the Common Market Group. Whereas the Council is predominantly a policy-making body, it falls on the Common Market Group to implement the policies to achieve the objectives of MERCOSUR, and even in certain circumstances actually conclude agreements in accordance with the mandate given to it by the Council. The Group may be described as the actual “operational engine” of MERCOSUR. Again, whereas the Council of the Common Market can only adopt financial and budgetary decisions (Art 8(x)), it is for the Common Market Group to approve the budget and the annual statement of accounts (Art 14(viii)), which is a very important power for any institution. Furthermore, it has been authorised to supervise the activities of the MERCOSUR Administrative Secretariat, which is basically a body authorised to execute the directives that may be given to it by the Common Market Group.

9. THE MERCOSUR TRADE COMMISSION

The MERCOSUR Trade Commission was set up for assisting the Common Market Group in monitoring the application of the common trade policy agreements accepted by the Parties in connection with the operation of the Customs Union. It has also the duty to do what may be described as “follow-up” and review questions and issues relating to common trade policies intra-MERCOSUR trade, ie between the MERCOSUR states, and also questions and issues arising from trade with the third countries.

The Commission consists of four members and four alternates for each party and is co-ordinated by the Ministries of Foreign Affairs. It is required to meet at least once a month, or whenever it may be requested to do so by the Common Market Group or by any of the parties to the Treaty.

The following are the duties and functions of the MERCOSUR Trade Commission (Art 19):

- To monitor the application of the common trade policy instruments operational within MERCOSUR, third countries and international organisations.
- To consider and render decisions on the requests that may be submitted to it by the states parties in connection with the application of and compliance with the common external tariff and other instruments of common trade policy.
- To follow up the application of the common trade policy instruments in the states parties.
- To analyse the progress made on the common trade policy instruments relating to the operation of the Customs Union and to submit proposals, where necessary, to the Common Market Group.
- To take decisions on the application of the common external tariff and the common trade policy instruments agreed by the state parties.
- To report to the Common Market Group on the development and application of the common trade policy instruments arising for request received from the states parties.
- To propose to the Common Market Group any new customs regulations or changes in the existing regulations.
- To propose rescission of the tariff rates for specific items of the common external tariff occasioned by new production activities within MERCOSUR.
- To set up technical committees which may be needed to effectively perform its duties, and to direct and supervise their activities; and
- To render service to the Common Market Group in relation to the common trade policy, if so requested by it.

Decisions of the MERCOSUR Trade Commission take the form of directives or proposals; directives are binding upon the states parties. The MERCOSUR Trade Commission is also responsible for considering complaints which may be referred to it by the Commission's National Sections, or by states parties, or by individuals, including corporate entities, relating to situations provided for in Article 7 or Article 25 of

the Brasilia Protocol for the Settlement of Disputes.

A complainant is not prevented from taking action under the Brasilia Protocol even though it was referred to the Trade Commission.

The MERCOSUR Trade Commission is obviously an expert body possessing expertise in trade and Customs Union-related issues. Although it is subordinate to the Common Market Group, in effect it is the principal body to monitor the application of the common trade instruments and to ensure the success of the Customs Union. As stated earlier, it has also the authority to consider judiciary or otherwise trade and Customs Union-related issues.

10. THE JOINT PARLIAMENTARY COMMISSION

The Joint Parliamentary Commission is the organ which represents the Parliaments of the states parties to MERCOSUR. It consists of an equal number of members of parties of the Member States, who are appointed by the respective national Parliaments.

One of the principal functions of this Commission is to hasten internal procedures in the Member States to ensure the prompt enforcement of the decisions taken by the MERCOSUR organs. It is required to render assistance to the harmonisation of legislation which is a factor of the integration process. The harmonisation of legislation as a factor of the integration process seems to have been taken seriously by MERCOSUR, because under the Protocol of Ouro Preto the Council of the Common Market can request the Joint Parliamentary Commission to examine issues which have been accorded priority by the Council. The Joint Parliamentary Commission submits recommendations to the Council of the Common Market through the Common Market Group.

11. THE ECONOMIC-SOCIAL CONSULTATIVE FORUM

The Economic and Social Consultative Forum is the organ which represents the economic and social sectors of the Member States and consists of equal numbers of representatives from each state party. This forum, which has a consultative function, submits its recommendation on various issues within the purview of its mandate to the Common Market Group.

The title of this forum is self-explanatory. It is a forum which offers a platform for discussion of issues and matters among representatives of the Member States, which, in reality, should assist the other constituent organs of MERCOSUR, namely, the MERCOSUR Trade Commission and the Joint Parliamentary Commission. This forum should also be regarded as an expert body.

12. THE MERCOSUR ADMINISTRATIVE SECRETARIAT

The Administrative Secretariat is led by a Director who shall be a national of one of the Member States of MERCOSUR. He/she is chosen by the Common Market Group on a rotating basis, following consultation with the Member States and is appointed by the Council of the Common Market. His/her term of office is two years, and he/she may not be re-elected.

The Administrative Secretariat, which is required to provide operational support, is responsible for providing services to the other MERCOSUR organs. It is based in the City of Montevideo, and is required to carry out the following activities:

- To serve as the official archive for MERCOSUR documents.
- To publish and circulate the decisions adopted by the MERCOSUR institutions; it is also required to translate these documents into authentic Portuguese and Spanish language and make them available to all concerned.
- To publish the MERCOSUR official journal.
- To organise the logistical aspects of the meetings of the MERCOSUR organs, namely, the Council of the Common Market, the Common Market Group, and the Trade Commission, and the other MERCOSUR organs, when those meetings are to be held at the headquarters of MERCOSUR. In the event of any meetings being held outside of the headquarters, the Secretariat is required to provide support to the state in which the meeting will take place.
- To inform on a regular basis the state parties of the measures taken by each Member to incorporate into its legal system the decisions adopted by the MERCOSUR organs.
- To compile national lists of arbitrators and experts, presumably who possess expertise in customs unions and trade-related issues and matters.
- To perform tasks which may be requested by the Council of the Common Market, the Common Market Group and the MERCOSUR Trade Commission.
- To prepare the draft budget for the organisation, and upon approval of it by the Common Market Group to action with a view to ensuring its appropriate implementation; and
- To submit annually its report on its activities along with the statement of accounts to the Common Market Group. The budget is funded by equal contributions

from the states parties to the Protocol.

As the title of the organisation suggests, the MERCOSUR Administrative Secretariat is an administrative body. One of the most important activities of this organ is to prepare the budget of the organisation. As it is required to submit its annual report to the Common Market Group, it may safely be assumed that the Administrative Secretariat is accountable to the former (the Common Market Group).

13. A BRIEF ANALYSIS OF THE INSTITUTIONAL STRUCTURE OF MERCOSUR

MERCOSUR is an inter-governmental institution, headed by the Common Market Council with decision-making power, and is responsible for overseeing compliance with the strategic objectives identified in the Asuncion Treaty and the Ouro Preto Protocol. It is primarily a political body to provide policies and meets twice a year – first, with the Ministers of the Council and second, to meet the member countries' Presidents. It is also very much involved in what may be described as “public relations” work both within and outside MERCOSUR.

The Common Market Council delegates many of its responsibilities to the Common Market Group. In reality, it is an executive organ; thus, it is required to implement the decisions of the Council, to ensure the proper functioning of the integration process, and to negotiate trade relations with third countries under the mandate of the Council.

The Common Market Group has the privilege of being assisted by a number of consultative and negotiating teams in a wide range of disciplines including financial affairs, transport, communications, industry, the environment, agriculture, energy, health, investment etc. In addition to these consultative and negotiating teams, the Common Market Group is also assisted by a number of ad hoc groups, specialised assemblies and committees to deal with issues such as science and technology, tourism, drugs, and women's issues.

The Trade Commission, as stated earlier, is primarily concerned with an effective application of the common trade policy within the region. It is in a way the nerve centre of trade and related issues. By virtue of being an expert body, its decision-making technique will hopefully be less politically charged. The Trade Commission is assisted by certain subsidiary bodies to ensure a proper application of the competition policy, for example, or issues relating to the protection of consumers. There is also the Trade Defence and Safeguards Committee, the objectives of which are self-explanatory.

The consultation mechanism in the Trade Commission facilitates resolution of differences between the Parties concerned that may arise from trade-related transactions

or in regard to the implementation of the common trade policies or even issues related to tariff barriers, unilateral tariff modifications or trade barriers of any nature.

Incidentally, the Economic and Social Consultative Forum, which is composed of representatives of different economic and social sectors of the Member States, has also only consultative factions. Its recommendations are forwarded to the Common Market Group, and this forum provides a channel for participation of the civil society in the integration process – a bottom-up approach. On the other hand, there exists the opinion that the participation of civil society and of the members of Parliaments has been limited and their recommendations have had minimal practical effect (see C Pena and R Rozemger, “MERCOSUR: A Different Approach to Institutional Development”, FOCAL (Canadian Foundation for the Americas FPP-05-06 at 5).

Like many other organisations, MERCOSUR maintains a hierarchy of institutions from political to non-political institutions. In most, a political body heads the institutions as the policy-making body. In the case of MERCOSUR however, the expert bodies seem to have a significant role to play. Both the Common Market Group and the Trade Commission are pro-integration institutions, although they work under the policy framework of the Council. In all such institutions, which are composed of sovereign states, what is most needed is a high level of internal co-operation, which should not be developed in a coercive fashion.

14. CONCLUSIONS

As controversies exist as to the characteristics of supranational organisations, it would be safer to call MERCOSUR an inter-governmental institution as such institutions can also be engaged in an integration process – provided of course the required will for it exists among the Member States.

The organisational structure of MERCOSUR is quite elaborate, and one can only hope that no overlaps and conflicts in programme operations can take place. From the state constitutional point of view certain difficulties seem to exist in achieving total integration. Whereas the Constitutions of Argentina and Paraguay allow international treaties supremacy over national laws, and delegate powers and responsibilities to external inter-governmental / supranational entities, the constitutions of Brazil and Uruguay do not accord any supremacy to international treaties over national laws. In the case of Brazil however, it may be maintained that Article 4 of the constitution, which deals with Latin American integration, offers a sufficient legal platform for the development and operation of a MERCOSUR Community law.

The legal structure of MERCOSUR has already been referred to. Although the sources of MERCOSUR Law are

clear, the “derived law” or whatever designation one may like to give it – that is, the laws developed by MERCOSUR institutions – has no “direct effect”, unlike, for example, the European Union; they are required to be “internalised” by each of the Member States. Having realised this difficulty, which is a hindrance to the integration process, Article 40 of Ouro Preto Protocol created a *sui generis* system which would be brought into effect in the following ways: (a) incorporation by each Member State of the directions into its internal law and notify the MERCOSUR Secretariat accordingly; (b) after incorporation has occurred in all the Member States, the MERCOSUR Secretariat will notify each of the Member States of this; and (c) simultaneous enforcement will take place within 30 days of the notification by the MERCOSUR Secretariat.

But the above system failed to produce the desired result. Attempts were made by the MERCOSUR Council in 2002 and 2004 to improve the internalisation process by the Member States. Council Decision 22/04 (2004) adopted a new procedure for the application of MERCOSUR norms that would not require legislative approval in the Member States. Instead, the 2004 directive recommended the following guidelines to implement decisions, resolutions and directives:

- to carry out internal consultations in accordance with Decision 20/12 to adopt norms;
- to get the norms approved by the MERCOSUR institutions, and upon receipt of the approval by the Ministers of Foreign Affairs, the Member States will have to publish them in their respective official bulletins (40 days prior to their coming into force);
- after publication the norm is to be considered as part of the national legal system.

In order to deal with the issue where norms would require Parliamentary approval, an inter-institutional agreement was concluded between the Council and the Final Parliamentary Commission in October 2003. The Council agreed to consult the Joint Parliamentary Commission on the issues which would require Parliamentary approval for their incorporation into the Member States’ legislative orders.

The integration process has proceeded with difficulties and has lost its initial momentum. The reasons for the actual difficulties could be identified as follows:

- a. Despite the increase in interregional trade, sometimes there are no tariff barriers between Member States.
- b. The highest organ of peaceful settlement of disputes in MERCOSUR is the Court of Arbitration, the performance of which has been very limited in terms of the quality and contents of the cases presented. Sometimes its awards have not been enforced by some states.

- c. The import substitution policy approach from members of the organisation such as Argentina, and Brazil has been applied several times. This has caused difficulties in increasing the openness of the regional market to the world. The clear objective of the countries mentioned is to protect their domestic markets from foreign access. The trade statistics in 14.1 below demonstrate the low degree of commercial openness of the main partner countries of MERCOSUR. The data also shows that MERCOSUR has little commercial importance for Brazil, and to some extent for Argentina as well. The economies of Paraguay and Uruguay are more dependent on regional trade.
- d. Ultimately, the political issues seem to prevail over legal ones, and there is some legal uncertainty in the relationship between some of the members of the common market. The common market as such remains a goal, although there have been very few policies that have sought to harmonise the legislation.

In conclusion, despite all the difficulties mentioned above, MERCOSUR remains the most important process of South American integration. Nevertheless, one may wonder whether a mere association of states for trading purposes like the Association of South East Asian Nations (ASEAN) would be a better alternative when states are inclined to maintain their sovereignty so rigidly.

14.1 Trade statistics for MERCOSUR Member States

Table 1

		thousands of millions				U\$S			
	MERCHANDISE	2008	2009	2010	2011	2012	2013	2014	
ARGENTINE	EXPORT	68	72	86	103	95	81	71	
	IMPORT	70	48	68	98	83	73	65	
	TRADE BAL	-2	24	19	5	11	8	6	
	TOTAL	138	120	154	201	178	154	136	
	EXP DESTIN	MERCOSUR	BRAZIL	18%	IMPORT	MERCOSUR	BRAZIL	19,50%	
			URUGUAY	2%	ORIGIN		URUGUAY	0,70%	
			PARAGUAY	0,9			PARAGUAY	0,71%	
			VENEZUELA	0,8			VENEZUELA	0,01%	
			TOTAL	21,70%			TOTAL	20,92%	
URUGUAY	MERCHANDISE	2008	2009	2010	2011	2012	2013	2014	
	EXPORT	6	5,5	6,7	8	8,7	9,1	9,1	
	IMPORT	6,4	5,2	6,9	8,5	8,5	9,5	9,6	
	TRADE BAL	-0,4	0,3	-0,2	-0,5	-0,2	-0,4	-0,5	
	TOTAL	12,4	10,7	13,6	16,5	17,2	18,6	18,7	
	EXP DESTIN	MERCOSUR	BRAZIL	18,10%	IMPORT	MERCOSUR	BRAZIL	17,30%	
			ARGENTINE	4,40%	ORIGIN		ARGENTINE	15%	
			PARAGUAY	1,70%			PARAGUAY	1,60%	
			VENEZUELA	4,50%			VENEZUELA	2,30%	
			TOTAL	28,70%			TOTAL	36,20%	
BRAZIL	MERCHANDISE	2008	2009	2010	2011	2012	2013	2014	
	EXPORT	197	153	197	256	243	242	225	
	IMPORT	182	128	180	226	223	240	229	
	TRADE BAL	15	25	17	30	19	2	-4	
	TOTAL	379	281	377	482	466	482	454	
	EXP DESTIN	MERCOSUR	URUGUAY	1,46%	IMPORT	MERCOSUR	URUGUAY	0,68%	
			ARGENTINE	8%	ORIGIN		ARGENTINE	6,80%	
			PARAGUAY	1,37%			PARAGUAY	0,54%	
			VENEZUELA	1,47%			VENEZUELA	0,45%	
			TOTAL	12,53%			TOTAL	8,47%	
PARAGUAY	MERCHANDISE	2008	2009	2010	2011	2012	2013	2014	
	EXPORT	6,4	5	7	8	7	9	10	
	IMPORT	9	7	10	12	12	12	12	
	TRADE BAL	-2,6	-2	-3	-4	-5	-2	-2	
	TOTAL	15,4	12	17	20	19	21	22	
	EXP DESTIN	MERCOSUR	URUGUAY	11,80%	IMPORT	MERCOSUR	URUGUAY	2%	
			ARGENTINE	8%	ORIGIN		ARGENTINE	22%	
			BRAZIL	31%			BRAZIL	25%	
			VENEZUELA	0,03			VENEZUELA	0,01%	
			TOTAL	50,83%			TOTAL	49,01%	
VENEZUELA	MERCHANDISE	2008	2009	2010	2011	2012	2013	2014	
	EXPORT	95	57	65	92	97	89	80	
	IMPORT	50	41	39	48	60	53,5	44	
	TRADE BAL	45	16	26	44	37	35,5	36	
	TOTAL	145	98	104	140	157	142,5	124	
	EXP DESTIN	MERCOSUR	URUGUAY	0,16	IMPORT	MERCOSUR	URUGUAY	1,60%	
			ARGENTINE	0,50%	ORIGIN		ARGENTINE	5,60%	
			BRAZIL	9,34%			BRAZIL	8,60%	
			PARAGUAY	0,02%			PARAGUAY	0,16%	
			TOTAL	10,02%			TOTAL	15,96%	
Rate of openness: PBI/ commercial trade:									
(U\$S billion) gdp Trade Total index									
ARGENTINE	545	136	4						
Brazil	2245	454	4,94						
Paraguay	30	22	1,36						
Uruguay	55	18,7	2,94						
Venezuela	377	124	3,04						

The following is a guide to understanding the data in Table 1:

1. The figures in the tables of merchandise are in thousands of dollars.
2. The table only shows the merchandise trade without services trade data.
3. The tables show export, import, trade balance (export-import) and total (export + import).
4. Trade balance may be positive or negative (eg Uruguay in 2014 has \$0.5 thousand million dollars of negative balance).
5. The first and second rows of the table show the percentages of exports and imports.
6. “Exp destin” means the percentage of the export.
7. Import origin means the percentage of the imports.
8. The percentages show the trade to and from MERCOSUR countries (eg Uruguay exports to Brazil 18.1% (of the total) and imports from this country 17.3%). The table helps us to understand the MERCOSUR countries’ dependency taking into account its total trade with the rest of the world.
9. The total percentages are the export and import trade with MERCOSUR countries (eg Uruguay exports 28.70% of the total to MERCOSUR countries and imports 36.2%). That means Uruguay exports 71.3 per cent of its merchandise to the rest of the world and import 63.8 per cent of merchandise from the rest of the world.
10. Data on rate of openness is contained in Table 2 below.

Table 2

(US\$ billion)	gdp	Trade Total	Index
Argentina	545	136	0,24
Brazil	2245	454	0,2
Paraguay	30	22	0,73
Uruguay	55	18,7	0,34
Venezuela	377	124	0,32

The data explains how open a country to the world is. Low figures means less open, high figures more open. When index is highest the economy is more open. The table shows that Paraguay is the more open country followed by Uruguay. Brazil and Argentina receive the lowest rate because their commercial policies are not open enough to the world.

Professor C Chatterjee

*LL M (Cambridge), LL M, Ph D (London), Barrister;
Co-Director, London Academy of Diplomacy.*

Professor Enrique Hernandez Sierra

*LLM (London), MA, DEA, Aggregate Professor of Public
International Law, Faculty of Law, University of the Republic of
Uruguay.*