

Mercosur's experiences of preparing trade negotiations with the EU

A memorandum

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Discussion Paper No. 50

January 2004



EUROPEAN CENTRE FOR DEVELOPMENT POLICY MANAGEMENT
CENTRE EUROPÉEN DE GESTION DES POLITIQUES DE DÉVELOPPEMENT

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¹ I am very thankful to Aldo Centurión López, Pedro da Motta Veiga and José Manuel Quijano for their able memoranda on Paraguay, Brazil and Uruguay, respectively. I also thank those government officials who accepted to be interviewed and to comment on my thoughts and findings, as well as my colleagues at the ECDPM for their useful comments. Of course, any errors of fact or interpretation are my own exclusive responsibility.

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Summary

This paper reviews MERCOSUR's experience in conducting trade negotiations with the European Union (EU). Following a brief introduction, the second section discusses the political, governance and economic context of trade policy-making, emphasizing the role played by political democratisation, trade liberalisation, the widening scope of trade negotiations and the conduct of overlapping and simultaneous negotiations.

The third section briefly reviews the practice of trade policy-making and trade negotiations in each MERCOSUR member state, underlining differences and similarities. In the case of each country the focus is placed on how trade policy is made in the public sector, how negotiations are conducted and what is the role of the private sector in both.

The fourth section analyses trade policy formulation and negotiations at the regional level. Since MERCOSUR is supposed to be a customs union, trade policy instruments and negotiations must be enforced and conducted on a collectively agreed basis. By focusing first on the intra-regional dynamics, the section discusses how MERCOSUR is organised to undertake intra-regional negotiations. In particular, we emphasise the strong inter-government character of the decision making process and the fragilities of rule-making and implementation procedures. This section also examines how MERCOSUR has organised to conduct negotiations with third parties. We pay particular attention to MERCOSUR's difficulties to identify and enforce a "regional negotiating position", except for the definition of broad negotiating principles. The third section also addresses the issue of technical cooperation (how it is managed at the regional level) and private sector participation.

The fifth section reviews in more detail MERCOSUR's trade policy-making and negotiations with the European Union. Since the signature of the Bi-Regional Framework Agreement in December 1995, MERCOSUR and the EU have developed continuous negotiations aimed at a trade, political and cooperation agreement. This section reviews the conduct of such negotiations on the MERCOSUR side, illustrating some of the weaknesses previously identified.

Finally, a sixth and last section summarizes some lessons drawn from MERCOSUR's experience that can help to develop better negotiating practices. The lessons focus on the domestic dimension of the trade policy-making and negotiating process, as well as in the collective aspects of negotiations with third parties. The conclusions do not aim to suggest recipes for success, but to identify critical areas (by the standard of MERCOSUR's experience) that will need to be addressed with creativity based on national circumstances.

Acronyms

ALCA	Área de Libre Comercio de las Américas
CACEX	Câmara de Comercio Exterior (Brazil)
CEFIR	Centro de Entrenamiento y Formación para la Integración Regional
CEII	Comisión Especial de Comercio Internacional e Integración (Paraguay)
CET	common external tariff
CICI	Comisión Inter-ministerial de Comercio Internacional (Argentina)
CMC	Common Market Council
CMG	Common Market Group
CNI	Confederação Nacional da Indústria (Brazil)
COMISEC	Comisión Sectorial para el MERCOSUR (Uruguay)
CONACIN	Consejo Nacional de Comercio e Integración
CTC	Committee on Technical Cooperation
EU	European Union
FCES	Foro Consultivo Económico y Social
FTA	free trade agreement
FTAA	Free Trade Area of the Americas
GATT	General Agreement on Tariffs and Trade
GSP	Generalised System of Preferences
IADB	Inter-American Development Bank
LAFTA	Latin American Free Trade Association
LAIA	Latin American Integration Association
NAFTA	North American Free Trade Agreement
MERCOSUR	Common Market of the South
MFN	most favoured nation (principle)
MTNs	multilateral trade negotiations
SENALCA	Secretaría Nacional da ALCA (Brazil)
SENEUROPA	Secretaría Nacional da Europa (Brazil)
WTO	World Trade Organization

1 Introduction

This paper reviews the record of the Common Market of the South (MERCOSUR) in the realm of foreign trade policy-making and negotiations.² Section 2 provides a brief overview of the political, governance and economic context of trade policy-making and negotiations in the region. Section 3 offers a stylised account of changing national policy-making practices.

Section 4 reviews the content and performance of existing regional arrangements in the realm of trade policy-making and international negotiations. Section 5 reviews how member countries and MERCOSUR have managed their trade negotiations with the European Union (EU). Finally, section 5 draws some policy conclusions based on the national and regional experiences.

2 The political, governance and economic context of trade policy-making

In the last 15 years the trade policy-making machinery of the member states of MERCOSUR has undergone significant transformations. These transformations were the result of a combination of factors, the most important being: (a) domestic political democratisation; (b) trade policy liberalisation; (c) the increasing breadth and coverage of international trade agreements; and (d) the multiplicity of negotiating rings. Together, these factors rendered existing trade policy-making procedures obsolete. However, the emergence and consolidation of a new pattern have been slow and uneven across countries.

2.1 Domestic political democratisation

During the post-war period, trade policy-making and international negotiations were in the hands of a small techno-bureaucracy with informal and opaque links with the private (business) sector.³ This policy-making approach was consistent with import substitution, which made trade policy predominantly inward-looking, and the prevalence of authoritarian regimes, which limited the ability of other branches of government (including legislatures) and non-business private actors (i.e. civil society) to engage actively in the policy process. With the emergence of democratic regimes in the 1980s this environment gradually changed. In many countries the process of democratisation coincided with a major overhaul of the trade policy regime and the abandonment of inward-orientation. However, this extensive reform process was conducted predominantly from 'top-down', inhibiting the structured participation of either the private sector or other branches of government.

However, the democratisation of political regimes and the waning of the initial, more radical phase of trade policy reforms gradually laid the basis (and created the pressure) for more open and participatory policy-making processes. Both the legislatures (which frequently hold the primary law-making authority) and non-business actors (such as trade unions and non-governmental organisations) became more actively engaged in the trade policy debate and policy-making process, limiting the autonomy of the techno-bureaucracy. This process is epitomised by the loss of the quasi-monopoly power over trade negotiations traditionally enjoyed by Itamarati, the Brazilian Ministry of Foreign Relations.

The transition to broader participation in the trade policy-making process has not been a smooth one, however. The lack of experience, poor organisation and the tradition of opaque policy-making procedures have often made

² The member states of MERCOSUR are Argentina, Brazil, Paraguay and Uruguay. Chile and Bolivia are associate members.

³ For an analysis of trade policy-making institutions and procedures in Argentina, Brazil and Uruguay, see IADB (2002)

broader participation cosmetic rather than substantive. Indeed, such participation has often been used to legitimise outcomes rather than to weigh alternative policy options and channel particular interests in a transparent manner. Yet what started as cosmetic engagement gradually opened the door to a learning process and created pressure for more substantive participation. These new demands and opportunities also made clear the limited resources and the poor technical expertise available in the private sector as well as in various branches of government (including the legislatures). These shortcomings acted as powerful barriers to the ability of these sectors to provide meaningful inputs to the policy process.⁴

2.2 Trade policy liberalisation

Trade liberalisation has been a multi-layered process carried forward on a unilateral, multilateral and preferential basis. Although the starting points, pace and depth of unilateral trade liberalisation have differed across countries, by the early 1990s all MERCOSUR member states had firmly established more outward-oriented trade regimes.⁵ Commitments undertaken in the Uruguay Round of multilateral trade negotiations (MTNs) consolidated many of these unilateral reforms as well as new and more binding disciplines in a variety of areas. Preferential negotiations, and particularly the creation of MERCOSUR, also contributed to further liberalisation and trade policy reform.

This multi-layered process of trade liberalisation has affected policy content as well as policy-making procedures. In particular, unilateral liberalisation and the abandonment of import substitution rendered obsolete many of the pre-existing instruments and policy-making routines. These included the traditional sector focus of trade policy, the relatively high autonomy and discretion enjoyed by the techno-bureaucracy (most remarkably in the case of Brazil, but also in Argentina) and the informal and opaque channels of interaction with the private (mainly business) sector.

The Uruguay Round agreements have also had a significant impact on trade policy-making. The private sector, as well as trade officials, gradually realised that more binding multilateral commitments meant less discretion in using trade policy instruments. Complex multilateral negotiations also demand a better understanding of what is at stake and adequate assessments of the costs and benefits of alternative outcomes. The creation of the World Trade Organization (WTO) and a more effective dispute settlement procedure also raised the demands for very specific technical competencies in both the public and private sectors.

The creation of MERCOSUR also posed new and more stringent demands on trade policy-making and participation procedures. A dense intra-regional agenda made national trade (and other agencies') bureaucracies subject to routines of structured interaction on a wide range of policy areas, significantly raising the demand for expertise and coordination. Equally, it stimulated the more active involvement of non-state actors (i.e. private sector and civil society).

⁴ Many public sector officials complain that the private sector often fails to provide adequate inputs to the policy-making process due to the lack of technical expertise and human and material resources. In some countries there are also broader problems of representation that affect private sector organisations; industrial associations, for instance, may not adequately represent their membership.

⁵ Whereas Argentina, Brazil and Uruguay enforced import substitution policies during most of the postwar period, Paraguay implemented a trade regime that was substantially more open than those of its neighbours. The relatively high incidence of informal trade flows made its economy *de facto* more open than those of the rest of the region.

2.3 The increasing breadth and coverage of international trade negotiations

The increasing breadth and coverage of foreign trade negotiations have also had major influences on trade policy-making. The Uruguay Round agreements cover much broader and deeper ground than the pre-existing General Agreement on Tariffs and Trade (GATT). The WTO disciplines deal with issues as diverse as 'non-border' barriers to trade, the protection of intellectual property rights, and the rules applicable to trade in services. This is a complex, demanding and contentious agenda.

The demands are even greater in the realm of preferential negotiations. MERCOSUR aims at creating a customs union and a common market. This ambitious goal involves more than the elimination of tariff barriers to intra-regional trade – as a minimum, it also requires the adoption of a common external trade policy. This means that member states have to agree on a common structure of protection and, equally important, enforce common disciplines on issues as diverse as customs procedures, trade relief and competition policy. The Treaty of Asunción that created MERCOSUR also includes commitments to coordinate policies in the realms of agriculture, industry and macroeconomics. This challenging agenda has been compounded by other preferential negotiations, such as the Free Trade Area of the Americas (FTAA) and the negotiations with the EU. By definition, these exercises are aimed at reaching WTO-plus agreements, meaning that their coverage and depth are expected to go beyond existing multilateral arrangements.

This broader and more complex agenda has also rendered the pre-existing trade policy-making procedures obsolete. A small techno-bureaucracy relatively isolated in a government agency is no longer able to deal with such a complex set of issues. The new agenda demands an inter-agency policy-making process and a significant increase in coordination. In addition, it also broadens the range of private sector parties that will be potentially interested in or affected by international negotiations.

2.4 Multiple negotiating rings

As mentioned before, trade policy reform in MERCOSUR has been a multi-layered process involving simultaneous engagements in a variety of negotiating scenarios. One such scenario is the multilateral trading system, which demands a continuous focus on a diverse and complex set of issues. The other scenario is preferential negotiations. For MERCOSUR member states, this has been tantamount to intra-regional negotiations, as well as negotiations with third parties such as the other members of the Latin American Integration Association (LAIA), the FTAA process, and negotiations with the EU.⁶ These multiple and simultaneous negotiating rings demand physical infrastructure, human resources, technical competencies and coordination abilities.

The multiplicity and simultaneity of these negotiations mean that the parties could benefit from complementarities and a potentially high degree of cross-fertilisation. But in order to realise this potential, countries must be capable of putting to work the necessary coordinating capacities. These have not been easily forthcoming in a context where tradition has enshrined centralised, non-transparent and non-participatory policy-making processes. In addition, for the smaller countries of Latin America, these simultaneous negotiations have meant that their already scarce resources have been significantly overstretched.

⁶ LAIA, created by the Montevideo Treaty in 1980, was the successor to the Latin American Free Trade Association (LAFTA).

2.5 Summary

In less than a decade the contextual changes reviewed have rendered the old trade policy-making process obsolete. It is no longer the case that a relatively autonomous techno-bureaucracy enjoys quasi-monopoly control over trade policy-making. Political democratisation has opened the door to legitimate pressures for the participation of a more diverse set of actors, in both the private and public sectors. In addition, trade policy liberalisation, the growing breadth and complexity of the trade agenda, and the increasing number of negotiating rings have multiplied the relevant policy issues, shifted the emphasis from sector to 'horizontal' policies and disciplines, raised the demand for more structured and transparent policy-making procedures, and increased the need for more effective coordination.

The result has been a transition in trade policy-making mechanisms. Old procedures are no longer working, but the emergence of new and more effective mechanisms is taking time and demanding significant material and organisational resources. Within MERCOSUR, the experiences with the reform of national trade policy-making institutions and procedures have been mixed, with some countries displaying better records than others. At the level of regional policies, progress has been even more modest. After a promising start, the credibility of MERCOSUR's policy-making and negotiating machinery has deteriorated badly, as member states have failed to identify common and complementary interests and to arbitrate existing differences.

Since the mid-1990s MERCOSUR has displayed a growing 'implementation gap', which has led some to question the regulatory efficacy of the customs union.⁷ By the same token, MERCOSUR's participation in more complex and demanding negotiations (such as the FTAA and with the EU) has been basically 'reactive'. In these cases MERCOSUR's negotiators have had to face counterparts who are better equipped, have better-defined negotiating objectives, and operate through relatively well-established routines and procedures.

The next three sections address in more detail the national, regional and extra-regional dimensions of trade policy-making in MERCOSUR.

⁷ For a detailed analysis of MERCOSUR's regulatory performance, see Bouzas, da Motta Veiga and Torrent (2003).

3 Trade policy formulation and negotiations in practice: the national dimension

3.1 Argentina

Traditionally, trade policy-making and implementation in Argentina have been the responsibility of the Secretary of Industry and Trade of the Ministry of the Economy.⁸ Trade negotiations and export promotion activities, in turn, are coordinated and carried forward by the Ministry of Foreign Relations, International Trade and Worship. The divisions and fragmentation typical of the Argentine political economy, coupled with the institutional and financial crisis that has pervaded the public sector during the last decade, have conspired against a coherent and articulate policy-making process.

Trade policy-making in Argentina is not subject to formal deliberative procedures and there is little inter-agency coordination. The trade policy-making process lacks formal mechanisms and procedures to make, coordinate and enforce decisions in a consistent manner. This situation is aggravated by the fact that several agencies take part in the policy process. These characteristics have made the policy output highly dependent on personalities and special circumstances. As a result, the policy process is fragmented, lacks continuity and is beset by significant inter-agency competition, all of which have affected the credibility and bargaining capacities of Argentine trade negotiators.

During the early years of MERCOSUR, the participation of Argentina in the process of regional economic integration was highly centralised in the Ministry of Foreign Relations. This agency took care to keep the negotiations as isolated from the influence of the private (business) sector as possible.⁹ However, the need to deal with a broad intra-regional policy agenda gradually stimulated the involvement of other public sector agencies, mainly through their engagement in the working groups responsible for technical negotiations.¹⁰ This broader official engagement obviously increased the demand for coordination.¹¹

The fragility of the Argentine trade policy-making process and the internal divisions over multiple policy issues were on some occasions transferred to the regional negotiating arena. Not infrequently, different government agencies (particularly high-ranking officials) adopted divergent stances regarding intra-regional policy issues and/or the best way to conduct international negotiations. Since no mechanism was put in place to iron out these divergent views and to produce a unified policy, the credibility of Argentine negotiators suffered badly.

The only formal mechanism that the Argentine public sector has put in place to coordinate, exchange information and develop national positions concerning issues that are to be addressed simultaneously in various negotiating tables is the national section of the Common Market Group (indeed an outgrowth of the MERCOSUR process). Although informal exchanges among officials is customary (particularly when they belong to the same agency),

⁸ In 2002 the Secretary of Industry and Trade and the Secretary of Agriculture became part of a new Ministry of Production. However, tariff policy remained under the authority of the Treasury Secretary at the Ministry of the Economy. In May 2003 the Ministry of Production was absorbed by the Ministry of the Economy. The remainder of the Ministry of Production and other agencies became a new Ministry of Infrastructure. The public sector is frequently subject to such organisational changes, which negatively affect institutional learning and capabilities.

⁹ The *Acta de Buenos Aires*, signed in 1990 by Argentina and Brazil, launched an automatic, linear and across the board programme of tariff cuts. The procedures of the *Acta de Buenos Aires* were adopted by MERCOSUR when member countries signed the Treaty of Asunción in March 1991. The *Acta de Buenos Aires* constituted a major procedural innovation, as it replaced the case-by-case, item-by-item market access negotiations typical of LAIA, with automatic and generalised tariff phase-out schedules.

¹⁰ The organisational structure of MERCOSUR includes a diverse array of working groups (reporting to the Common Market Group) and technical committees (reporting to the Trade Commission). For a discussion of MERCOSUR's institutional structure, see Bouzas and Soltz (2001).

¹¹ The demand for national coordination was enhanced by the fact that all of MERCOSUR's decision-making bodies include at least two national officials. The top decision-making body (the Common Market Council), for example, includes ministers of the Economy and Foreign Relations. The executive body (the Common Market Group) and the Trade Commission (see below) also include two national representatives from each member state.

inter-agency competition and different agency cultures have precluded the existence of more structured channels of interaction. In 2000 the government created a *Comisión Inter-ministerial de Comercio Internacional* (CICI) to coordinate trade policy-making and implementation and to set international negotiating strategies. The *Comisión* included representatives from all participating public sector agencies and operated under the authority of the Secretary of the Presidency. The initiative had little impact, however, probably because its chairman lacked the leadership skills and the authority required to align all the public sector agencies traditionally engaged in trade policy-making. Devoid of legitimacy and effective authority, the *Comisión* faded away unnoticed.

Argentina's trade policy process and negotiating capacities are also handicapped by the poor technical support infrastructure. The highly informal and idiosyncratic policy process limits the demand for and the potential contribution of technical support activities. The *Centro de Economía Internacional* of the Ministry of Foreign Relations – the agency with the most stable and well-trained trade bureaucracy – is a small research unit that provides technical support and background assistance to the negotiators. Within the Secretary of Industry and Trade this role is played by the *Centro de Estudios de la Producción*, but the activities of this unit have been stifled by budget constraints and a volatile technical staff. Often, their work involves disseminating information and providing support to official policies rather than providing technical assistance to the negotiators.

The structural features of trade policy-making have also hampered Argentina's ability to benefit from technical cooperation and assistance for trade-related capacity building. The main problems include: (a) the lack of adequate identification of the needs and demands of the public sector; (b) overlapping responsibilities and lack of coordination within the executive; (c) inter-agency competition for technical support funds and the lack of domestic counterpart funds for international cooperation programmes; and (d) the poor interaction between public officials and temporary personnel working under technical cooperation contracts.

Each of these problems warrants a detailed explanation, but that is beyond the scope of this paper. At this stage it may be sufficient to point out that the absence of clearly identified needs tends to mean that technical assistance is driven by supply, rather than demand considerations. Similarly, the poor coordination among executive departments and inter-agency competition mean that the outputs of technical cooperation (such as studies) may overlap and duplicate or, even worse, remain on the shelf unknown to the negotiators. A related problem is the distance that tends to exist between politically appointed officials and 'technical experts' on the one hand, and 'bureaucrats' (civil servants) on the other. In this context, technical assistance is often used as a source of revenue in the context of tight budgets rather than as a mechanism to strengthen and support the policy-making process and the negotiations. The relatively high rate of rotation of high-level (politically appointed) officials also means that technical assistance programmes are unstable, lack continuity and do not have a medium- or long-term focus.

As in the rest of the region, trade policy reform and unilateral liberalisation have been largely 'top-down' processes since the late 1980s. By necessity, then, trade policy remained highly centralised and was designed and implemented with relatively little consultation with and participation of the private sector. However, as the major reform drive waned in the mid-1990s, the private sector again became engaged in the trade policy-making process. The phasing out of special treatment in MERCOSUR (such as the exceptions to intra-regional preferences) and the negotiation of a common external tariff (CET) also encouraged the involvement of the private (business) sector, albeit following the traditional sector approach. The same methodology was applied when market access offers were drafted in the context of the FTAA and the negotiations with the EU. Private sector actors other than business, in turn, remained largely excluded from the policy process.

In the case of Argentina, the informal, case-by-case and sector approach characteristic of the 'defensive' attitude towards international negotiations and trade policy-making that prevailed during the period of import substitution has not yet been replaced by more suitable mechanisms that can deal with diverse, technically complex and multilayered negotiations. In order to respond to these demands, in 2002 the government established a *Consejo de Comercio Internacional*, composed of government officials and representatives of the private (business) sector, trade unions and academia. The *Consejo* meets under the initiative of the administration to discuss issues related to international trade negotiations. Although the *Consejo* is relatively new, its activities have so far concentrated on disseminating information rather than on providing a forum for policy debates. This has been partly a result of the fact that the private sector has so far maintained a passive attitude towards the operation of the *Consejo*.

3.2 Brazil

During most of the post war period, Brazilian trade policy-making and negotiating procedures were paradigms of the sector approach and the comparatively high leverage enjoyed by a mighty techno-bureaucracy, largely concentrated in the Ministry of Foreign Relations and a few other agencies such as the *Câmara de Comércio Exterior* (CACEX). The macroeconomic crisis of the early 1980s radically altered the environment in which trade policy was made and international negotiations were conducted. First, the LAIA process – the favourite arena of Brazilian trade negotiators – came almost to a complete standstill. Second, the fiscal crisis severely curtailed the (financial and regulatory) capabilities of the public sector, which had until then implemented activist trade and industrial policies. Unilateral liberalisation and preferential negotiations in MERCOSUR constituted major departures from previous trends, but as in other countries in the region, the private sector was excluded from the consultations, and a top-down approach to trade policy reform and negotiations was adopted in the context of far-reaching structural reform.

As in the case of Argentina, intra-MERCOSUR negotiations provided an opportunity for the participation of many public sector agencies, especially in the working groups responsible for technical issues. Backed by a tradition of professionalism and competence in foreign trade negotiations, the Ministry of Foreign Relations played a leading role in coordinating multi-agency participation. After MERCOSUR, the major challenge for the institutional reorganisation of the trade policy-making process was triggered by the FTAA negotiations. Given the sensitivity of the issues involved, and the competence and resources of the counterparts (especially the US), the Ministry of Foreign Relations created the *Secretaría Nacional da Área de Libre Comercio de las Américas* (SENALCA), which was charged with building ‘national positions’ on each of the issues to be addressed. SENALCA meets monthly and brings together representatives of several ministries, the Foreign Trade Chamber of the President’s Office, the Central Bank and other federal agencies. The decree that created SENALCA foresaw the possibility that civil society organisations may be invited to participate, which has occasionally happened.

The technical complexity of some of the issues involved in the FTAA negotiations also led the government to create inter-ministerial groups centred on major issue areas. These groups, composed of technical representatives from ministries and other federal agencies, were responsible for following up the activities of each FTAA Negotiating Group. Until 2002 these groups allowed for the participation of private sector representatives on an informal basis, but since then the participation of business and labour representatives has been regular.

The working schedules of SENALCA and the inter-ministerial groups are set by the pace of the negotiations. Generally, meetings of the FTAA negotiating groups are followed by national meetings to evaluate results, discuss topics to be addressed in future sessions, and to prepare negotiating positions. As the FTAA negotiations entered the phase of exchanging market access offers, the frequency of meetings intensified and the channels of communication multiplied (physical meetings, the Internet, etc.).

The FTAA process has had significant institutional externalities for trade policy-making in Brazil. Originally created to deal with the FTAA negotiations, the inter-ministerial groups have played an increasingly significant role in other negotiations, particularly in those with the EU and in the WTO Development Round. At present, a typical meeting of the Inter-Ministerial Group on Services deals with current events in the Doha Round, the FTAA, and the intra-MERCOSUR and EU–MERCOSUR negotiations.

The SENALCA model was later adopted to support Brazil’s negotiations (through MERCOSUR) with the EU. The resulting organisation, the *Secretaría Nacional da Europa* (SENEUROPA), brings together public officials, and one member each of the Brazilian sections of MERCOSUR’s *Comisión Parlamentaria Conjunta* and *Foro Consultivo Económico y Social* (see section 4).

In 2001, the Ministry of Foreign Relations carried out an internal reorganisation with the aim of improving the preparations for and the conduct of trade negotiations. The reform included the creation of coordination offices for each of the ongoing negotiations (FTAA, EU), as well as for new issue areas (i.e. market access, trade defence and safeguards, intellectual property, investment and services, etc.). The ultimate objective was to ensure that officials responsible for one issue area will be engaged in all negotiations touching that specific issue.

Although a slow process of convergence seems to be under way, this new public sector institutional structure has not covered all negotiations and issue areas. In particular, negotiations with LAIA members continue to be conducted according to the old procedures. This is partly due to the fact that most of the negotiations are still largely focused on tariffs, and that they tend to be less systematic and more 'shallow' than negotiations with the industrialised countries. Moreover, since they lack a specific target (such as reaching a free trade agreement), they remain highly permeable to sectoral pressures, especially from import-competing industries.

Institutional change in the public sector was paralleled by a more active participation of the private sector, thus ending the long-standing monopoly of the Ministry of Foreign Relations in trade policy-making and international trade negotiations. Soon after its inception, MERCOSUR opened the door to renewed trade policy-making interactions between the private and public sectors. The negotiation of a common external tariff (CET) in 1993–1994 restored routines of consultation with business, largely using the pre-existing sector approach. The activities of MERCOSUR's technical groups also stimulated exchanges between the private sector and public officials, although most of these were informal and seldom gave rise to a structured process of coordination and follow-up of the negotiations.

In the late 1990s international negotiations gained unprecedented relevance in Brazil's trade policy agenda. Moreover, the agenda broadened to include a wide range of regulatory practices, including 'border' and 'non-border' issues. This wider agenda stimulated a major restructuring in the way in which the private sector is organised in order to influence policy-making, as well as in the mechanisms available to interact with the government. As had been the case with the public sector, the FTAA process was probably the single most important factor – except for MERCOSUR – behind the reorganisation of the private sector and the restructuring of Brazil's domestic consultation practices. One major result has been the creation of the *Coalização Empresarial Brasileira* (centred around the *Confederação Nacional da Indústria, CNI*), which brings together representatives from manufacturing, agriculture and service industries to undertake preparatory technical work for the private sector. Jointly with a trade union federation, the *Coalização* has gained a seat on several inter-ministerial working groups.

3.3 Paraguay

Until Paraguay joined the WTO in 1995, trade negotiations were limited to the LAIA. These negotiations were not very demanding, as Paraguay enjoyed special and differential treatment. Despite elements of nominal protectionism, the trade policy of Paraguay has been in practice quite open, as the country exploited its advantage as an entrepôt for 'informal trade' with its larger and better-protected neighbours. Traditionally, the Ministry of Industry and Trade has been the agency in charge of setting and implementing trade policy, whereas the Ministry of Foreign Relations has been responsible for coordinating international negotiations.

MERCOSUR has stimulated major changes in the ways in which trade policy is made and trade negotiations are conducted in Paraguay, as it has exposed public sector officials to more comprehensive, regular and systematic exchanges with relatively better-equipped counterparts.¹² The creation of a diversified structure of technical working groups in MERCOSUR forced Paraguay to allocate unprecedented human and budget resources into new policy areas. To respond to these demands, in 1992 the government created a small Ministry of Integration, which improved Paraguay's bargaining capacities and became a forum for domestic debates on issues concerning regional integration. Although the Ministry was the main agent for Paraguay's participation in MERCOSUR, it was dissolved in 1998 and its responsibilities and staff were transferred to the Ministry of Foreign Relations. Although the official reason for its dissolution was that its responsibilities overlapped those of the Ministry of Foreign Relations, it was more likely the result of political intrigue and conflict, and of competition for resources and programmes.¹³

¹² The Treaty of Asunción explicitly included the principle of reciprocal rights and obligations, in practice abandoning special and differential treatment for less advanced countries. Putting the smaller and less developed countries on an equal footing with the larger economies placed additional demands on trade officials from the former parties.

¹³ The 1993–1998 administration strongly supported the Ministry of Integration, whereas the new administration that took office in 1998 was very much opposed to it.

The internal organisation of Paraguay's trade negotiating machinery has been shaped in accordance with the major issue areas covered by each negotiation. In terms of impact, the key arena has been MERCOSUR, for which the Paraguayan government organised its negotiating teams replicating the structure of MERCOSUR's working groups. All negotiations are coordinated by the Ministry of Foreign Relations, but responsibility for each issue area is allocated to the agency competent on the subject. Some of these areas include formal coordinating mechanisms (such as the *Comisión Especial de Comercio Internacional e Integración* (CEII) of the Ministry of Agriculture and Livestock), while others operate under informal procedures.

To take part in the FTAA negotiations the Ministry of Foreign Relations also created eight working groups paralleling those of the FTAA process. Negotiations with the EU, in turn, rest on 11 focal groups chaired by the Ministry of Industry and Trade, the Treasury, and the Ministry of Agriculture. As in the case of MERCOSUR, the Ministry of Foreign Relations coordinates all negotiations. Given the lack of human resources to sustain such diverse and broad engagements, the same officials may take part in several negotiations, leading to *de facto* coordination (but also to 'encapsulation' from other interested actors). Paraguay's human and material resources have been stretched to the limit.¹⁴

As a very small and poor country, Paraguay has a limited capacity to make an impact on the content and results of its trade negotiations. This has been the case even in MERCOSUR, where the Argentina–Brazil axis has played the leading role. Paraguay's limited bargaining capacities have been aggravated by material and technical shortages, which have led negotiators to take refuge in waivers and temporary exceptions.

Paraguay has received substantial technical assistance to strengthen the local capacities for trade policy-making and trade negotiations. One of the most significant programmes (*Programa ATN/SF 5888*), funded by the Inter-American Development Bank (IADB), aimed to strengthen the capacity of the public sector to undertake international negotiations, to stimulate domestic discussion and to increase public awareness of the issues involved. The aid was used for consulting, seminars and workshops, the preparation, editing and dissemination of materials, and computer support. The programme has had very limited impacts in terms of improving inter-institutional cooperation or in enhancing private sector participation or technical expertise.

As far as general assistance programmes are concerned, although there have been no systematic studies of the impacts and performance of technical cooperation, a large share of the programmes do not seem to have had the impact originally expected. In particular, between 1992 and 2002 the EU committed EUR 92.4 million to Paraguay (non-reimbursable funds), of which EUR 26.7 million were invested in 50 already concluded projects. The remainder is accounted for by 13 projects, some of which experienced long delays in implementation. The problems with international cooperation programmes in Paraguay typically include delays, the limited implementation ability, politicisation, corruption, the lack of local counterparts, the frequent rotation of project coordinators, the lack of transparency and excessive bureaucracy.

Concerning the participation of the private sector, in 1994 the government established a *Comisión Nacional de Integración*, which was empowered to study, assess and propose policies to the Ministry of Integration. The *Comisión* was chaired by the Minister of Integration and included representatives of six public sector agencies (the Ministries of Integration, Foreign Relations, Agriculture and Livestock, Industry and Trade, the Treasury, and the Central Bank) and 12 representatives of the private sector (business and labour unions). The disappointing performance of the Ministry of Integration deprived the *Comisión* of a significant role, confirming that a body for public–private coordination could not work effectively without strong political support. In 2002 the government created a *Consejo Nacional de Comercio e Integración* (CONACIN), chaired by the Minister of Foreign Relations. The composition of CONACIN is similar to that of the *Comisión* and it has been similarly empowered to evaluate and make recommendations on trade policy and economic integration issues. Until the creation of the CONACIN, consultations with the private sector were undertaken on a case-by-case basis on issues of special interest to potentially affected parties. In view of the short experience with CONACIN, it is still too early to draw conclusions about its effectiveness, but so far its role and impact have been very limited. However, there have been significant improvements in the dissemination of information to the private sector, mainly through the use of the Internet and electronic press releases (usually by the ministries of Industry and Foreign Relations).

¹⁴ Paraguay has faced difficulties even in satisfactorily carrying out the tasks of the rotating Pro-Tempore Presidency of MERCOSUR.

3.4 Uruguay

In Uruguay the leading official agencies in charge of trade policy-making and negotiations are the Ministries of the Economy and Foreign Relations. Although Uruguay's economy is small, its relatively high per capita income (by Latin American standards) prevented it from being granted the benefits of special and differential treatment in LAFTA and LAIA. This did not stop Uruguayan negotiators from obtaining significant market access concessions from Argentina and Brazil through special bilateral deals. Throughout this process the private sector (particularly business) participated actively to make sure that firms' 'defensive' interests were preserved and that the negotiations targeted market niches in the larger economies.¹⁵ Although the increasing breadth and complexity of the issues involved in international trade negotiations during the 1990s meant that the old channels of participation soon became obsolete, these continued to operate (particularly when dealing with traditional areas of concern such as market access issues).

MERCOSUR was the major trigger behind the reform of trade policy-making institutions and the conduct of trade negotiations in Uruguay. The fact that MERCOSUR is a major factor in shaping Uruguay's economic prospects (the region accounts for nearly half of Uruguay's foreign trade) has been decisive in encouraging the government to search for procedures and mechanisms to develop 'national consensus positions' on priority issues. The chosen mechanism was the *Comisión Sectorial para el MERCOSUR* (COMISEC), created in 1991 as an advisory organ to the government. COMISEC is chaired by a representative of the Presidency's Planning and Budget Office, and its members include delegates from cooperatives, trade unions and business organisations. The prevailing evaluation of the role of COMISEC is that it was very active during the early years of MERCOSUR, but that it gradually lost its dynamism. Eventually, it became mainly a vehicle to disseminate information. The participation in MERCOSUR's technical working groups has also fostered exchanges and cooperation between the private and public sectors, leading to the creation of national coordinating committees in charge of setting negotiating priorities. These mechanisms have had positive impacts, in that they have encouraged more structured interactions among domestic actors.

The participation of the private business sector in MERCOSUR has always been very intense, either through COMISEC or through the provision of direct policy inputs on sensitive issues such as temporary exceptions to free trade or the CET. A representative of the *Confederación Industrial del Uruguay* has always closely followed the MERCOSUR negotiations, and more recently the FTAA. The methodology has been that of prior and *ex-post* consultations and the 'room next door' during critical junctures. The participation of business in the FTAA has not been as intense as in the case of the EU–MERCOSUR negotiations, probably because of the limited resources available to the private sector and the need to cover too many negotiating tables. As one example, the *Confederación Industrial* failed to make substantive comments on MERCOSUR's list of market access offers to the EU, as requested by government officials. The reason given by the organisation was the lack of personnel.

The Uruguayan private sector has also been active in regional fora (such as MERCOSUR's *Foro Consultivo Económico y Social*). Their participation has encouraged active exchanges among national participants striving to develop and maintain 'national positions', in some cases (such as environmental issues) very successfully. However, since these regional fora have no decision-making authority, their effectiveness (as measured by concrete inputs to policy-making) has been modest.

Following the precedent of COMISEC, in preparation for the Seattle WTO Ministerial Meeting in Seattle in 1999, Uruguay created a *Comisión Inter-Ministerial* to design and coordinate national negotiating positions. The *Comisión* brought together representatives of the public sector, business and labour. Although the participants' assessments of the experience of the *Comisión* prior to and during the Seattle meeting were very positive, the mechanism was discontinued and was not re-established on the road to Doha.¹⁶

In order to participate in a more articulate manner in the FTAA process, the Uruguayan government created a *Comisión Nacional del ALCA*, largely along the lines of COMISEC. In contrast with the latter, the *Comisión* does not foresee the participation of the private sector. The *Comisión* is relatively new, and evidence of its effectiveness so far is limited.

¹⁵ For Uruguay, as for other countries of the region, international trade negotiations during the post-war period meant basically the exchange of preferences in LAFTA and LAIA.

¹⁶ The government in office at the time of the Doha round was less inclined than its predecessor to open broad consultations with the private sector, except business. For its part, the business sector also resented being consulted as just one group among others.

4 Trade policy formulation and negotiations in practice: the regional dimension

4.1 Intra-regional negotiations

Dealing with the intra-MERCOSUR trade-related agenda demanded significant inter-state exchange and cooperation. To channel the interactions, the Treaty of Asunción established a Common Market Council (CMC), composed of the ministers of the Economy and Foreign Relations of each member state, and a Common Market Group (CMG), which consisted of two national officials from each member state. The CMC was given the top decision-making authority, while the CMG remained as the executive body. In order to give content to the policy agenda, the CMG created a diverse set of working groups.¹⁷ In practice, a large share of inter-state cooperation took place in these working groups, which carried most of the burden of technical negotiations.

The process contributed to the human resource development in a variety of public sector agencies, particularly in the smaller countries and during the initial stages of the integration process, when negotiations were both credible and effective. This participation exposed national public sector officials to in-the-field training in international negotiations, upgrading their skills in tasks as diverse as drafting proposals, interpreting other countries' domestic regulations and understanding the impacts of domestic decisions on third parties. Participation in MERCOSUR also created incentives (and the demand) for more active and effective inter-agency coordination within each national administration. During the early years of MERCOSUR the national representatives in the working groups were high-ranking technical officials – usually at the level of national directors.

This structure was very effective during the initial stages of the integration process, when political commitment was at its peak and the negotiating agenda focused largely on border issues. As the agenda deepened, however, the fragility of common interests and the deficiencies of rule-making process became more evident. On the one hand, MERCOSUR member states showed increasing difficulties in keeping alive a matrix of interests that would provide meaning and content to the regional integration agenda.¹⁸ On the other, the regional negotiating agenda gradually lost focus, leading to a marked increase in the gap between decisions and implementation. In combination, these trends severely undermined the credibility of the entire process of regional integration.¹⁹

4.2 Negotiations with third parties

The Treaty of Asunción also established that MERCOSUR should adopt a common trade policy as of 1 January 1995. Being a customs union, MERCOSUR member states also had to implement mechanisms to coordinate trade policies and to undertake collective negotiations with third parties. Thus, Decision 34/95 created an Ad-Hoc Group on External Relations, which was empowered with the task of conducting MERCOSUR's relations with third parties. Resolution 38/95, in turn, established that all initiatives concerning the external negotiations of MERCOSUR should be subject to the prior approval of the CMG.²⁰

Since member states did not appoint national officials specifically in charge of the external affairs of MERCOSUR, the Ad-Hoc Group on External Relations did not gain an existence of its own. In practice, the preparation of negotiating positions at the technical level remained essentially a national process, which at some stage involved the exchange of drafts and non-papers among national officials. At more advanced stages of the decision-making

¹⁷ In 1995, the *Protocolo de Ouro Preto* created a Trade Commission to administer common trade policy instruments and daily trade affairs. The Trade Commission was also composed of four representatives from each member state.

¹⁸ For a detailed analysis of the record of MERCOSUR, see Bouzas, da Motta Veiga and Torrent (2003).

¹⁹ The negotiating agenda of MERCOSUR became much more conflict-prone after the region entered a period of severe macroeconomic turmoil in 1999.

²⁰ For an organogram of MERCOSUR's negotiations with third parties, see annex 1.

process the CMG would intervene, take decisions and eventually take care of the most critical aspects of the negotiations. Not infrequently, intra-MERCOSUR coordinating sessions took place immediately prior to a scheduled meeting with a counterpart. Typically, the formal role in conducting negotiations with third parties fell upon the country holding the Pro-Tempore Presidency. By contrast, the substantive work to shape and coordinate a regional position usually fell upon the most interested party, whether for 'defensive' or 'offensive' reasons.

On balance, the record of MERCOSUR in conducting trade negotiations with third parties has been mixed. On the one hand, MERCOSUR has been quite successful in speaking with a single voice (that of the Pro-Tempore Presidency) during formal negotiations. On the other, national negotiating positions have frequently differed on issues of substance. MERCOSUR has had limited success in identifying common and complementary interests and arbitrating those that are non-convergent,²¹ which has severely handicapped its ability to adopt a unified negotiating stance.

In 1996, shortly after the adoption of the common external tariff (CET), MERCOSUR concluded two free trade agreements (FTAs), one with Chile and the other with Bolivia. These agreements (the only ones concluded in seven years) were made possible by special circumstances. The agreement with Chile was a consequence of the top political priority that the Argentine government assigned to it, rather than the result of a consistent and well designed collective bargaining strategy.²² The lack of an articulated negotiating strategy on the part of MERCOSUR raised the leverage of Chilean negotiators, who obtained very long tariff phase-out periods (up to 18 years) for sensitive products, and an extension of the authorisation to use its temporary admission programme until 2006 (eventually leading to a similar extension for intra-MERCOSUR trade). The agreement with Bolivia was an easier task because all MERCOSUR member states already had comprehensive preferential agreements with Bolivia. In addition, Bolivia did not pose a serious competitive threat to any member (not even to MERCOSUR's smaller economies).

After that promising start, however, MERCOSUR failed to reach agreements either with the Andean Community or with Mexico (the other LAIA members with pre-existing bilateral preferential deals). At a minimum, and in order to enforce the CET effectively, MERCOSUR should have been able to merge pre-existing bilateral preferential pacts into a single deal applicable to the customs union as a whole (even if it was not as ambitious as an FTA). However, while Brazil and Argentina concluded bilateral agreements with the Andean Community, Paraguay and Uruguay maintained their pre-existing bilateral deals separately with each Andean Community member. Similarly, all members of MERCOSUR renewed or expanded their bilateral deals with Mexico.²³ Most of these bilateral agreements are limited in scope – only those of Paraguay and Uruguay with Ecuador cover a large number of tariff items – but a handful include 100% preferences. Similarly, only the agreement between Mexico and Uruguay has comprehensive coverage. MERCOSUR's failure to conclude collective agreements with other LAIA partners is an indicator of the difficulty in effectively enforcing a common external trade policy and in identifying an appropriate collective negotiating strategy, even with partners with whom MERCOSUR could play the role of a *demandeur*.

In order to bring some discipline to this situation, in June 2000 the CMC decided that MERCOSUR should negotiate as a single party with non-members, and set 30 June 2001 as the deadline for completing all pending bilateral negotiations. Decision 23/00 of the CMC also established that existing bilateral preferences would remain in force only until 30 June 2003, when they would be superseded by those collectively agreed during the transitional period. The state of disarray of the CET and the lack of cohesion that currently prevails in MERCOSUR led to these deadlines to be missed again.

The coordination of the participation of MERCOSUR member states in the FTAA process has also gone through periods of ups and downs. The process has been framed by a methodology of 'shallow' coordination. This approach worked while the negotiations focused on strategic principles, but as they became more detailed, the

²¹ In 2003 Uruguay and Paraguay submitted their services' offer in the FTAA, while Argentina and Brazil refrained from doing so. Although it had been agreed that each member state would submit its own list of offers, it was implicit that there will be a joint submission of the four national lists.

²² The smaller countries, Paraguay and Uruguay, were unsympathetic with the idea of granting Chile market access benefits that would be eventually equivalent to those that they enjoyed, while at the same time that country was exempted from the disciplines of a CET.

²³ In fact, Brazil denounced its bilateral preferential arrangement with Mexico following that country's refusal to extend North American Free Trade Agreement (NAFTA) preferences unconditionally as established in the Treaty of Montevideo that created the LAIA.

need for coordination increased substantially. In effect, during the early years of the FTAA, when negotiations aimed at agreeing on a strategic framework and MERCOSUR enjoyed high credibility, MERCOSUR negotiators succeeded in maintaining a unified stance and in establishing some key principles as guidelines for the negotiations.²⁴ However, when the FTAA process moved towards making concrete market access offers, the fragility of MERCOSUR's institutional and political mechanisms to shape common positions became most evident.²⁵ Although formally MERCOSUR member states have always spoken with a single voice during negotiations (that of the Pro-Tempore Presidency), the quality and extent of the preparatory work and the exchanges to develop 'regional' negotiating positions have usually been limited.

Several factors account for MERCOSUR's difficulty in shaping a 'regional' negotiating position, in particular the divergent interests of member states, and the growing credibility crisis of MERCOSUR. There have also been problems related to the methodology employed: the approach used has conspired against the identification of common and complementary interests, and reaching acceptable trade-offs in non-convergent ones. The emergence of a 'regional view' has been made more difficult due to the lack of a regional bureaucracy empowered to conduct 'external' negotiations, and of a techno-bureaucracy responsible for providing 'collective' inputs to the negotiators. Thus, rather than being the result of mutually accepted trade-offs, 'regional' negotiating positions have frequently been the minimum common denominator of national views. One typical example has been the list of market access offers for goods submitted to the FTAA in 2003 (see note 20). The difficulty in constructing common negotiating positions has been even more evident in the area of services, where Uruguay and Paraguay submitted their offers, while Argentina and Brazil did not.²⁶

4.3 Technical cooperation

Most of the technical support for negotiations is provided on a national basis, irrespective of whether negotiations are intra-regional or with third parties. There is no MERCOSUR service that is able and empowered to make 'regional' assessments of policy and/or negotiating issues. This means that there is no 'regional' view available to complement, supersede or dissolve national interests and perspectives. Consequently, the task of identifying common and complementary interests and arbitrating differences remains in the hands of national government officials, not only concerning who holds the decision-making authority, but also in terms of the analysis and assessment of alternatives. This approach significantly narrows the range of options, as national representatives tend to remain entrenched in their perceived national views.

In 1995 MERCOSUR member states created an Administrative Secretariat to provide support to MERCOSUR organs. Its activities have been limited to being a depository of documentation and providing modest administrative and logistic support during meetings. In 2002, however, MERCOSUR member states decided to transform the Administrative Secretariat into a Technical Secretariat, to be staffed by technical personnel. This was the result of the growing perception that the sole reliance on inter-government organs and the lack of a technical advisory agency were detrimental to the progress of regional integration. If it works properly, the Technical Secretariat could play a key role in providing background studies, identifying commonalities of interest and finding creative ways to arbitrate differences of interests. Moreover, the Technical Secretariat has the potential to mobilise significant resources of cooperation assistance. Of course, its results will depend on the credibility and political support enjoyed by the Secretariat.

Since 1992 technical cooperation with MERCOSUR has been managed by a Committee on Technical Cooperation (CTC), which reports directly to the CMG. During the short history of MERCOSUR the main sources of cooperation

²⁴ This was the case, for example, with the 'single undertaking' principle and the explicit admission that countries could take part in the negotiations either individually or as members of trading groups. For a review of the FTAA negotiations, see Bouzas and Svarzman (2001)

²⁵ For some member countries the hemispheric process was even regarded as a strategic vehicle to influence intra-regional negotiations. For example, in 2001 the Argentine government insisted on revitalising the '4+1' mechanism, which was instituted in the Rose Garden Agreement in 1991 and provided for a means to channel trade consultations and negotiations between the US and MERCOSUR. The '4+1' mechanism has been used sparsely, but as a result of Argentina's pressure, Decision 8/01 of the Common Market Council created a special group to take part in the '4+1' negotiations and appointed a coordinator and an adviser. The mechanism was never implemented, however.

²⁶ Although countries had agreed to submit individual lists of offers in services, they were supposed to do so simultaneously. See note 21.

have been the IADB and the EU.²⁷ Cooperation with the IADB started at an early stage, with the Non-Reimbursable Technical Cooperation Agreement signed in 1993. This programme aimed at providing technical support, particularly the coordination and harmonisation of macroeconomic and sector policies, in three modules: (a) supporting working groups in their work to harmonise standards and policies; (b) providing technical support, especially to Paraguay and Uruguay to upgrade their capacities to shape negotiating positions; and (c) disseminating information about MERCOSUR outside the region. The IADB's technical cooperation has financed studies and reports, but many of them arrived too late or have been of little direct use for the negotiators.

Although technical cooperation has helped at the negotiating and/or implementing stages, the experience in MERCOSUR highlights a number of problems. First, the cumbersome process of negotiating and defining the subject of cooperation means that outputs frequently reach the technical bodies too late, making the end result redundant. Second, experts have seldom been able to interact and develop synergies with MERCOSUR's technical bodies (the working groups), and this has severely hampered the policy relevance of the studies produced. The reasons for this poor performance include the criteria used to select experts (frequently not based on technical qualifications), poor communication between experts and national bureaucracies, and the reluctance of national governments to provide information and support on sensitive issues. An area of major dissatisfaction has been the preparation of databases, many of which rapidly became obsolete due to the lack of follow-up or maintenance.

4.4 Participation of the private sector

Although in 1995 MERCOSUR member states created a special forum to channel the participation of the private sector (*the Foro Consultivo Económico y Social*, FCES), when private sector participation has been substantive it has mainly taken place at the national level. The FCES is composed of 36 representatives (nine from each of the four member states) drawn from the business community, the trade unions and other civil society organisations (such as consumer groups and cooperatives). The FCES meets in plenary at least every six months, reaches decisions by consensus and its role is exclusively advisory. The FCES receives no financial support from MERCOSUR member states: the participants must bear the full costs of their engagement. In practice, the FCES has been an *ex-post* vehicle to disseminate information to the private sector rather than an *ex-ante* mechanism to stimulate and facilitate its participation in the decision-making process.

Despite the poor record of the FCES, MERCOSUR has contributed significantly to the communication and networking within the private sector. The interactions and exchanges among industrial associations, chambers of commerce, consumer organisations and labour unions have increased, and they meet regularly to consider issues of mutual interest. As a result, region-wide organisations such as the *Coordinadora de Centrales Sindicales del MERCOSUR*, the *Consejo Industrial del MERCOSUR* and the *Consejo de Cámaras de Comercio* have emerged as coordinating fora for each of these sectors.

The fact that the FCES has had a very limited influence on the MERCOSUR decision-making process helps to explain why the private sector has preferred to continue to influence regional policy-making through national channels. The absence of a regional process for deliberation on trade policy-making and the ineffectiveness of the regional mechanisms for private sector participation have led the actors with higher stakes or capacity to influence to channel their participation through national decision-making processes. At most, in order to gain weight and influence policy-making more effectively, they may coordinate their positions regionally and then submit them to each government. This has been the working methodology of some business organisations concerning market access offers, the CET or exceptions to intra-regional free trade.

The FTAA process also has a structured forum for channelling the participation of the business sector. The FTAA Business Forum meets regularly before each ministerial meeting to make recommendations to the ministers. Although there is no formal coordination between MERCOSUR business organisations to take part in the FTAA Business Forum, in practice they tend to arrive at common positions and to act as a bloc. However, since representation is unstructured, several different voices may be heard. The EU–MERCOSUR process also has mechanisms to foster or channel the participation of the private sector, some of which are mentioned in the next section.

²⁷ For a brief overview of EU–MERCOSUR technical cooperation see section 5.2 below.

5 Trade policy formulation and negotiations in practice: MERCOSUR and the EU

The negotiations between MERCOSUR and the EU have been in progress since 1995, when MERCOSUR was given international legal personality.²⁸ In December 1995 MERCOSUR and the EU (and its member states) signed an Inter-Regional Framework Agreement aimed at fostering political and economic cooperation and closer trade relations.²⁹ The immediate target of the Framework Agreement was to gather information and to lay the foundations for future market access negotiations. The EU–MERCOSUR negotiations cannot be interpreted independently from the FTAA process. On the EU side, the FTAA gave rise to strategic ‘defensive’ incentives, as later confirmed by the signature of a Free Trade Agreement with Mexico.³⁰ On the MERCOSUR side, in turn, once the decision to take part in the FTAA negotiations was made, it made little sense not to pursue a similar undertaking with the EU, the region’s largest trading partner. Strategic considerations were also central to MERCOSUR’s decision to negotiate with the EU.

However, discussions proceeded very slowly until 1999, when the Council of Europe granted the European Commission a mandate to negotiate a political dialogue, trade and cooperation agreement with MERCOSUR. The mandate, which emerged as a compromise between divergent EU member states’ positions, is ambiguous on certain issues (such as the kind of trade agreement to be negotiated). In fact, the approved mandate makes no specific reference to a free trade area and sets no time frame for concluding the negotiations. In addition, concessions in the area of agriculture are made dependent on the outcome of the WTO negotiations. By contrast, the mandate states explicitly that the Commission’s mandate is to engage in negotiations with MERCOSUR as a customs union and not with individual countries.³¹ The Trade Negotiations Committee met for the first time in April 2000. On that occasion, the parties decided to postpone until July 2001 all discussions on the methodology and schedule for the progressive elimination of tariffs on goods and the liberalisation of trade in services.

As has been the case with the participation of MERCOSUR (and especially Brazil) in the FTAA process, the negotiations with the EU have been basically ‘reactive’ and ‘defensive’ rather than the by-product of well structured and clearly identified negotiating interests. In fact, except for the explicit target of reaching an FTA by 2005, the MERCOSUR negotiating mandate (summarised in an *aide memoire* agreed in May 1999 and in a document on negotiating objectives drafted one year later) is even vaguer than that of the EU. MERCOSUR’s mandate states only some general strategic principles to guide the negotiations, such as the target of progressive and reciprocal liberalisation, no exclusions, the ‘single undertaking’, etc. Many of these strategic principles replicate MERCOSUR’s negotiating positions during the preparatory phase of the FTAA negotiations.

Compared with the EU’s negotiating guidelines, MERCOSUR’s objectives appear much simpler and shorter. The lack of precise negotiating objectives is another indicator of MERCOSUR’s difficulties to identify a common stance on matters of detail and to develop the intra-regional trade-offs necessary to shape a common negotiating agenda. Frequently, this has led documents and positions that reflect only a minimum common denominator of national member states’ interests.

A good example of this logic is MERCOSUR’s offer on market access for goods submitted in October 2001 (three months after that of the EU). The trade covered by MERCOSUR’s initial offer was very modest – 39.2% of total tariff

²⁸ In 1995 MERCOSUR started the enforcement of a Common External Tariff and a customs union was proclaimed. The legal basis of the customs union is ALADI’s *Acuerdo de Complementación Económica* Number 18 (Economic Complementation Agreement).

²⁹ For an overview of MERCOSUR–EU negotiations since the signature of the Framework Agreement, see Bouzas (2003).

³⁰ Although in the past the EU has been very active in negotiating preferential trade agreements (mostly non-reciprocal) with developing countries, until NAFTA was signed and the FTAA process was launched, no preferential treatment (except for the Generalised System of Preferences, GSP) was given to Latin American countries. The GSP is the least advantageous market access treatment granted by the EU, except for most favoured nations (MFNs).

³¹ This was interpreted as an explicit signal that the EU was interested in strengthening MERCOSUR as a customs union, most likely to play a strategic game in the context of the FTAA.

lines and 32% of total imports from the EU.³² This modest offer was not the result of a bargaining strategy, but rather a consequence of intra-bloc disagreements and the inability to bridge them successfully. At that time, the Brazilian negotiators were inclined to submit an aggressive proposal made conditional on an equivalent offer on the part of the EU, whereas the Argentine government maintained a much more reluctant stance. The Argentine stance was decisively shaped by the domestic crisis and the claims of local industrialists that all international trade negotiations should be halted until more normal economic conditions were restored. Even some important agriculture and processed food producers' associations –sectors in which Argentina is supposed to be highly competitive without subsidies– opposed liberalizing the domestic market to European competition. On the contrary, the Brazilian counterparts showed themselves much more flexible concerning the coverage of MERCOSUR's market access offer, subject to the condition of establishing an Export Subsidies Free Bi-regional Area.

Despite its modesty, the fact that MERCOSUR was able to submit an offer on goods at all came as a surprise. Considering the disarray that prevails in the customs union, the submission of an offer to the EU was a good example of the role that negotiations with third parties have played in inducing MERCOSUR to continue to work together in certain areas.³³ Yet, although this incentive may have temporarily stimulated cooperation, unless MERCOSUR countries are able to improve their bargaining stance and solidify their bonds on a more sustained basis, returns will be diminishing. In March 2003, after much internal effort MERCOSUR member states succeeded in submitting an improved offer that included about 85% of imports from the EU, including items in sensitive areas such as the automotive industry.

The bargaining stance of MERCOSUR *vis-à-vis* the EU has been weakened by the absence of a coherent common strategic objective. Moreover, at some points in time some member states seem to have taken part in the negotiations with little conviction that such negotiations should be pursued or that an acceptable outcome would be feasible. MERCOSUR's ambiguities regarding negotiations with third parties are confirmed by the disarray that prevails in the implementation of the CET, the key instrument for increasing MERCOSUR's bargaining capacity *vis-à-vis* third parties. The bargaining capacity of MERCOSUR member states has been equally affected by the general weaknesses of the negotiating and trade policy-making machinery reviewed in section 4, including the lack of political leadership and of adequate institutional and organisational arrangements. It must be said, however, that negotiations with the EU have been the first ones where MERCOSUR has had to make market access offers to a major trading partner. In that sense, the process has been a major source of experience. Whether such experience will be capitalized in a regional learning process is still to be seen.

5.1 Participation of the private sector

The participation of the private sector in MERCOSUR's negotiations with the EU takes place at two levels. First, there is a domestic process by which private sector actors are consulted and engaged in shaping national positions; as described in section 3, this process varies from country to country. Second, there are regional fora in which private sector ideas can form inputs, albeit usually very limited, to the policy and negotiating process. The EU–MERCOSUR negotiations have been paralleled by the creation of an EU–MERCOSUR Business Forum that brings together representatives of large private sector firms with an interest in bilateral trade and investment relations. The EU–MERCOSUR Business Forum organises periodic meetings that end with policy recommendations, although these have generally been very broad and have not served as a basis for decision making. Meetings of the EU–MERCOSUR Business Forum are more important as indicators of business support for the negotiations than as a source of technical advice and policy suggestions.³⁴

MERCOSUR's *Foro Consultivo Económico y Social* (FCES) also maintains a regular dialogue with the EU's Social and Economic Committee, developed through a Joint Committee that meets twice a year. Given the weaknesses and fragility of the FCES (reviewed in section 4), these meetings are usually not very relevant in terms of providing

³² The EU initial offer had a higher coverage, but preferences were limited to *ad-valorem* tariffs. Given the commodity composition of bilateral trade, EU specific tariffs play a significant role in limiting market access to MERCOSUR products.

³³ The negotiating mandate approved by the Council authorises an inter-regional negotiation.

³⁴ An exception may be the area of business facilitation.

policy inputs. The EU has provided cooperation funds to enhance the capacities of the FCES to take part in the activities of the Joint Committee.

5.2 Technical cooperation

In May 1992 an Inter-institutional Cooperation Agreement signed with the European Communities set general guidelines for exchanging information, training personnel, and providing technical assistance and institutional support for MERCOSUR. The focus of this technical assistance has been to resolve key challenges to be faced by the customs union during the 'transitional period' and to promote statistical harmonisation. The four major areas identified for cooperation (and in which projects were finally approved) were customs, product standards, statistics and agriculture.

The process of negotiating the projects has been very slow, and implementation has been equally arduous, partly a result of cumbersome administrative procedures. The cooperation is centrally managed from the MERCOSUR desk in Brussels, which is responsible for project formulation, approval and follow-up activities. Although one MERCOSUR recipient country has been appointed as administrator for each project area, the procedures require the establishment of a management unit with a European and a regional co-director, the appointment of coordinators for each national sub-programme, and the preparation of a global operational plan and annual plans. The latter have to be agreed by the four member countries, analysed by the relevant working group, and finally approved by the MERCOSUR desk. Even more important, this complex process does not seem to have ensured that the results of the cooperation are substantive, or are made available to negotiators and other trade officials.³⁵

The EU–MERCOSUR process lacks a technical support infrastructure equivalent to that offered by the Tripartite Committee in the case of the FTAA.³⁶ A *Grupo de Seguimiento de las Negociaciones UE–MERCOSUR*, sponsored by *Chaire MERCOSUR* at the *Institute d'Etudes Politiques de Paris* (Science-Po) and funded, among others, by the European Commission and the IADB, sponsors technical background studies and provides opportunities for informal exchanges between the private sector and the negotiators. However, the role of the *Grupo de Seguimiento* appears to be to facilitate and disseminate information, rather than to provide technical support.

The EU has also supported training for negotiators through the cooperation with the *Grupo de Río*. During most of the 1990s the EU funded the *Centro de Entrenamiento y Formación para la Integración Regional* (CEFIR) in Montevideo, which was charged with the task of training negotiators of the *Grupo de Río* countries. The experience of CEFIR went through several stages. First, it developed an active human resources training programme, with courses taught by Latin American and European instructors, but the programme gradually ran out of steam. By the late 1990s, the internal problems in the European Commission and the idea that programmes should be temporary led the EU to withdraw its financial support and ask for that of the *Grupo de Río* countries, but the Latin American countries were not responsive. The fact that the needs and demands of the *Grupo de Río* countries differ widely may help to account for their indifference regarding the fate of CEFIR. Similarly, the fact that the participants in CEFIR's training courses were increasingly lower-ranking officials suggests that the programme had lost priority or utility for governments. Even in Uruguay, the country that hosted the programme, the impact on local capacities has been very modest. The experience of CEFIR illustrates how politically motivated initiatives may go the full circle without having any durable impact.

³⁵ One senior trade official commented that he has never come across one physical output from any of these projects.

³⁶ The FTAA Tripartite Committee – formed by the Inter-American Development Bank, the Organization of American States and the UN Economic Commission on Latin America and the Caribbean – provides technical support to the negotiations in the form of studies, databases and training.

6 Best practices in preparing for negotiations: lessons from MERCOSUR

MERCOSUR member states entered the 1990s with limited capacities and brief experience in the realm of trade negotiations. The main reason was that during the period of import substitution, trade policy-making was almost fully endogenous. During the 1990s the environment in which foreign trade policy was made and international trade negotiations conducted underwent significant changes. Political democratisation, the multiplication of negotiating arenas and a more complex and broad trade agenda placed strong pressures on existing procedures and institutions. It was in this new context that MERCOSUR member states had to embark on ambitious trade negotiations, despite their lack of experience and limited resources and capabilities.

The emergence of new institutional patterns for trade policy-making and negotiations has been a slow process, which is still underway. The public sector, poorly equipped and lacking well-structured policy-making procedures, has faced many obstacles to respond adequately to the increased demand for technical background support and inter-agency coordination. This has placed countries at a disadvantage in negotiations with the well trained and well equipped professional teams of their counterparts, who are typically able to identify, put forward and follow up specific agendas.

Similarly, the traditional channels and methods of private sector participation in trade policy-making have been gradually and imperfectly replaced by new procedures. The fact that unilateral trade policy reform has been predominantly implemented as a 'top-down' process means that consultations with and the participation of the private sector have been by definition very limited. Gradually, all MERCOSUR member states have adopted new procedures for channelling the private sector's participation in the policy-making process, but their effectiveness has been limited. On the one hand, the private sector itself has proven unprepared to provide adequate inputs to the policy process. On the other, structured participation has been difficult to achieve in a situation in which the public sector itself lacks well-established policy-making procedures.

The experience of MERCOSUR leads to some broad conclusions and policy recommendations at both the national and regional levels. The problems that MERCOSUR has had to deal with are in many ways similar to those faced by other developing countries or regions. These include the limited human and material resources, the lack of experience, poor inter-agency coordination, a 'reactive' stance in the negotiations, difficulties in identifying interests in a broad and complex agenda, a poorly organised private sector and problems of implementation. In the case of MERCOSUR these deficiencies have been compounded by the fact that the regional grouping adopted the shape of a customs union, the enforcement of which, and the prevailing organisational and institutional procedures, have proved not to be very effective.

6.1 Lessons for trade policy-making and negotiation: the domestic dimension

Avoid overburdening the policy-making process and the negotiating machinery

The experience of MERCOSUR shows that governments should try to avoid overburdening their policy-making and negotiating capacities. This is easier said than done in an environment in which the 'domino effect' (and the 'defensive' reasons) characteristic of trade preferences and regionalism have encouraged participation in as many negotiating tables as possible. However, when the policy-making process is poorly structured, engagement in multiple negotiating tables may end up stretching resources beyond their capacities.

These pressures are likely to continue to be beyond the control of national governments. However, governments should make a conscious decision about taking part in different negotiations and, when such a decision is made, they should identify priority issues and partners. Only then they will be able to make efficient use of the limited resources at their disposal. The detailed negotiating interests identified in interactions with one partner may be replicated in other negotiating arenas. To a large extent the FTAA negotiations played this role in the case of MERCOSUR (see below for lessons for groups of countries).

It is a mistake to equate engagement in trade negotiations with positive outcomes. The simplistic view that equates trade liberalisation with economic growth and prosperity will favour trade negotiations irrespective of their content and result. This is bad policy advice, particularly as trade negotiations always have an explicit mercantilist bias. International trade negotiations should be entered into only with the backing of a strong team of negotiators, with clearly identified targets and priorities. If properly used, the participation of the private sector and other non-governmental actors can help to improve the bargaining stance of the executive.

Develop appropriate mechanisms of coordination within the public sector

Appropriate coordination among public sector agencies plays a key role in raising the likelihood that trade negotiations will produce desirable outcomes. Fragmentation and lack of cohesion among policy-making institutions are frequent problems in developing countries, particularly at times of radical policy change. More important than having a centralised agency in charge of trade negotiations, what seems critical is the ability to ensure effective coordination among several public sector agencies.

Moreover, since the present trade policy agenda includes topics that go beyond traditional border barriers to trade in goods, it is unlikely that a single government agency will be capable of dealing with such a variety of subjects. Many issues presently under negotiation touch upon or involve domestic regulations that have been traditionally regarded as falling beyond the scope of international disciplines. Dealing with this not only broader, but also technically more complex agenda usually requires appropriate and specialised technical knowledge.

When available, that specialised technical knowledge is dispersed over several public sector agencies. This strengthens the case for effective coordination mechanisms in order to enable governments to take part in multi-issue, multi-agency and multi-level negotiations. One of the major weaknesses of trade policy-making in MERCOSUR member states has been the lack of adequate coordination within the public sector (in some countries more than in others), which has led to the inefficient use of resources and failure to take advantage of synergies and complementarities. Brazil has made most solid progress in this area, probably due to the fact that it has the best trained and most stable bureaucracy. In a period of extensive public sector reform (which in many countries has involved dismantling public sector agencies, and demoralising underpaid civil servants), Brazil maintained an effective public sector bureaucracy.³⁷

Enhanced coordination among public sector agencies may include having focal points for key negotiating topics. These focal points should have the necessary authority to effectively undertake coordination activities. They should also play the leading role in identifying negotiating interests and pushing them forward in the negotiations. The experience of MERCOSUR member states shows that it is not infrequent that different officials take part in different negotiating fora dealing with the same topic and do not coordinate among themselves.

Strengthen the technical support of the negotiators

Current international trade negotiations are knowledge-intensive. This makes adequate support and technical capabilities key inputs in the policy-making process. Technical knowledge is necessary to assess the impact of alternative policy outcomes, as well as to identify what needs to be done domestically in order to improve the

³⁷ Whether this bureaucracy was a depository of old entrenched interests is a question different from the effectiveness of the policy process.

chances of competitive success and/or to help the transformation of uncompetitive activities. An appropriate technical background is also a powerful tool in interactions with the private sector.

Although technical assistance can greatly help countries to upgrade their negotiation capacities, this is seldom the case. Countries with fragmented foreign trade policy institutions and policy-making procedures and poor inter-agency coordination are unlikely to reap the potential benefits of technical assistance. The experience of MERCOSUR civil service structures means that the outputs of projects are delivered to technical bodies or to decision-making layers too late to be of use.

In order to maximise results, technical assistance should target the permanent bureaucracy as directly as possible, preventing the creation of isolated or specialised units, the proliferation of 'external' experts, and one-off initiatives and resources (such as databases) that tend to disappear when the financial support comes to an end. Increased transparency in the execution of programmes may help to improve the effectiveness of technical assistance.

Develop transparent and effective mechanisms for private sector participation

The participation of the private sector in the policy process must be encouraged, both to obtain critical information as well as to provide legitimacy to the outcomes. If adequately used, private sector participation can also increase national bargaining capabilities. One problem with private sector participation in MERCOSUR member states has been its formal rather than substantive character. In order to serve as a legitimate input to the policy process, private sector participation must be structured, systematic and kept to manageable dimensions. Useful private sector participation will also demand a significant upgrading of its technical capacities. Not infrequently, in the case of MERCOSUR member states, the private sector failed to provide information, analysis or assessments when requested by public sector officials.

6.2 Lessons for trade policy-making and negotiations: the collective dimension

Regional negotiations can provide a catalyst for institutional change

Combining several already weak national policy-making and negotiating machineries is unlikely to produce a robust regional policy-making process. If national targets are not clearly defined, it will be difficult for a group of countries to identify common or complementary interests. Divisions within the internal policy-making structures are most likely to be transferred to the regional level, weakening the countries' bargaining stance and the credibility of the negotiators. Similarly, poor or ineffective channels for the participation of the private sector are most likely to be replicated at the regional level.

Regional exercises can serve as a catalyst for improving national policy-making procedures and participatory mechanisms. MERCOSUR was a powerful factor in promoting change in member states' trade policy-making machineries, particularly during the initial years of the integration process, and in promoting private sector participation. This has been also the case with the FTAA and the negotiations with the EU. In the longer term, however, the lack of appropriate regional mechanisms for decision-making and implementation has conspired against taking advantage of the catalytic role of trade negotiations. The catalyst must thus be strengthened through the establishment of mechanisms that provide adequate arenas for policy-making.

Identify a common agenda

In order to undertake joint negotiations it is necessary to have the ability to identify common or complementary interests. Common interests are shared objectives, but they are rarely intuitively obvious. They must be identified and nurtured, which is the task of politics. Complementary interests, by contrast, need not be identical. Indeed, they may be different as long as they are not contradictory. Being able to identify a matrix of complementary interests will broaden the basis for a coalition. Conflicting interests must be successfully arbitrated. Again, this requires appropriate procedures to identify them and to reach the necessary trade-offs. This is also a political process that requires commitment and leadership.

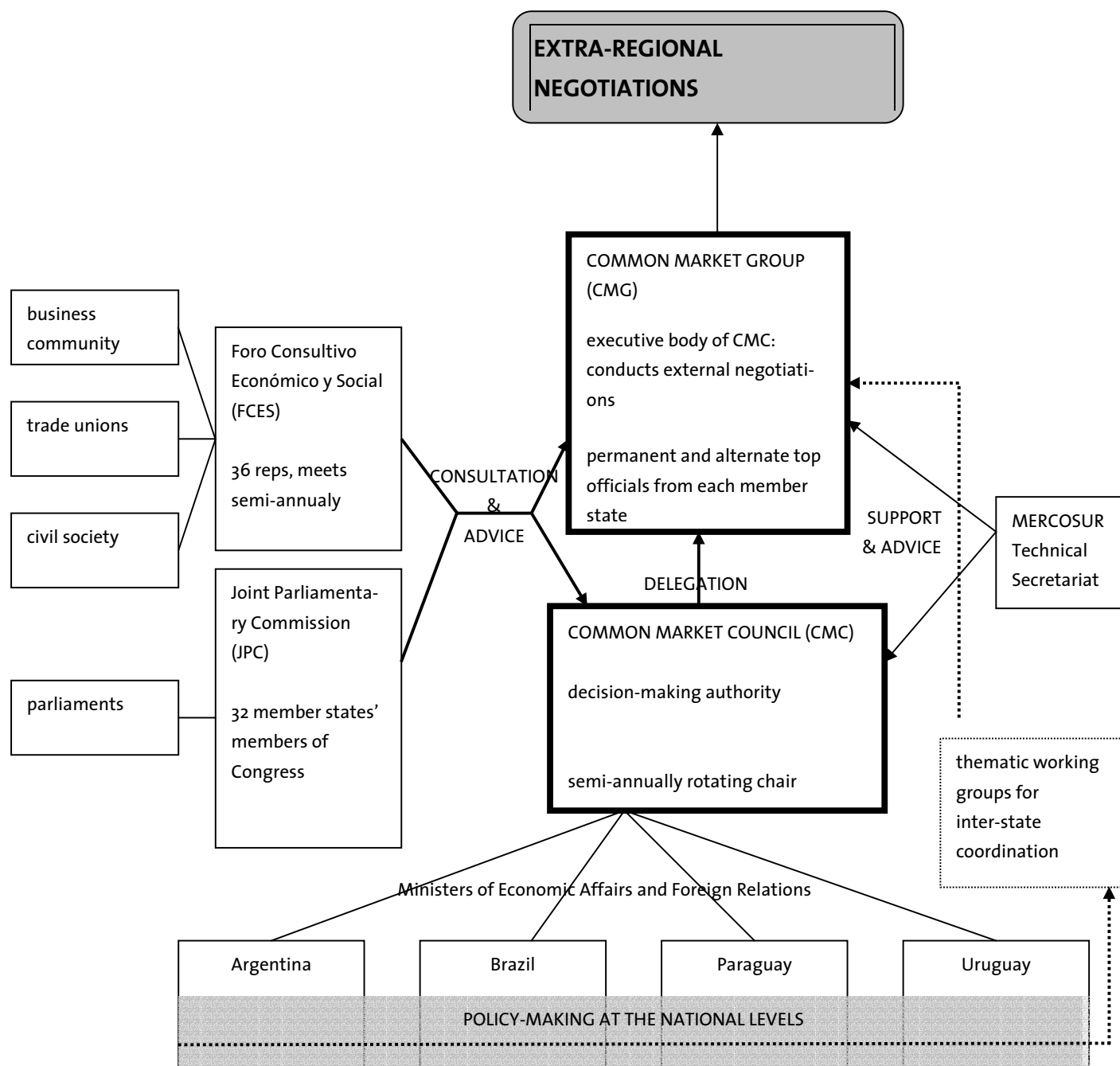
Identifying and putting forward a common agenda may require a 'third party' that provides inputs to the process and that goes beyond the narrow perspective of national officials. This does not necessarily mean the creation of a 'supra-national' body with the extensive powers of the European Commission (few countries would be prepared to pool national competencies in such a body). Instead, what may be required is the existence of an agent which can provide 'regional views' on issues of common interests, thus breaking the vicious circle of the reinforcing nationally focused perspectives of government officials. The experience of MERCOSUR highlights how the absence of such a mechanism has favoured the reproduction of national views in shaping regional positions, with the result that the latter may be merely the minimum common denominator of national views.

Select priorities in order to move forward on solid ground

The case of MERCOSUR also shows that activism and a broad agenda cannot be equated with good results. As MERCOSUR member states lost focus on priority issues, the intra-regional agenda widened and the negotiations lost their effectiveness. The intra-MERCOSUR negotiations are a clear example of blurred priorities: if MERCOSUR's aim was to enforce a customs union, member states should have emphasised the effective implementation of the CET and the enforcement of a common negotiating strategy *vis-à-vis* third parties. Instead, MERCOSUR member states broadened its agenda and failed to make progress in key areas, such as successfully concluding joint negotiations with other LAIA partners. In North-South negotiations MERCOSUR member states basically followed a 'reactive' and 'defensive' agenda.

Negotiations with third parties can temporarily act as a glue holding together a regional group. But this is unlikely to last for long. Regional groups based on 'defensive' considerations are unlikely to be able to sustain complex and multi-issue negotiations such as those that currently characterise the international trade agenda. To do so will require a positive set of incentives.

Annex 1 MERCOSUR in Extra-regional negotiations



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ISSN 1571-7577

The ECDPM gratefully acknowledges the financial contributions of the Swedish Ministry of Foreign Affairs, the U.K. Department for International Development (DFID) and the Swiss Development Cooperation (SDC) to the programme on 'Sharing experiences on building capacity for trade negotiations'.

Within this context the ECDPM produced two other case studies on South Africa (ECDPM Discussion Paper No. 53) and the Caribbean (ECDPM Discussion Paper No. 54). These publications are available at: www.ecdpm.org/cbo1