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MERCOSUL:

Institutional Structure, Dispute Settlement System and a Supranational Court

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TABLE OF CONTENTS

Any translations contained in this paper are my own and are in italic script.

"I understood immediately that if the economic basis is accepted, as an attempt, to establish in a not distant future the relationships between Brazil and the Oriental State, the action of this influence should be extended to the other side of the Prata River. The idea of a bank in the Argentinean Confederation was born in me, and I obtained the concessions that I asked. I know the influence of these establishments, when well organized and well managed, in the development of the industry, in the progress and welfare of the people and finally in the creation of wealth. I believed that moving this mechanism from Montevideo to Paraná, although in modest scale, and under very safe bases, I would make the largest of all the services: the new idea that we wanted to set up, that is to prepare the way so that an economic basis, or the interests of the people of the Prata River with Brazil enter as the main element of the government's policies and between neighboring people. They shall be invited to narrow and to develop relationships to each other, not only for good neighborhood, but also for commercial, industrial and monetary purposes, so that they could make reciprocal and advantageous exchange."

Irineu Evangelista de Sousa,

Baron of Mauá,

December of 1860

I. Introduction

The purpose of this paper is to approach historical aspects, institutional structure and the legislation of Mercosul. It will also analyze the subjects related to the sovereignty of the countries that take part in economic blocs, the dispute settlement system, the arbitration procedure, and the need of a Supranational Court of Justice. In the introduction, some fundamental data will be given on the member-States, as well as the stages of multilateral economic collaboration.

The Common Market of the South - MERCOSUL -, created by the Treaty of Asuncion, signed on March 26, 1991, is an economic integration project that comprises Argentina, Brazil, Paraguay and Uruguay. These countries together represent a total population of 210 million people. The area has more than 12 million square kilometers, and the Gross Domestic Products - GDP - of Mercosul was US$ 1,3 trillion in 1997.

Mercosul, despite being recent, is moving forward quickly in comparison to the European Union. This is especially due to the advanced high technology and the globalization, that caused economic, social, cultural and political revolutions.

The world reality, especially characterized by those factors, has forced the constitution of blocs of countries, not only for economic purposes, but with several others as well. The governments have been reviewing their concepts of politics and economics. The largest example is the European Union, which began in the 1950's, when the nations converged their efforts for the retaking of the growth, after World War II, with the Treaty of Rome. This year it entered the final phase, with the adoption of only one currency for all the member-States.

The purpose of integrating the countries goes beyond economic reasons to include political, social and cultural areas. The international juridical relationships are based on agreements among sovereign States, or between

States and entities of external public law, such as Organization of the American States - OAS - and United Nations Organization - UNO -, that can be bilateral or multilateral.

First of all, it is essential to define the following stages of multilateral economic collaboration:

1) **Free Trade Zone**: the countries eliminate or reduce the customs rates and restrictions to the exchange, exclusively for the import of goods produced within the zone;

2) **Customs Union**: it adds a Common External Tariff (CET), besides the free trade zone;

3) **Common Market**: in addition to the customs union, there is free circulation of goods, people, capital and services. It may include common rules of competition;

4) **Economic and Political Union**: it is more than the common market. It includes a monetary system and a common foreign and defense policies;

5) **Confederation:** as Professor Maristela Basso explains, the confederation "*implies the political and economic union, and in addition the unification of the civil, commercial, administrative, fiscal laws, etc. (phase still hypothetical in the economic blocs)"*.

According to Léotin-Jean Constantinesco, a common market is *"a space in which all the restraints to the free circulation of goods were eliminated, all the production factors can circulate without discrimination founded in the nationality and where three domains are object of a common politics. The common market is not identical to the customs union, whose limits it surpasses; it has tendency above all to be an imperfect economic union"*.

Community law differs from international law, especially because the former delegates powers to organs within the community that are usually exercised only domestically. It does not alter the branches of the law, it only substitutes the national law in matters it starts to enact. That transfer of sovereign powers for common organs still has not happened in the case of Mercosul. The decisions are made by the Common Market Council or Common Market Group.

The trade pact took effect as a customs union and partial free-trade zone on January 1, 1995. Since 1991, trade among Mercosul countries has more than tripled.

Among the principal objectives are the following: to improve the economies of the Member-States by making them more efficient and competitive and by enlarging their markets and accelerating their economic development by means of a more efficient use of available resources. Other objectives are to preserve the environment, to improve communications, to coordinate macroeconomic policies, including the free movement of labor and services among the four States, and to harmonize the different sectors of their economies.

Brazil is the largest economy in Mercosul and the eighth largest in the world. With a GDP of US$ 790.4 billion in 1997, the economy is dynamic and diversified. Brazil is also the largest of the Latin American countries, covering nearly half of the continent of South America - 3,286,470 sq. miles (8,511,965 sq. km). It had 165 million inhabitants in 1998. The *per capita* income was US$ 4,908 in 1997. The annual inflation rate in that year was 4.3%.

The Argentinean economy, from 1991 to 1994 growth around 8% annually, and had growth around 6% in the last two years. It has the second largest territory of South America - 3,761,274 square kilometers - and a population of 36,125 thousand inhabitants in 1998. In 1997 its GDP was US$ 304.3 billion. That year, the country *per capita* income was US$ 8,571.83, the highest in Mercosul. The 1997 inflation rate was below 1.0 %.

The economy in Paraguay is growing since it became a member of Mercosul. In 1993, the GDP was US$ 6.8 billion and in 1997 it was US$ 8.8 billion. It has a territory of 406,732 thousand square kilometers and a population of 5,223 thousand inhabitants. The annual inflation rate in 1997 was 7.0%.

Uruguay has the smallest territory and also population in Mercosul: 177,508 thousand square kilometers and 3,239 thousand inhabitants. The GDP in 1997 was US$ 18.955 billion, and the *per capita* income US$ 6,014. The inflation rate in 1997 was 19.8%. Since the mid-1980s, Uruguay has maintained an open capital account and has allowed unrestricted currency transactions.

Mercosul is in the phase of customs union (still imperfect), that will only be completed in 2005, since each member-State still have goods exception lists. The common market is a subsequent stage, and it exists political will of the party- States for its configuration.

The volume of business among Mercosul nations has increased every year.

The official language of Brazil is Portuguese and Spanish is the official one in the other countries.

The Brazilian Constitution, in Article 4, sole paragraph, states that "The Federative Republic of Brazil shall seek the economic, political, social and cultural integration of the peoples of Latin America, viewing the formation of the Latin-American community of nations".

II. Background

To better understand the creation of Mercosul it is necessary to distinguish the remote antecedents from the recent ones. The earlier especially refer to the integration efforts and cooperation among the Latin-American countries, originated by the Agreement of Montevideo (1960), that created ALALC - Latin American Free Trade Association. Its intention was a free-trade zone, with periodical negotiations among the members. ALALC worked well until 1965, but almost came to a deadlock in the 70's. In 1980, ALADI - Latin American Integration Association, replaced ALALC and is still in operation, joining the following countries: Argentina, Bolivia, Brazil, Colombia, Chile, Ecuador, Mexico, Paraguay, Peru, Uruguay and Venezuela. Since its creation its objective has been to establish multilateral relationship in Latin America. Many agreements between its members were signed. The final aim was a Regional Common Market.

The expected full regional liberalization was not reached, because of the widespread recession on the Continent in the 1980's. Another obstacle was the big foreign debt of the three most developed countries: Argentina, Brazil and Mexico.

Even though ALADI did not completely meet its objectives, it influenced the subsequent economic approach of the member-States, such as the Andean Pact.

The more recent antecedents to the successful formation of Mercosul are related to several agreements starting from the eighties. Between 1984 and 1989 Argentina and Brazil signed twenty-four bilateral trade protocols, twelve of them in 1986.

On 11/30/85, the Presidents José Sarney from Brazil and Raul Alfonsin from Argentina signed the Declaration of Iguazu, about Latin America's convenience to reinforce its power of negotiation with the rest of the world, especially through the coordination of efforts of the member-States. The objectives of the Declaration of Iguazu were summed up with the signature of the Program of Integration and Economic Cooperation - PICE -, by Brazil and Argentina, on 07/20/86. This integration document looks for alternatives to the adopted models, especially technological modernization and larger efficiency in the application of resources in the two economies, including preferential treatments from other markets. Several agreements, in many areas, were signed, in addition to PICE.

On 11/29/1988, Brazil and Argentina signed the Agreement for Integration, Cooperation and Development between Brazil and Argentina, based on the positive results of the previous negotiations, with the purpose of consolidating the process of economic integration. The document was approved by both Congresses, in August of 1989. The integration process became not only an economic, but also a political and social reality.

On 07/06/1990, Brazil and Argentina signed the agreement of Buenos Aires, seeking to establish a Common Market among the two countries. They settled on the date of 12/31/1994 for the definitive formation of the common market. The initialization of the process occurred specially because of world economic blocs and the globalization. In that moment the Common Market Group was created, which started to meet periodically, seeking to elaborate and to propose to both Governments measures to enhance effectiveness of the objectives and schedule specified by the Presidents.

On September 5 and 6, 1990, the delegations of Paraguay and Uruguay became aware of the course of the integration process between Brazil and Argentina and demonstrated interest in participating in the Common Market.

On October 22 and 23 of that year, the Brazil-Argentina Common Market Group met in Rio de Janeiro to examine the studies that were already done. The delegations of Paraguay and Uruguay participated as observers. Other meetings happened for evaluation of the work. One of the most important meetings occurred in December 13 and 14, 1990, in Buenos Aires.

On 12/20/1990, the Agreement for Economic Complementation - ACE-14 - was signed between Brazil and Argentina, in the presence of the Paraguayan and Uruguayan delegations, consolidating and enlarging all the previous bilateral agreements, and also determining the rules for the establishment of the Common Market in its commercial aspects until 12/31/1994.

Five other South American countries revealed interest in joining Mercosul: Bolivia, Chile, Colombia, Peru and Venezuela. Initial agreements were signed with Bolivia and Chile on 06/25/1996, but negotiations are still underway.

III. The Treaty of Asuncion and the Protocol of Ouro Preto

The signature of the Treaty of Asuncion, that created Mercosul, on 03/26/1991, by Presidents Menen from Argentina, Collor from Brazil, Rodriguez from Paraguay and Lacalle from Uruguay, summed up the previous negotiations accomplished between Brazil and Argentina, with posterior and graduate joining of Uruguay and Paraguay.

The document stated the following objectives: the possibility of greater competitiveness of the economies of the four member-States, in a world where technical progress is more and more essential for development; to increase productivity; to stimulate trade with the rest of the world, creating attractive investments in the region; to promote opening efforts in the economies of the four countries, working toward to Latin America's gradual integration; to promote the integration of the private sectors and of the society. The Treaty is based on mutual rights and obligations of its members.

Article 1 of the Treaty establishes the main characteristics, as follows: free movement of goods, services and factors of production between countries through, *inter alia*, the elimination of customs duties and non-tariff restrictions on the movement of goods, and any other equivalent measures; establishment of a common external tariff and the adoption of a common trade policy in relation to third States or groups of States, and the coordination of positions in regional and international economic and commercial forums; coordination of macroeconomic and sectoral policies between the party-States in foreign trade, agriculture, industry, fiscal and monetary matters, foreign exchange and capital, services, customs, transport and communications and any other areas that may be agreed upon, in order to ensure proper competition between the member-States.

The Treaty also specifies the obligations of the parties to ensure equitable trade terms in their relations with third countries, applying their domestic legislation to restrict imports, the prices of which are influenced by subsidies, dumping or any other unfair practice. They also shall coordinate their respective domestic policies with a view to drafting common rules for trade competition.

To execute these objectives, during the transition period, ending 12/31/94, the following economic measures were foreseen: a trade liberalization program, which shall consist of progressive, linear and automatic tariff reductions, accompanied by the elimination of non-tariff restrictions or equivalent measures, as well as any other restrictions on trade between the party-States, to arrive at a zero tariff and no non-tariff restrictions for the entire tariff area by 31 December 1994; common external tariff which encourages the foreign competitiveness of the member-States; and the adoption of sectoral agreements in order to optimize the use and mobility of factors of production and to achieve efficient scales of operation.

The Treaty also included the possibility that other Latin American Integration Association - ALADI - members could join Mercosul. However, membership is subject to negotiation and approval of the member-States of Mercosul, once the Treaty has been in force for five years. Another provision allowed membership to ALADI countries which have not joined other sub-regional integration schemes or an extra-regional association, before the five year period. In either cases, approval of applications shall require the unanimous decision of the party-States.

In Chapter V, Articles 21 and 22 stipulate the possibility of renouncing the Treaty by any party-State. The renouncing country must formally express its intention to the other member-States and must submit the document within 60 days to the Ministry of Foreign Affairs of the Republic of Paraguay, which shall distribute it to the others. After the renunciation has been formalized, the rights and obligations of the renouncing State deriving from its *status* as a party-State shall cease. Those relating to the liberalization program under the Treaty and any other aspect to which the member-States, together with the renouncing State, may agree within 60 days following the formalization of the renunciation shall continue. These latter rights and obligations remain in force for a period of two years from the date of the formalization.

Mercosul began as a free-trade zone, but its objective is a common market, allowing also free movement of labor and capital. That depends on equal rights and obligations of the member-States. In the transition period, because countries have different economies and laws, the rights and duties of each member can be different.

In compliance with the provisions of Article 18 of the Treaty of Asuncion, the party-States signed the Protocol of Ouro Preto, on December 17, 1994, reaffirming the principles and objectives of that Treaty. In the document, the member-States determined the structure of Mercosul, its legal personality, decision-making system, internal applications of the decisions adopted by Mercosul organs, legal sources, dispute settlement system, budget, languages, reviewing system, entry into force. Article 53 calls for the repeal of provisions in the Treaty of Asuncion if they conflict with the terms of the Protocol or with the content of the decisions adopted by the Common Market Council during the transition period.

Under the International Law Mercosul assumes legal personality. Accordingly, may take whatever action that is necessary to achieve its objectives, such as signing contracts, buying and selling personal and real property, appearing in court, holding funds and making transfers.

The decisions of Mercosul organs shall be made by *consensus* and in the presence of all the party-States.

The member-States always have to take all the necessary measures to ensure in their respective territories compliance with the decisions adopted by the Mercosul organs, and inform the Administrative Secretariat of these measures.

In order to ensure that the decisions adopted by the Mercosul organs come into force simultaneously in each party-State, all the Countries have to report the incorporation of the said measures in their respective domestic legal systems. The decisions enter into force 30 days after the date of the communication made by the Administrative Secretariat and each member shall publish it in its respective official journal.

The official version of the working documents is that in the language of the country hosting the meeting.

IV. Institutional Structure

The institutional structure of Mercosul is composed by: Common Market Council (CCM), Common Market Group (CMG), Mercosur Trade Commission (MTC), Joint Parliamentary Commission (JPC), Economic-Social Consultative Forum (ESCF) and Mercosul Administrative Secretariat (MAS).

The Common Market Council, the Common Market Group and the Mercosul Trade Commission are inter-governmental organs with decision-making powers.

A. Common Market Council

Its general functions are in Article 3 of the Protocol of Ouro Preto: *"the Council of the Common Market is the highest organ of Mercosul, with responsibility for the political leadership of the integration process and for making the decisions necessary to ensure the achievement of the objectives defined by the Treaty of Asuncion and the final establishment of the common market"*.

It is composed of the Ministers of Foreign Affairs and the Ministers of Economy of the member-States, or their equivalents. The presidency rotates every six months among the Countries, in alphabetical order. The meetings take place whenever it is convenient, under coordination of the Ministers of Foreign Affairs, and at least once every six months with the participation of the Presidents of the parties-States. The Decisions of the Common Market Council are obligatory for member-States.

The duties and specific functions of the Common Market Council are defined in Article 8 of the Protocol.

B. Common Market Group

The Common Market Group is the executive organ of Mercosul. Each country has four members and four alternates, appointed by their respective governments, and must include representatives of the Ministries of Foreign Affairs, the Ministries of the Economy (or their equivalents) and the Central Banks. It is coordinated by the Ministries of Foreign Affairs. It has the power to call on representatives of other organs of government or of the institutional structure of Mercosul. The ordinary or extraordinary meetings occur as often as necessary, in accordance with the terms of its rules of procedure. The Resolutions of the Common Market Group are obligatory for the party-States.

The duties and functions of the Common Market Group are established in Article 14 of the Protocol.

C. Mercosul Trade Commission

The Mercosul Trade Commission is responsible for assisting the Common Market Group. It shall monitor the application of the common trade policy instruments agreed by the party-States in connection with the operation of the customs union, as well as to follow up and review questions and issues relating to common trade policies, intra-Mercosul trade and with third countries. It is also responsible for considering complaints presented by the National Sections of the Mercosul Trade Commission and originated by party-States or individuals - natural or legal persons -, related to the situations referred to in Articles 1 or 25 of the Protocol of Brasilia, when they are within its sphere of competence. It has four members and four alternates for each party-State, and it is coordinated by the Ministries of Foreign Affairs. The meetings happen at least once a month, or whenever requested by the Common Market Group or any of the member-States. The decisions of the Commission shall take the form of Directives or Proposals. Those are obligatory for the party-States.

The Article 19 of the Protocol establishes the duties and functions of the Mercosul Trade Commission.

D. Joint Parliamentary Commission

The Joint Parliamentary Commission is the representative organ of the member-States parliaments within Mercosul. It shall submit Recommendations to the Common Market Council through the Common Market Group. It shall also try to speed up the corresponding domestic procedures in the party-States in order to ensure

the prompt entry into force of the decisions taken by the Mercosul organs provided for in Article 2 of the Protocol. Finally, it has to assist with the harmonization of the party-States legislations. This Commission must be composed of an equal number of members of parliament representing each party-State, which are appointed by the respective national parliaments.

E. Economic-Social Consultative Forum

The Economic-Social Consultative Forum, which has a consultative function and expresses its views in the form of Recommendations to the Common Market Group, is the representative organ of the economic and social sectors. It is composed of an equal number of members from each party-State.

F. Mercosul Administrative Secretariat

Mercosul has an Administrative Secretariat to provide operational support to the other Mercosul organs and is headquartered in the city of Montevideo. It is headed by a Director, who is a national of one of the member-States and is chosen by the Common Market Group on a rotating basis. The Director is appointed for two years by the Council of the Common Market and may not be re-elected.

The Secretariat carries out the activities foreseen in Article 32 of the Protocol.

V. The Sovereignty Matter

The potential loss of State's sovereignty is a delicate subject when entering into a common market. The concern about the subject of sovereignty has always been intense. The European Court of Justice, writing on the matter, decided that:

> *As opposed to other international treaties, the Treaty instituting the E.E.C has created its own order which was integrated with the national order of the member-States the moment the Treaty came into force as such, it is binding upon them. In fact, by creating a Community of unlimited duration, having its own institutions, its own personality and its own capacity in law, apart from having international standing and more particularly, real powers resulting from a limitation of competence or a transfer of powers from the States to the Community, the member-States, albeit within limited spheres, have restricted their sovereign rights and created a body of law applicable both to their nationals and to themselves...*

A state can renounce the agreement if it feels its sovereignty is being undermined. A state's renunciation from a common market can have serious consequences, especially economic and social ones. The level of the consequences will depend on the stage of negotiations at which the state withdraws. There is current debate whether a country must receive approval from its domestic legislature before renouncing the common market. In 1926, the eminent Brazilian jurist Clóvis Bevilaqua wrote about the possibility for Brazil's renunciation from the Pact of the League of Nations, independently of analysis by the Legislative Power. An important part of his work Pareceres II (p 347) is mentioned by Brazilian Doctor José Francisco Rezek:

> *Considering the Federal Constitution, the Executive Power can remove the country from the obligations of an agreement, that, in its text, establishes the conditions and the way of the renunciation, as stated in the last part of Article 1 of the Pact of the League of Nations, without approval of the National Congress. That proposition seems evident, for itself. If there is a clause in the Agreement, foreseeing and regulating the renunciation, when the Congress approves the agreement, it approves the way of renouncing it; therefore, putting into practice that clause, the Executive Power just exercises a right that is declared in the text approved by the Congress. The act of renunciation is merely administrative.*

A second distinguished Brazilian jurist, Pontes de Miranda, views the matter in a different way:

> *Can the President of the Republic, by himself, renounce the treaties, conventions or agreements that were already approved by the Legislative Power? To approve treaty, convention or agreement, allowing that the Executive Power renounce it, without consultation, nor approval is to subvert the constitutional principles. The President of the Republic can present a renunciation project, or to renounce the treaty, convention or agreement, ad referendum of the Legislative Power.*

The first position has prevailed in Brazil. The Executive Branch recently renounced the Convention 158 of the International Labor Organization - ILO -without legislative approval. Even though the Convention had been approved already by the Legislature.

Because of common markets, the concept of national sovereignty has changed. Nations have moved toward consensual and cooperative coexistence.

The illustrious jurist Jellinek wrote:

> *In its historical origin, sovereignty is a political conception, that only later became juridical in nature. This concept was not discovered in a cabinet of persons separated from the world. In fact it owes its existence to very profound forces, the struggles of which form the content of whole centuries*.

VI. Legal Sources of Mercosul and Dispute Settlement System

The legal sources of Mercosul are the Treaty of Asuncion, its protocols and latter additions; the agreements concluded within the framework of the Treaty of Asuncion and its protocols; as well as the Decisions of the Council of the Common Market, the Resolutions of the Common Market Group and the Directives of the Mercosul Trade Commission adopted since the entry into force of the Treaty of Asuncion.

Legislation distinguishes between types of settlement: those among party-States, those between party-States and private parties and, finally, those among private parties belonging to different member-States.

Since the Treaty of Asuncion and its Annex III, the main concern is directed to the resolution of conflicts among the member-States of Mercosul. Currently, the matter is governed by the Protocol of Brasilia and the Protocol of Ouro Preto, especially Article 21 and respective Annex. The Protocol of Brasilia, signed on 17 December 1991, contains the procedures to settle the disputes which arise between the party-States concerning the interpretation, application or non-fulfillment of the provisions of the Treaty of Asuncion and the agreements concluded within its framework. The Protocol also is applied to the Decisions of the Common Market Council, Resolutions of the Common Market Group and Directives of the Mercosul Trade Commission. Both Protocols will be analyzed later.

In the case of conflicts among countries and private parties, whether physical persons or juridical entities, "as a result of the sanction or application, by any of the States Parties, of legal or administrative measures which have a restrictive, discriminatory or unfairly competitive effect", the Articles 26 to 29 and 32 of the Protocol of Brasilia shall be applied. This topic will also be developed further.

An effective instrument of resolution of disputes between private parties belonging to different member-States still does not exist. They are being decided by the Judicial Powers of the party-States. However, because of the importance of the matter, five Protocols dealing with the disputes settlement system were already signed.

The Protocol for Cooperation and Jurisdictional Assistance in Civil, Commercial, Labor and Administrative Matters, well-known as Protocol of Las Leñas, guarantees the equality of legal proceedings among citizens and

permanent residents of the countries of Mercosul, as well as free access to the respective jurisdictions for the defense of rights and private interests. It also states that the proceeding must be free of charge.

The Protocol of Provisional Remedies has the purpose of regulating among the party-States of the Treaty of Asuncion, the execution of provisional remedies destined to prevent the irreparable damage in relation to people, goods and obligations. It can be requested in ordinary, special or extraordinary legal proceedings of civil, commercial or labor nature and criminal ones related to the civil responsibility. The solicitation of the remedies will happen by means of letter rogatory directly transmitted to the competent judge, without need of the Supreme Court *exequatur*, when the courts are in the frontier zones.

The Protocol of Buenos Aires, about International Jurisdiction in Contractual Matter, sets rules defining the competent national jurisdiction to judge conflicts related to international contracts in the civilian and commercial spheres. It includes all contracts signed within Mercosul, among private parties, excluding bankruptcy subjects, contracts of social security, administrative, labor, consumer, transport, insurance and also family, heritage and real laws.

In a paper about the Mercosul Courts, the Brazilian Ambassador Botafogo Gonçalves wrote about the community juridical order. The following part explains the system:

> *Mercosul does not produce norms of community law, endowed with the possibility of direct application in the party-States. The norms emanating from MERCOSUL need, for their validity in the territories of the four party-States, to be incorporated in the national juridical systems, in accordance with the procedures established in each country system. In this context, to decide cases that involve matters related to the integration process, the judges of the four party-States have to apply within the limits of their jurisdiction, the national norms that have incorporated to the national juridical order the commitments made in MERCOSUL, and not supposed 'community norms'".*

In compliance with the dispositions of the Treaty of Asuncion the party-States adopted a system for the resolution of conflicts, contained in the Protocol of Brasília. This system is in effect during the transition period, until a permanent system for the resolution of conflicts in the Common Market enters into force.

During the transition period, the disputes which arise between the member-States regarding the interpretation, application or non compliance of the dispositions contained in the Treaty of Asuncion, of the agreements celebrated within its framework, as well as any decisions of the Common Market Council and the resolutions of the Common Market Group, will be submitted to the procedure for resolution established in the Protocol of Brasília.

The illustrious Brazilian Professor Maristela Basso, a specialist in integration subjects, writing on the theme of settlement of conflicts, says that:

> *In the sphere of the Treaty of Asuncion, there is note a solid institutional structure capable of guaranteeing the execution of its decisions. As it is known, a faulty system of resolution of conflicts can jeopardize the creation and consolidation of a true common market*.

And she continues affirming, when she writes about the Mercosul institutional structure, that it is necessary to have, among other organs:

> *A superior judiciary organ, that works as a Court of Justice, assuring the respect of the community law and its uniform interpretation. That is, without doubt, one of the most important organs, because it is the one that makes integration progress, consolidating the community law. Only a Court of Justice is capable to form the collection of the community decisions. According to Ferrari Bravo: 'In the system of the community organs, the Court of Justice occupies, certainly, a position of great authority. In more*

> *than thirty years of community jurisdictional experience, the importance of the Court has always grown' (in Lezioni di diritto delle Comunità Europee, Scientifica, 1992, p.134). The Court would be, therefore, the definitive system of settlement of disputes in Mercosul ... Only through organs with autonomous powers (supranational) is it possible to accomplish the integration intended in the Treaty of Asuncion. It is not possible to speak about a Common Market without independent organs.*

In a real common market, the existence of independent organs, with power to act whenever they are called is essential. It is impossible to think in a different way in relation to Mercosul. Despite the evident resistance of those involved in the preparation of the agreements, it will be inevitable, when we enter the Common Market phase, to create independent organs for the elaboration and application of the community norms.

VII. The Arbitration Procedure

The Arbitral Tribunal of Mercosul, foreseen in the Protocol of Brasília, is the final instance for the settlement of conflicts among the member-States. Until now it has not been used, in spite of the eight years of validity of the Treaty of Asuncion. Conflicts are inevitable, especially because of the commercial enlargement among the participants, that increased from US$ 3 billion in 1991 to US$ 21 billion in just seven years.

Most of the discords are resolved by direct negotiation, which is a very good thing, or through the Trade Commission of Mercosul and, if necessary, by the Common Market Group. However, some conflicts were not fully resolved by these methods and they did not reach the Arbitral Tribunal. The main reason that they did not get to the Tribunal is the fear of not achieving success in the dispute and the fear that the result affects internal policies in fundamental sectors. That is because if they do not execute the decisions of the Tribunal, the other member-States can apply temporary compensatory measures.

There is also concern on the part of some people in the sense that an arbitral determination may be taken to the domestic Judicial Branches of any of the party-States involved in the case. This, however, should not happen, because the decisions of the Arbitral Tribunal will correspond to sentences.

In the dispute settlement system, according to the Protocol of Brasilia, there are three stages: direct negotiations, participation of the Common Market Group, and arbitral procedure. First of all, the party-States will initially attempt to resolve any controversy through direct negotiations. They have to inform the Common Market Group, through the Administrative Secretariat, about the actions that are undertaken during the negotiations and their results. The direct negotiations cannot, except pursuant to an agreement between the parties, exceed a time limit of fifteen (15) days from the date on which the member-States originally raised the controversy.

If an agreement is not reached, or the controversy is only resolved partially, any of the party-States involved in the controversy can submit it for consideration by the Common Market Group, which will evaluate the situation, giving an opportunity to the parties in the controversy to state their positions. Also will require, whenever considered necessary, the advice of experts selected from a list, which is referred to in Article 30 of the Protocol of Brasília.

The Common Market Group will formulate its recommendations to the party-States involved, suggesting a resolution to the dispute. The procedure cannot be extended for a period greater than thirty (30) days, from the date on which the controversy was submitted for consideration by the Common Market Group.

When a controversy cannot be resolved through the application of those procedures, any of the party-States in the controversy can communicate to the Administrative Secretariat its intention to resort to the arbitral procedure. The Secretariat notifies the other party-State or parties involved in the controversy and the Common Market Group is entrusted with the means required for the development of the procedures. In this case, the States involved declare that they recognize as obligatory, *ipso facto* and without need of a special agreement, the jurisdiction of the Arbitral Tribunal which in each case is established in order to hear and resolve the controversy.

The Tribunal is composed of three (3) arbitrators contained in a list. Each party-State designates ten (10) arbitrators, jurists of recognized competence in matters that can be subject of a controversy. They are included in a list registered with the Administrative Secretariat. Within fifteen (15) days, each party-State in the controversy, shall designate one (1) Arbitrator. The third arbitrator, who cannot be a national of the member-States in the controversy, is designated upon common agreement and presides over the Arbitral Tribunal. Substitute arbitrators are also nominated, in order to replace the original arbitrators, in the event of their incapacity or withdrawal from the Arbitral Tribunal. If one of the Parties does not nominate its arbitrator within the time limit, he/she will be chosen by the Administrative Secretariat from the arbitrators list provided by this State, pursuant to the order established in its respective list. If no agreement can be reached between the States concerning the selection of a third arbitrator, the Administrative Secretariat, at the request of either, will proceed to designate the arbitrator by lottery from among a list of sixteen (16) arbitrators put together by the Common Market Group. This list is composed in equal parts of nationals from the party-States and of nationals from third countries.

If two or more party-States have the same position in a controversy, they will unify their representation before the Arbitral Tribunal and they will designate one arbitrator upon common agreement.

In each case, the Tribunal will adopt its own rules of procedure, and each State involved shall have the fullest opportunity to be heard and to present its proofs and arguments. The proceedings must occur in an expeditious manner.

The Tribunal can, at the request of an interested party, issue appropriate provisional measures, in order to prevent damages during the arbitration procedure. The parties in the controversy shall immediately, or within the time limit determined by the Tribunal, comply with any provisional measure, until the final decision is issued.

It will decide the controversy within sixty (60) days, extendible for an additional time limit of thirty (30) days if necessary from the time its President is designated. The decisions are taken by majority vote, based on the following: the dispositions of the Treaty of Asuncion; the agreements signed within its framework; the decisions of the Common Market Council; the resolutions of the Common Market Group; as well as the principles and dispositions of international law which are applicable to the matter, including equity (*ex aequo et bono*) if the parties so agree. It is not allowed to explain dissenting votes, and confidentiality must be maintained.

The States must comply with the decision within fifteen (15) days, unless the Arbitral Tribunal fixes a different time limit. The decisions cannot be appealed and are binding on the party-States from the moment the respective notification is received and will be deemed to have the effect of *res judicata*. If a clarification is required, the Tribunal can suspend the execution of the decision until it resolves the request.

Temporary compensatory measures, such as the suspension of concessions, can be adopted by the other party-States if the decision is not followed within a time limit of thirty (30) days, which should tend to lead to compliance.

The Protocol of Brasilia also establishes, with some restrictions, that the rules studied above "shall apply to all complaints made by private parties (whether physical persons or juridical entities) as a result of the sanction or application, by any of the State Parties, of legal or administrative measures which have a restrictive, discriminatory or unfairly competitive effect, in violation of the Treaty of Asuncion, of the agreements celebrated within its framework, the decisions of the Common Market Council or the resolutions of the Common Market Group".

The complaints must be filed before the National Section of the Common Market Group of the party-State wherein they maintain their usual residency or business headquarters. The Section can initiate direct contacts with the National Section of the Common Market Group of the party-State to which the violation is attributed, with the goal of finding an immediate resolution to the question that has been put forth or it can immediately refer the complaint to the Common Market Group.

The Common Market Group simply can reject the complaint, if it concludes that the necessary requirements are not present to sustain it. If it accepts the complaint, it will immediately convene a group of experts, composed of

three (3) members chosen by the Common Market Group. If it is not possible to reach an agreement on the experts, they shall be selected from a list of twenty-four (24) experts by a vote of the party-States. The experts should then issue a report with their conclusions to the Common Market Group within a non-extendible time period of thirty (30) days. If this report verifies the legal basis of the complaint made against a party-State, any other member can then demand that corrective measures be adopted or that the disputed measure be annulled. If this demand is not met within a time limit of fifteen (15) days, the party-State that made it can then proceed directly to the arbitral procedure pursuant to the conditions established in Chapter IV of the Protocol of Brasília.

The Protocol does not bring the possibility of complaints by an individual against another. These complaints are currently resolved by International Private Law. Mercosul members should develop a system for resolution of conflicts involving individuals.

Additionally, the arbitration is an effective way of resolution of conflicts among private parties and it is foreseen in the domestic legislation of the countries that form Mercosul. Arbitration can occur if there is an arbitration clause in the contract, or by elaboration of an arbitration commitment. In the first case, the parties establish that eventual conflicts that appear due to the contract will be resolved by arbitration. In the second case, even if there is not previous stipulation, if a conflict occurs, the parties can decide to submit the litigation to arbitration. Arbitration is being used in the international commercial sphere not at levels that can be considered satisfactory.

VIII. A Mercosul Supranational Court

A Mercosul Supranational Court of Justice is an essential piece in a common market to decide the conflicts that arise and cannot be resolved in the previous stages. Moreover, it will have the purpose of interpretation of the community legislation and jurisprudence formation, to aid in the stability of the relationships not only among the party-States, but also among the private parties (whether physical persons or juridical entities). These tasks cannot be accomplished by a temporary tribunal. A simple Arbitral Tribunal does not completely reach the objective.

The Community Court will surely contribute to the increment of economic investments in the region, due to the creation of a more stable legal structure that will analyze not only the conflicts involving the member-States, but also non Mercosul countries with the party-States. In order to create a Supranational Court, it will be essential to have legislative harmonization among the member-States. It is unnecessary to have uniform legislation as has been argued by some critics.

Professor Vera Jacob de Fradera, specialist in Community Law, in a profound article, wrote that the legislative harmonization can begin to be implemented in the plan of the Private Law - civil and commercial -, because it is more flexible. She points out that a project of an European Code of Contracts already exists in the European Union. However, in relation to the Public Law "*the harmonization task should be much more complex, because the Public Law contains a great political charge; the Public Law has printed, in indelible characters the mark of the national values, the peculiarities of the country, especially concerning Constitutional Law"*. In her conclusion, the illustrious Professor notes that *"In the plan of South American States, at this moment, the only form to arrive at harmonization of the juridical systems will be through general principles of Law, common general principles of the internal law of the member-States and the mutual recognition of the national rules, behavior that is identified with the comitas gentium"*.

She also says that such solution is fully compatible with the current constitutionalist South American reality. The extraction of the common principles will initially be attributed to the doctrine and, *"In a second moment, that task should be completed by the Court of Justice of MERCOSUL, that when extracting the general principles previously mentioned, and when interpreting them in agreement with the objectives pursued by the Integration, it will be consolidating and improving the legislative harmonization among South American Juridical Orders"*.

The Agreement of Asuncion itself is concerned with the sovereignty of the member-States. Article 16 is an example. It specifies that "during the transition period, decisions of the Common Market Council and the

Common Market Group shall be taken by consensus, with all States-Parties present". Therefore, only the consensus, with all the participants' presence, can base the decisions of these Mercosul organs.

In the Brazilian system the agreements cannot contradict the Federal Constitution. In case of conflict, before an agreement is ratified, the Constitution must be amended, leaving it compatible with the agreement that will be signed.

The party-States are concerned by the creation of a Supranational Court, on account of the already mentioned subject of the sovereignty. Many times the Executive Powers resist the decisions of their own domestic courts in cases not involving sovereignty. Some aspects are really complex in this sphere. Adaptations to the national constitutions should occur to allow the creation of the Mercosul Supranational Court.

The Brazilian position on the Mercosul Supranational Court is that it only should be instituted after the Common Market has been set up. Presently, the decisions of the several organs foreseen in the Protocol of Ouro Preto have intergovernamental character, and it is possible for the member-States to preserve interests they consider important.

The Argentinean Constitution, in Article 75, item 24, already foresees the delegation of competence and jurisdiction to the supranational organizations. It follows the Monist system of reception of non-national law, automatically. In this system there is not a conflict among the national and international spheres.

In the specific case of Brazil, that adheres to the Dualist system, it is more difficult to directly apply the supranational law. Article 49 of the Federal Constitution specifies that "It is exclusively the competence of the National Congress: I - to decide conclusively on international treaties, agreements or acts which result in charges or commitments that go against the national property".

It is necessary to note that some law professionals say that Brazil is ruled by the Monist system, because, according to them, the Legislative approval is more a validity condition for the international sphere than for the national one.

It cannot be forgotten that Article 84, VIII, of the Brazilian Constitution demands the *referendum* of the National Congress to all international treaties, conventions and acts that are concluded by the President of the Republic. Only after the *referendum* can the President ratify the signed Treaties or Agreements. A common confusion that the Legislative Power ratifies the treaties or agreements that are submitted to it should be avoided. In reality, they are only examined by that Power. In case of admission, they can or cannot be ratified by the President of the Republic, depositing the ratification document at the chosen chancellery. Professor Cachapuz de Medeiros reiterates this point:

> *The Parliaments do not ratify the agreements, they only examine them, authorizing or not the Executive branch to commit the State. The ratification, consequently, is a personal act of the Executive Leader.*

Without the parliamentary *referendum*, the agreement can be subject to nullification, in accordance to Article 46 of the Convention of Vienna about the Law of the Treaties, that specifies the annulability when there is an obvious provision violation on competence to conclude the treaty. Therefore, the rules of each constitutional system should be followed, avoiding eventual nullities or inefficacies.

Article 102, item I, *h*, of the Brazilian Constitution, that deals with the execution of foreign court decisions, demands their ratification by the President of the Supreme Court for application in Brazil. The community courts make decisions based on supranational law, that has not yet been incorporated into Brazilian Constitution.

The Brazilian National Tributary Code clearly states the relationship between national law and law derived from conventions. The provision is the following: *"the treaties and the international conventions revoke or modify the internal tributary legislation and they shall be followed by the subsequent laws"*.

The jurisprudence, not only of the Brazilian Supreme Court, but also of the State Courts has accepted the supremacy of the treaties and other agreements, based on Article 98 of the National Tributary Code, restricted to the tributary matter. One of the examples is the General Agreement on Tariffs and Trade - GATT -.

When the constitutions of the member-States do not provide for the application of decisions of a supranational court, it is only possible to establish a classic community court, that does not have the power to interfere with the juridical order of the party-States. In this case, the decision of the Community Court would not be obligatory.

The integration process will cause modifications in the member-States' Constitutions, with the purpose to adapt them to the system of shared sovereignty. It has to be emphasized that the community norms contained in the treaties and agreements, if the constitution of the party-State provides, can be immediately applied in the domestic juridical order by the national magistrates.

The European Court of Justice, the most perfect Supranational Court currently, can be a model for the Mercosul Court. The Treaty of the European Union establishes the rules for the European Court, with the main purpose of assuring the uniformity of application of the community law. It is composed of 15 judges, one for each country in the community. The court is not competent to settle conflicts among private parties.

Dr. Mariza Figueiredo points out a situation foreseen in the European Community legislation that deserves to be mentioned. When a national court encounters a subject of interpretation of community law, that can or cannot involve private parties, the national judge sends it to the Community Court for interpretation, without resolving the litigation. An interpretative decision will be drawn by the European Court of Justice to be used by the national judge to resolve its case.

She notes that currently the European Court of Justice can punish the countries that do not fulfill their obligations in accordance with specifications of the European Union. Consequently, a country that does not obey a decision of the Court is condemned to a financial penalty. This is a recent development, since previously the national authorities executed the decision.

Dr. Mariza also points out that:

> *"All the acts adopted by the community institutions can be annulled by the European Court on the basis that acts are usually annulled in Administrative Law in the member-States: lack of competence, violation of essential formalities, violation of a Treaty of the European Union or violation of any juridical norm relatively to its application, or in deviation of power. That appeal can be interposed by any country of the Community, by the Commission, by the Council, in some cases by the European Parliament and by private parties. In this last case, since, although they have a wide and involving sense, the acts are directly related to them"*.

Writing with clarity about the European Community Court, Dr. Maria Teresa Cárcomo Lobo, Federal Judge in Rio de Janeiro, discusses:

> *The primacy of the community law is 'an existential demand' of the juridical order of the Communities, that necessarily results from the notion of common market itself. It is marked by the imperatives of the unity, uniformity and effectiveness*.
>
> And she continues affirming that:
>
> *the community law constitutes an authentic juridical order, conceived as an organized and structured group of juridical norms, with its own sources, endowed with organs and procedures adapted to emit the norms, to interpret them, to confirm them and, if it is the case, to sanction the violations that occur. Besides being an autonomous juridical order, with its own system of normative production, it contains a specific force of `penetration into the domestic juridical order of the member-States, that appears in the*

> *principles of the immediate enforcement, of its primacy and of its direct effect. The principle of the immediate enforcement guarantees, per se, to the community norm the statute of positive law in the internal juridical order of the States, in which it is inserted, without need of any introduction or reception formula, imposing itself as community law and generating for the national jurisdictional organs the obligation of applying it.*

The direct effect is that national judges can apply treaties, agreements, regulations and other community norms independent of the national law. In effect the treaties take on the force of a Community Constitution.

The ruling of the European Court of Justice on the subject that deserves to be mentioned:

> *The national judge entrusted to apply, in the limits of his/her powers, the dispositions of community law, has the obligation to assure the full effect of those norms, to stop applying, if it is necessary, and for its own authority, any opposite disposition of the national law, including subsequent norms, without it being necessary to request or wait for the previous waiver of the national law by the Legislative Power or any other constitutional procedure".*

The community law does not repeal explicitly or implicitly the national law. Even though there is not hierarchy of community law over national law, usually prevails the community norms.

The Brazilian Supreme Court ruled that after the "*Protocol of Las Leñas - only applicable to the interjurisdictional relationships among the subscriber States of the Treaty of Asuncion and members of Mercosul - it became possible, by a simple letter rogatory, to promote the ratification and granting the exequatur in our Country, of sentences pronounced by the judiciary organs of Argentina, Paraguay and Uruguay*".

This decision, applying the Protocol of Cooperation and Jurisdictional Assistance in Civil, Commercial, Labor and Administrative Matters, known as Protocol of Las Leñas, constitute progress for the juridical relationships among the members of Mercosul. This progress relates to the direct execution of decisions pronounced by the courts of the party-States. According to normal legal process, still in force among the non-members of Mercosul, it is necessary for the Brazilian Supreme Court to ratify the foreign sentences before executing them in the country. That is to say, foreign decisions cannot be executed through a letter rogatory, unless the country is a member of Mercosul.

The above-mentioned Protocol guarantees equal treatment in legal procedures between citizens and permanent residents of Mercosul countries, as well as free access to the respective jurisdictions for the defense of rights and private interests.

It can be affirmed that the Protocol of Brasília and the Protocol of Las Leñas are the real initial steps in the formation of Community Law. Moreover these Protocols surpass purely economic issues to also promote the integration of other sectors.

IX. Conclusion

After the Second World War, nations realized the advantages of integration. International communities were created. The first great bloc was structured in Europe, and gave origin to the current European Union. The political international organizations like United Nations Organization - UN - and Organization of the American States - OAS -, were founded respectively in 1945 and 1948.

The political and economic changes by the 70's prompted the creation of other groups of States, each one with its own characteristics, such as Alca, Nafta and Mercosul. The last results from a long process of negotiations that began with the creation of Alalc, in 1960, of Aladi in 1980, and several other agreements among the States of the South Cone.

Mercosul is making efforts to reach its main objective, the creation of a common market. The transition period lasted from 1991, when the Treaty of Asuncion was signed, to 1995. Among the economic objectives, the bloc partially achieved a free trade market, reduced tariffs and attempted to coordinate macroeconomic policies. In the second phase, beginning in 1995, the bases for a customs union were instituted through the Protocol of Ouro Preto. This phase is expected to be completed by 2006. Mercosul also assumed an international legal identity. Achieving this legal identity was of highest importance, because the bloc obtained legitimacy to exercise rights and to contract obligations by itself.

The economic integration process also has an important role in the consolidation of democracy in the region. Recently, the party-States took an interested role in the presidential elections in Paraguay.

Mercosul is passing through an important stage. Since the beginning of this year, it is in the phase of customs union, still imperfect, because all the member-States have lists of exceptions. The intention is to end tariffs within the bloc by the year 2000. It has to be said that are presently many problems arising, especially between Brazil and Argentina, the two largest economies of the bloc. The cause is the great devaluation of Brazilian currency, the Real, in January of this year, since Brazil is Argentina's largest commercial partner.

Some observers are fearful that the current economic instability can put an end to Mercosul integration process. However, I do not hold such a position. There is no doubt that a big effort on the part of the member-States will be necessary for the continuation of the process. Nevertheless, the process to reach a common market could be delayed. It cannot be forgotten that negotiations evolved quickly and that not even a decade has elapsed since the signature of the Treaty of Asuncion.

However, positive results have happened almost exclusively in the commercial sphere. And the objectives of Mercosul, as indicated in the Preamble of the Treaty of Asuncion, are much wider, including improvement in the conditions of its citizens' lives. After 8 years, the free movement of services, capital, and people are still in the initial phase of discussion. It has to be said that the commercial integration has positively affected other social sectors, especially education, culture, transportation, energy and justice. Several agreements related to these areas were signed. But there is still great resistance to change.

It is essential that the laws and the economic and social policies be in agreement, which is happening very slowly. The difficulty of introducing a Common External Tariff is the best example. It is important to have an on-going evaluation of the structural development, always seeking to follow the objectives proposed for each stage of the integration process. In addition the leadership needs to overcome a sense of limitation to project more ambitious goals. It is imperative that they follow through the commitments, now and in the future, to guarantee credibility, both in Mercosul and abroad.

In the area of Justice, Brazil has taken the first steps. National judges are already applying the legal procedures for the execution of the dispositions of the agreements in their various spheres of jurisdiction, as mentioned in section VIII of this paper.

Nevertheless, this is not enough. For the integration process to progress, the creation of a Parliament and of a Supranational Court are essential. Without these independent organs, there is no way to talk about a true common market, since they are necessary for the creation and application of the supranational norms. As already analyzed in section V, the sovereignty of the member-States remains the major obstacle. This, however, should not be an impediment. The contemporary vision of a shared world is the most conducive to progress. Moreover, as previously mentioned in this study, at any time a member-State can renounce the agreement that ties itself to other nations. Obviously the renouncing State must accept the consequences that can arise from this action. Moreover, the consequences will be more serious depending upon the stage it breaks of the negotiations. Despite progress in other fields, legal integration remains incipient, without the existence of a definitive juridical basis for legislative harmonization.

An independent Supranational Court, with coercion power and international juridical identity is essential. The 40-year successful record of European Court serves as a model, which will require adaptations to the Latin American context. The Mercosul Court would be responsible for instituting legal proceeding and trial litigations

within the Bloc. It would be also responsible for interpreting the Community Law, when necessary, for the national Judges. In this way, the Court can ensure uniform application of the Law.

Difficulties remain in creating a real Common Market of the South, especially for constitutional subjects. It will be necessary to make amendments in the member-States Constitutions, particularly in Brazil and Uruguay. As Professor Maristela Basso asserts, national constitutions must allow primacy of international law and treaties over the domestic law. There should be larger efforts and less shyness in this area. After almost 10 years, the meetings with this objective have been unproductive. The topic of sovereignty remains a barrier. Because of its own economic problems, Brazil stands out presently as one of the most resistant members to amending its Federal Constitution and for the creation of a Mercosul Parliament and of a Supranational Court.

In 1997, the I Brazilian Congress of Magistrates of Mercosul, that took place in Santa Catarina State, by a wide majority, concluded that it is necessary to create a Supranational Court. In a Common Market it is not possible to have only an Arbitral Tribunal, which has limited competence.

It has to be emphasized that the national juridical sector has not been properly summoned to take part in the integration process. Usually the jurists have not participated in the discussions. It is expected that, in the moment that the studies for the creation and installation of a Court of Justice begin, institutions such as the Brazilian Bar Association and the Brazilian Magistrates Association, among others, would be called to participate in the meetings and elaboration of the projects.

In a few years, certainly, other countries of Latin America will be integrating into Mercosul. Some steps were already taken in this direction, especially with Chile and Bolivia, know as "associated countries". Agreements called 4+1 were signed with these two countries. Bolivia is a member of the Andean Pact, but received authorization of the other members to negotiate the agreement with Mercosul. Negotiations are in process with Venezuela, Colombia, Peru and Ecuador. Some problems in the economic sphere must be overcome to allow other Latin American countries to join Mercosul. Chile is the most economically stable country in South America. Certainly, this is one of the main reasons why it did not yet take part of Mercosul. It refuses to participate in an integration process which is not in harmony with its macroeconomic policy. Chile will probably enter the Bloc when it reaches the common market phase. However, other South American countries do not participate of Mercosul because of their economic problems, with a few exceptions.

Since the creation of Mercosul, several positive aspects were already verified, such as the productivity increase, larger commercial openings, cultural and educational exchange, application of the agreements by the Judiciary Power of each party-Country, beyond the increase of international credibility of the member-States. In 1997, South America had the best economic performance of the last decades, partly related to Mercosul, with the smallest inflation of the last 50 years, largest growth rate in 20 years and the highest flow of investment ever. The internal commercial growth of the Bloc grew from US$ 4 billion in 1991, to US$ 18.8 billion in 1997.

Finally, it has to be emphasized that the development of the integration process in South America made other blocs to be interested in strengthening contacts with Mercosul. It produced a cooperation framework agreement with the European Union, and this year in Brazil there will be a Mercosul-EU summit. Mercosul and European Union have the long-term target to sign a free trade agreement after 2005. The United States also showed interest, and there is an intention to establish a Free Trade Area of the Americas - FTAA- by 2005.

Mercosul is a successful reality, which should not be left to weaken. Each member-State has to put forth effort so that such a significant project can continue to develop, with the whole range of advantages of a common market, or maybe reaching a Zone of Political and Economic Union.

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