

## THE IMPACT OF NEW REGIONALISM ON TRADE POLICY MAKING: THE CASE OF MERCOSUR AND THE FTAA \*

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### I. INTRODUCTION

Since the '90s, Latin American Countries (LACs) have been signing and negotiating many trade agreements, constituting what is called new regionalism (*BID/IADB*, 2002). In contrast to the old type, new regionalism has two main features: on the one hand, is a uni-dimensional type of integration, in which the dominant goal is to coordinate the liberalization of trade and finance to achieve a larger economic market. On the other hand, when integrating countries display different levels of development (North/South for instance) there is no regional commitment to tackle down asymmetries nor do they provide compensation to the losers. Even if most governments reject the idea of creating supranational institutions or coordinating common policies, new regionalism carries big challenges, especially for developing countries when the agreements include developed countries as well, that are difficult to solve with intergovernmental instances of policies' coordination.

This paper focuses on the impact of new regionalism on the domestic policy making process. Most of the literature about policy making in economic integration processes is based on the European Union (EU) experience. In this sense, specialists highlight the pervasive effect that EU supranational policy and institutions generate in the policy-making of individual countries. Nonetheless, the array of institutions has generated not one, but several modes of policy making, depending on the policy domain and the period<sup>1</sup>.

Only a small part of the literature deals with the specificity of policy making within new regionalism. Most studies are based on individual

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country studies or focuses on integration process as occurring alone. Also, some authors remark the integration agreements ability to opening up and creating channels of participation for actors, traditionally excluded from a process, depicted as hermetic and elitist (Ostry, 2000; Botto, 2002). Others emphasize their capacity to renovate and update the management of the public sector in LACs. This is so because until the '90s, involvement in this kind of projects was characterized by the absence of presidential interest, a lack of trained, professional officials and stable bureaucracy and the delegation of authority on the part of the national Congress (Jordana & Ramio, 2002).

Assuming that new regionalism has opened up new spaces and windows of opportunity for the participation of new and old national actors, this essay attempts to evaluate to what extent these changes have improved policy making in terms of turning it into a more democratic process. Which are the new and old actors involved? In what arenas and phases of decision making process do they participate? And who really influences? We argue that this opening up does not necessarily imply democratization, but rather tighter technocratization.

The analysis is restricted to the process of decision making, where rules are made, and will involve two different experiences of new regionalism: the MERCOSUR (*Mercado Común del Sur*) and the FTAA (Free Trade Area of the Americas). The information and data used in this paper correspond to three national cases: Chile, Argentina and Brazil. We have chosen these countries because they all have started a process of trade liberalization both through symmetric (S-S) and asymmetric (N-S) negotiations.

The paper is organized in three parts. In the first one, there is a brief description of the economic context and policy style each country had before new regionalism came to stage. In the second and third one, we analyze the actors, arenas and processes in the negotiation that brought MERCOSUR into existence and the FTAA negotiation process that is currently taking place.

## II. HOW WERE CHANGES INITIATED? CHANGE AND CONTINUITY IN POLICY MAKING

The exhaustion of the import substitution model at the end of the 70's opened up the way to trade liberalization and a shift on the economic policies in the whole region. Nonetheless, in the initial phase of the liberalization process, the policy style kept rather similar, reinforcing the role of the executives and keeping narrow, almost closed, consultations with business because they were perceived as only holding protectionist

interests. In fact, during the import substitution period, trade policy making was exclusively the competence of national governments - especially bureaucrats and technocrats- who decided which sector and local industries were going to be considered as representative of the national interest and, as a consequence, protected from liberalization. Negotiations at that time were mainly regional negotiations, which only achieved rather insignificant tariff reductions, in the form of intra-sectoral concessions<sup>2</sup>.

Policy instruments and incentives for exports promotion or protection –such as taxes and credits or non tariff protection– were used and administrated in a very discretionary way with no transparency and a high degree of informality in the relationship between public and private agents. The private-public relationship during the 70s had a common pattern throughout the region. Big firms and business chambers (like petrochemicals and steel sectors) participated actively in the negotiations of the Latin American Integration Association (LAFTA/LAIA) in order to protect their particular interests; but they rarely participated in the definition of the national positions during the negotiation because they were not significantly affected.

With the explosion of the external debt crisis in LA in the mid 1980s, governments started to implement structural reforms. Trade liberalization was one of the three pillars of the so called Washington Consensus Model. In all three country cases under study, the financial crisis was a key factor to persuade the political elite to introduce liberalization in the agenda (Niño, 2004)<sup>3</sup>. Nonetheless, policies and policy style differed among countries, and especially between Chile on the one hand and Argentina and Brazil on the other. In the case of Chile, trade liberalization started in the mid-'70s during the military rule and took the form of a unilateral liberalization. Their own version of the “neo-liberal” model implied the neutrality of the economic policy; this belief translated into a much defined policy: the implementation of a flat tariff and the harmonization of protection or incentives across sectors. Due to the hardness of Pinochet’s dictatorship, effective until 1990, the decision making process was not significantly disputed and trade liberalization could advance with no set backs. Economic losers and institutional opposition - such as political parties and Congress- were silenced by the removal of the rule of law.

When decreasing unilaterally tariffs could not keep improving trade results, the Chilean government, by that time a democratic one, decided to use trade agreements to deepen liberalization (Saez, 2002). While in the first stage (unilateral liberalization) Chile reached an average tariff of 11%, with MERCOSUR and other trade agreements it reduced it to 6%, but at this time with the involvement of Congress.

In the case of Brazil and Argentina, trade liberalization was undertaken by democratic governments at the end of the 80's. External debt crisis helped both Menem and Collor de Mello to start the liberalization process by guaranteeing the support of external institutions to oversee the implementation of reform. Both leaders used the unilateral and bilateral strategy of negotiations simultaneously. On the one hand, they reduced and eliminated tariff protection as part of the agreement with International Financial Institutions (IFIs). But on the other hand, governments consolidated its results and tried to go deeper through a regional strategy.

The most significant and binding agreement signed by both countries was MERCOSUR. The Treaty of Asuncion (1991) established that the process of liberalization of goods was going to be gradual, progressive and automatic with no sector excluded. The goal was to achieve a Free Trade Area (FTA) and a common custom union in 1995. But the crisis' effect did not last forever and institutional opposition and reluctance reappeared in a short time. Opposition both from public and private sectors was more active in the regional than unilateral trade liberalization because the regional liberalization went further and deeper.

The strategy of opening markets through sub-regional and bilateral negotiations spread out over the whole region in the 90's as a consequence of the offer of industrial countries to improve market access opportunities and increase foreign external investments. This new type of regionalism imposes big challenges to national governments -and states- for trade policy making. In effect, on the one hand, governments are forced to deal with simultaneous and more complex negotiations that require larger and more sophisticated expertise. New and more complex issues are involved (for instance, intellectual property rights) in which public sectors do not necessarily have knowledge neither experience. On the other hand, any kind of concessions creates opposition and rejection from those private sectors- mainly business chambers and enterprises- that will lose protection. They will use national (congress, lobbies) and international (networks, fora) and resources to reject reform or demand compensation from the government. The way that governments deal with this conflict/cooperation scenario between public/private interests in both national and multilateral arenas has been, as we will show in the next section, to include new actors and to change some procedures in the policy making.

### III. THE DECISION MAKING PROCESS OF MERCOSUR: ACTORS, ARENAS AND PROCEDURES

Using research on the cycle of public-private interaction by Tussie, Casaburi and Quiliconi (2004), it is possible to draw a scheme containing five different stages in trade policy making, varying in terms of actors, arenas and procedures. A preliminary stage is called the agenda setting, where governments, usually through high-ranking politicians, make the foundational decision. This decision is usually influenced by a particular business sector that needs market access. Then, there is a stage of rule making, where decisions about the agenda, timing and instruments to achieve integration are made. National officials and state bureaucracy lead negotiations, while consultations to private actors are intermittent. Business actors become more alert and consultations are intensified during the stage of market offers and requests, when each country's priorities are negotiated and product-by-product haggling takes off (Sanchez Bajo, 1999; Giacalone, 2004). The fourth stage is led by national congresses that decide whether the agreement should be approved and internalized as a national law, exposing it to the consideration of civil society groups and public opinion. Finally, during the implementation phase, when enforcement of the agreement takes place and disputes over interpretation may arise, private representatives usually take the initiative and submit applications to the relevant government agencies to seek redress in their domain.

#### **Agenda Setting**

The idea of creating a common market in South America was reflected on two preceding treaties signed by Argentina and Brazil during the late '80s<sup>4</sup>. These background experiences were not successful in terms of generating high levels of intra regional trade, but served to further a high degree of coincidence and confidence between governments. Based on a good public reputation, the governments of Argentina and Brazil decided to take a step further by adding another two member countries – Uruguay and Paraguay – to the regional engagement and going deeper in terms of political integration.

In effect, the public commitment made by governments was to create a common market, where - following the experience of the European Union (EU) - all productive factors - capital and labor - could move freely in the region. However, short term expectations were to create trade and attract foreign direct investment in order to get economies of scale (Manzetti, 1994)<sup>5</sup>.

The car sector was the backbone of MERCOSUR. It was the only case in which business played an active role together with national

governments. With the support of business, Brazil and Argentina coordinated a common policy implying administered and compensated trade. Since MERCOSUR inception, this sector has been excluded from the liberalization process and is still under a preferential regime.

### **Rule Making**

From 1990 to 1995, definitions about the scope, schedule and structure of regional integration were reached and formally expressed in the two foundational treaties: the Asunción Treaty (1991) and the Ouro Preto Protocol (1994).

The Asuncion Treat was very ambiguous and ambitious in its form. On the one hand it identified all four middle-term policies to carry out in order to pursue a common market: 1) The elimination of intra-zone tariffs and non-tariff measures; 2) the adoption of a common external tariff; 3) the coordination of macroeconomics and sectoral policies. But on the other hand, it did not go into any detail about the enforcement mechanism to achieve those goals. In fact, governments rejected the idea of giving up their national sovereignty, and established that all decisions will be made within inter-governmental organs and under the rule of consensus.

The only exception to this reservation of sovereignty was the intra regional tariff elimination schedule where governments agreed on implementing an automatic mechanism - called the Trade Liberalization Program (TLP). Since governments had fresh in their minds recent unsuccessful attempts to liberalize, the TLP advanced through neither non-negotiable deadlines nor sectors<sup>6</sup>.

Far from going deeper into the integration process, the Ouro Preto Treaty reduced the ambiguity and ambitious goals previously defined in the Asuncion Treaty. While the later promised to achieve a common market area in five years' time, the Ouro Preto Protocol redesigned MERCOSUR scope, focusing on the achievement of a free trade area by 1998 and a customs union by the year of 2001. In terms of the institutional structure, it made it more complex but did not change its inter-governmental approach.

Ministers and officials made all decisions at this stage. Private participation at this stage was intermittent basically because of two reasons. On the one hand, very few business associations were equipped to deal with cumbersome technicalities. Only those big firms and sectors (such as petrochemicals and steel<sup>7</sup>) highly concentrated within and among countries had been invited to participate in the definition of MERCOSUR regulations, through sectoral accords. In fact, in spite of a clear commitment to general liberalization, the sector-based option was kept open within the MERCOSUR as a "safety valve" for sensitive sectors and

capital intensive ones. On the other hand, incentives to get involved had not yet materialized, as it takes time for the cost of the negotiation to get registered by the relevant sectors. These sectors and companies waited to get involved until the next MERCOSUR phase

Nonetheless, government participation in the redesigning of MERCOSUR scope and structure highly differed among countries. Brazil took the leadership in the definition of the common external tariff (CET) and it was able to impose as a regional policy its decision to recover the old sectoral approach. The decision to protect and favor investment in traditional and powerful sectors, such as automobile, textiles, footwear and computer and telecommunication hardware was reflected in the CET tariff escalation. The negotiation of the CET started in 1992 and was carried out by technocrats from all four countries under some regional guidelines given by the Common Market Group (*GMC- Grupo Mercado Común*), the executive organ of MERCOSUR. It was not an easy job to do because of the lack of information/statistics among countries and the structural asymmetries prevailing in the region.

For defining priorities, Itamaraty carried out a process of private consultation and negotiation between government negotiators with business associations<sup>8</sup>. In contrast, in Argentina, the task of designing the preferred CET fell basically on technocrats without any clear political guidelines or advice from business sectors. Contradictions and conflicting views within the State robbed the MERCOSUR initiative from any credibility within private and public sectors<sup>9</sup>. Contradictions ended by mid-1994 when Menem, under pressure from Brazil, made the public announcement that the Protocol of Ouro Preto was going to be signed (interview with Fernando Porta). Unfortunately, by that time consensus about mechanisms and timing to get to a customs union was already achieved between the governments and the opportunity for private advice was gone. Also, civil society organizations, through regional networks, sought to participate in the MERCOSUR's rule making process. In order to help governments to go further towards the common market goal, trade and environmental groups prepared a proposal for improving social agendas in the region. In the case of trade unions, they elaborated two initiatives in conjunction with national officials from the government's technical group (*SGT11- sub-grupo de trabajo*): a regional proposal for labor standards and the idea of creating a participatory channel for NGOs, business and trade organizations in the MERCOSUR structure. Both proposals were sent to the regional governments, but while the first was not discussed in the GMC<sup>10</sup>; the second one was taken into account in the new institutional setting included in the Ouro Preto Protocol. The new institutional setting included: 1) a

trade commission, an executive instance to deal with consultations and conflicts derived of the conformation of the custom union; 2) a consultative parliament commission (*CPC- Comisión Parlamentaria Común*) ; 3) a socio-economic forum (*FES- Foro Económico Social*) to formally include the voices of business, trade unions and NGOs in the decision making process.

### **The Interchange of Offers and Requests**

Private participation in this stage is characterized by defensive lobbying at the national level in order to obtain preferential treatment for the sector or firm. Due to the automatic, linear and progressive tariff reduction adopted by the Asuncion Treaty (TLP), the phase of offers and requests took a negative approach. Negotiations among governments were only about requests to protect domestic “sensitive sectors” and were basically of two different types: 1) requests for extending schedules to reach liberalization; 2) requests for excluding products in the schedule.

In terms of extending the schedule for intra-zone liberalization, governments agreed to include a more flexible timetable in 1994 that was called Final Regime towards a Common Custom (RAFUA- *Regimen Final hacia la Union Aduanera*). All countries had the opportunity to include sensitive products in their own list, and to give those sectors some extra time to restructure themselves (Palacios, 2004: 4). The big contrast between the number of exception items included by Brazil (29) and the other countries (211 tariff items from Argentina, 435 from Paraguay and 964 from Uruguay) clearly reveals where defensive sectors came from.

In terms of excluding sectors from CET, the requests came mainly from Argentina, Uruguay and Paraguay. Once the tariff escalation schedule was defined, a lobby competition from firms and business chambers surfaced in each country in order to obtain some specific exceptions. Nonetheless, exceptions were not available to anyone; only big firms and sector chambers with previous expertise in trade negotiations (for instance in LAFTA) could have access to information and key people. Small to medium and small producers were totally excluded. Trade liberalization in Argentina, was not only resisted by non-competitive sectors, but by big sectors such paper, textiles, footwear and timber. The textile sector represents a paradigm of this behavior. Its protection has always been higher than the MERCOSUR average tariff (16%) and using the ceiling consolidated at the WTO (35%). In order to prevent its final demise, national negotiators made the request to the partners to consider an “informal” exception to the CET<sup>11</sup>. Brazil’s exceptions took a more systematic and programmed form. After 1995, the sectoral approach to

trade and industrial policies recovered some of its former significance and appeal, and the government decided to favor investment and protection in certain sectors. In that sense, exception requests by Brazil were basically in those sectors such as computing and telecommunications, where they were not really competitive suppliers.

### **The Internalization of the Agreement**

Once agreements among countries are achieved, they are sent to the respective congresses to be passed as a requisite for their implementation in the national arena. In this way, national congresses exerted a key role in the progress of MERCOSUR. Foundational pillars – such as the Asunción Treaty, Ouro Preto or Brasilia Protocols- were easily approved, while a big number of key decisions made by consensus in the regional arena are still waiting to be internalized by one or all national congresses (Table 1). This data is even more puzzling if we consider that national congresses have a direct representation in the institutional structure of MERCOSUR through a Parliamentary commission<sup>12</sup>.

**Table 1 – Regional Decisions Taken from 2000 to 2004**

Type	Total	No need	Need	Approved yet	Internalized
Decisions (CMC)	162	55	162	61	43
Resolutions (GMC)	277	57	277	163	57
Directives (CCM)	46	2	46	25	19
Totals			873		119

*Source:* Mercosur Secretariat (2004).

In most MERCOSUR countries - with the partial exception of Brazil<sup>13</sup> - national parliaments have echoed protectionist interests, both private and provincial interests. National episodes, such as the discussion of the Sugar Protocol in Argentina, give evidence in this regard. Sugar is one of the two main productive sectors of the Northwest region and has been traditionally protected in Argentina. Without this protection, it would disappear against the competitive production of Brazil, which produces sugar as a commodity. Initially, this sector was excluded from all liberalization programs (TLP and RAFUA). But the pressure from the Brazilian government obliged all countries- in the Common Market Council (CMC- Consejo Mercado Común) to sign the Sugar Protocol in 1996. This protocol sent it to national congress for its internalization.

Before this regional agreement was reached the Argentine Congress, the Argentine sugar chamber convinced senators from the Northwest

provinces to repel the bill<sup>14</sup>. Based on the constitutional principle that international law is superior to domestic one, the executive insisted. Nonetheless, the Sugar Protocol is still waiting to be internalized and sugar, together with the car sector, has become the two main exceptions to the MERCOSUR liberalization process.

Other than opposing the executive's will, national congresses often work, as a good and functional counterpart to the executives' interests, blocking regional decisions considered invasive or disadvantageous for national interests. When the executive branches are personally committed to their implementation, national governments often use 'non sanctum' mechanisms - such as internalizing regional agreements under the umbrella of the Latin American Integration Association (LAFTA/LAIA) –or more administrative mechanisms– like issuing decrees to overcome congressional rejection.

This national procedure –congress/executive cooperation to block a bill– helps to explain the little progress made so far by MERCOSUR in deepening its regional agenda. Regional consensus on sector policies necessary to consolidate and advance the integration process - such as investment, services, competition, etc - has been blocked in the national arena, waiting for the approval of national congresses. A paradigmatic case of this dynamic has been the Protocol of Trade in Services, which generated a big debate inside the Services Technical Group (SGT). The version that was finally approved, signed in December 1997, is a soft version with no real step forward from the commitment undertaken by these four governments under the GATS. Nevertheless, it is waiting for Congress approval.

### **Implementation and Enforcement Phase**

Apart from governments, who are responsible for implementing regional agreements and regulations, business sectors are the main actors at this stage. They play a key role in trade controversies, asking national governments to use ad-hoc protectionist measures<sup>15</sup> to defend their sectors or production from more competitive suppliers, or to represent their claims in dispute settlement arenas, either regional (MERCOSUR) or multilateral (WTO). Trade disputes and regional conflicts have existed since MERCOSUR started, but their number increased due mainly to the asymmetries among economies and the lack of flexibility imposed by the Asunción Treaty and Ouro Preto Protocol. Conflict escalation increased with macroeconomic divergences between countries and its critical point came in 1999 when Brazil decided to devalue its currency to avert the

effect of the Asian crisis on its own economy (Rosemberg and Swartzman, 2000).

Argentina is a good case to demonstrate that legal complaints and accusations procedures are not available for all sectors. Accusation of dumping in the MERCOSUR have not only come from small and medium firms, as expected, but from the leading firms in the petrochemicals, steel, paper, and textiles industries, such as Indupa (Petrochemical from Grupo Richard), Ipako y Pasa (petrochemicals from Grupo Zorraquin and Perez Companc, respectively) Electror (petrochemical from Duperial), Acindar (steel), Propulsora Siderugica, Siderca (Techint), Massuh & Celulosa (paper), Alpargatas, Gatic (textiles). Sporadically, depending on the macroeconomic environment, also foods sectors, like Cargill, have asked the government to protect their firms from the invasion of Brazilian poultry (Viguera, 1998: 28).

Apart from asking the government to defend their own interests in trade negotiations, private sectors are required to help governments to overcome MERCOSUR's current stalemate by implementing two different strategies. On the one hand, they are thinking up policies to promote productive integration among countries in those sectors where national economies can enter complementary associations. Since 2002, a new program for called "Programa de foros de competitividad de las cadenas productivas del MERCOSUR (FCCPM)" has been implemented<sup>16</sup>. Under the coordination of the Group of Industry (SGT7), governments have invited national delegations of business and unions to take part in the business sector rounds.

Secondly, national governments are promoting cross country sectoral agreements in order to give some flexibility to the MERCOSUR legal framework. This strategy is currently used by the Argentinean government to enhance the re-industrialization process after the devaluation of the peso. Discussions between producers of capital goods –domestic engines, textiles, shoes– from Argentina and Brazil are taking place with a view to defining the size and type of quotas for Brazilian suppliers in the Argentine market. In sum, MERCOSUR may not be has the locking effect N-S do have, but it has changed the decision making process by meshing actors, agenda and procedures. In the following section we will analyze the contrast with N-S negotiations.

#### **IV. THE DECISION MAKING PROCESS OF FTAA: NEW ACTORS, ARENAS AND PROCEDURES**

In this section we are going to analyze policy making in regionalism of asymmetric type. Our focus will be on the Free Trade Area of the

Americas (FTAA) negotiation process. On the one hand, it involved all three countries here analyzed. On the other hand, it has introduced a significant innovation in terms of means and timing of non-governmental actors' involvement. This innovation is being imitated by other asymmetric agreements around the world.

Until the FTAA process, channels of consultation were opened once the agreement was signed. In the FTAA, as we are going to see, non-governmental actors are included during the process of defining rules among member governments. Far from legitimizing and participating in the implementation of rules previously agreed by governments, social organizations - such as business, trade unions and NGOs - can influence intergovernmental discussion and even trigger a debate on new and previously unforeseen agendas (Botto, 2003: 75). The FTAA negotiation is an unfinished, ongoing process. It is still in the stage of offers and requests, and does not seem to be near conclusion<sup>17</sup>. To solve this gap and analyze the description of the decision making process, we are going to work through analogy by bringing into the scene other experiences of asymmetric agreements (S-N) in the region.

### **The Agenda Setting**

Interests and expectations regarding the FTAA differed strongly among the countries involved. In the case of United states, interests and support from both public and private sectors can be explained basically because of two reasons: on the one hand, because of the prospect of enlarging their markets for high-technology goods and services; on the other hand, by the opportunity to obtain deeper commitments from Latin American in issues such as services, investments and intellectual property rights. In contrast, LAC governments seek to improve access to so far protected markets and attract foreign direct investment flows in a global context where bilateral cooperation and financial assistance are ever scarcer. In the particular cases of Argentina, Chile and Brazil, governments were pushed into hemispherical negotiations by the agricultural and mineral business sectors. But at the same time, manufacturers and industrial sectors, especially in Brazil, fear losing preferential access to regional markets *vis-à-vis* more competitive counterparts from the north.

### **Rule Making**

From 1995 to 2000, governments from all 34 countries in the hemisphere laid down the ground rules. Decisions at this stage were made by ministers and technocrats but negotiations were attended by actors of different types and arenas. During this first part of the process (1995-97), discussions were about rules for consensus, timing and agendas.

International organizations - such as IDB and the OAS - held a key role in terms of technical support and resources. Results were balanced in terms of expectations developed and developing countries in the hemisphere.

In terms of how to get consensus, developing countries under Brazilian leadership imposed two principles: decisions should be made under consensus and under the single undertaking rule, where no negotiation is closed before governments have reached a consensus in all the issues under discussion. They also promoted the idea that negotiations should be respect sub regional agreements (such as MERCOSUR, CAN).

Concerning to the schedule, United States wanted to be conclusive in terms of the timing and scope of the agreements. Governments agreed that the FTAA, whatever its content, should be concluded by the end of 2005 and that agreements should be WTO-plus. Finally, regarding to the agendas, governments agreed on the idea that negotiations would include nine disciplines with binding commitments - each of them with its own negotiation group (NG). The other three controversial issues, in which governments could not reach any consensus, were still going to be included in the organizational structure as special committees (see Chart 1 in page 275). One of these special groups was, surprisingly, on participation of civil society.

To deal with so many issues and expertise, some Latin American governments introduced institutional changes. This is the case of Brazil where a coordination body was created by decree within the Foreign Affairs Ministry, as a FTAA national secretariat (*SENALCA- Secretaria Nacional del ALCA*). This secretariat is responsible for the formulation of the national position in the FTAA and co-ordinates the participation of the other ministers and executive agencies involved in the negotiations agenda.

As the FTAA negotiations progresses, issue-specific inter-ministerial groups are organized. They are responsible for monitoring the discussion in each of the FTAA Negotiation Groups and consist of technical representatives for the ministers involved. Both experiences are being reproduced in other later asymmetric and controversial negotiations, such as the negotiation for free trade agreements between MERCOSUR and Europe, SENAEUROPA and WTO. But they do not infect preferential agreements with other LAIA countries, laterally negotiated, in which consultations still remain informal and irregular.

In Chile, an institutional reform was started by the first democratic government and after the FTA with Canada was signed. The aim was to give a greater prominence to foreign trade and to make its management more efficient. A coordination body, called Inter-ministerial Committee for International Economic Relations, was created in the Foreign Affairs

Ministry, comprising officials from the Ministries of Finance, Economy, Agriculture and the General Secretariat of the Presidency. Once the FTAA negotiation process was formally launched in 1998, the discussion about the agenda was reopened by the participation of civil society groups. Participation of non-governmental actors at this stage of decision making was a big issue under discussion among governments.

The first promoter of the idea was the United States. As host to the first meeting, they decided to invite business chambers and transnationalized firms to attend and to accompany governments in the initial stages of negotiation. This proposal had a good reception in the hemisphere, was followed in the successive meetings and finally business involvement was included in the structure and dynamic of FTAA negotiations in the form of a consultative business forum<sup>18</sup>. Latin American countries were reluctant to include civil society organizations (unlike business) in the negotiation process. They feared that this recognition would end in the inclusion of trade issues - such as labor or environmental standards - in the negotiations agenda<sup>19</sup>. To exert pressure towards their own recognition in the regional process and the expansion of the FTAA agenda, NGOs and labor organizations in the hemisphere formed a regional network - called "Hemispheric Social Alliance" (HSA) - just as the business sector had done previously. The response of LA governments to these pressures and demands varied over time, but remained confined within narrow limits characterized by the creation of regional channels for NGOs and academics<sup>20</sup> and by an increasing involvement of these same actors in the national arena. However, the call to civil society in the national arena is neither inclusive nor immediate.

Chile was the first country to introduce changes in its policy making process. The decision to do so, as well as the way in which it was implemented, was highly influenced by the experience of the free trade agreement signed with Canada. Dialogue and exchanges with business took a more formal and transparent form through the creation of the Committee on Public-Private Participation in International Economic Negotiations (*Comité de participación público-privado de negociaciones internacionales económicas*)<sup>21</sup>. By doing this, the government wanted to legitimize the ongoing negotiation and prevent any possible rejection of Congress<sup>22</sup>. Chilean Congress has always played a relevant role in policy making as an arena for actors and interests involved in the national debate.

This opening-up process went deeper in the following negotiations. During the Americas summit held in Santiago de Chile in 1998, civil society organizations - especially environmental NGOs - gained momentum as local partners of transnational networks. In this way, NGOs

who had been excluded from the previous discussions helped the government to organize the event and achieved experience and know-how about trade concerns. Finally, during the recent FTA negotiations with US, the Lagos administration decided to include a representative of the national trade union in the Private-Public Committee, who would be chosen by the president himself. In the regional arena, US/FTA also opened a side-room for both business and trade unions.

In the case of Brazil, Itamaraty took distance from the sectoral approach that characterized the private-public relation in MERCOSUR by inviting business and trade unions through their horizontal organizations (*CIN, Confederacao Nacional de Industria, CAN, Conferacao Nacional de Agricultura e CUT, Central Unica de Trabalhadores*) to take part in the meetings of SENALCA. Other organizations such as NGOs, the National Congress and academy waited until the end of 2000, when negotiations seemed to enter their final phase, to get involved in the FTAA process. As business and trade unions, they can participate in SENALCA meetings and events but they are not included in the routine of formulating and legitimizing negotiations. In contrast to what happens in MERCOSUR<sup>23</sup>, national legislators do not only echo the voices and interests of defensive business but also the fears and negative perception of the general opinion as regards the controversial effects of asymmetric agreements.

### **The Exchange of Offers and Requests**

After the FTAA VII Ministerial Meeting (Quito, 2002), governments were invited to make their offers on fourth different issues: market access, agriculture, services, investments and government procurement. All countries submitted their market access offers and agriculture to the corresponding negotiation group in due time. In those issues where they held defensive positions, national positions diverged among the hemisphere. In the case of MERCOSUR, the only offer that was submitted following the schedule was the one regarding access to market and agriculture issues.

In this phase, negotiations took place in both national and regional arenas to reach a MERCOSUR position. All four governments asked business associations to hold a process of consultation among their members and to present a list of offers and requests for liberalization. National negotiators from both the Treasury and Economy and Foreign Affairs “combed” the national position and submitted it to the regional arena. A regional offer was finally through a minimum common denominator, where the sectors and products included were those that did not receive any objection from any member country. In this respect, what is

interesting to point out is that asymmetric negotiations have proved to be a strong pressure force for domestic and regional actors to “put the house in order” and make efforts towards a more coordinated and deeper regional integration. This is the case of ongoing EU/MERCOSUR negotiations, in which the European Union has asked its counterparts –basically Argentina and Brazil– to achieve a consensus before presenting MERCOSUR’s offers and requests as a sine-qua-non condition to start negotiations.

The FTAA negotiation urged Argentina to institutionalized consultation with private actors to interchange information and knowledge sector. Changes included the creation of a public-private committee by decree from the Foreign Minister during the phase of interchange of the FTAA negotiations, but its performance was too low. On the one hand, academics lost interest and; on the other hand, business sectors showed a limited ability to deal with knowledge-intensive technical issues, other than those related to tariff issues<sup>24</sup>. Also, a consultative council for civil society has been created to promote dialogue and information access. Besides, FTAA negotiations have not yet reached the critical point of exchanging concessions among countries; previous experiences of NAFTA and US/Chile show that this critical stage usually ends by leaving hard and sensitive issues till the end and solving them as part of a “tied package”, without much knowledge of what has been negotiated (Torres, 2004). NAFTA and US/Chile also show that the best way for governments to overcome the lack of expertise and knowledge *vis-à-vis* their counterparts is to invite key sectors to play a key role as advisors in the so called “room next door”. The procedure of the “next room” has also starting to be used by Brazilian and Argentinean governments since 2003 and in the latest meetings of both WTO and FTAA. Nonetheless, effective participation and influence is reduced to those who have knowledge and resources to get involved<sup>25</sup>.

### **The Internalization of the Agreement**

To describe actors and procedures that characterize the dynamic of asymmetric agreements, we focus on three different experiences of the role of national congresses in the hemisphere. In the case of the NAFTA, the United States Congress had a big influence on the final version and scope of the agreement. After three years of negotiations among the executives of all three countries, the final version of the agreement was sent to both the Mexican and American congresses to be approved, as is stipulated in presidential systems. Due to the fact that the Mexican official party - PRI - controlled the majority in both houses, opposition to the agreements could not be voiced through formal institutions. Opposition to the agreement

came from the United States Congress and managed to block the talks. During the final phase of congressional ratification, trade unions and environmental lobbies approached congressmen, threatening the executive with the rejection of the negotiated text.

To avert this veto power, the executive acceded to the trade and NGOs demands: on the one hand they included two additional agreements in the original version, one related to labor standards and the other to the protection of environmental regulations throughout the region. On the other side, the executive implemented new policies to compensate those sectors potentially affected by the liberalization reform. In the case of the US/Chile agreement signed in 2002, labor standards were included in the trade negotiation agenda as a requisite for negotiations to begin. Following the NAFTA content, this regulation does not bind governments to a supranational standard, but obliges national governments to accomplish their own domestic regulation, under penalty of paying a penalty percentage of their total exports to their counterparts. Nonetheless, the pressure and participation of North American trade unions in the “next room” pushed the Lagos administration to promote sectoral meetings in order to discuss the rules and legitimize the process.

Despite the efforts made by the Chilean government to include all civil societies into the negotiation process, political opposition rose in the national congress. In contrast to what had happened in the MERCOSUR/Chile agreement, the Chilean congress spoke on behalf of public opinion that had doubts about the advantages of asymmetric agreements. As a consequence of these doubts, during the negotiations with the European Union, congressmen created two special commissions to analyze and discuss the content of the agreement with private sectors and negotiators. Fears increased even more during the negotiations for a free trade agreement with the United States and there was a total of 27 sessions on this concern (Frohman, 2004). However, objections and criticism by congressmen in this regard did not achieve any change in the executive’s behavior. As a consequence, some congressmen started to demand a more binding role for parliament in trade decision making<sup>26</sup>.

Finally, the recent experience of the US- Central American Free Trade Agreement (CAFTA) illustrates the new dynamic introduced by these bilateral agreements. In the final stage of the negotiation process, congressmen from Costa Rica traveled to the United States to lobby American legislators and the public opinion on the advantages of ratifying that agreement in comparison to the one that was being negotiated, at the same time, with Australia. The executive signed the agreement but a

cabinet crisis ensued and one can see roadblocks as Congress inspects the package to pass implementing legislation

## V. CONCLUSION

To sum up, a feature of the new regionalism is its emphasis on deepening trade liberalization. Even in the absence of supranational institutions –as in the case of EU experience - it leads to intensive negotiations which alter processes and actors' behavior.

Evidence from the two cases here analyzed, show three basic changes in decision making process, if compared with the past pattern:

Trade policy making is no long the exclusive competence of bureaucrats of national governments but involves a big number of actors in both public and private side. On the public side, highly professional officials are increasingly involved in more complex and technical issues. On the private side, highly concentrated business sectors provide both expertise and legitimacy needed by governments to negotiate in regional arenas.

Policy making is no longer a solely national decision making process but a mixed process hinging on regional, national and subnational discussion about who will retain protection. Exceptions and institutional procedures (congressional veto and legal complaints) are not available for all national sectors but only for those highly concentrated actors with access to main resources: expertise and contacts. Public-private interactions increase in number, intensity and institutionalization because of the resource interdependency. While central governments have the exclusive competence of defending national interest in negotiating tables; private sector provides the knowledge and the information require to solve more complex, dynamic and diversified problems and civil society participation helps to legitimate national positions. These changes have innovated regional policy making in both trade negotiations. The FTAA, in particular, has gone further in introducing new issues and changing consultation procedures with private actors. All trade negotiations that lead to significant liberalization exert changes in national policy making, although all countries have become mutually "contaminated procedurally", the phenomena differs in shape and direction, according to the country on stake.

In Argentina, impacts on policy making have been stronger in the case of MERCOSUR that in the FTAA. Changes, in terms of the political activity of Congress, the creation of a national agency to coordinate executive agencies and the increasing involvement of business were been mainly part of a defensive reaction to the leading role played by Brazil.

While MERCOSUR gives Brazil the opportunity to shape institutions and procedures by transferring domestic patterns to the regional arena, The FTAA negotiations have introduced some important changes to traditional policy making. Changes relate mainly to the ways of achieving collective action from a sectoral to a horizontal one, in which new actors on national and regional arenas -congress, NGOs, academics- are included.

The case of Chile shows a good case to test our main tenet: the big bang trade liberalization was achieved under military rule. Thus consultation opened by hemispheric negotiations provided a window of opportunity to legitimize the past and to create support for the continuous reduction of remaining protection at the margin. All these national particularities are summarized in the chart below.

**Chart 1 - Trade Policy Making. National Particularities**

Agreement	Argentina	Brazil	Chile
Symmetric	Political activity of Congress in defense of business interests. Attempt to coordinate increasing number of agencies involved. Consultation to business chambers and groups	No big change	No big change
Asymmetric	Idem Brazil	Political activity of Congress defending public opinion interests. Institutional changes towards coordination. Consultation to horizontal private national and regional associations	Institutional changes towards coordination. Institutionalization of pluralistic consultative channels

## Notes

- <sup>1</sup> In contrast to the overall idea that the EU has created a unique and distinctive kind of policy process characterized as 'communitarization', policy making in the European Union can vary among five policy modes: the supranational policy model, the regulatory model, the multilevel governance, the policy coordination and benchmarking and finally, an intensive trans-governmentalism (Wallace, 2002:28).
- <sup>2</sup> Negotiations such as LAFTA, Andean Community, CARICOM failed to create a common market because of different reasons and impetus on the initiative declined over the time.
- <sup>3</sup> Once again in the recent history of LAC, crisis helped national leaders to make a 180° change in terms of development paradigm, by changing policy style into a very personalitic way - where leaders and experts control the whole decisional process. It had happened during the 50s when a critical external environment, resulted from the second war persuade Latin American leaders to follow the import substitution model promoted by an international organization CEPAL.
- <sup>4</sup> The first treaty was the Argentine- Brazilian Programa de Intercambio y Cooperación Económica (PICE) signed in 1986 and the second, the Tratado de Integración, Cooperación y Desarrollo, signed in 1988. Both agreements aimed to promote regional integration through trade liberalization and technological cooperation among other means, and they shared many of the features typical of LAFTA and LAIA (voluntary concessions and a sector basis).
- <sup>5</sup> Apart from the economic expectations of improving its national income, Brazil, in particular, had a geo-political interest in the creation of MERCOSUR within the context of a globalized world, where industrialized countries started to play a strong seduction game on developing countries.
- <sup>6</sup> Once the easy phase of reciprocal trade liberalization of the PICE initiative was left behind (usually involving goods not protected locally), the exchange of preferences based on a positive list approach strengthened the leverage of import competing interests, which definitively blocked the process that was used in the PICE initiative.
- <sup>7</sup> Their plants are technically indivisible and given their increasing dimensions pushed by large economies of scale, they require enormous capital investment. Due to their continuous process of production and high interdependence of production flows and technology, they are constituted into vertical industrial complexes (Sanchez Bajo, 1999:2).
- <sup>8</sup> Sector chamber were founded in 1991 for negotiations of prices and wages and late evolved into a forum to discuss and negotiate issues of sector development and competitiveness, have been very influential in the contents of the various automobile agreements negotiated between the State, companies and the unions (Da Motta Vega, 2000:15).
- <sup>9</sup> On the one hand, Cavallo - at that time Minister of Economy and father of the convertibility plan - rejected the idea of creating a common customs in MERCOSUR and worked hard in order to achieve a bilaterally free trade agreement with the United States. On the other hand, there were those who believed in MERCOSUR as an option for regional development (Personal interview with Graciela Palacios, representative of Argentina in the MERCOSUR Trade Commission).
- <sup>10</sup> The proposal was blocked in the Consejo Mercado Común (CMC) (common market council) because of the refusal of one country to go deeper into harmonization. The discussion was reopened in 1996 when negotiations of MERCOSUR towards free trade areas with the United States (FTAA) and Europe persuaded governments to improve their relation to

CCSCS (Portella, 1999). It was finally approved as a 'Declaración Socio-Laboral' with no binding effect.

- <sup>11</sup> Personal interview with Palacios, Buenos Aires, April 21th, 2004.
- <sup>12</sup> The Comisión Parlamentaria Común is integrated by the four delegations from national congresses; national legislators are expected to give advice to inter-governmental bodies and promote the internalization of regional laws in the domestic arena.
- <sup>13</sup> In the case of Brazil, Congress does not play a big role in the discussions of MERCOSUR. Business prefers to lobby on the executive branch rather than the legislative. One explanation for this is the fact that the national state is organized in a federative way, where provincial and federative states do have a very strong autonomy, but on the other hand, and partly because of that, there are no consistent nor strong national parties. The political party system is known for its volatility, which makes it difficult for executives and local interests to pursue any special initiative through Congress.
- <sup>14</sup> With the support of the two main national parties – Peronista (official) party and Radicales - a national law to protect the sector and exclude it from the trade liberalization was rapidly passed in 2000 (Mustapic & Llanos, 2000).
- <sup>15</sup> Most of this safety valves were prohibited by the MERCOSUR and WTO rules, such as the use of non-tariff barriers (NTBs), quotas, dumping, perforation of the CET. Safeguards and exports subsidies - such as draw backs and reimbursements - were allowed during the transitional period (1991-94).
- <sup>16</sup> The first forum to be discussed is the one related to timber and furniture; the first and second meetings took place in March 2003 and May 2004, respectively (MERCOSUR Administrative Secretary, 2004:25).
- <sup>17</sup> Specially if we take into consideration Zoellick's speech September, 11th 2002, where he introduced the idea of using bilateral agreements as reward/punishment as the new US strategy in the unilateral order (The Economist, 5t December, 2002).
- <sup>18</sup> The American Business forum's explicit aim is the discussion and exchange of information among sectors in order to reach consensus on each negotiation issue and to make recommendations to regional governments before the meeting of ministers and governments. ([http: www.reih.org](http://www.reih.org))
- <sup>19</sup> Disciplines such as labor and environmental standards are viewed by LAC governments and developing countries as non-tariff barriers imposed by industrial countries to protect domestic productions and prevent access of more competitive suppliers, such as natural intensive goods producers.
- <sup>20</sup> Basically, there have been three regional initiatives:1) the organization of two academic colloquia before the ministerial meetings, promoted by regional international organization - OAS and IDB - (Quito, 1997 and Buenos Aires, 2001:2) the invitation to submit individual or collective proposals through a broad consultation on the internet (opened in 2001/02/03); 3) the participation in issue- specific meetings of governments and technical specialists (opened after the Quito Ministerial, 2003).
- <sup>21</sup> It operates within the Economy Ministry and comprises officials from the Ministries of Finance, Foreign Affairs and Agriculture, as well as the Confederation of Production and Trade and other exporters' associations, representing the private sector.
- <sup>22</sup> In trade issues, national parliaments were not always trustworthy While in 1991Congress followed the executive initiative of reducing the external tariff from 15% to 11% and approved the bill in only one week. in 1998 congress-men opposed the initiative of

reducing the external plain tariff from 11 to 6%, echoing the protectionist interests of agricultural sectors. This rejection could have made the MERCOSUR commitment fail.

- <sup>23</sup> Business lobbies act on the executive branch rather than Congress. In contrast to the Chilean case, the national state is organized in a federative way, where provincials and federative states do have very strong autonomy, but on the other hand, and partly because of that, there are no consistent and strong national parties.
- <sup>24</sup> Business's proposals and advice is limited to market access and to protection mechanisms, such as administration of trade relief. There are little business advise and knowledge about others new issues such as investment, competition, etc (Personal interview with Nora Capello, negotiator from Argentina, Foreign Affairs, Buenos Aires, April 28th, 2004).
- <sup>25</sup> Personal interview to Jose Maria Fumagalli, director of Petrochemical Chamber in Argentina in Buenos Aires, 30th June, 2004)
- <sup>26</sup> The idea is to reproduce the fast track mechanism, which allows the United States Congress to introduce partial changes into the bill. But changes of this sort seem difficult to take place in the short term. On the one hand, the executive branch is reluctant to lose power in the decision process; on the other, it should achieve the consensus of the 'special' majority in congress to reform the Constitution. (Frohman, 2004)

## References

- BID/IADB (2002), *Más allá de las fronteras. El nuevo regionalismo en América Latina*. [www.iadb.org/pub](http://www.iadb.org/pub).
- Botto, M. (2002), "Mitos y realidades de la participación no gubernamental", in D. Tussie y M. Botto (eds.) *El ALCA y las cumbres de las Américas: ¿una nueva relación público – privada?*. Buenos Aires: Editorial Biblos/FLACSO.
- Botto, M. (2003), "The FTAA and the Participation of Civil Society: Scope and Challenges of a New regional Agenda", *Integration and Trade 7*.
- Bouzas, R., P. Da Motta Vega, y Torrent (2002), *In Depth Analysis of MERCOSUR Integration, its Prospective and the Effects thereof o the Market Access of EU Goods, Services and Investments*. Barcelona: Observatory of Globalization, University of Barcelona.
- Da Motta Vega, P. (2000), "O policy making da politica comercial do Brazil: Os caminhos da Transicao", in BID-Interamerican Dialogue-Munk Center (eds.) *El proceso de formación de la política comercial: nivel uno de un juego de dos niveles*. Documento de divulgación 13 comerciales, Mimeo.
- Fumagalli, J. M (2004), *Interacción público-privada en el diseño de políticas comerciales*. Mimeo.
- Frohman, A (2004), *Political and Institutional Context of Trade Policy in Chile*. Mimeo.
- Manzetti, L. (1994), "The Political Economy of MERCOSUR", *Journal of Inter American Studies and World Affairs* 35.
- MERCOSUR Administrative Secretary (2004), *Primer informe semestral del MERCOSUR*. [www.MERCOSUR.org.uy](http://www.MERCOSUR.org.uy).

- Mustapic, A and M. Llanos (2000), "El papel del Congreso argentino en el tratamiento del presupuesto y del MERCOSUR", in G. Gaetano and R. Perina (eds.) *MERCOSUR y Parlamentos*. Montevideo: Impresora Editorial.
- Niño, J. (2004), *What determines Trade Regimes and Reforms? The Role of Ideas and Democracy*. Paper. London School of Economics, Universidad de Colombia.
- Ostry, S. (2002), *The Trade Policy Process: Level One of Two Level Game. Country Studies in the Western Hemisphere*. Occasional paper 13. BID /Interamerican Dialogue/Munk Center.
- Palacios, Graciela (2004), *MERCOSUR: Instrumentos Económicos*. Buenos Aires: Universidad de Buenos Aires, Mimeo.
- Portella, de Castro M. S. (1999), "Negociaciones Colectivas internacionales e mercosul", in Y. Challout, and P. de Almeida (eds.) *Mercosul, NAFTA e ALCA. A dimensao social*. Sao Paulo: LTR Editora.
- Saez, D. (2002), "La formulación de la política comercial en Chile: una evaluación", in BID - Interamerican Dialogue-Munk Center (eds.) *El proceso de Formuación de la política comercial: nivel un de un juego de dos niveles*. Documento de divulgación 13.
- Sanchez Bajo, C. (1999): *MERCOSUR's Open Regionalism and regulation: focusing on the Petrochemicals and Steel Sector*. Paper presented in IPSA. Washington D. C.
- Rosemberg, R. y G. Swarzman (2002), *El proceso de integración Argentina- Brazil en perspectiva: el ciclo cambiario y la relación publico-privada en Argentina*. Documento de Divulgación 17, INTAL-ITD-STA.
- Torres, Blanca (2004), "Actores estatales y no estatales y política exterior: La apertura comercial", in Lorenzo Meyer and Ilán Bizberg (coords.) *Transformaciones y permanencias 1970-2000. Una historia contemporánea de México Tomo I*. México: Océano.
- Tussie, D., G. Casaburi, y C. Quiliconi (2002): "Argentina: in a Logic of Nested Games", in Lengyel and Ventura-Dias (eds.), *Trade policy reforms in Latin America: Multilateral Rules and Domestic Institutions*. New York: Palgrave Macmillan.
- Viguera (1998), *La política de la apertura comercial en la Argentina*. Paper prepared for LASA meeting, September 24-26.
- Wallace, H (2000), "Institutions process and analytical approaches", in H. Wallace and W. Wallace (eds.) *Policy making in the European Union*. Oxford: Oxford University Press.