CHAPTER 4
INSTITUTIONAL FRAMEWORK OF MERCOSUR
AND HOW THE MERCOSUR ECONOMIC
INTEGRATION PROCESS FUNCTIONS

I. INTRODUCTION

The original goal of MERCOSUR (Common Market of the South in English or MERCOSUL in Portuguese) was the creation of a common market between Argentina, Brazil, Paraguay, and Uruguay by January 1, 1995. Despite the stated goals of the Treaty of Asuncion (the document that set the outlines for establishing that common market), what actually appeared in the Southern Cone on New Year’s Day in 1995 was a very imperfect customs union. The common external tariff (CET) was applied to only about 85 percent of the tariff lines found in the MERCOSUR nomenclature or harmonized tariff classification system (NCM). The actual duty charged depended on the particular item, although during the mid-1990’s the weighted average of the CET was approximately 14 percent. In addition, about 10 percent of the tariff lines found in the NCM originating within and traded among the MERCOSUR countries was still subject to tariffs or non-tariff barriers such as quotas or outright import restrictions.

II. INSTITUTIONAL FRAMEWORK

The Treaty of Asuncion provided for three institutional bodies that were to be replaced by January 1, 1995. In particular, Article 9 of the treaty established the Common Market Council and the Common Market Group to oversee the administration and implementation of the MERCOSUR process during the so-called transition period that officially began in November 1991 and ended on December 31, 1994. In addition, Article 15 of the Treaty of Asuncion set up an Administrative Secretariat in Montevideo to coordinate meetings, issue press releases, and handle public relations.

The Protocol of Ouro Preto, which was signed by the four MERCOSUR countries in December 1994 and came into full force and effect on December 15, 1995, instituted a new institutional framework for MERCOSUR. The Protocol retained the three original institutional bodies and added three new ones as well, including the MERCOSUR Trade Commission. The Protocol of Ouro Preto is also important because it gave MERCOSUR a juridical personality.
under international law, thereby allowing MERCOSUR to negotiate agreements with other countries, trade blocs, and international organizations.

One of the biggest shortcomings of MERCOSUR’s institutional framework is that none of the bodies enjoys supranational authority. This means that all decisions, resolutions, or directives (but for those affecting the daily operations of MERCOSUR’s institutional bodies) must either be ratified by each member state’s respective legislature or incorporated into domestic law by executive decree before they have any legal effect within each country’s territory. There is no concept of “direct effect” as in the European Union where regulations issued by the EU Council, for example, are directly applicable in each member state without the need for national measures to implement them.\(^1\) Although each MERCOSUR country is under an obligation to incorporate all MERCOSUR-issued decisions, resolutions, and directives into its respective domestic legislation, this procedure is time consuming and prevents quick resolution of the many asymmetries that currently exist among the MERCOSUR countries. Furthermore, the legislation is not enforceable on a regional level until all four member states have ratified it (although there are instances where a decision or resolution only requires that it be ratified by two or three out of the four member states before it comes into force on a regional level).

Another potential problem with MERCOSUR’s institutional bodies is that any measures must be adopted with the consensus of all four member states.\(^2\) This procedure has worked reasonably well up until now, but if MERCOSUR ever becomes the type of deep economic integration process similar to the European Union (as was contemplated when the project was launched in the early 1990s), the current voting system may become unfeasible. Under the current system, for example, tiny Paraguay (population 6 million) and Uruguay (population 3.5 million) have a vote that is equal to Argentina (population 34 million) and Brazil (population 186 million).

Even in 1995 the four MERCOSUR governments recognized some of the shortcomings of MERCOSUR’s current institutional framework. This is the reason why Article 47 to the Protocol of Ouro Preto reserved the right to convene a diplomatic conference in the future to revise MERCOSUR’s institutional structure.

Although the current associate members of MERCOSUR do not have the right to vote in any matters before MERCOSUR’s institutional bodies, they are allowed a limited presence. For example, Common Market Council Decision (CMC) 12/97 authorizes Chile to participate in meetings of the Common Market Council and to attend meetings of the Common Market Group when this is deemed convenient by both Chile and MERCOSUR. The Chilean

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\(^1\) As a result of 1994 amendments to the Argentine Constitution and subsequent holdings by the Argentine Supreme Court, norms that flow out of a binding international legal treaty (such as the Treaty of Asuncion) may take precedence over conflicting domestic legislation or fill in for voids in the national legal framework.

\(^2\) It is important to point out that the affirmative vote of all countries is not required to achieve a “consensus.” A country may abstain and not destroy the requirement of consensus.