

Unintentional power sources? Institutional setup and effects on bargaining in inter-regional negotiations – the EU and the MERCOSUR

¿Recursos de poder involuntarios? La configuración institucional y sus efectos en las negociaciones interregionales: La UE y el MERCOSUR

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Abstract: This research article takes one step to investigate bargaining in international politics and shows how institutional dynamics influence a regional institution's ability to realize the own set policy goals. The chosen case, the trade negotiations between the EU and MERCOSUR, presents a way to assess both institutions abilities and dynamical underpinnings in the interaction with each other. Based on a qualitative research design, the article examines the experiences of negotiators on both continents that have directly participated in the EU-MERCOSUR negotiations. The results show that while a high degree improves learning processes, expertise, and external legitimacy, it bears a high risk of rigidity and therefore, failure. The research article draws precise conclusions for the way we study regional institutions examining how their set-up influences strategic choices.

Resumen: Este artículo versa sobre las investigaciones de procesos de negociaciones internacionales y muestra cómo su dinámica institucional influye en la capacidad de las instituciones regionales para concretar sus propios objetivos. El caso elegido es el de las negociaciones comerciales entre la UE y el MERCOSUR, el cual permite evaluar tanto las capacidades de las instituciones como los fundamentos dinámicos de la interacción entre ellos. Con un diseño de investigación cualitativa, el proyecto examina las experiencias de los negociadores de ambos continentes que han participado directamente en las negociaciones entre la UE y el MERCOSUR. Los resultados

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muestran que, si bien un alto grado de institucionalización mejora los procesos de aprendizaje, la experiencia estratégica y la legitimidad externa, conlleva un alto riesgo de rigidez y, por lo tanto, de fracaso. En el artículo de investigación se sacan conclusiones precisas sobre la forma en que estudiamos las instituciones regionales y la manera en que su configuración influye en las opciones estratégicas de las partes involucradas.

Keywords: MERCOSUR, European Union, inter-regionalism, trade, bargaining, institutionalism.

Palabras clave: MERCOSUR, Unión Europea, inter-regionalismo, comercio, negociaciones, institucionalismo.

1. INTRODUCTION

Over the last two decades, international trade agreements as response to the insecurity globalization poses have proliferated. Those agreements are as much about compromise as they are about strategic bargaining, power sources and cost benefit calculations. What makes an actor in the arena of trade an effective negotiator able to advance the own benefits in negotiations? Researchers studying trade policy have rendered various angles and debate on the ability of actors to achieve their interests in the international environment¹. One contemporary example of a trade agreement, as the first completed agreement on inter-regional level, is the arrangement between the European Union (EU) and the Mercado Común del Sur (MERCOSUR). The agreement is a *sui generis* model of two regional institutions bargaining with each other both influenced by their institutional context.

This research paper takes one step to investigate bargaining in international politics and shows how institutional dynamics at hand influence an international actor's ability to realize own set policy goals. Understanding the policymaking process as practical tool for interest attainment, this policy paper draws important conclusions for the effects of various degrees of integration on interest attainment. Based on a qualitative research design, the study makes inferences connecting the institutional set up of the both regions

1 DOCTOR, Mahruk. "Brazil's Role in Institutions of Global Economic Governance: The WTO and G20". *Global Society*. 2015, vol 29, nº, 286–300. Available in: <<https://doi.org/10.1080/13600826.2015.1025041>>. CONCEIÇÃO-HELDT, Eugénia; MEUNIER, Sophie. "Speaking with a Single Voice: Internal Cohesiveness and External Effectiveness of the EU in Global Governance". *Journal of European Public Policy*. 2014, vol 1, nº 7, 961–79. Available in: <<https://doi.org/10.1080/13501763.2014.913219>>. YOUNG, Alasdair R.; PETERSON, John. "The EU and the New Trade Politics". *Journal of European Public Policy*. vol 13, nº 6, 795–814. Available in: <<https://doi.org/10.1080/13501760600837104>>. YOUNG Alasdair R. "European Trade Policy in Interesting Times European Trade Policy in Interesting Times". *Journal of European Integration*. 2017, vol 39, nº 7, 909–23. Available in: <<https://doi.org/10.1080/07036337.2017.1371705>>. CONCEIÇÃO-HELDT, Eugénia. "When Speaking with a Single Voice Isn't Enough: Bargaining Power (a)Symmetry and EU External Effectiveness in Global Trade Governance". *Journal of European Public Policy*. 2014, vol 21, nº 7, 980–95. Available in: <<https://doi.org/10.1080/13501763.2014.912146>>.

and their strategic exploitation of bargaining mechanisms. By examining the experiences of thirteen individuals that have directly participated in the EU-MERCOSUR negotiations, findings are based on novel empirical data and firsthand experience.

The study demonstrates how giving the competences to negotiate to a supranational institution can cause internal conflict and an over-representation of peculiar economic interests in the bargaining process. However, the institutional dispersion and the shared legitimacy over trade policy in the EU, have served as leverage to the Commission in the negotiations. MERCOSUR faced difficulties to coordinate with the EU and to show strength as a bloc, as intergovernmental relations reign the policy process. Individually, the members could find compromises with their economic interest groups and stakeholders more quickly as their flexible institutionalization improved their accountability and legitimacy, supplementing them with additional resources.

The article proceeds as follows: Combining strands of literature on effectiveness, institutional theory, and EU trade power, the first part of this paper draws on the conceptual considerations of the relevant literature to set the outline for the subsequent empirical analysis. A second chapter outlines the research design of the study. The section that follows reflects upon the empirical mechanisms and draws important conclusions. In the final section, the article discusses the findings by highlighting the tensions between various degrees of integration.

2. ACADEMIC STATE OF THE ART

Regional institutions become an effective and legitimate actor in international trade if they can actively pursue their own interests in the world. How they achieve this ability has been discussed on a number of occasions. The European Union has received wide attention of scholars studying effectiveness in international trade. It is often assumed that the sheer size of Europe's single market combined with the collective character of European trade policy give the EU an advanced bargaining chip in trade negotiations². Arguably, a large domestic market to which other countries want access or are dependent upon gives a better position to make persuasive offers or coercive threats³.

Fewer authors have analyzed the potential internal determinants of its institutional architecture that increase its ability to realize goals in the international arena⁴. Analyzing under which conditions the EU faces difficulties in bargaining trade agreements and how it proceeds to solve those issues, much of the literature's attention has been devoted to connecting

2 MEUNIER, Sophie and NICOLAIDIS, Kalypto. "The European Union as a Conflicted Trade Power". *Journal of European Public Policy*. 2006, vol 13, n° 6, 906–25.

3 DÜR, Andreas; ZIMMERMANN, Hubert. "Introduction: The EU in International Trade Negotiations". *Journal of Common Market Studies*. 2007, vol 45, n° 4, 771–87. Available in: <<https://doi.org/10.1111/j.1468-5965.2007.00747.x>>

4 CONCEIÇÃO-HELDT, Op cit.

effectiveness with the institutional set-up. As Meunier and Nikolaidis find, the EU is a 'conflicted trade power' as it has to balance national and regional policy goals at the same time, and simultaneously negotiates within a third level, the external partner.

These insights draw on the game analogy by Putnam, who was the first to demonstrate that the foreign policy of countries can be best described as two-level game⁵. Chief negotiators must deal simultaneously with actors at the international level and the domestic level. An agreement at the international level is only possible when the win sets of involved actors overlap on both levels. Camroux adds to these assumptions that an inter-regional negotiation process becomes a four-level game, as it entails four negotiation stages⁶. While this game analogy helps to understand the complexity of trade policy and renders the framework of analysis, it sheds little light on the deductible conclusions for the interactions on the fourth level. It remains to ask, what influences the effectiveness of actors on inter-regional level.

Driven by the particular interest to analyze external effectiveness, EU scholars have studied internal cohesion and external effectiveness, testing whether cohesion is what determines success⁷. Studies conclude that whether the Commission can act independently from its member states positively influences its power position in negotiations⁸. Meunier analyzes how different institutional rules to aggregate divergent member state preferences into one common position affect the bargaining capabilities of the EU in international trade negotiations⁹. Her insights are contributing significantly to negotiation theory by shedding light on the linkage between domestic institutional structures and external effectiveness in international negotiations. On the basis of trade negotiations between the EU and Mexico and the EU in multilateral negotiations, her study posits that cohesion is not the explanatory factor for successful negotiations, but again the bargaining

5 PUTNAM, Robert. "Diplomacy and Domestic Politics: The Logic of Two-Level Games". *International Organization*. 1988, vol 42, n° 3.

6 CAMROUX, David. "Interregionalism or Merely a Fourth-Level Game? An Examination of the EU-ASEAN Relationship". *East Asia* 27. 2010, n° 1, 57–77. Available in: <<https://doi.org/10.1007/s12140-009-9096-x>>

7 GEHRING, Thomas; URBANSKI, Kevin; OBERTHÜR, Sebastian. "The European Union as an Inadvertent Great Power: EU Actorness and the Ukraine Crisis". *Journal of Common Market Studies*. 2017; vol 55, n° 4, 727–43. Available in: <<https://doi.org/10.1111/jcms.12530>>
CONCEIÇÃO-HELDT, Eugenia. "Variation in EU Member States' Preferences and the Commission's Discretion in the Doha Round Variation in EU Member States' Preferences and the Commission's Discretion in the Doha Round".

8 WOOLCOCK, Stephen. "EU Trade and Investment Policymaking After The". 2010, 22–25. Available in: <<https://doi.org/10.1007/s10272-010-0321-z>>; NUTTALL, S. *European Foreign Policy*. Oxford: Oxford University Press, 2000.

9 MEUNIER, Sophie. "A Faustian Bargain or Just a Good Bargain? Chinese Foreign Direct Investment and Politics in Europe". *Asia Eur Journal*. 2014, 143–58. Available in: <<https://doi.org/10.1007/s10308-014-0382-x>>; MEUNIER, Sophie. "Managing Globalization? The EU in International Trade Negotiations". *Journal of Common Market Studies*. 2007. vol 45, n° 4, 905–26. Available in: <<https://doi.org/10.1111/j.1468-5965.2007.00753.x>>

power position of the EU vis-à-vis the third subject¹⁰.

On another case, Conceição-Heldt shows through a systematic analysis of EU member states and the Commission's preferences concerning agricultural trade negotiations in the Doha round, how the divergence of preferences among the member states have increased the EU's ability to pursue its preferred policies¹¹. Also, Meunier demonstrates that internal conflict can be the ultimate source of power. As Schelling argues, "the power of a negotiator often rests on a manifest inability to make concessions and to meet demands"¹². Do those assumptions from the literature hold true for the case with MERCOSUR? If it is the institutional set-up of the EU united through the collective representation requirement that enabled the EU to increase its achievements in international trade negotiations, the same effect should occur with MERCOSUR.

By comparing both regions' strategies and how negotiations were managed on interregional level, those findings can shed light on the postulated mechanisms. Beyond this mechanism they can show the power sources of a flexible institution such as MERCOSUR. The supranational body legitimized to negotiate terms of agreements independently is absent in the set-up of MERCOSUR. So far, the strategic interaction of both on the sphere of inter-regional bargaining and how the institutional set up of the bargaining process has restricted or enhanced their position has received little academic attention. The vast majority of EU-MERCOSUR research analyzed inter-regional negotiations with an 'actor-lens' on the EU, analyzing its ability to shape the international system¹³. Only a few exceptions compared specific dimensions of the institutional set-up of both¹⁴, while no recent study has

10 CONCEIÇÃO-HELDT, Op. cit.

11 CONCEIÇÃO-HELDT, Op. cit.

12 SCHELLING, Thomas. *The Strategy of Conflict*. Cambridge, MA:Harvard University Press, 1960, p.19.

13 GARCÍA, María. "The European Union and Latin America: 'Transformative Power Europe' versus the Realities of Economic Interests". *Cambridge Review of International Affairs*. 2015, vol 28, n° , 621–40. Available in: <<https://doi.org/10.1080/09557571.2011.647762>>; SÖDERBAUM, Fredrik, STALGREN, Patrik; VAN LANGENHOVE, Luk. "The EU as a Global Actor and the Dynamics of Interregionalism: A Comparative Analysis". *Journal of European Integration*. vol 27, n° 3, 365–80. Available in: <<https://doi.org/10.1080/07036330500190297>>; MATTHEIS, Frank; WUNDERLICH, Uwe. "Regional Actorness and Interregional Relations: ASEAN, the EU and MERCOSUR". *Journal of European Integration*. 2017, vol 39, n° 6, 723–38. Available in: <<https://doi.org/10.1080/07036337.2017.1333503>>; MALAMUD, Andrés. "La Unión Europea, Del Interregionalismo Con América Latina a La Asociación Estratégica Con Brasil". *Revista CIDOB d'afers Internacionals*. 2012, 219–30; RÜLAND, Jürgen. "Balancers, Multilateral Utilities or Regional Identity Builders? International Relations and the Study of Interregionalism". *Journal of European Public Policy*. 2010, vol 17, n° 8, 1271–83. Available in: <<https://doi.org/10.1080/13501763.2010.513586>>

14 GRUGEL, Jean. "New Regionalism and Modes of Governance - Comparing US and EU Strategies in Latin America". *European Journal of International Relations*. 2004, vol 10, n° 4, 603–26. Available in: <<https://doi.org/10.1177/1354066104047850>>; MALAMUD, Andrés. "Presidential Diplomacy and the Institutional Underpinnings of MERCOSUR: An Empirical Examination". *Latin American Research Review*. 2005, vol 40, n° 1; 138–64; DESIDERÁ, Neto; WALTER, Antonio. "The Evolution of MERCOSUR Behaving as an International Coalition, 1991-2012". *Contexto Internacional*. 2016, vol 28, n° 2, 593–620. Available in: <<https://doi.org/10.1080/13501763.2016.1135866>>

been conducted on the techniques and strategies of negotiations on inter-regional level in interaction with each other yet.

This analysis is aimed at filling the identified gaps by testing the assumptions and limitations of the previous literature and against empirical evidence. The article aims to enhance our knowledge on the policy process by incorporating first-hand observations and original insights. The empirical examination is focused on the perspective of the MERCOSUR negotiators on the EU and on the negotiators perceived differences between the set-up of MERCOSUR and the set-up of the European Union.

3. RESEARCH DESIGN

The analysis ought to use a 'conceptual framework', where the researcher understands analytical tools that help make conceptual distinctions, thereby bringing structure and coherence to a case-driven empirical research¹⁵. The phenomenon in question is how the institutional architecture and strategy between the EU and the MERCOSUR shapes their interaction. The inter-regional negotiating process is understood as a social learning sphere, in which the actors from both regions come together bargaining for their respective interests. They act as agents representing stakeholders and political interests as they are managing their internal bargaining at the same time as their external. It entails that the difference in the institutional set up and the perception of negotiators about the setup of the other party influences the effectiveness of their own strategy to require the other party for concessions or adjusting to own set procedures, goals and anticipated outcomes.

Overall, the research is driven by the interest to experimentally and empirically explore the perception of policymakers about the dynamics and factors that have been present in the process¹⁶. Empirical conclusions are drawn from a qualitative content analysis of observations gained from semi-structured interviews. Thirteen interviewees were chosen because of their expertise as they have directly participated in the negotiation process. It included high-level officials that have participated in the negotiations from Argentina, Uruguay and Brazil and from the European Union. Respondents were asked which institutional arrangements were influencing the negotiating

org/10.1590/s0102-8529.2016380200004>; KRAPOHL Sebastian. "New Institutionalism Meets International Political Economy: A New Approach to the Study of Regional Integration Dynamics In- and Outside of Europe". *Working Paper Prepared for Presentation at the GARNET Conference 'The European Union in International Affairs'*. 2008, n° 24.

15 DAMRO, Chad. "Market Power Europe: Exploring a Dynamic Conceptual Framework Market Power Europe: Exploring a Dynamic Conceptual Framework". *Journal of European Public Policy*. 2015, 1–19. Available in: <<https://doi.org/10.1080/13501763.2015.1046903>>

16 SHANNON, Sarah; HSIEH, Hsiu-Fang. "Three Approache to Qualitative Content Analysis". *Qualitative Health Research*. 2005, vol 15, n° 9, 1277–88. Available in: <<https://doi.org/10.1177/1049732305276687>>; BEACH, Derek; PEDERSEN, Rasmus. *Process Tracing Methods – Foundations and Guidelines*, University of Michigan Press. University of Michigan Press, 2012.

process, whose actions eased the process, and how they would describe the process in general.

Furthermore, negotiators were asked how they perceive the other region's institutional architecture. The interviews were conducted under the Chatham House Rule, anonymous transcripts can be made available upon request. The analysis is focused on the time frame between 2016 and 2019. The next section sheds light on the empirical results of the study. Effect of the institutional set-up delete the 'in' are discussed in direct comparison addressing issues of *legitimation, expertise, experience, institutional strategic engagement, and accountability*.

4. RESULTS

4.1. The representation element

The first factor at play is the capability of each region to represent itself as one bloc. With the supranational Commission leading trade negotiations, the EU can be easily perceived as one entity, representing the interest of many, but speaking with a "single voice"¹⁷. To enhance the EU's ability to negotiate external trade, its member states have delegated the policy-making authority to the supranational level, the European Commission. As soon as the framework for negotiating is agreed by the Council, this intergovernmental institution delegates negotiating authority to the supranational Commission. Hence, the European Commission and particularly and the Directorate General Trade and Agriculture have been the backbone and central actor of the EU's external trade policy towards MERCOSUR¹⁸. For the trade agreement with MERCOSUR the mandate has been given in 1999 and updated at the relaunch of negotiations in 2010. This mandate given by the Council was broad enough to expand the Commissions' power and flexibility when balancing with the MERCOSUR members¹⁹. During the twenty years of negotiations, a EU Committee frequently discussed the margins of the Commission's work²⁰. This Committee is seated with officials from individual EU member states and national ministers and meets frequently to discuss the conditions offered on

17 CONCEIÇÃO-HELDT, Eugenia and MEUNIER, Sophie. Op. cit., p. 1.

18 GOLDTHAU, Andreas and SITTER, Nick. "A Liberal Actor in a Realist World? The Commission and the External Dimension of the Single Market for Energy". *Journal of European Public Policy*. 2014, vol 21, n° 10, 1452–72. Available in: <<https://doi.org/10.1080/13501763.2014.912251>>; MEUNIER, Sophie and NICOLAIDIS, Kalypso. "Who Speaks for Europe? The Delegation of Trade Authority in the EU". *Journal of Common Market Studies*. 1999, vol 37, n° 3, 477–501. Available in: <<https://doi.org/10.1111/1468-5965.00174>>; CONCEIÇÃO-HELDT, Eugénia. "Do Agents 'Run Amok'? A Comparison of Agency Slack in the EU and US Trade Policy in the Doha". *Journal of Comparative Policy Analysis: Research and Practice*. 2013, vol 15, n° 1, 20–36. Available in: <<https://doi.org/10.1080/13876988.2012.754152>>; MORIN JEAN, Frédéric and CARTA, Caterina. "Overlapping and Evolving European Discourses on Market Liberalization". *British Journal of Politics and International Relations*. 2014, vol 16, n° 1, 117–32. Available in: <<https://doi.org/10.1111/1467-856X.12021>>

19 Interview 11, Directorate General for Trade, 04.02.2019, Brussels.

20 GOMEZ ARANTZA, Arana. "European Union Policy-Making towards MERCOSUR". In *The European Union's Policy towards MERCOSUR*, 2018. Available in: <<https://doi.org/10.7765/9781526108401.00009>>

market access and soft, negotiable, requirements by the EU.

The Commission is composed of different Directorate Generals dealing with specific policy issues, such as DG Agriculture or DG Trade, that both played a key role in the internal negotiation process. Even though all actors are supposed to work in the interest of the Commission and the EU, this does not exclude potential conflict between the DG's action based on which interest they represent and national interest groups intertwining with those²¹. With MERCOSUR, every meeting round with the bloc was led and accompanied by the specific Commissioner of the Directorate division according to the specific issue discussed²². The legal basis allows the Commission to negotiate in direct dialogue with interest groups²³. The individual Directorates and negotiators rely on information received by frequent consultation with stakeholders, interest groups and civil society actors²⁴.

MERCOSUR negotiators perceived the EU on interregional level as capable actor that is following its goal to achieve the best deal for the EU as a whole. While the EU internally negotiated the soft requirements of the agreement, on bi-regional level with MERCOSUR, the Commission only spoke with a single voice, representing European interests and defending a common position on behalf of the EU. Even though nation states officials and ministers have met regularly with South American leaders, when it came to specific terms of the agreement, the Commission and the Chief negotiator of the Commission have always played the central role²⁵.

An overview over the MERCOSUR institutions and how negotiations were handled in this intergovernmental environment sheds light on the trajectories of its negotiating position. MERCOSUR exists of four member countries, the two 'major' states, Brazil and Argentina and two smaller states, Paraguay and Uruguay. The institutional design of MERCOSUR is characterized as follows: The main decision-making bodies are the Common Market Council (CMC upper decision body), the executive Common Market Group (CMG) and the Trade Commission (TC)²⁶. The CMG is the body that negotiates with third parties, the TC supports the CMG and proposes legislative directives²⁷. The Trade Commission is composed of officials from each member state, while the CMG are ministers of foreign affairs, economy and central banks that

21 CONCEIÇÃO-HELDT, Eugenia. Op. cit.; ELSIG, Manfred. "The EU's Choice of Regulatory Venues for Trade Negotiations: A Tale of Agency Power?". *Journal of Common Market Studies*. 2007, vol 45, nº 4, 927–48. Available in: <<https://doi.org/10.1111/j.1468-5965.2007.00754.x>>; MEUNIER, Sophie; NICOLAIDIS, Kalypso. Op. cit.

22 Interviews 1-13.

23 Interviews 1-13.

24 Interviews 1-13.

25 Interviews 1-13.

26 BOUZAS Roberto, DA MOTTA VEIGA, Pedro; TORRENT, Ramon. *In-Depth Analysis of MERCOSUR Integration, Its Prospectives and the Effects Thereof on the Market Access of EU Goods, Services and Investment*. 2002, 1–530. Available in: <<http://www.opalc.org/images/INRE/in-depth-analysis-of-mercosur-integration.pdf>>; GOMEZ, Arana. Op. cit.

27 BOUZAS Roberto, DA MOTTA VEIGA, Pedro; TORRENT, Ramon. Op. cit.; MALAMUD, Andrés. Op. cit.

enforce decisions and resolutions²⁸.

Despite the number of bodies, MERCOSUR relies on presidential diplomacy and government-led definition of priorities²⁹. Malamud concludes that in Latin America, regional integration is “sovereignty protective rather than sovereignty sharing”³⁰. In fact, the institutional process in trade negotiations with the EU remained an intergovernmental decision-making process. The absence of regional institutions or a regional bureaucracy also means that policy-makers and their technocratic teams operate at the national level and can be held accountable for decisions through elections³¹. Hence, social demands coming from entrepreneurs, civil society or transnational actors are accustomed to the chief executives³².

In the negotiations on market offers the countries defined their position in a two- up to three-stage process: domestically, on regional level and then on bi-regional level with the EU. Often, issues at hand addressed specific realms that have not been agreed on regional level yet or circulated around goods of interest of the individual nations. Here the EU directly negotiated with the national government, as for example on Geographical Indications or on Government Procurement³³. Regarding other substantial parts of the agreement, after the countries negotiated internally the outcome was taken to the EU and represented by the chief negotiator of the country inhabiting the Pro Tempore presidency. This presidency rotates biannually between the member states. While the presidency does not allocate power over decisions, it can impact the strategy in negotiations with the European Union. The president can build upon experience and/or expertise, sometimes even representing country-specific preferences³⁴.

4.2. Legal complexity as legitimizing resource

A deep level of integration, representing legitimacy gained by a legal structure, has a positive effect on a region’s strength in negotiations. In 2010, the European Union demanded a set of laws, regulations and trade chapters that have not been included in the first rounds of negotiations that ebbed out in 2004. As those regulations have become part of the legal structure of EU trade policy, MERCOSUR was expected to apply the standards and requirements. Those rules and standard procedures, for example on sanitary

28 BOUZAS, Roberto; FANELLI, José María. “MERCOSUR: Integración y Crecimiento”, *Programa MERCOSUR*, 2001; MALAMUD, Andrés. Op. cit.

29 LUÍZA, Patricia; KEGEL, Mohamed. “MERCOSUR and Its Current Relationship to the European Union,” *Zentrum Für Europäische Integrationsforschung Rheinische Friedrich Wilhelms Universität Bonn*, 2012; MALAMUD, Andrés., Op. cit.

30 MALAMUD, Andrés. “MERCOSUR Turns 15: Between Rising Rhetoric and Declining Achievement”. *Cambridge Review of International Affairs*. 2005, vol 18, n° 3, 421–36. Available in: <<https://doi.org/10.1080/09557570500238068>, p. 526>

31 Idem.

32 Idem.

33 Interviews 1-13.

34 Interviews 1-13.

and phytosanitary measurements, have become an integrative part of how the EU performs trade internally as well as internationally, as it has become a global exporter of regulations³⁵. The majority of chapters the EU demands to include in negotiations are templates that the EU created, enriched and secured over time. This binding law has proved itself useful internally as well as externally, an argument that gives legitimizing leverage to the EU when negotiating with MERCOSUR.

In MERCOSUR, issues are solved between four nations, with sometimes loosely integrated legally binding agreements and many exclusions and complicated exemptions as well as short-term instruments to suspend clauses³⁶. A strong and stable integration clearly lacks in the intergovernmental structured MERCOSUR, where law and regulations have remained highly flexible to ensure that the national governments did not lose sovereignty over policymaking. Thus, this factor of legally acquired legitimacy gave additional power resources to the EU. However, it must be acknowledged that only because of the asymmetric constellation of institutionalization between the EU and MERCOSUR, the EU could demand flexibility from MERCOSUR and negotiations have remained lively.

4.3. Expertise and experience

The third factor interviewees agreed on to have had improved the EU's leverage in the negotiations, was the expertise of technical staff growing with a highly institutionalized architecture. As the European Union's negotiations are led by the Commission, and even though the commissioners are elected every five years, the negotiating teams are composed of staff highly experienced with negotiations because they are rotating inside the Commission. Furthermore, during 2016 and 2019, the same commissioners, negotiators and assisting teams were constantly and jointly working on the chapters and trade conditions which increased their expertise from round to round. Additional to expertise, this configuration creates a strong social network, where personal contacts can decrease the likelihood of conflicts³⁷.

DG Trade argued that because the Commission works with such an experienced team, its perception of strength, reliability, and trustworthiness with internal and external partners is increased³⁸. This perceived advance of expertise and the social network attached to it pushed the Commission to conclude the trade deal with MERCOSUR before summer 2019. Both sides feared the changes the European Union's elections and the new Commission

35 BRADFORD, Anu. "Exporting Standards: The Externalization of the EU's Regulatory Power via Markets". *International Review of Law and Economics*. 2012, vol 42, n° 3, 158–73. Available in: <<https://doi.org/10.1016/j.irle.2014.09.004>>

36 GÓMEZ-MERA, Laura. "Domestic Constraints on Regional Cooperation: Explaining Trade Conflict in MERCOSUR". *Review of International Political Economy*. 2009, vol 16, n° 5, 746–77. Available in: <<https://doi.org/10.1080/09692290802454216>>

37 Interviews 1-13.

38 Interview 11.

could pose. Simultaneously, electoral processes in the EU are not as likely to disrupt a common external trade approach as much as national elections. External trade on EU level is usually approached by the commissioners independently of national and political-ideological interests. Further, because staff rotates among the Directorates, within the daily exercise of bargaining, their capability of learning is fueled. Internationally, after concluding more than twenty free trade agreements, an even larger number of preference regimes and association agreements, the knowledge at hand bound within the institution is unprecedented.

MERCOSUR on the other hand does not have a supranational institution that binds thousands of officials working in an independent policy agenda over such a long period. Many negotiators dealing with issues of bi-regional interest have changed with national elections. Much of the technical staff negotiating internally with sectorial interests as well as on inter-regional level rotated within the respective ministries and fluidity remained low. This way MERCOSUR members can bind expertise as the staff know how to deal with their own stakeholders and domestic players.

However, after national elections, the ministers of agriculture, industries and trade and other relevant ministries have changed, which ultimately sets out a different policy agenda. Within EU-MERCOSUR negotiations, political decisions and the closeness of executing politicians to economic sectors laid out the potential concessions and it influenced the depth of desired international trade integration (for example on Government Procurement). Furthermore, the making of external trade policy was altered with the executive's decisions to reform the structure of the ministries. This happened for example in Argentina in 2018 and in Brazil in 2019/2020. Those reforms have considerably altered the relationship between the economic sectors of the country, on the case it has improved the policymakers leverage to make concessions to the EU. It follows that changes in the political agenda lead to loss of knowledge and experience. The fluidity of staff is much higher compared with a supranational institution following a politically independent integration goal such as the Commission.

One element has shown stability and improved strategic bargaining potentials: The Pro Tempore president. Interestingly, the Pro Tempore presidency can create an important stable mechanism for the direction of negotiations. The president can spoon out the role by becoming proactive, particularly discussing chapters and stipulations were the four do not talk with the EU individually. The Pro Tempore president, as 'face of MERCOSUR', can represent the group of four as a whole and accommodate on inter-regional level as one voice³⁹.

Even though MERCOSUR has not set-up a supranational institution, it has a useful tool at hand to bring expertise and experience to the table. However, the chief elected for the presidency of each country is bound to

39 Interview 1, Embassy of Argentina to the European Union, Brussels, 03.05.2019.

the executive governing the member states. For example, because of the government governing for many legislative periods, the Uruguayan negotiator was in contact with the EU for more than 10 years, which improved the effectiveness of MERCOSUR during negotiations⁴⁰. Therefore, a high level of continuity improves expertise and strategic leverage, but it remains highly dependent on the executives and therefore, on politics.

4.4. Institutional strategic engagement

A factor that has played out differently between MERCOSUR and the EU was the institutional and actor-based employment of strategic learning depending on the degree of institutionalization. In the time frame analyzed, the European Union demonstrated a learning effect between the Council and the Commission. First, specifically knowing the issues between agricultural opposition and industrial and service sectors at hand, the Council decided to give a broad mandate. A non-detailed mandate is issued to give the Commission substantial power over trade, the capacity to change issue occurring with challenges and a larger margin to manage internal interests⁴¹.

Second, the Commission implemented a defensive-offensive strategy. For sensitive products, quotas have become the Commissions instrument of choice, as those have shown to be more easily negotiated with the member states and simultaneously leverage the negotiations on inter-regional level. In fact, quota create symmetries that can be defined and measured, giving the perception of substantial progress. A quota itself is not negotiable, it is an offer whose depth can be negotiated. Despite learning internally how to define the terms of an external agreement, the Commission was also able to strategically exploit the intergovernmental dynamics of MERCOSUR. In fact, demanding concessions from the four countries played out well for the EU. The responsiveness of the four countries grew when the MERCOSUR members were (on political level) highly willing to conclude the trade deal rapidly (such as in 2019)⁴².

On the other hand, the Commission deals with many issues and a high number of external negotiations. This instance discouraged the EU's sensitivity for the specifics of the negotiation partner and blocked progress when small issues occurred⁴³. As DG Trade argued, it had difficulties to understand the specificity of MERCOSUR, their inter-governmental nature and the problems the members faced integrating their sectors within the economic area. "We don't know how they play by themselves. It is not visible for us if they are represented as one group if they are four countries with different procedures"⁴⁴.

The institutional learning on strategic bargaining played out differently

40 Interview 9, Embassy of Uruguay to the European Union, 9.05.2019, Brussels.

41 Interview 11.

42 Interview 4, Chief Negotiator Regional Relations, 30.01.2020, Itamaraty Brasília.

43 Interviews 1-13.

44 Interview 11.

among MERCOSUR, whose inter-governmental nature affected the learning curve. A so-called spillover effect stemmed from the agreement at hand: “It is a learning process”, many negotiators stated. In fact, the European Union has learned bargaining over a long-time by engaging with many, but not particularly with MERCOSUR. The MERCOSUR members have learned how to imitate or exploit the EU and their negotiators’ strategies. For example, MERCOSUR states copied the EU’s behavior by applying the systematic use of bargaining power during negotiations with other partners⁴⁵. Any new exchange of offers in other negotiations was adjusted from offering all to excluding the main products and presenting those in quota. This altered the level of liberalization substantive to negotiations. On the EU agreement the Brazilian foreign ministry highlighted,

The EU always asks for something, if we give a finger it wants the hand, if we give a hand it wants the arm. It was a never-ending story, so we realized this and stopped offering. It didn’t matter what we gave, the deal would have not closed in 2018, as the final factors to justify the conclusions were not reached on EU level yet⁴⁶.

The advantage of MERCOSUR to react abruptly, to take a rapid decision and decrease transparency, was a strategic advantage vis-à-vis the European Union. Instead of continuing to negotiate the hard terms, communicators chose to remain silent and decrease transparency, an instance that is impossible for the Commission who has to be transparent and demonstrate action to its various stakeholders. The governments of MERCOSUR were able to balance with strategic elements that only intergovernmental structures offer to increase pressure on the EU in the final phase of negotiations.

4.5. Cohesion and accountability

The cohesion of the EU in the negotiations considerably influenced the policymaking process and their progress over time. The Commission’s main aim was firstly to balance between the internal interests and secondly with MERCOSUR. The Commission’s main goal is to advance trade integration worldwide and achieving this goal rather rapidly. However, to conclude any agreement, the EU has to incorporate many sectorial and domestic interests. This automatically requires incorporating the positions from all member states and finding an advantage for every state in order to present a legitimate agreement in the end.

This policy process is highly complex. Some industries within countries favor protectionism, others favor free trade. These instances tie the hands of commission. On the agreement with MERCOSUR, all member states showed interest in the distributive consequences due to its size and scope. A nation

45 Interview 9.

46 Interview 4.

alone has a clear win and lose set⁴⁷. Over the dispersion of many nation states and because interests can be bound on national and regional level, a lose set is most likely to be over-represented within the EU.

Its institutional overlap requires the Commission to balance the most sensitive issues, such as agriculture, the rules of origins, trade facilitation, and the protection of EU geographical indications. The Commission had to consult the member states and sectorial stakeholders after every round of negotiations, waiting for them to respond with their expectations, opinions, and comments to then take those into account. This process is very likely to lead to conflicts and delays and is a costly and resource intensive procedure.

The empirical observations have shown two simultaneously active dynamics, one limiting the effectiveness of negotiations and one where institutional fragmentation eases up the process, because cohesion is not always required. First, because of the Commissions mandate, direct cohesion was not required to make offers or negotiate with MERCOSUR on bi-regional level, and the broad mandate allowed the policymakers to balance between internal and external interests. Hence, legitimacy is mostly received through output, and less with throughput, also determined as 'procedural legitimacy'⁴⁸.

However, during the negotiations with MERCOSUR, the EU faced un-cohesiveness between domestic sectors and national governments. While some member states, including Spain, Germany and the Netherlands preferred to negotiate a large free trade area on industrial products and services with MERCOSUR, agricultural hubs such as France, Ireland, Austria and Eastern European countries, such as Poland and Lithuania opposed the idea of liberalizing the Common Agricultural Policy of the EU (CAP).

Particularly on agricultural issues, member states had such different positions on the specifications of the trade agreement, that throughout several moments they conflicted with the common position and undermined the authority of the European Commission by publicly criticizing its approach⁴⁹. Particularly among producers of beef, wine and rice contestation was high. As an EU Delegate argued, the EU could have reached a better deal in 2019, if national parliamentarians had not used polemic debates and stimulated public discussions. "We could have exported more industrial goods within a shorter time period of five years - a sector whose growth is important and future oriented"⁵⁰.

The cohesion between the member states and their approval of the international trade area was tested once again after completing negotiations.

47 CAMROUX, David., Op. cit.

48 MORAVCSIK, Andrew. "In Defence of the 'Democratic Deficit': Reassessing Legitimacy in the European Union". *Journal of Common Market Studies*. 2002, vol 40, n° 4, 603–24. Available in: <<https://doi.org/10.1111/1468-5965.00390>>

49 AGENCE EUROPE PRESS. *Talks for EU-MERCOSUR Free Trade Agreement Nearing Finishing Line*, 2017.

50 Interview 12, European Delegation to Argentina, 8.10.2019, Buenos Aires.

After June 2019, the upheaval of contestation of France, Ireland and Austria on the conditions of agricultural terms was immense. Threatening the overall agreement and its approval by national parliaments was a strong instrument of the public and the nation state in EU politics⁵¹, also negatively affecting the recognition and authority of the Commission in the negotiation process.

In fact, the contestation of the agreement raised fears among policymakers in South America. While during the negotiations, MERCOSUR was often viewed as the stumbling factor due to the difficulties the four member states faced in finding a common position, this last contestation on EU side was perceived as the one factor that could ultimately require to shuffle the deck of cards entirely new. Particularly difficult for the European Union is the fact that the more politicized issues occur, this instance ultimately threatens the overall legitimacy of the institution, not of the member states governments. Hence, from the European perspective, the limitations stemming from the institutional complexity and shared competences on trade have restricted the ability of the EU to advance European interests internationally.

Cohesion in MERCOSUR follows a distinct rule. On the case, the mutual willingness to advance negotiations has mostly depended on the two largest countries, Brazil and Argentina, but the intergovernmental nature of the process requires all four states equally to be willing to negotiate. As the examination has shown, at times when all four member states and particularly Argentina and Brazil were aligned with the interest to seriously negotiate an agreement, their cohesion was strong and the ability to mobilize resources and capital rapid. However, without the four member states aligned, their common approach was overly difficult and resource intense.

In services and public procurement, the four countries separately engaging in talks with the EU has made the coordination a lot easier⁵². The aspects such as market access, where the EU sees MERCOSUR as a whole, challenged the cooperation of the four as they first had to domestically coordinate, then regionally and then on inter-regional level. Similar to the EU, as the interests and sensitive areas of all four overlapped on many substantive issues, the four had to make concessions towards each other to be able to make a concession towards the European Union, which increases the demand for solidarity. As a negotiator argued: “We always have the worst offers, the lowest common denominator which makes us inflexible and weak. We need more coordination especially compared to the EU, to match information that we have and represent us as one entity”⁵³.

Further, making a concession to the EU, state actors had to directly balance losses internally, by reimbursing actors for what they loose on interregional level. This instance requires a strong balancing act of economic

51 YOUNG, Alasdair R. *Trade Policy in a Changing EU and an Uncertain World*, 2017.

52 Interview 1.

53 Interview 9.

adjustment costs, which was for example achieved with taxation reforms or budget plans in Brazil and Argentina. After all, the agreement's conditions had direct political repercussions on the elected executive, as domestic economic policies were most often intertwined with the inter-regional market liberalization with the EU.

Generally, when the willingness to negotiate was present, the bloc was able to more rapidly and effectively present offers and respond to the EU than the other way around. Particularly in the final rounds, even though the negotiations faced internal contestation from certain sectors on domestic level (wines, dairy, auto parts, steel, vehicle sectors, rice and olives), they were able to mobilize relevant resources and political capital. Furthermore, after concluding the agreement in 2019, policymakers perceived a low potential risk of their national parliaments to not ratify the agreement⁵⁴. Additionally, by legally allowing the agreement to enter in vigor, any government's decision will be automatically bound. Hence, because the intergovernmental cohesion of the four countries was very high at the point of closure of the deal, it made the final decision stronger and more conclusive than the one of the European Union, who was negotiating coordinated with one institution, but faced problematics within.

4.6. Flexibility as power, rigidity as threat?

A last dynamic on EU side played a key role in the bi-regional negotiations process. Despite the disadvantages demonstrated, its institutional fragmentation and overlapping of competences were not necessarily only restricting the EU's strategic effectiveness. In fact, there has been a hidden power at play which improved the EU's bargaining position. For example, in 2019, France discussed the agricultural concessions required with its parliament and even though a rapid conclusion was desired, the Commission chose to not push France further. Instead, the Commission came back to the table with MERCOSUR arguing "there was not more to achieve"⁵⁵.

This confirms what Nicolaidis pointed out "tying one's hands internally, for instance through inflexible negotiating instructions and divisions highly visible to the opposite party, can confer strength in negotiations"⁵⁶. Divided internally but united through the collective representation, the "EU has been able to obtain more in international trade negotiations than it might have if all decisions had been made through strict majority voting and with a lot of flexibility granted to European negotiators"⁵⁷.

Countries and sectors agree to a certain chapter or quota by making internal concessions towards each other. If one concession on inter-regional level changes, it changes the internal structure and the yet agreed terms,

54 Interview 1, Interview 2, Directory of International Trade Negotiations Ministry of Foreign Affairs, 10.10.2019, Buenos Aires and Interview 4.

55 Interview 1.

56 MEUNIER, Sophie and NICOLAIDIS, Kalypso, Op. cit.

57 Idem.

which makes the negotiations on bi-regional level reluctant to change - and therefore, highly rigid. The analogy of a *mosaic of interests* helps to clarify this institutional dynamic: By changing one position of the mosaic, the whole environment is affected, and negative domino-effects are likely to occur. As one interviewee pointed out: "If you have a position of only four, with a big conglomerate of countries such as the EU, it is impossible to change the mind on the other side"⁵⁸.

Often, being rigid can be perceived as disadvantage because compromises are harder to match. But in the case with MERCOSUR, the EU's rigidity demonstrated strength and served as hidden power resource. Once a position by the EU was found, often MERCOSUR had to take it or leave it. It follows, that as integrated regional group the EU has shown the ability to be inflexible, but to justify this inflexibility externally. This interplay offers an advantage vis-à-vis the intergovernmental MERCOSUR (though it also inherits certain risks in case the bargaining partner demonstrates rigidity as well).

In fact, the final conclusion of the agreement in 2019 can be accredited to the MERCOSUR countries, an internal move and political decision from every member to open their markets. The willingness of the four countries was necessary to realize the agreement rather rapidly. In the end, the margin of Brazil and Argentina was the margin discussed on inter-regional level. Flexibility lies at the heart of its intergovernmental nature and the lower level of political integration among the MERCOSUR members: "We are ad-hoc coalitions"⁵⁹. MERCOSUR negotiators agreed that their flexibility was crucial in the negotiations, as this degree of flexibility can only be shown by state actors able to immediately balance with their own interest groups and veto players.

CONCLUSION

One might think that in trade, the power of a country or a regional group is above all a function of its sheer economic strength. However, it is not sufficient to have a large bargaining power to successfully negotiate the terms of a deal, there is also the need for strategic engagement and the internal and external balancing of interests. To match the own goals with the outcome, inter-regional bargaining was used in a very different way by MERCOSUR members than by the European Union. This distinct process is explicable with the degree of institutionalization stemming from the institutional set-up of trade policy. Supranational or not, both institutions faced advantages and disadvantages because of their institutional nature.

58 Interview 1, Interview 8, Ministry of External Relations, 22.10.2019, Montevideo and Interview 9.

59 Interview 1.

Table 1. Typology of integration of external trade policy; the author suspects it as spectrum

Low Degree of Institutionalization	High Degree of Institutionalization
Flexibility	Rigidity
Fast decision making	Slow decision making
Resource-reducing	Resource-increasing
Dependent on cohesion	Dependent on compromise
Fast Learning	Sustainable learning
Low Expertise	High Expertise
Politicization	Over-representation of lose set
High accountability of policymakers	Low accountability of policymakers

What has been proved, is that an independent institution carrying out trade policy improves a regional group's external recognition, enhances its authority and, with the perception as being one actor with many interests, increase its leverage in negotiations. However, as competences in trade remained shared and the member states still have to carry out economic and financial policies on national level, interest remain connected to nation states. Within this configuration, the nationalization of EU policies is inevitable. Paradoxically, this simultaneously increased the ability of the Commission to require concession from the MERCOSUR bloc. Because of its flexibility, MERCOSUR showed high time and cost efficiency: As the main actors are the national governments, the internal negotiation process is less conflictual which ultimately makes substantive concessions faster and more durable. As the four were able to choose to implement the agreement in vigor, the deal itself was sealed and strengthened.

This article has shed light on the intended and unintended consequences of the institutional set up of regional groups on their performance in negotiating trade agreements. From those results, direct implications for policy practice and institutional reform can be drawn. While high institutionalization and shared competences over policy issues between states and supranational actors decreases flexibility and increases complexity, it is a source of power in negotiations. On the other hand, talking with four voices and deciding every step of integration intergovernmentally increases an institutions ability to negotiate effectively. All in all, the results implicate that improving coordination and integration has more advantages than to remain flexible. The building of strong and solidary-based institutions as response to the insecurity globalization poses, has proved to be an overly effective tool to enhance the own bargaining position.

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Fontes de poder involuntários? A Configuração institucional e os efeitos nas negociações inter-regionais: A UE e o MERCOSUL

Resumo: Esse artigo de pesquisa propõe-se a investigar a negociação no campo da política internacional e apresentar como as dinâmicas institucionais influenciam nas habilidades das instituições regionais em realizar suas próprias metas políticas. O caso escolhido, as negociações comerciais entre a União Europeia e o MERCOSUL, possibilita a avaliação das habilidades e dinâmicas sustentadas por ambas as instituições na interação entre elas. Com

base em um desenho de pesquisa qualitativa, o artigo examina as experiências de negociadores dos dois continentes que participaram diretamente das negociações UE-MERCOSUL. Os resultados mostram que embora um alto grau de integração melhore os processos de aprendizado, a experiência e a legitimidade externa, apresenta também um alto risco de rigidez e, portanto, falha. Dessa maneira, esse artigo de pesquisa tira conclusões precisas sobre a maneira como estudamos as instituições regionais e como suas estruturas influenciam escolhas estratégicas.

Palavras-chave: MERCOSUL, União Europeia, inter-regionalismo, comercio, negociações, institucionalismo.

BIOGRAPHIC SUMMARY

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