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MERCOSUR common market building: harmonization and (or) mutual recognition of rules*

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Abstract

My paper addresses the following questions: can MERCOSUR achieve the goal of creating a common market that implies free movement without resorting to governance instruments that require supranational institutions? Can the Mutual Recognition (MR) instrument resolve the problem of divergent standards? Further, in the case of MERCOSUR, can it really be considered a non-supranational governance instrument? In the next sections, I define a common market under a Regional Integration Agreement (RIA), I then address the relationship between standards, technical barriers, and the integration of goods markets, especially in view of the potential trade-off between liberalization and heterogeneity. Finally, I consider the possibility of building a MERCOSUR common market without supranational institutions.

Key words: MERCOSUR - Mutual Recognition (MR) - integration - common market - Regional Integration Agreement

Construcción del mercado común del MERCOSUR: armonización y (o) reconocimiento mutuo de reglas

Resumen

Mi documento aborda las siguientes preguntas: ¿puede el MERCOSUR lograr el objetivo de crear un mercado común que implique la libre circulación sin recurrir a instrumentos de gobernanza que requieren instituciones supranacionales? ¿Puede el reconocimiento mutuo (MR) resolver el problema de normas divergentes? Además, en el caso del MERCOSUR ¿realmente se lo puede considerar como un instrumento de gobierno no-supranacional? En las siguientes secciones, defino un mercado común bajo un Acuerdo de Integración Regional (RIA), luego abordo la relación entre normas, barreras técnicas, y la integración de mercado de bienes, especialmente en vista del posible intercambio entre liberalización y heterogeneidad. Finalmente, considero la posibilidad de construir un mercado común del MERCOSUR sin instituciones supranacionales.

Palabras claves: MERCOSUR - reconocimiento mutuo - integración - mercado común - Acuerdo de Integración Regional

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Introduction

The MERCOSUR integration process can be usefully compared with the equivalent European process insofar as pursuing the same objectives, particularly the construction of a common market, albeit through substantially different processes. This therefore constitutes an important case study to assess the different forms of integration of European markets when compared to Latin American markets.

After all, MERCOSUR scholars and politicians have always referred to the substantial difference between the European integration method and that of MERCOSUR integration, which rejects the use of supranational solutions based on the rule of law in favour of forms of intergovernmental cooperation.

Important to recall first are the definitions: the official MERCOSUR documents speak of the formation of a common market promoting only free trade but the "free movement of goods, services, and factors of production between countries", and hence beyond the mere liberalization of domestic markets[1].This implies a higher degree or "deep" integration entailing not only the elimination of tariff and non-tariff barriers, but also defining a new system of law and order for establishing rules and their enforcement, i.e., a constitutional change. This, however, according to the notions formerly expressed, must be achieved without assigning sovereignty.

In the economic literature dedicated to the issue of the removal of technical barriers to trade (TBT), the possibility of replacing the instrument laying down common rules, whereby regional institutions require a high degree of supranationality, with that of the mutual recognition of national rules, is often supported and deemed more flexible and, above all, more suitable to agreements that do not entail ceding national sovereignty.

My paper thus addresses the following questions: can MERCOSUR achieve the goal of creating a common market that implies free movement without resorting to governance instruments that require supranational institutions? Can the Mutual Recognition (MR) instrument resolve the problem of divergent standards? Further, in the case of MERCOSUR, can it really be considered a non-supranational governance instrument? In the next sections, we define a common market under a Regional Integration Agreement (RIA). I then address the relationship between standards, technical barriers, and the integration of goods markets, especially in view of the potential trade-off between liberalization and heterogeneity. Finally, I consider the possibility of building a MERCOSUR common market without supranational institutions.

1 - Building the common market under a RIA

What are the design features that characterise a common market? The EU's experience has at times been regarded as a template for other regional bodies throughout the world, and this has often hampered the comparative analyses of the formation of common markets by confusing the study of European integration with the study of economic regionalism, itself a sub-set of the broader study of European integration. In other words, in an Eurocentric view, the European Union (EU) is often considered the universal model for the construction of a domestic market

[1] The difference between "free trade" and "free movement" is explained by Pelkmans (2007: 700): "….free movement is much more compelling and far-reaching than 'free trade'. Under free trade, a country agrees not to impose (say) tariffs and quotas under an international treaty, so it is 'bound' in that respect but remains autonomous otherwise. ….. Free movement, however, forces the country into a different position: the right of market access (here, inside the EU) is not negotiable but guaranteed as such, and the country can only deviate by explicit derogations as specified in the treaty or European Court of Justice (ECJ) case law".

measuring the success (or failure) of other Regional Integration Agreements (RIAs) by way of their proximity to (or remoteness from) the European model.

Indeed, much of the scholarly literature on international cooperation regards those regional agreements characterised by a single efficient solution to the problems of the interaction of states as less than sufficient (for example, Garrett and Weingast, 1993). Functional type approaches based solely on identifying the most efficient solution or on assessing the national interests of states cannot, however, provide valid explanations for international cooperation applied in a comparative context across regions. Although these types of analyses can confirm *ex post* whether the solutions identified are efficient, they cannot explain *why* these particular solutions were chosen.

Garrett (1992) in his analysis of the EU internal market notes that numerous empirical studies indicate that there may be many different solutions to the need for inter-state cooperation in a regional body, and that none can be considered as generally valid. These studies can hence be synthesised with the "folk theorem" in non-cooperative game theory, which emphasizes that in repeated games with non-superficial information, infinite solutions can be sustained in equilibrium, including those that are not on the Pareto-optimality frontier. This implies that the assessment of cooperative solutions to a problem, such as the construction of a common market, requires considering not only one optimal solution, but many possible solutions. Further, the impact of redistributive power and asymmetries cannot be underestimated, nor the importance of ideas, social norms, institutions, and shared expectations in the search for, and choice of, a common solution (Garrett and Weingast, 1993; Murray and Warleigh-Lack, 2013).

Thus, different solutions to the task of constructing a common market need to be considered. In any case, what constitutes a common market under a RIA must first be defined.

In a traditional economic perspective, the prevalent conceptual approach indicates the market as a place of economic transactions to improve consumer welfare - the catallaxy game in Hayek's (1976) version - through the optimal allocation of resources or rationalizing their use by means of competition. If this concept is extended to the case of a single market regional agreement, the standard definition refers to the verification of the law of one price, whose conditions are the presence of competition policies and full information for buyers and sellers (Flam, 1992). In this view, the formation of a regional market becomes a "simple" exercise of deregulation, i.e., eliminating tariff and non-tariff barriers and monitoring the compliance of participating States to the commitment.

By contrast, economic theory in the institutionalist and constitutionalist tradition, political science, and economic sociology have long dealt with issues relating to market building, particularly with regard to facilitating economic transactions through rule-making and law enforcement. One of the basic arguments of institutionalist theory is the link between politics and markets: a market economy cannot exist in a vacuum (Boettke et al., 2005), but is embedded in a broader set of institutions.

Markets cannot exist without rules enabling economic transactions - property rights, rules on contracts, product and production process standards, and so forth. The goodness of these rules (institutions) determines an economy's growth capacity (Acemoglu, 2005) and is in turn determined by the quality of the relationships formed between the rules, the government organizations and the economic actors (North, 1990). In this way, even large differences that exist in the economic performance of different countries can be explained taking into account the differences in their institutional structure.

The formation of markets thus understood – as exchanges regulated by an institutional system - has been the subject of numerous studies in various social science disciplines.

In the socio-political sphere, for example, Fligsteinand Stone Sweey(2002) argue that the link between markets and political authorities encourage economic development on the extent that this is linked to the emergence and consolidation of a particular symbiotic relationship among rule formation structures, government organizations and economic actors.

Appropriate types of governance, institutions and enforcement mechanisms promote economic development while bad institutional choices probably lead to forms of rent seeking by companies or public operators. This mechanism is evolutionary, in the sense that an increase in trade, as can occur in an international or inter-regional context, pushes traders to demand more rules and greater governance capacity. New institutions therefore change the way in which businesses and other actors are organized and interact.

Beckert (2009:247) intends market exchange as "a form of social interaction that can be explained… only by the institutional structures, social networks, and horizons of meaning within which market actors meet". The author considers that the task of economic sociology is to explain the terms of coordination, i.e., the possibility for actors to align "their actions in ways that allow for market exchange to take place", possibilities deriving from the fact that expectations can be formed about the behaviour of the other actors, considered sufficiently compatible with their material interests and ideals.

Duina (2006) in his analysis of the social construction of the market in the EU, NAFTA, and MERCOSUR investigates how markets have been built taking into account the ability of participants to share cognitive notions, especially in the area of property rights.

Remaining within the institutionalist framework, economists drawing on this inspiration assume the obvious presence of transaction costs where the market must be understood as "a social arrangement that facilitates repeated exchange among a plurality of parties" (Furubotn and Richter, 2003: 284). The market is thus intended as an organization that consists of a set of institutional rules in addition to those who create and apply these rules. The objective is to obtain higher utility levels than those possible in the absence of any type of rule. Furubotn and Richter indicate that ultimately the market is able to organize contacts between parties due to the existence of a system of formal and informal rules (institutions) that govern transactions, specifically in the search, inspection, contracting, execution, control and enforcement stages. The rules are implemented collectively and through bilateral initiatives. Market efficiency thus depends on the costs incurred in "... setting up, maintaining and changing the organization market" (Furubotn and Richter, 2003: 284) and these costs can be attributed to the market but also to political transactions. Institutionalist inspired economists therefore resume the concept of the market as a "social construct" and consider, in addition to rules in the strict sense, the investments to promote relations among individuals, namely, to strengthen the relational culture (or mutual trust).

These analyses therefore – in contrast to standard economics – enable us to explain how a market and a polity (or regional political entity such as MERCOSUR) is simultaneously built.

Recalling the importance of institutions, rules, and relational investments leads to considering the need for a legal order as a meant of identifying a market. Important for our purposes is therefore Hadfield and Weingast's (2012, 2013) suggestion that an environment (a market) can be considered as organized according to a legal order if:

- There is an identifiable entity (an institution) that deliberately supplies a normativa classification scheme that designates some actions as "wrongful".
- Actors, due to the classification scheme, forego wrongful actions to a significant extent.

Economic analyses on the formation of markets tend to recognize that the main task of institutions is the same over time and space, namely, to ensure respect for property rights and make credible the threat of pursuing those that do not respect them. However, even if the objectives are constant, the appropriate institutions may vary with alternative law enforcement strategies.

In evaluating the case of MERCOSUR, this observation enables us to avoid comparisons that are based on the use of the European integration experience as a benchmark. Rather, we rely on the assumption that a shared goal, such as the construction of a common market, can be achieved with different solutions that consider the starting point of participating

states. As Glaeser and Shleifer (2003) underline, different institutions in different circumstances can provide the solution to the perceived need for a single market and the basic issue of market regulation, namely, the protection of property rights. However, recognizing that there may be different solutions to the same problem does not mean that all solutions can be adapted to the established objective.

Clearly, building a common market under a RIA is a very complex problem, since a RIA:

a) Creates a new market starting from existing market organizations, in the sense of Furubotn and Richter (2003), or more precisely, creates a new organization capable of producing new market transaction organizational rules.

b) Is implemented between different countries, thus creating the problem of making a new efficient choice or limited to a transplantation of law.

c) Therefore, the ability to change the institutions is essential.

We intend to consider this problem from a particular point of view: the official MERCOSUR documents speak of the formation of a common market, which implies free movement, and not only free trade, and hence beyond the mere liberalization of domestic markets. This implies a higher degree or "deep" integration entailing not only the elimination of tariff and non-tariff barriers, but also defining a new system of law and order for establishing rules and their enforcement. In our view, the fundamental difference with the EU is in the common market definition:

- in the EU, the common market (now the internal market) is "an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured in accordance with the provisions of the Treaties" (Article 26 of the Treaty on the functioning of the EU).

- in MERCOSUR, according to the Treaty of Asunción, Art. 1: "The States Parties hereby decide to establish a common market, which shall be in place by 31 December 1994 and shall be called the 'common market of the southern cone' (MERCOSUR). This common market shall involve: the free movement of goods, services and factors of production between countries through, inter alia, the elimination of customs duties and non-tariff restrictions on the movement of goods, and any other equivalent measures".

To note is the difference with the European definition, which calls for both the absence of borders and the "guarantee" of free movement. This implies the transition from the notion of a common market to that of single or internal market, a step linked to the creation of a common system of rules based on supranational institutions. In the case of MERCOSUR, the Treaty limits itself to a definition that does not imply guarantees for economic operators or commitments for states, while the goal of free movement is entrusted to intergovernmental type agreements.

2 - Regional liberalization and standards

The elimination of non-tariff barriers – the crux of any attempt to create a regional common market - has long been the focus of public and private operators with substantial consensus on the need to reach agreement on standards, namely, the rules governing the production and marketing of goods and services, and the regulation of input factor markets. Why seek an agreement on standards, particularly in MERCOSUR?

The nature of the public good of standards (understood according to theory as non-privately appropriable goods whose consumption is non-divisible) entails some particularly important consequences for our problem in terms of the link with regional integration. The fact that standards are shared by a community, generally national, since they guarantee the achievement of common goals, indicates their clear association with the characteristics of the

community itself: preferences, habits, technological skills, levels of quality of life, cultural traditions.

Given that communities may greatly differ, this implies the absence of any supposition that the regulations must be the same. A further consequence is that the endogenous nature of the regulations can only change when the fundamental characteristics of the communities that have expressed them also change. This therefore points to the need for communities participating in a RIA being sufficiently homogeneous.

International trade plays an important role here: trade openness can substantially change the characteristics of a community, for example, by modifying spending capacities, production models, and income distribution, and thus indirectly contributing to the change of the regulations sought. Likewise, the international opening of a country may allow the influx of information - for example, the most innovative technologies available to resolve a problem addressed by national regulations - that was previously unavailable, and thus overcoming another important factor, namely, the information gap that may at times be the source of regulatory differences.

This consideration entails the need to make a clear distinction between the existence of different regulations - which, considering public goods theory is absolutely rational - and the strategic use of the same regulations, which conversely may lead to distortions in the allocation of resources and therefore an inefficient outcome. These are two distinct issues at the logical level: the difference in market regulations between different communities when also effectively reflecting a difference in the characteristics and preferences of citizens does not only lead to distortions in the international system, but is precisely the means of impeding them. Conversely, imposing the same regulations in substantially different countries can lead to a distorted use of resources.

In other words, the heterogeneity of regulations has very different consequences for international trade in relation to the reasons that determined it. According to Sykes (1996), "good" heterogeneity, derives from differences in people's tastes, preferences, and incomes. For example, a national community that has had to bear the weighty costs of the failure of financial institutions demands higher banking or insurance regulations than others, in the same way as another community that has relatively low-income levels is less willing than others to bear the costs of rigid regulations on the quality or safety of products. The income distribution within a community can itself be the source of heterogeneity: if the preferences for regulations are expressed by the "average" constituent, a community characterized by an egalitarian distribution of income will tend to show preferences for rules that protect health or safety compared to those expressed by a community characterized by highly concentrated income distribution. Many of these differences can be justified, as stated before, with reasons linked to efficiency, but even when such reasons cannot be applied, democratic legitimacy is also a sufficient justification.

The discourse changes when the causes of heterogeneity are not found in these types of reasons, but are merely causal factors or related to government deficiencies. In other words, regulations can only be approved based on traditions without any reference to preferences or income levels, or when sufficient government information is lacking, for example, on new technologies available to achieve a particular result of public interest. In this case, defending support for the differences between national regulations is more difficult, especially when they result in additional costs for international trade.

"Bad" heterogeneity raises even more doubts due to organized interest groups "capturing" the regulations, such as those easily constituted in heavily regulated sectors and which find precisely in the regulations an important trade defence instrument. Such a situation may give rise to rules with explicit discriminatory content, harming foreign competitors, and formally non-discriminatory rules, which may equally create differences to the detriment of competitors. According to the theory of international trade, rules that explicitly or otherwise have discriminatory intent reduce social welfare in the same way as traditional trade defence instruments.

Therefore, "good" heterogeneity appears to be largely justified and, indeed, is the source of differences between countries that determine the trade benefits. Conversely, differences arising for other reasons may be undesirable, and should therefore be eliminated in an ideal world. Of course, the call for the international harmonization of internal regulations cannot only consider the reasons for heterogeneity, but must also consider the role attributed to the regulations in relation to international trade. Indeed, even in the face of the second type of justification for regulatory differences, if they do not involve costs for international trade, but only for those countries that apply them, there would seem to be no rational reasons to link trade liberalization to harmonization.

Abbott and Snidal (2001) seek to address the complexity of the matter by providing first a definition and taxonomy of the different types of standards, which is very important to understand the problems associated with solving this problem and choosing the requisite forms of governance to deal with them. The definition of standards as "a guide for behaviour and for judging behaviour" (Abbott and Snidal, 2001:345) is broad enough to consider very different situations, all of which can affect a regional agreement. Consider, for instance, the standards designed to regulate products and production processes, but also those aimed at regulating factor markets, or rules for the production of public goods (environmental protection, etc.). Likewise, the authors define international governance as "the formal and informal bundles of rules, roles and relationships that define and regulate the social practices of state and non-state actors in international affairs. Standards and the institutions associated with them are subcategories of governance" (Abbott and Snidal, 2001:346).

These definitions may clarify the complexity of problems related to resolving the externalities created by the difference between national standards. Externalities, which may manifest when an actor's behaviour affects the welfare of others, require adopting the necessary standards in an economic perspective to improve the efficiency of a market system. However, as we previously pointed out, a possible trade-off exists between the need for standards compatible with market integration and the different preferences (and regulatory capacity) of participating countries.

This complexity ultimately makes it particularly difficult to choose the desired governance systems in a RIA considering both the different problems and the different preferences.

Returning to Abbott and Snidal (2001) for a deeper insight into this topic, identifying a taxonomy that enables expediently classifying the standards to discuss their role in regional integration processes is useful. These authors suggest considering the differences between the standards depending on whether they entail coordination or cooperation games.

The first case involves standards related to technological or transactional interconnectivity issues, which normally favour common standards even if countries cannot agree on which standards to choose. In the second case, we can include standards applied to resolving physical externalities (such as environmental issues) or policies (for example, regulating factor markets): cooperative games prevail here, since individual countries may find it expedient to adopt their own standards, possibly conflicting with those of other countries, and only through cooperation - when the opportunity is recognized - it is possible to reconcile the standards with international trade.

Naturally, coordination or cooperation games may require different international governance solutions, and those normally discussed vary widely, ranging from pure competition to the extreme opposite of uniform and common regulations.

3 - TBT and MERCOSUR

TBTs in MERCOSUR have a significant impact on the level of well-being of member countries. A recent UNCTAD (2016) study reported that the impact of TBTs is significantly

higher than the impact of traditional Non-Tariff Barriers (NTBs) - quotas, price controls, etc. -, causing prices to increase by 10-15% in Argentina and Brazil, and 10% in other countries. The need for the convergence of regulations therefore seems evident. UNCTAD also indicates that such convergence can create significant well-being gains: the adopted Computable General Equilibrium model signals a gain attributable to deeper regional integration, equal to an increase of two billion US $, also considering the losses due to the national governments renouncing the revenues obtained through NTBs.

Similar to other regional agreements, decisions regarding TBT and sanitary and phytosanitary standards (SPS) adopted in MERCOSUR refer to the rules established by the WTO Agreements.

In fact, both in Resolution 60/93, relating to SPS, and in Decision 45/17, concerning technical barriers, the basic principle is to adopt the WTO Agreements as a basis for decisions. In the case of SPS, the resolution is dedicated both to establishing the principles, objectives, and criteria for the adoption of measures, and to indicate the parameters to be used for the equivalence of such rules. These parameters include those of the Codex Alimentarius and the World Organization for Animal Health. In the case of TBT, the MERCOSUR countries decided to establish an internal program for the reduction of technical barriers through the harmonization of national rules and the mutual recognition of the conformity assessment processes. Again, both the definitions and the contents of the rules must be established considering the general rules and principles of the WTO TBT Agreement. This decision offers a minimum level of security to commercial transactions, given that if a country adopts an internationally recognized standard, the TBT Agreement prevents recipient countries from erecting technical barriers to trade. On the other hand, in addition to accepting the institutional weakness of the WTO Agreements, it also entails the substantial waiver of regional norms typical of MERCOSUR.

In fact, the “original” part of the MERCOSUR decisions is procedural in nature, i.e., how to adopt, when deemed necessary, the MERCOSUR technical standards. Decision 45/17, which replaced the previous 56/02, is rather precise in this regard, and indicates a complex decision-making process that starts from a Member State's proposal and passes to the specific working subgroup (SGT), and from here to the Common Market Group (GMC), which must take the final decision. The process then entails incorporating the law into the national legal system, and as known, the rules come into force after incorporation by national institutions only in Brazil, while in other member countries, they come into force only after all members have incorporated the rules.

In the event of a subsequent dispute, the MERCOSUR countries then have different dispute resolution options, either through the settlement mechanism envisaged by the founding treaty or through the WTO dispute settlement mechanisms.

From reading the rules and their subsequent application, the following emerges:

- MERCOSUR expects to solve the problem of the elimination of TBTs through the harmonization of national rules that must take place according to the procedure set out in Resolution 45/17. The innovation brought about by this last resolution consists mainly in the commitment of member countries to oppose the MERCOSUR standards only for technical reasons. The mutual recognition mechanism, in turn, is reserved only for the conformity assessment procedures.

- The adoption of common rules is very complex and slow, and in any case does not offer economic operators guarantees or respect of the adoption. Numerous analyses indicate that many years after adoption by the GMC, most of the harmonized rules have not been incorporated by Member States. Furthermore, the preferred procedures for resolving disputes are direct negotiations between governments rather than the intervention of the Permanent Review Court. In any case, the lack of a supranational institution able to establish the correct

interpretation of the rules, which is left to national courts, provides no guarantees of the commitment to eliminate technical barriers.

- A large part of the work, especially in elaborating the harmonized common rules, is entrusted to national technical bodies, and therefore depends on their technical and institutional quality. Prado and Bertrand (2015) indicate that relying on national regulatory bodies has proved to be the main obstacle to the harmonization process, but as we shall see, it also prevents the use of forms considered less demanding than TBTs, such as the mutual recognition of national rules.

Indeed the MERCOSUR experience to date does not seem to meet the requirements. The GMC cannot be deemed an authoritative steward, considering that, at most, it can offer proposals or informal recommendations, and is not regarded as a political but a purely functional organ. Decisions are made by consensus, which means that negotiations must continue until an agreement is reached, often accompanied by high levels of ambiguity.

The dispute resolution instruments are not mandatory though, at least formally; however, when used, they produce final and binding decisions. Nevertheless, states can negotiate suspension measures with other parties to the litigation, thus not creating interpretative certainty.

The operational and institutional difficulties associated with these attempts to harmonize national rules through the production of MERCOSUR rules have led, in some cases, to following different paths. The main path, in the case of both TBT and SPS, is that of private agreements. At least in theory, this is a very interesting experiment, namely, the possibility of creating a market without a traditional rule of law. In this regard, useful to recall are the indications of Hadfield and Weingast (2012, 2013) that an environment (a market) can be considered as organized according to a legal order, which could be envisaged in particular circumstances. “There is an identifiable entity that serves as an authoritative steward of a unique, clear, and non-contradictory normative classification that is prospective and reasonably stable. This classification must be public and common knowledge. It must enable ordinary individuals to predict reasonably well the classifications that the system will reach through the use of impersonal, neutral, and independent reasoning to extend generalizable classifications to specific and novel circumstances”.

To achieve this, the institution tasked with coordinating the legal order must facilitate the integration of knowledge and ways of reasoning of each individual (state) in a generalized and sufficiently universal way to be able to serve the interests and needs of all of those who play an important role in its decentralized enforcement. Further, individuals (states) must perceive that belonging to such a coordination mechanism increases their wellbeing.

Is it possible that this identifiable entity is of a private nature? In the case of MERCOSUR, is a legal order conceivable that is not necessarily defined by the presence of a “centralized enforcement body” but can exist -under the conditions that we shall highlight- even in the absence of a central government but with the power of enforcement?

Under these conditions, is the effective implementation of the internal market achievable? Is it possible for MERCOSUR to achieve within the existing institutional framework a common market that is based on the rule of law but without a centralized structure of rules and their coercion and enforcement mechanisms?

The question can be answered thus: it is possible to envisage a non-centralized lawful order if an institution can be created that is able to choose from a list of universally recognizable rules of conduct and where the incentive to respect a behaviour that the classification deems not wrongful is that of not incurring a penalty. However, the ability to impose a penalty should not necessarily be attributed to this or another centralized institution. Hadfield and Weingast (2013:8) consider this to be “a form of collective punishment whereby delivery of an effective penalty depends on independent and simultaneous decisions made by individual (non-official) actors to punish a wrongdoer”.

From this perspective, the functioning of the known mechanisms of decentralized collective punishment (loss of reputation, retaliation, shame, ostracism, or suchlike) leads us to the central question regarding coordination among different countries for a common interpretation of the rules and a common assessment of the need for punishment. The existence of a legal institution that can produce a common classification of the conduct of an individual (state) as wrong or right reduces ambiguity and makes the coordination of collective punishment possible.

Clearly an approach based on private, nongovernmental enforcement, is appropriate when the interaction between the parties is continuous and repetitive.

In MERCOSUR, several examples of rule integration processes, largely outside government agreements, are recalled. Bruszt and McDermott (2014) present two studies dedicated to the automotive (Costa and Jacoby, 2014) and agricultural sector (Lengyel and Delich, 2014), both characterized by a "private" initiative that interacts with the public initiative.

In the case of the automotive sector, the initiative was mainly in the hands of the multinationals that identified solutions to propose to their governments through the bodies representing their interests (and therefore without attention to the distribution of benefits). The regional solution took place thanks to the "private" talks between the national associations of the MERCOSUR countries that then simultaneously transmitted their joint proposals to their governments. This system enabled overcoming the absence of a supranational authority, creating a regional structure that made it possible to overcome the divisions that emerged at the intergovernmental level.

Naturally, this solution is limited to a productive sector that, albeit in the absence of a formal regional rule capable of favouring the implementation and possible resolution of disputes, keeps the agreements weak and subject to economic and political pressures, especially in periods of economic difficulty. Costa and Jacoby (2014) recall, for example, that in 2011, private agreements were strongly hampered by the disputes between the governments of Argentina, Brazil, and Uruguay that led to new trade barriers in the automobile sector.

A similar situation occurred in the agri-food sector, where the trend towards the growth of voluntary private standards is affirming globally, especially in the markets of developed countries (Lengyel and Delich, 2014). Of course, there is also a tendency to adapt to this private approach in the MERCOSUR countries, especially in exporting countries. The authors highlight that the economic operators in the sector appreciate the greater access to markets, the improvement of production quality, the greater attention to environmental issues, but are also concerned about the costs of adjustment and the difficult harmonization of the SPS themselves.

Lengyel and Delich (2014) report the heterogeneity of behaviour both in Argentina and, more generally, in MERCOSUR, as regards the SPS of products most linked to international trade, where the quality of standards is very important, namely, fresh fruit (apples and pears in particular), rice, and lemons, and their different commercial performances.

An in-depth analysis of individual cases leads to the indication that the success in adopting private standards depends on the quality of public-private cooperation, above all to guarantee the dynamic of continuous product quality improvements. This makes it very difficult in MERCOSUR to achieve the reduction of trade barriers through the voluntary adoption of sufficiently homogeneous SPS. The profound differences between member countries with respect to the ability to manage this public/private relationship signal the difficulty of creating a unified institutional apparatus at the regional level.

The interesting conclusion of the two authors is that the main task of MERCOSUR, in this specific case, is not so much harmonizing the existing public or private rules, but implementing an experimentation space, and therefore accumulating common knowledge that "from below" leads to reducing differences and strengthening product innovation capacity.

4- Alternatives to harmonization: mutual recognition

As we have seen, full harmonization appears not only technically and politically more difficult, but in many cases is less appropriate, as we previously pointed out in terms of heterogeneity.

We have seen that the harmonization attempts managed at the intergovernmental level or with the support of private economic operators are equally very difficult and do not represent a credible solution to the problem.

Even in MERCOSUR, therefore, alternatives to harmonization may be preferable. Which alternatives are viable in MERCOSUR?

The governance form that can take these observations into account could be – in the OCDE classification - the "Mutual Recognition" (MR) of national rules or the Mutual Recognition Agreements (MRA) observing the competence of "conformity assessment bodies".

MR has recently gained a great deal of attention among politicians precisely because it would ensure the possibility of maintaining national autonomy in the production of rules.

MR foresees that the regulations of Member States may have different solutions to the same problem. If a product is lawfully marketed in one Member State, it may also enter the markets of other Member States. Schmidt (2007) indicates that significant benefits can derive, ranging from avoiding the costs of negotiation for harmonization, to avoiding the costs of adapting different national standards. However, the same author notes that MR nevertheless entails a transfer of sovereignty, even if not vertical, i.e., a supranational authority, but horizontal, since it requires accepting the consequences, for example, on the level of regulations, on the free circulation of products in their country that meet different regulations.

The most important consequence for our purposes, and as we shall see in the case of MERCOSUR, is that MR requires a high level of confidence in the ability of other countries to regulate and control their own enterprises. From this point of view, Schmidt (2007) notes that MR is a mechanism to integrate very demanding markets. The practical difficulties of implementing it and the problems that may arise *ex post* are in contrast with the apparent ease of its governance. Consider the management of mutual trust between governments, or the ability to create incentives, once the free movement of products is ensured, for lowering the level of regulation in a country with the intent to promote the competitiveness of its enterprises. In other words, the risk of a "race to the bottom" often feared in the international system.

The research conducted on MR in the Journal of European Public Policy's special issue indicates the characteristics summarized by Schmidt in the introductory article (2007:675):

(1) Mutual recognition is bound to work differently in different policy fields – making it more acceptable in one compared to the other;

(2) Mutual recognition will have different implications for different people and different geographical areas;

(3) Mutual recognition is generally applied in a restricted way, mediating its consequences; and

(4) For an assessment of mutual recognition, a dynamic perspective is needed, taking into account its longer term effects, while being aware of both the advantages and disadvantages of its alternatives.

The first point recalls Abbott and Snidal's (2001) and our previous assertion, namely, that an agreement on standards is easier to obtain, even if not to maintain, when coordination games prevail, in other words, in the case of technological or transactional interconnectivity, where the interest in common standards is evident, although it may be difficult to agree on individual standards. Much more difficult, as indeed the European experience demonstrates, is MR in the case of physical or political standards: consider, for instance, European immigration

policies. Further, points (2) and (3) indicate that MR must be managed, and therefore entails significant governance problems. Finally, MR can only be proposed and managed in agreements that have a credible lifespan for private operators and are able to provide them with adequate safeguards.

These considerations lead to an inevitable conclusion: an MR agreement cannot only rely on market incentives but requires the existence of public and private operator networks that can jointly address the problem of its functioning. This recalls the assertion of Hermann-Pillath (2006) arguing that the cornerstone of the integration policy lays in the possibility that interaction in markets and in policy takes place only in the presence of networks of actors who have the need to communicate with each other. "This is because institutions are the necessary condition for any coordinated action, which are in turn embedded into language as the medium of communication" (Hermann-Pillath, 2006:298). In other words, the creation of a common market is an institutional fact based on communication between all parties involved, namely, networks of trading nations.

Moreover, the history of MR governance in the EU describes this situation well. As known, the EU employs two MR-based approaches:

- The old approach based on the principle of origin and the requirement of equivalency that Pelkmans (2007) defines "Judicial MR", since it moves from the assumption established by a European Court of Justice judgement that imposes on Member States the free movement of goods when the regulation objectives are "equivalent". Of course, if there are any disputes on the equivalence of rules, the Court of Justice itself must intervene.
- The new approach, in Pelkmans' definition "Regulatory MR", requires a European directive that indicates the common objective of standards and delegates to national or international bodies the production of the technical rules.

Thus, in Pelkmans words (2007:702), "the New Approach is based on directives where the joint definition of regulatory, objectives is the heart of the matter. Once objectives are commonly defined, the lack of equivalence can no longer be a reason to hinder imports. The Old Approach (mainly developed before Cassis de Dijon), by contrast, harmonizes by attempting to unify almost all technical aspects of … regulation, including extremely detailed technical specifications, testing, approvals and certification. It violates the respect for diversity".

The European MR mechanism is therefore based on these two approaches, about existing standards, and on the aforementioned requirement of prior notification of future standards. Pelkmans has no doubts in considering that, without this procedure, particularly without the obligation of prior notification; the European internal market could not exist.

However, to be noted for our purposes is that European internal market, while allowing a certain level of autonomy to Member States for the definition of standards, requires for both approaches the existence of a level of governance and supranational control: the old approach "imposes" MR through the intervention, when necessary, of the Court of Justice for verification of equivalence, while the new approach still requires the approval of European directives for the definition of common regulatory objectives. Heritier (2007) makes a similar claim: the adoption of MR depends on an "activist court and on well-developed implementation rules".

Another assertion of Pelkmans is important for our purposes of comparison: in considering the benefits and costs of MR, the author points out the many difficulties in the practical management of the principle. Above all, information and transaction costs: businesses are not sufficiently informed on the possibility of using MR, the costs of obtaining this information, and when needed the intervention of the Community institutions, can be very high, and therefore particularly small and medium-sized enterprises tend to refrain from exporting or adapting to the standards of the destination country, which is precisely what MR seeks to avoid. Recalling again that the integration processes, including those based on mechanisms such as MR, must rely on networks of public and private economic operators able to communicate with each other and thus, amongst other things, reduce information and transaction costs.

In view of the complexity of the agreement and its benefits and costs, is MR importable to MERCOSUR when considering the limitations imposed by the basic principles of regional priority, territorial integrity, national sovereignty, and non-interference?

It is evident that some important conclusions of the analysis that we have presented need to be kept in mind.

First, it is questionable whether MR meets the requirements of national sovereignty and non-interference. We have already mentioned that MR is still a form of horizontal transfer of sovereignty, in the sense that a state must accept the rules defined by another state. Kerber and Van Den Berg (2008: 453) highlight that "Under a mutual recognition rule, the Member States lose their power to enact mandatory regulations for domestic markets. They are only able to enact mandatory regulations for domestic producers". Therefore, "… the different preferences of the citizens in regard to regulations can no longer be satisfied".

Second, Maduro (2007) also questions the existence of a vertical transfer of sovereignty. This occurs, for example, when MR is constrained by some form of essential harmonization, or rather, when establishing a reference to international standards. If we then consider the role of the monitoring organizations, such as the ECJ, of note is that even where the body only has to determine the equivalence between national rules, it must still have power of enforcement and, in any case, can hardly base the decisions solely on the recognition of equivalence, but must refer to the final objective, namely, the creation of the common market. In the EU experience, this has often manifested in a transfer of jurisdiction to determine whether and when MR should be applied by the political process to the judicial process. This role, in the case of the ECJ, was manifested precisely in the invitation to individual states to adapt, if necessary, their own rules to MR needs.

Third, numerous analyses consider the relationship of MR with the problems of homogeneity among countries and mutual trust. It is easy to argue, as Pelkmans (2007) and Maduro (2007) do, that MR is a viable option when countries are homogeneous, and the objectives of the rules are identical, and the only problem is therefore the recognition of the equivalence of the rules. Such recognition could simply be awarded through judicial means and justifying diversity could also be relatively easy. We refer mainly to the cases of technological or transactional interconnectivity that we previously considered: here supranational governance may not be necessary, especially when there is a sufficient level of mutual trust between states.

Much more complicated are the cases where the objectives of regulation differ, and homogeneity is limited. Maduro (2007) clarifies that, in these cases, a political process of identifying broader objectives is needed that considers not only national interests, but also all those in the area being integrated. The problem becomes even more complicated when MR entails policies under the jurisdiction of states but that influence the integration process, especially due to their divergences. We refer to cases that we formerly defined as physical externalities or policies requiring a solution through standards that do not undermine the integration process. Hence, the paradox that Maduro recalls: in cases of this kind, the need for MR of national rules is even greater, but approval and management are even more difficult due to the lack of homogeneity between states and insufficient mutual trust. The solution in such cases can only be supranational, a choice until now excluded from the MERCOSUR agreements.

These indications explain why the only two experiments undertaken by MR on the rules and standards recognized by the OECD are that of the EU and the Australia New Zealand Closer Economic Agreement (ANZCERTA agreement between Australia and New Zealand. Both imply 'hard' law, which means they are fairly high up on the ladder of increasing integrative ambition and have been made possible by a unique and deep form of economic integration and some common institutional frameworks with responsibilities at a high political level.

Although the principle of mutual recognition is also employed with MRA, it is strictly confined to the recognition of technical competence of designated foreign bodies, in the exporting country, in specific product markets, to perform conformity assessments of products to the rules and procedures of the importing country. The latter country neither gives up nor adapts any safety, health, environment and consumer protection objectives, nor does it have to change any existing procedure for conformity assessment.

Consequently, MERCOSUR only seeks to launch MRA; on the other hand, MRA also requires a form of regional governance.

The Correia de Brito, Kauffmann, and Pelkmans (2016) OECD analysis indicates that the prevalence of cost benefits of MRA agreements can only be obtained in some cases.

These benefits are mainly the reduction of transaction costs due to testing and certification, even if, in the case of highly regulated products (pharmaceuticals, cars, electronics, etc.), it is more convenient to rely on multilateral harmonization agreements, while for less regulated sectors, the costs of the agreement exceed the benefits. Benefits are also found in greater administrative efficiency, reducing the cost of inspections, and speeding up the time of the clearance of goods. A final important source of benefits could be given by the flow of knowledge and peer learning. The OCDE emphasizes that in the case of countries with lower technical skills, these knowledge flows can act as a "capacity building tool".

The costs are typically of an administrative nature, even if the main cost is also in this case linked to a loss of "sovereignty" in matters of regulation. In fact, the problem arises when there is insufficient convergence in the regulations and control mechanisms, so that the commitment to making the controls compatible is not credible. Joining an MRA means, in essence, considering the quality requirements of the partner country controls, which is only possible if the countries have similar preferences regarding regulation, and if their control institutions are sufficiently elastic.

As can be seen, the approach to the use of MR and MRA differs greatly from that of the EU.

The EU, while recognizing certain autonomy to states, "imposes" MR based on recourse to the Court of Justice for the verification of the "equivalence" of national rules, establishing common directives for the identification of the common objectives of the regulation. Naturally, this action is strongly supported by the search for convergence among member countries in terms of regulatory preferences: MR is possible because the preferences of individual member countries are not, and above all, tend not to be, substantially different.

The main difference is therefore that the EU has both MR, which refers to the regulations (and therefore the principle of equivalence, and the supranational institutional instruments become fundamental to guaranteeing its application) and MRA. In the case of MERCOSUR, the GMC resolutions refer only to conformity assessment activities, namely, MRA. The rules remain, in any case, within national sovereignty both for their approval and for their management and implementation. In other words, mutual recognition agreements do not concern the rules or standards of other countries, but only the recognition, by a receiving country, that the conformity assessment bodies of other countries can certify the conformity of a product to its own rules.

MERCOSUR is also very explicit in defending national sovereignty, as this is in its nature, reiterating that nothing can condition the national regulatory authorities to adopt the most appropriate rules to protect national targets for the protection of citizens or the environment.

There is therefore a level of supranationality in the EU that is denied in MERCOSUR. To the contrary, it relies on the achievement of sectoral agreements, choosing not the whole market but only a few priority sectors (also according to national interests), for which forms of cooperation must be found, particularly to identify mutually acceptable standards whose respect

must be recognized by national bodies, and the conformity assessment bodies, whose decisions must be accepted by the other states based on general conditions negotiated between the parties.

On the other hand, as indicated previously, TBTs originate from rules that express different preferences of countries, which may be of a cultural origin but also due to different levels of development and knowledge. From this point of view, it makes little sense to negotiate reciprocal concessions on purely technical aspects, also considering the fact that the absence of a supranational authority automatically pushes individual governments to disregard agreements in respect of interests perceived as national. One possible solution is to replace technical sectoral negotiations with a regional view of the problem, i.e., carrying out activities that enable developing a shared vision of the regulatory problem.

Furthermore, a serious problem relates to lack of transparency. Lack of transparency can certainly be understood as a cost to the economy, either because uncertainty or insufficient understanding can lead to wrong decisions, or because transparency is the best defence against "capturing" agreements in favour of partisan interests.

Ultimately, both the MR and the MRA tools are only achievable in some cases that we can summarize according to the OECD guidelines:

- There must be a strong motivation to trade in all the countries involved;
- Countries must not be too divergent, both in their preferences for regulation and in the quality of the control institutions;
- Making agreements is easier when differences in regulation create excessive difficulties in international trade. This is clearly the case of products with a global value chain, such as telecommunications equipment or electronic products;
- Regulations are guided more by scientific knowledge and national preferences;
- They refer to areas for which sufficient mutual trust exists in the technical and regulatory capacities.

These are objective situations that, in the case of MERCOSUR, can only be identified in some cases, mainly in the context of the trade of agricultural products. In other cases, the MRA path appears complicated and linked to the willingness of member countries to accept solutions with a high supranational content.

In any case, a central issue is that of mutual trust between regulators and the conformity assessment agencies, trust that requires investments, especially in cooperation.

Conclusions

The results of the MERCOSUR common market building process by eliminating TBTs hide some important difficulties.

In fact, the harmonization process, initiated in the sectors that MERCOSUR indicated as a priority, has led only some member countries to adopt the agreed rules, and hence indicating partial harmonization. Since adoption is approved at national level, there is no guarantee that states will maintain the rules adopted over time or contribute effectively to their implementation. Some seemingly positive results obtained in some commercial sectors suggest that harmonization was led by some more advanced and sophisticated companies, whose main objective was the "raising of rivals' costs". In this way, small businesses consider both harmonization and MR as an instrument to increase their difficulties in accessing the market, or even impeding their survival.

MERCOSUR may face many similar problems in different sectors, where harmonization towards ambitious common objectives can be very dangerous for companies and countries less able to manage the risk of the common market.

There are also other important difficulties with regard to technical capabilities, the provision of physical infrastructures, such as testing centres, the quality of governance of the harmonization process, and therefore also of MRA.

The removal of TBTs through the harmonization of rules - which must take place at national level - and MRA are therefore still very distant from actually achieving a common market. Pursuing the path drawn according to the principles of MERCOSUR (rejection of the use of supranational solutions based on the rule of law in favour of forms of informal and intergovernmental cooperation and the retention of sovereignty) has therefore not allowed completing the construction of the common market.

Moreover, these difficulties were widely anticipated. Interesting to note is that the same problems have been identified in the case of ASEAN, as the Report of the Eminent Persons Group (2006) states, "ASEAN's problem is not one of lack of vision, ideas, or action plans. The problem is one of ensuring compliance and effective implementation. ASEAN must have a culture of commitment to honour and implement decisions, agreements and timelines". Perhaps also in the case of MERCOSUR, Jones' (2015) suggestion holds: "... the weak institutionalisation of ASEAN economic cooperation is not a design flaw, nor does it reflect a normative preference for non-legalistic interaction, as constructivists suggest. Rather, it persists because it is functional for powerful interests. Open regionalism reflects and sustains a broad accommodation between, on the one hand, neoliberal technocrats, economists and reformist business interests who favour greater liberalisation and, on the other, those politico-business elites and other societal groups favouring protection".

What are the main problems and solutions?

The MERCOSUR roadmap in this context foresees at the beginning of the process the harmonization of rules (and therefore not mutual recognition) through government agreements. This road is very long and expensive, and has some significant obstacles:

1) In the first place, sectoral negotiations are often conditioned by the interests of the most advanced countries and companies, creating disparities between companies and consequently between states that then condition the continuation of the process.

2) Once agreement has been reached, often after very long negotiations, the decision to adopt the agreed rules falls to the national states. In addition to the issue of the adoption time, here the problem of lack of transparency is felt: monitoring the harmonization process is often conditioned by a lack of information from governments, therefore rendering the evaluation of results difficult.

3) MRA come into play only after agreement has been reached and the agreed rules are adopted at national level, and concern only the recognition of the activities of the conformity assessment bodies. Here the difficulties above all lie in the qualitative level of the actions of these technical bodies and the availability of financial and cognitive resources.

4) The agreement results are often ambiguous, and the dispute resolution tools are lacking when there are conflicts over the interpretation of the rules.

From these considerations derives the proposal for a different approach, no longer based on technical sectoral negotiations but on an action carried out jointly at the regional level. In particular, the proposal to base the harmonization on a process carried out jointly by all member countries would seem important. According to Yan and Cadot (2016), ASEAN proposed "The creation of similar bodies in all ASEAN member countries and the scope for setting up common training would promote the emergence of a common vision in terms of regulatory principles". This means overcoming a merely technical negotiation phase - and therefore easily influenced by the opposing interests of states and business - in favour of a regional approach that develops interest for the emergence of a common culture of good regulation.

This, however, would require fostering the involvement of businesses and the creation of a common interest in regulation and accentuating mutual trust among companies and governments.

References

ABBOTT, K. and SNIDAL, D. (2001). International Standards and International Governance, in *Journal of European Public Policy*, 8(3), pp. 345-370

ACEMOGLU, D. (2005). Politics and economics in weak and strong states, in *Journal of Monetary Economics*, 52 (7), pp.1199–1226

ASEAN (2006). Report of the Eminent Persons Group on the ASEAN Charter. Available at: http://www.asean.org/wp-content/uploads/images/archive/19247.pdf

BOETTKE, P. J., COYNE, C. J., LEESON, P. T., and SAUTET, F. (2005). The New Comparative Political Economy, in *The Review of Austrian Economics*, 18(3-4), pp. 281-304

BRUSZT L. and MCDERMOTT, G. A. (eds.) (2014). *Levelling the Playing Field: Transnational Regulatory Integration and Devlopment*. Oxford University Press, USA

CORREIA DE BRITO, A., KAUFFMANN, C. and PELKMANS, J. (2016). The Contribution of Mutual Recognition to International Regulatory Co-Operation, in *OECD Regulatory Policy Working Papers*, Nº 2, OECD Publishing, Paris

COSTA, M. and JACOBY, W. (2014). Informal Drivers of Regional Regulatory Integration, in BRUSZT L. and MCDERMOTT G. A. (eds.). *Leveling the Playing Field: Transnational Regulatory Integration and Development*, Oxford University Press, USA

DUINA, F. G. (2006). *The Social Construction of Free Trade: The European Union, NAFTA, and Mercosur*, Princeton University Press

FLAM, H. (1992). Product Markets and 1992: Full Integration, Large Gains?, in *The Journal of Economic Perspectives*, 6 (4), pp. 7-30

FLIGSTEIN, N. and STONE SWEET, A. (2002). Constructing Polities and Markets: an Institutionalist Account of European Integration, in *American Journal of Sociology*, 107, pp. 1206-1243

FURUBOTN, E. and RICHTER, R. (2003). *Institutions & Economic Theory*, The University of Michigan Press, Ann Arbor

GARRETT, G. (1992). International Cooperation and Institutional Choice: the European Community's Internal Market, in *International Organization*, 46(2), pp. 533-560

GARRETT, G. and WEINGAST, B. R. (1993). Ideas, Interests, and Institutions: Constructing the European Community's Internal Market., in GOLDSTEIN, J. and KEOHANE, R. O. (eds), *Ideas and Foreign Policy*, Cornell: Cornell University Press

GLAESER, E. L. and SHLEIFER, A. (2003). The Rise of the Regulatory State, in *Journal of Economic Literature*, 41(2), pp. 401-425.

HADFIELD, G. K. and WEINGAST, B. R. (2012), What is law? A Coordination Model of the Characteristics of Legal Order, in *Journal of Legal Analysis*, 4(2), pp. 471-514

HADFIELD, G. K. and WEINGAST, B. R. (2013). Law Without The State: Legal Attributes and the Coordination of Decentralized Collective Punishment, in *Journal of Law and Courts*, 1(1), pp. 3-34

HAYEK, F.A. (1993). The Market Order or Catallaxy, in HAYEK, F.A. (ed.). *Law, Legislation, and Liberty: A New Statement of the Liberal Principles of Justice and Political Economy*, Routledge, London

HERITIER, A. (2007). Mutual Recognition: Comparing Policy Areas, in *Journal of European Public Policy*, 14(5), pp. 800-813

HERMANN-PILLATH, C. (2006). Endogenous Regionalism, in *Journal of Institutional Economics*, 2(3), pp. 297-318

JONES, L. (2016). Explaining the Failure of the ASEAN Economic Community: The Primacy of Domestic Political Economy, in *The Pacific Review*, 29(5), pp. 647-670

KERBER, W. and VAN DEN BERGH, R. (2008). Mutual Recognition Revisited: Misunderstandings, Inconsistencies, and a Suggested Reinterpretation, in *Kyklos*, 61(3), pp. 447-465

LENGYEL, M. and DELICH, V. (2014), Multiple Paths Toward Regime Building? SPS Regulation in the MERCOSUR, in BRUSZT, L. and MCDERMOTT, G. A. (Eds.). *Leveling the Playing Field: Transnational Regulatory Integration and Development*, Oxford University Press, USA

MADURO, M. P. (2007). So Close and Yet So Far: The Paradoxes of Mutual Recognition, in *Journal of European Public Policy*, 14(5), pp. 814-825

MURRAY, P. and WARLEIGH-LACK, A. (2013). Europe-Asia Studies: The Contribution of Comparative Regional Integration, in *The Palgrave Handbook of EU-Asia Relations*, Palgrave Macmillan, London

NORTH, D. (1990). *Institutions, Institutional Change and Economic Performance*, Cambridge University Press

PELKMANS, J. (2007). Mutual Recognition in Goods, in *Journal of European Public Policy*, 14(5), pp. 699-716

PRADO, M. M. and BERTRAND, V. (2015). Regulatory Cooperation in Latin America: The Case of Mercosur, in *Law & Contemporary. Problems*, 78, pp. 205 - 230

SCHMIDT, S. (2007). Mutual Recognition as a New Mode of Governance, in *Journal of European Public Policy*, 14(5), pp. 667-681

SYKES, A. (1996). *Strategies for Increasing Market Access Under Regulatory Heterogeneity*, *OECD, TD/TC* (96) 8.31

UNCTAD (2016). *Non-Tariff Measures in Mercosur: Deepening Regional Integration and Looking Beyond*, UNCTAD/DITC/TAB/2016/1

YAN, L. and CADOT, O. (2016). *Facilitating ASEAN Trade in Goods* (No. DP-2016-20), Economic Research Institute for ASEAN and East Asia (ERIA)