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ARTICLE

THE ENVIRONMENTAL CHALLENGE OF THE COMMON MARKET IN SOUTH AMERICA: REMA UNDER MERCOSUR

BY PEDRO VILLEGAS*

I. INTRODUCTION

As trade integration continues to be a central feature of the contemporary Latin American economic metamorphosis, the extent to which trade liberalization and concerns for environmental quality have been linked continues to vary across the Americas. In some cases, expeditious negotiation of inter-American trade pacts have not been matched by equally ambitious efforts to address long-standing and emerging environmental dilemmas. In other cases, political commitments to safeguard and to improve environmental quality alongside freer trade have resulted in new international institutional responses to environmental matters. Differences among domestic political economies and international positioning may explain this uneven environmental policy development. For whatever reason, asymmetries among environmental policies

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conceived in tandem with separate liberalization agreements in the Americas pose a variety of difficulties both for the physical state of the inter-American environment and for the political task of negotiating a Free Trade Area of the Americas (FTAA).

The largest and most strategic inter-American trade pacts—the North American Free Trade Agreement (NAFTA) and the Southern Cone Common Market (MERCOSUR)—best illustrate the problem of environmental policy asymmetry for inter-American trade integration. Some observers have promoted reconciliation of the two agreements as a possible avenue toward a FTAA. The difficulties surrounding this approach, as Stephan Haggard, Director of the Institute for Global Conflict and Cooperation, rightly points out, are daunting:

The NAFTA and the MERCOSUR are emerging as the two pivots of the hemispheric integration process However, it is also the case that the countries of the hemisphere continue to disagree on the scope, speed and structure cooperation should take ... Latin American initiatives reflect quite different policy preoccupations and have even been formulated in part as strategic counterweight to American influence The key to the hemispheric process rests on how the North American and South American complexes will be reconciled.¹

Environmental policy is one of the often-overlooked “initiatives” where fundamental differences in policy pose a barrier to a FTAA. Deservedly, the environmental provisions of the NAFTA have commanded the majority of scholarly attention devoted to the issue of free trade and environmental quality in the Americas.²

Above all, the greatest contribution made by the NAFTA environmental side agreements appears to have been their un-

1. Stephan Haggard, *The Political Economy of Regionalism in the Western Hemisphere*, 2-3 (May 1996) (research paper, Graduate School of International Relations and Pacific Studies, University of California, San Diego, <<http://www-irps.ucsd.edu>>).

2. See Richard Oppen & Mark Spalding, *Mexico Border Environmental Regulation*, in 1996 WILEY ENVIRONMENTAL LAW UPDATE (Stern & Volz eds., 1996); Mark Spalding, *Lessons of NAFTA for Apec*, 6 J. ENV'T AND DEV. 2 (1997).

ambiguous insertion of the environment into inter-American integration policy debates—debates often asphyxiated by myopic attention to commercial issues. The environmental policies of the NAFTA, linking trade and the environment through new environmental institutions, set the precedent for integration with NAFTA members. Put simply, the NAFTA set a standard for environmental policy that conditioned the landscape of future economic integration with Mexico, the United States, and Canada.

Less attention has been paid to the MERCOSUR and its environmental policy components. Established by the Treaty of Asunción on March 26, 1991, MERCOSUR seeks a greater exchange of goods, services, and factors of production among its member nations—Argentina, Brazil, Paraguay, and Uruguay.³ The agreement calls for the coordination of macroeconomic policies and sector policies as well as the harmonization of national legislation with the goal of enhancing member countries' international market competitiveness.⁴

The Treaty of Asunción builds upon a process of integration between Argentina and Brazil begun in 1988 and as of January 1, 1995, member countries have been operating under a common external tariff, the basis of new investment and trade patterns in the Southern Cone region.⁵ MERCOSUR has also forged partner agreements with Bolivia and Chile and is currently pursuing alliances with the Andean Pact and, separately, with Venezuela.⁶

Evident from the following analysis of MERCOSUR's environmental provisions is the recognition that like other important integration issues, the environmental dimension of MERCOSUR economic integration is managed much differently than NAFTA's and even the European Union's, to which MERCOSUR is more alike in organizational structure. While the

3. *Boletim de Integracao Latino-Americana (BILA)* (visited April 5, 1999) <<http://www.mre.gov.br/getec/WEBGETEC/BILA/LISTA.htm>> [hereinafter *BILA*].

4. *Inter-American Development Bank* (visited April 5, 1999) <<http://www.iadb.org>>.

5. *Id.*

6. Members of the Andean Pact are Colombia, Ecuador, Peru, Bolivia, and Venezuela.

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NAFTA institutionalizes cooperation among its member countries, the MERCOSUR lacks institutional mechanisms for coordinated environmental protection, despite rapidly expanding and new trade practices among its members. MERCOSUR countries share with the NAFTA countries similar environmental challenges born from border development and sectoral adjustments within national economies. Yet, the MERCOSUR relies upon relatively weak policy coordination among separate national regulatory regimes to address the environmental costs of economic integration. The context of environmental policy in the MERCOSUR is quite different from the NAFTA context. More disparate domestic regulatory frameworks, limited institutional capacities, and North-South disagreements over environment versus economic development are among a variety of factors that conspire in making Southern Cone environmental policies rudimentary. As Argentine commercial and environmental lawyer Guillermo Malm Green notes, "the specific provisions and regulations that NAFTA enforces are still merely declarations of principles in MERCOSUR, which yet need to be regulated."⁷

The preamble of the Treaty of Asunción states the guiding principle of the MERCOSUR environmental approach to be "preservation of the environment ... on the grounds of the principles of graduality, flexibility, and equilibrium." From 1992 to 1996, the *Reunión Especializada de Medio Ambiente* (Special Meetings on Environment or REMA) constituted MERCOSUR's response to environmental issues. The REMA operated as a sort of task force commissioned by the Common Market Group (CMG)—MERCOSUR's executive body—for the purpose of exploring how best to harmonize national environmental legislations. The REMA, however, was not a part of MERCOSUR's formal structure, and not until 1996 was one of MERCOSUR's ten Special Working Groups (SWGs) devoted to environmental matters. Operating directly under the CMG, the SWG on Environment simply continued the work of the REMA on harmonization of national codes.

7. Guillermo Malm Green, *Environmental Issues and MERCOSUR*, in *FREE TRADE AREA FOR THE AMERICAS* 184 (Joseph A. McKinney & Melissa Essary eds., 1995).

MERCOSUR's environmental policy development according to the precepts of "graduality, flexibility, and equilibrium" has proven insufficient in light of Southern Cone environmental problems. Freer trade in the region has brought negative environmental outcomes linked to large-scale infrastructure projects and to the intensification of export industries. The subsequent activism of environmentalists in MERCOSUR countries and abroad poses a significant political barrier to FTAA—particularly in the United States. This uneven development of trade and environmental policies is extending beyond MERCOSUR, as recent negotiations to expand MERCOSUR trade to the Andean Community may proliferate weak environmental measures across South America.⁸

Debates in the United States over granting "fast track" negotiating authority to President Clinton and Chilean accession to the NAFTA suggest that the long-term prospect for a FTAA built upon NAFTA-MERCOSUR integration is undermined by an emerging juxtaposition. At least partial policy mediation of environmental outcomes in the North contrasts against environmental degradation unmitigated by nascent, even complaisant, environmental politics in the South. Polarizing environmental practices between integration accords has the continental effect of strengthening politically critical environmental constituencies in the U.S. and of inviting recriminations by the Northern business community of unfair competitive advantages accruing to MERCOSUR exporters under loose environmental regimes.

This article will first discuss the type of cooperation that MERCOSUR provides for negotiation of trade and environmental policies. Comparison with the NAFTA illustrates the limited range of MERCOSUR initiatives beyond trade policies and its defense within general inter-American development debates. Second, the article offers a profile of current Southern Cone environmental challenges. Third, the article lays out MERCOSUR's environmental policies and the paucity of prog-

8. See British Broadcasting Corporation, *Andean Summit Final Document Stresses Need for Further Integration*, Summary of World Broadcasts, 29 April 1997 available in LEXIS, News Library, Curnws file.

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ress made in adequately addressing those environmental challenges.

II. THE NAFTA AND THE MERCOSUR: INTEGRATION VERSUS COOPERATION

The MERCOSUR and the NAFTA are distinct types of regional agreements that reflect unique histories, national political economies and member country's diplomatic relations. Internal national politics and international power dynamics among member countries specifically inform the degree and kind of cooperation under each pact. Several analyses of modern integration efforts observe these structural differences between the NAFTA and the MERCOSUR. Peter Smith, Director of the Center for Iberian and Latin American Studies, notes significant differences in scope, depth, institutionalization and centralization between the NAFTA and the MERCOSUR—the latter arguably falling short of his integration criteria *on environmental matters*:

Integration is not the same as intergovernmental cooperation Integration entails the creation of a new entity ... that provides a recognized framework for accommodation among member states on issues relating to the mutual exchange of goods, services, capital or persons. Integration thus provides information, establishes common expectations, and assures a level of predictability. Intergovernmental cooperation, on the other hand, results from ad hoc bargaining between sovereign states; it does not necessarily occur within a framework of long-term expectations, convergent interests, and shared benefits.⁹

In codifying Smith's observation, the typology of integration has been described as consisting of four gradations ranging from comprehensive political, economic and social integration

9. PETER SMITH, THE CHALLENGE OF INTEGRATION: EUROPE AND THE AMERICAS, 5-10 (Peter Smith ed., 1993).

(Type I) to simple cooperation pacts (Type IV).¹⁰ In both schemes, the NAFTA rates as a much more comprehensive, cooperative and binding agreement than the MERCOSUR.

The environmental institutions of the NAFTA demonstrate more sophistication and intent than the loose, cooperative orientation of the MERCOSUR. In the case of the NAFTA, U.S. domestic political accountability to environmental groups (and allied, opportunistic political bedfellows) and historical relationships among the signatory countries produced a regime consisting of dispute resolution and border environment institutions. The United States and Canada had established official rapport on border environmental issues (transborder smelter contamination) dating to the first half of the century. In the latter half of the 1980s, Mexico's economic liberalization program opened avenues for renewed and closer cooperation with the United States—cooperation that lead to the NAFTA and negotiation of new environmental institutions. These institutions embody supranational characteristics and address a spectrum of outstanding and anticipated North American environmental issues.

In the case of the MERCOSUR, the tenuous relationships between signatory countries and the relative weakness of public influence on policymaking partially account for the pact's initial exclusion of environmental concerns and, later, for the past's belated, perfunctory and compartmentalized treatment of environmental issues. MERCOSUR's exceedingly cautious and slow approach to environmental issues might also reflect historically contentious member countries' diplomatic relations. In the 1970s, MERCOSUR countries were governed militarily and some approached war with each other over water rights to the Paraná River.¹¹ Member countries have reasonable historical reasons to be averse to any overarching authority on eco-

10. Manfred Mols, *Regional Integration and the International System*, in COOPERATION OR RIVALRY: REGIONAL INTEGRATION IN THE AMERICAS AND THE PACIFIC RIM 15-24 (Nishijima & Smith eds., 1996).

11. See Diana Tussie & Patricia I. Vásquez, *The FTAA, MERCOSUR, and the Environment*, Presentation at the Trade and the Environment in the Americas Conference 7-9 (University of California, Los Angeles, April 11, 1997).

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nomie or other matters. As in macroeconomic policy, according to Argentina's former secretary for MERCOSUR, Felix Peña, the pact has severe difficulties advancing beyond "a minimum consensus on economic fundamentals."¹² The MERCOSUR consensus is a frail and extremely flexible consensus, thus constraining the scope and the depth of its policies—environment included—in the Southern Cone. Over twenty years, however, the necessity of economic growth through improved trade slowly eroded lingering diplomatic suspicions.

The weakness of MERCOSUR environmental policies has more practical roots as well. Contradictions between Brazilian and Argentine economic policies require that commitments to MERCOSUR be flexible in order to accommodate domestic political economies.¹³ Brazilian economist Gilson Swartz posits the tentativeness of MERCOSUR coordination even on its principal objective, trade liberalization:

after the Mexican crisis, when Argentina came close to default on its foreign obligations and Brazil faced a speculative attack on its new currency ... [b]oth governments reacted with raising import tariffs and negotiating of wider exception lists and new, more flexible schedules for MERCOSUR common external tariffs. In short, pragmatism won out over any sort of ideological or utopian integration ideal.¹⁴

This notion has been seconded: "Pragmatism seems to be the essence behind the functioning of MERCOSUR. Agile deci-

12. Felix Peña, *Strategies for Macroeconomic Coordination: Reflections on the Case of MERCOSUR*, in *THE CHALLENGE OF INTEGRATION: EUROPE AND THE AMERICAS*, *supra* note 9, at 184.

13. Interestingly, recent swings in trade flows between Argentina and Brazil have revealed a strikingly weakness in MERCOSUR cooperation in the area of exchange rate management (an area where Argentina's currency board imposes strict limits on cooperation). Following a strong aversion to things supranational, Brazil resorted to negotiated *ad hoc* unilateral import controls on automobiles, for example, to counter an unfavorable shift in its terms of trade with Argentina.

14. Gilson Schwartz, *Brazil, MERCOSUR, and SAFTA: Destructive Restructuring or Pan-American Integration?*, in *COOPERATION OR RIVALRY: REGIONAL INTEGRATION IN THE AMERICAS AND THE PACIFIC RIM*, *supra* note 10.

sion-making and no supranational institutions are the core elements behind its obvious flexibility.”¹⁵

The member countries of MERCOSUR have been reluctant to incorporate stringent environmental policies for an additional, generalized reason that echoes traditional North-South debates on development. “Some government sectors still believe that such [environmental] legislation should not hinder the economic development process.”¹⁶ Brazil, in particular, has been quick to point out the role of over-consumption in the developed countries of the North. Environmental degradation in Latin American countries is fundamentally linked to practices and excessive demand in rich countries. The effects of excessive hydrocarbon use by Northern industrialized countries on the Amazon rainforest are a favorite example. Pressures from the developed world for stronger and immediate MERCOSUR environmental policies are hypocritical and are construed as an attempt to deny Southern Cone nations economic growth. This very real perspective also includes the possible imposition by Northern countries of non-tariff barriers on Latin American nations under the guise of environmental protection—a concern that would clearly challenge Article XX of the General Agreement on Trade and Tariffs.¹⁷ In addition to these moderate sensitivities, Heraldo Muñoz, Permanent Chilean Ambassador to the OAS, cites more “extreme positions” that categorize the North as attempting “to conserve their natural beauties for the sake of developed countries’ ecotourism.”¹⁸

Finally, the institutional and jurisdictional barriers to coordinating environmental policy in MERCOSUR are formidable. Individually, member countries have very limited capacity for enforcing their own environmental laws. Additionally, federal-state jurisdictional characteristics of member countries disperse environmental legislation in a way that severely complicates simple harmonization and enforcement of environmental

15. Tussie & Vásquez, *supra* note 11, at 6.

16. Green, *supra* note 7, at 184.

17. Heraldo Muñoz, *The Environment in Inter-American Relations*, in ENVIRONMENT AND DIPLOMACY IN THE AMERICAS 8 (Heraldo Muñoz ed., 1992).

18. *Id.* at 6.

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codes. According to the Argentine Constitution, for example, environmental protection is the domain of provincial governments. Argentine environmental laws, like those of other MERCOSUR member countries, are ambiguous, often overlap, and are inadequately enforced. The starting point for MERCOSUR environmental law is nothing less than a decentralized tangle of environmental codes and regulations.

For whatever reason, the institutional and administrative ramifications of MERCOSUR's environmental shortcomings are alarming, particularly in light of growing transnational environmental problems arising from infrastructure integration projects and from shifting investment patterns within member country industries.

III. CURRENT SOUTHERN CONE ENVIRONMENTAL CHALLENGES

Free trade among MERCOSUR members has brought some market-oriented improvements in environmental quality. Argentine paper and petrochemical industries have successfully incorporated cleaner technologies into many of their export operations.¹⁹ Uruguayan and Argentine hide and Brazilian shoe and steel production, however, exhibit a "dual production pattern," where new plants utilize cleaner technologies for booming export markets while older plants maintain "dirty" production for the domestic market.²⁰ On balance, economic integration has produced more challenges to environmental quality in the Southern Cone than environmental policy development within the MERCOSUR has been willing or capable of addressing.

Among MERCOSUR initiatives to promote trade are large land, sea and river route integration projects which produce entirely new sets of environmental and developmental consid-

19. See N. Birdsall & D. Wheeler, *Trade Policy and Industrial Pollution in Latin America: Where are the Pollution Havens?* 2 J. ENV'T & DEV. 1 (Winter 1993); D. Chudnovsky et al., *Los Limites de la Apertura: Liberalizacion, reestructuracion productiva y medio ambiente*, ALIANZA, 1996, Editorial.

20. Tussie & Vásquez, *supra* note 11, at 16.

erations for member countries. For example, the proposed 2,130-mile river highway—the Hidrovia stretching from Nueva Palmira, Uruguay to Cáceres, Brazil—has dire and immediate implications for the Pantanal, the world's largest wetlands.²¹ The project, scheduled to begin construction in 1997, would join the Paraná and Paraguay rivers in an effort to integrate local river economies in all member countries and Bolivia. The project would require a massive diversion of water from the Pantanal into the waterway, thus disrupting the ecology of an area that is home to 650 species of birds, 240 fish species, 80 different mammals, 50 reptile species, and 90,000 plant varieties.²²

Increased trade in mining, timber, and agricultural exports transported via the Hidrovia will produce additional indirect effects in the form of hazardous wastes, fertilizer and pesticide run-off, increased water demand, deforestation and desertification. Uruguayan rice production, 90 percent of which is exported (65 percent to Brazil), is likely to increase in the coming years, requiring more water from Uruguay's eastern marshes and, therefore, endangering that area's swamp ecology.²³ Increased Brazilian soybean exports transiting along the water highway will require greater biocide use and land clearing, while, if unmitigated, depleting groundwater levels and raising nitrate water concentrations to levels dangerous for human consumption.²⁴ The Hidrovia would also place the second-largest deposit of iron and manganese in Corumba, Brazil within reach of mining exploitation.²⁵

Interestingly, the approval of the mining project, financed by the World Bank and the Inter-American Development Bank, also raises concerns over multilateral financial institutions'

21. See Todd Lewan, *South American Waterway Plan Spark Economy vs. Ecology Debate; Environment: Planned 2,130 mile Link from Uruguay to Brazil will Bring Prosperity, Backers Claim. Foes Fear Effect on World's Largest Wetlands*, LOS ANGELES TIMES, December 31, 1995, at A13.

22. See *id.*

23. Among the species affected by the Hidrovia project is the black-necked swan, which is in danger of extinction. See Yvette Collymore, *Trade-Environment: Trade Accords Undermining the Environment*, InterPress Service, October 18, 1996.

24. See Friends of the Earth, *Why Hidrovia?* (visited April 5, 1999) <<http://www.foe.co.uk/foei/tes/link13b.htm>>.

25. See Lewan, *supra* note 21.

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environmental assessment procedures. In 1996, an independent Specialist Review Panel declared the waterway's environmental impact statement inadequate for failing to produce sufficient evidence supporting the contention that the Hidrovia would levy negligible environmental effects on the area.²⁶

Developments in the MERCOSUR oil and natural gas market may also have significant environmental outcomes for the Southern Cone. All four MERCOSUR countries have undergone the deregulation and privatization of their petroleum and energy sectors. Greater demand for hydrocarbons generated by a larger MERCOSUR market may result in increased offshore wells.²⁷

A proposed bridge over the River Plate and a proposed motorway linking Buenos Aires and São Paulo are among ambitious plans to link railways and waterways to natural resources and agricultural production in Bolivia and Brazil.²⁸ Ground infrastructure integration hopes to introduce additional Amazonian gold and timber resources, western Brazil's agricultural goods, and Bolivian gas deposits to export markets and foreign investors.²⁹ With the encroachment of roads—stretching from Guyana through Brazil to Chile, Bolivia, and Peru—indigenous and environmental groups fear rampant deforestation of remaining Amazonian forests and irreversible loss of species biodiversity in response to international commodity demand.³⁰

As in the case of the U.S.-Mexico border, transboundary pollution emanating from pre-existing and untreated sources remains a primary issue. The Brazilian Candiota thermoelectric plant located in Rio Grande do Sul has been a point of con-

26. See Tussie & Vásquez, *supra* note 11, at 12.

27. See Luis Castelli & Juan Rodrigo Walsh, *Environmental Concerns Arising from Natural Resource Exploitation in the South Atlantic: Regional and Patagonian Implications*, in 5 REVIEW OF EUROPEAN COMMUNITY AND INTERNATIONAL ENVIRONMENTAL LAW: LATIN AMERICA (1996).

28. See Collymore, *supra* note 23.

29. See Pratap Chatterjee, *Environment—Amazon: Infrastructure Plans Threaten Amazonia*, InterPress Service, June 25, 1997.

30. For additional information, see the Rainforest Action Network (RAN) website at <www.ran.org>.

tention with its neighbors in the bordering Uruguayan region of Cerro Largo.³¹ Acid rain generated by coal emissions makes its way across 80 kilometers into the agricultural region surrounding the Uruguayan city of Cerro Grosso.³² Brazilian officials plan to increase plant production, while the Uruguayan government's allegations of public health deterioration and damage to crops in Cerro Grosso have remained unanswered. The ordeal has escalated and captured the attention of Uruguayan politicians who have no MERCOSUR dispute resolution forum through which to voice their grievances. Humberto Pico, Uruguayan Deputy Minister of Housing and the Environment, laments Brazil's "toxic aggression" and "wishes for binational cooperation that never happens."³³ As he plainly puts it:

Brazil's promises to solve the problem have not been fulfilled. And the issue now goes above and beyond the aspects of health and environmental pollution, in light of the MERCOSUR's (Southern Cone Common Market) process of regional integration.³⁴

The MERCOSUR simply lacks institutions for redressing the Deputy Minister's concerns.

This lack of environmental capacity within the MERCOSUR also extends to its associate members. In a particularly acute demonstration of border environmental challenges to the Southern Cone region, the recent spill of 235,000 tons of toxic waste into Bolivia's Yana Machi River threatens the surrounding ecology as well as ecosystems of the Pilcomayo River running through Paraguay and Argentina.³⁵ The rupture of a dike at the Porco mine of the *Companía Minera del Sur* (Comsur), a property owned by the family of President Gonzalo Sánchez de Lozada, occurred as the President prepared to host

31. See Raul Ronzoni, *Environment: Uruguay and Brazil at Loggerheads over Acid Rain*, InterPress Service, August 28, 1996.

32. See *id.*

33. *Id.*

34. *Id.*

35. See Juan Carlos Rocha, *Bolivia-Environment: Mine Spill has President in an Awkward Position*, InterPress Service, October 23, 1996.

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the Summit of the Americas on Sustainable Development in December of 1996. According to the Environmental Defense League of Bolivia (Lidema) and the Swiss Agency for Development and Cooperation, this discharge of arsenic, cyanide, and other chemicals used in mining exploration into the Yana Machi and the Pilcomayo compounds daily river emissions of toxic substances—emissions whose regulation is impeded by limited public resources and the lack of hazardous waste disclosure requirements.³⁶

IV. MERCOSUR ENVIRONMENTAL POLICY

The institutional framework of the MERCOSUR is set forth by the Las Leñas Agreement of 1992 and finalized by the Protocol of Ouro Preto, ratified on December 17, 1994. The Common Market Council is the supreme decision-making body of the MERCOSUR. The Council is supported by an Administrative Secretariat and the resolutions of the Common Market Group (CMG), directives from the Commerce Commission, recommendations from the Joint Parliament and the Counsel of the Economic and Social Forum.³⁷ As MERCOSUR's executive body, the CMG is, in turn, supported by its Special Working Groups that are tasked to develop policy in areas deemed vital to the success of MERCOSUR.

The momentum of environmental policy within the MERCOSUR has been slow in developing. In preparation of the 1992 United Nations Conference on Environment and Development held in Rio de Janeiro, the presidents of the MERCOSUR nations issued the Canela Declaration. The Declaration built upon the cautious commitment to environmental quality of the Asunción Treaty and acknowledged "protection of the atmosphere, biodiversity, hazardous wastes, land degradation, forests, water resources, financial resources, international

36. *Id.*

37. See Carmen Longa Virasoro, *Environmental Aspects of Regional Integration, in MERCOSUR*, in REVIEW OF EUROPEAN COMMUNITY AND INTERNATIONAL ENVIRONMENTAL LAW: LATIN AMERICA, *supra* note 27.

trade, marine environment, and the strengthening of institutions to achieve sustainable development.”³⁸

That same year the CMG proposed the REMA at Las Leñas as a political means of addressing environmental policy. Resolution #22/92, approved at the sixth meeting, initiated five rounds of REMA meetings to produce a gradual strategy for dealing with environmental issues.³⁹ Held in Montevideo in late November of 1993, REMA I stated the group’s purpose:

The REMA, considering the principles of graduality, flexibility and equilibrium defined in the Asuncion Treaty, the principles emanating from the “Declaración de Canela” and the [1992 United Nations Conference on Environment and Development] and the necessity to promote sustainable development, has as its objective the formulation of recommendations to the [Common Market Group] that will secure an adequate protection of the environment⁴⁰

Additionally, REMA I enumerated the functions of future REMA meetings:

- (1) to identify and forge agreement on general criteria for the treatment of the environment within the MERCOSUR;
- (2) to formulate and propose basic environmental directives that will contribute to concerted action by member states;
- (3) to coordinate and orient the efforts of the Common Market Working Groups where they are pertinent to the environment;

38. *Id.* at 13.

39. *See BILA*, *supra* note 3, vol. 12.

40. *Id.*

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(4) to identify and analyze international environmental agreements and propose ways of harmonizing these conventions within member states;

(5) to promote the incorporation of environmental issues in international cooperative projects within the MERCOSUR;

(6) to analyze the individual environmental laws of member states with respect to environmental criteria of the REMA;

(7) to identify and propose actions for the improvement of the environment which concord with the objectives of the MERCOSUR;

(8) to promote educational, training, research, and informational activities supporting the proper management of the environment.⁴¹

Until 1996, the REMA constituted the nucleus of MERCOSUR environmental policy.⁴² Initially, environmental policy did not rank among the policy areas meriting their own SWG. Peripheral environmental measures were discussed as sub-themes of the more commercially focused SWGs. For example, in 1993 Article 3 of the CMG's Resolution 5 founded an environmental commission as one of the seven commissions subordinate to the SWG 7 on industrial policy and technology. Similar environmental initiatives were initiated under the technical standards, agricultural policy and energy policy sub-groups.⁴³

The REMA had serious shortcomings as a mechanism for addressing environmental outcomes of economic integration. Foremost, the REMA did not operate as a formal institution

41. REMA II was held in Buenos Aires in early April, 1994; REMA III was held in Brasilia in June, 1994; REMA IV was held in Asuncion in November, 1994. See *BILA*, *supra* note 3, vols. 13, 14, 15, respectively.

42. For documentation of REMA meetings, see the *BILA*, *supra* note 3, vols. 14—18.

43. Longa Virasoro, *supra* note 37.

capable of monitoring and regulating environmental conditions or of resolving environmental disputes. The REMA limited its initiatives to cataloging separate national environmental codes, surveying and tracking international environmental agreements, and crafting a gradual plan for the harmonization of member country environmental laws. Member countries participated in meetings by submitting reports on the individual state of the environment, on institutional changes within relevant regulatory apparatus, and on changes to their respective environmental laws.⁴⁴ Indeed, this represented an informational gesture that kept environmental regimes compartmentalized along boundaries of national sovereignty. Proceedings from the REMA are littered with *national* briefings on the state of the environment in individual countries. Skillfully avoided were (1) discussions of transnational efforts to manage environmental and economic processes, and (2) the active involvement of NGOs.⁴⁵

Moreover, REMA depended upon sub-units of the SWGs to draft environmental initiatives as addenda to working groups' main tasks. It fulfilled mostly an *advisory* role with respect to the SWGs. Channeled through branches of the SWGs, harmonization of environmental codes meant harmonizing only select, trade relevant regulations, i.e. phytosanitary codes. Natural resource management and environmental protection were, essentially selected out of the SWG design.

In 1994, the REMA did produce, however, a list of eleven Basic Directives for MERCOSUR environmental policy. It has been argued those directives were "supposed to be the backbone of a joint environmental strategy, but [were] far from constituting an environmental agenda per se."⁴⁶

The REMA provided a modicum of innocuous political convergence on environmental issues that remained balkanized nationally and within the policy domain of weak, national environmental regulation. Comparatively, it did not approach the

44. *BILA*, *supra* note 3, vols.12-15.

45. *Id.* vols.13, 14, 15.

46. Tussie & Vásquez, *supra* note 11, at 14.

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intent or the sophistication of the NAFTA environmental regime.

In 1996, the Taranco Declaration officially transformed the REMA into a Special Working Group on Environment en par with SWGs on mining, communications, finance, industry, overland and maritime transportation, agriculture, energy and labor relations. Taranco sought to elevate the visibility of REMA's work and to expedite a plan for the harmonization of environmental regulations and production and process methods by the close of 1996. In April of 1997, CMG Resolution #20 best summarizes the progress of the Environment SWG.

In that resolution, the delegations demonstrated their concern over the delay in the work of SWG No.6 on the Environment generated by the absence of all the delegations in the last two ordinary meetings. The CMG reiterated the necessity that all the delegations participate in the meetings for the prompt completion of the legal environmental mechanisms for the MERCOSUR, through which it will construct the point of reference that will orient MERCOSUR environmental policy and the process of harmonization of environmental law among the Member Countries.

V. CONCLUSION

[I]n the articles of the [Asunción] Treaty there does not exist any norm on the harmonization of national legislations related to the protection of the environment or on the establishment of a common policy in this area, there is no doubt that in the near future actions shall be necessary in either of the two areas.⁴⁷

The Special Working Group on Environment has not promised a departure from the previous role of the REMA and a movement toward a more ambitious MERCOSUR environ-

47. Olivar Jimenez, Brazilian Association of Integration Studies, *quoted in* MARTHA LUCIA OLIVAR JIMENEZ, O ESTABELECIMENTO DE UMA POLITICA COMUN DE PROTECAO DO MEIO AMBIENTE—SUA NECESSIDADE NUM MERCADO COMUM 14 (1994).

mental policy. There are, however, a few functions that it could recommend, given the environmental challenges to MERCOSUR integration discussed earlier.

The Uruguayan complaint of transboundary pollution at Cerro Grosso indicates a need for environmental dispute resolution as conducted under NAFTA's CEC. Other functions of a CEC-like institution are appropriate to the MERCOSUR context, i.e. studying and tracking the potential environmental effects of new and expanding trade and investment patterns. It could recommend support for MERCOSUR directives and/or individual federal legislation supporting ecosystem conservation, technology transfer, pollution prevention, environmental law enforcement, public participation and environmental assessment compliance. A plan for federal legislation in each of the MERCOSUR countries designed to rationalize, consolidate, and enforce national environmental codes could coordinate an effective environmental regime while steering clear of sovereignty concerns. Recommending a facility designed to disseminate information on environmental matters and empowered by approval and enforcement of disclosure laws would corroborate progress in inter-American democratization and affirm commitments to sustainable development beyond rhetoric. MERCOSUR border institutions could take the form of a Hidrovia environmental quality organization, charged with regulating emissions into the waterway and monitoring other likely environmental effects on the river.

It is likely that MERCOSUR SWG on Environment will continue its slow and casual approach to trade and the environment. This lack of depth in MERCOSUR environmental policy poses a formidable barrier to NAFTA-MERCOSUR integration and a FTAA. The weakness of the SWG and the lack of institutions dedicated to environmental quality and resource management underscore a continued reluctance to deal effectively with the environment. They forebode of future potential limitations to economic integration. Environmental constituencies in other trading regions may prove hesitant to compromise their regulatory regimes with those of an environmentally deficient trading bloc. Given NAFTA's commitment to upward harmonization of environmental laws with trade partners,

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MERCOSUR policies would have “to green” substantially, lest the organization become mired in accusations from North American environmentalists and exporters (sensitive to competitive advantages) of lax Southern Cone environmental regulation. Essentially, MERCOSUR economic integration has left environmental policy far behind. The end result may be a trade pact that is incompatible with the structure, theory and level of commitment of NAFTA integration.