Stop and Go: The Impact of Post Agreement Behaviour on Incorporation in the Southern Common Market

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1 Introduction

Post agreement behaviour (PAB) departs from the idea that once a deal has been struck at an international negotiation table, it is not automatically the ratification process at the domestic level that follows and determines the further compliance behaviour of contracting states. Even though the signature under a treaty marks an important step, it is merely the promise given at the negotiation table to take action later (Mattli 1999). Delegations may be inclined to do so with varying degrees. On the one hand, they may feel obliged to keep their word, but on the other hand they might want to engage in renegotiation and try to strike a better deal. Whereas negotiations over taking a certain decision focus on “getting a yes”, post agreement bargaining is finally concerned with “getting it done” (Spector 2003).

In this article I use rational and sociological explanations for international cooperation and derive the conditions under which cooperation is likely to fail. Contractual theories suggest that a long shadow of the future may provide governments with an incentive to care for their reputation when they negotiate with others. Repeated interaction can overcome free riding problems as well as incentives through strong enforcement mechanisms. Then again, socialization effects between members of international delegations may incentive the delegations to behave according to an overall accepted conduct within an institutional contexts.
I test these theoretical claims analysing the incorporation performance of the Southern Common Market's (Mercosur) member states between 1994 and 2008. I present a data set that contains all 511 commonly made decisions that require incorporation in all four member countries. Using survival analysis, I show that institutional rules in international regimes apparently have different effects than expected. In contrast to all other international regimes, Mercosur's peculiar institutional set-up prevents all incentives for free riding. Nevertheless, even though rationally acting governments should have a strong incentive to effectively cooperate, the overall incorporation rate never exceeds two thirds. Statistical analyses suggests that the incentives for renegotiation after bargaining lead governments into package deals in order to receive side-payments. Strong socialization between the delegations mitigate this effect and can lead to a more cooperative behaviour.

I proceed as follows. After a conceptual clarification and a contextualization of post agreement behaviour in the literature on international cooperation more in general, I turn to the theoretical foundations for compliant behaviour. What are the conditions for cooperation? When is it likely to break down? I then present the empirical case, describing Mercosur's institutional rules for decision making and compliance and provide theoretically guided expectations how Mercosur should behave. Yet, Mercosur behaves differently and its institutional set-up which in theory furthers cooperation can not prevent delegations to renegotiate in order to realize side payments in package deals.

2 International cooperation and post agreement behaviour

Post agreement behaviour is one small step within an international policy process commonly defined as international cooperation. In his classic contribution, Keohane (1984: 51f.) defines it as follows: “Cooperation occurs when actors adjust their behavior to the actual or anticipated preferences of others, through a process of policy coordination. [...] Intergovernmental cooperation takes place when the policies actually followed by one government are regarded by its partners as facilitating realization of their own objectives, as the result of a process of policy coordination.” There are two parts within this definition: The partners need to coordinate on a common solution at the international level and, in a next step, they then need to follow the agreements they signed (Fearon 1998). Both of these steps have been widely studied.

International negotiations and international bargaining mark the starting point of this process (Avenhaus and Zartman 2007; Kremenyuk 2002; Raiffa 1982). The question what determines the outcome of international negotiations has not only received the attention of Political Scientists, but is increasingly multidisciplinary and obtains the attention of other
social sciences like economics or psychology, too.\(^1\)

More important to understand post agreement bargaining is the second part of international cooperation. A large scholarship has developed around compliance of states and asks whether they behave in the lines of the rules they specify in agreements. Can international agreements actually transcend the anarchical character of the international system and make states change their behaviour? Or do states continue to be independent and without constraints on their will?\(^2\)

The literature breaks down the behaviour in consequence of treaties into various substeps. Although compliance was the starting point at the end of the 1980s, recent works developed an increasingly fine grained understanding of the various processes that lie within compliance. Implementation is concerned with the more formal aspects necessary to bringing international rules to the domestic level. It can be described as “putting international commitments into practice: the passage of legislation, creation of institutions (both domestic and international) and enforcement of rules” (Raustiala and Slaughter 2003: 539). As can be seen, implementation is itself rather fuzzy and serves as a container for various processes within. There are three further steps, namely incorporation or ratification, application and enforcement.

Incorporation and ratification are two names for basically the same phenomenon. Both focus on the legal aspect of implementation and stand for the introduction of decisions made on the supranational level into the juridical bodies of the concerned states (Bergamaschine 2005). In the literature on the European Union, the phenomenon is well known as transposition and can be defined as “the whole of the measures necessary to incorporate European legislation into national law” (Bursens 2002: 175).\(^3\)

The next stage within implementation is the application of a common decision and considers the administrative part. It is especially important when states actively need to take action to realize common goals, but less so when certain action should be dismissed in the sense of negative integration.

Finally in the last stage the decisions need to be enforced which requires the monitoring of the national measures that incorporate a directive. Depending on the international institution, the supervision can be done in two ways. On the one hand, supranational institutions might execute the supervision in the sense of police patrol, on the other hand, citizens them-\[1\] Some even identify different prenegotiation phases and add them into the analysis of international bargaining (Tomlin 1989; Stein 1989; Zartman 1989).

\[2\] Overviews over the debate, or parts of it, can be found in (Martin and Simmons 1998; Mitchell 1993; Raustiala and Slaughter 2003; Simmons 1998, 2010; Slaughter, Tulumello and Wood 1998)

\[3\] Some authors refer to it even differently as legal or formal implementation (Versluis 2007; Haverland 2000; Lampinen and Uusikylä 1998; From and Stava 1993). Other scholars that come from a background in International Law call it incorporation even in the EU (Linos 2007).
selves can invoke the national courts.

Some theories provide theoretical links between negotiations and their later implementation and compliance. Schelling (1960) and Putnam (1988) suggested that those negotiators constrained by the political position of domestic partners may use these ties as a bargaining chip and succeed to strike better deals at the international negotiation table. Attempts have been made to formalize these claims and derive the conditions under which this claim holds (Drezner 2000; Evans, Jacobson and Putnam 1993; Iida 1993, 1996; Milner 1997; Mo 1994, 1995; Pahre 1997, 2001; Reinhardt 2001; Tarar 2001, 2005). Relying on the same basic rationale, others studied when and how domestic and external actors may influence domestic politics relying on international institutions (Drezner 2003).

I argue that there may be yet another point influencing compliance behaviour which occurs directly after the negotiation. Various authors from International Relations and Political Science have addressed different forms of post agreement behaviour and conceptualized it in different ways.

Jönsson and Tallberg (1998) start from a general conception of post-agreement behaviour and address these situations as basically all bargaining processes that follow after the conclusion of an agreement. They consider one particular form of post decisional contracting in their study they call compliance bargaining, which is the “process of bargaining between the signatories to an agreement already concluded, or between the signatories and the international institution governing the agreement, which pertains to the terms and obligations of this agreement.” (Jönsson and Tallberg 1998: 373) This rather wide conception considers all kinds of bargaining that are concerned with the actual behaviour of the contracting partners. A number of political processes are thinkable that may fall into this category like negotiations about incorporation between member states as well as with an international institution or bargains about the enforcement of decisions.

O’Neill (1981); Raiffa (1985) and Roth (1985) speak of post-settlement settlements. They occur when negotiation partners regulate several issues at a time, but do not manage to realize the optimal gains. A third party enforcer may then ex post suggest another solution about an outcome the initial partners would not be able to reach in the first place. Du Toit (2003) adopted this framework to explain the durability of peace settlements in South Africa. Their concept captures imperfections that stem from the bounded rationality of negotiators who are incapable to realize pareto efficient outcomes. In contrast to the before mentioned concept, the policy process has not yet reached the national sphere when renegotiation begins.

Finally, Spector and Zartman (2003) provide the most detailed elaboration of the concept and relate post agreement negotiations to international regimes. They build on the literature that explains their formation and develop ideas further about the role negotiation plays
for the development of institutions (Krasner 1983; Young 1989). The authors come to offer a framework that explicates the processes whereby international regimes adapt flexibly to a changing environment. Spector (2003) identifies six types of post agreement negotiation. Three of them take place at the international level, which are regime formation negotiations, regime governance negotiations and regime adjustment negotiations. At the national level he considers ratification negotiations, rule-making negotiations and enforcement and monitoring negotiations. In a more recent contribution, Wagner and Mwangi (2010) adds the idea of regime interpretation. The most relevant one for the context here are regime adjustment negotiations. They concern the actual policies that have been agreed upon in the context of a regime and that need to be revised because of changes in the international or domestic environment. The reasons for the renegotiation of policies are in this context an exogenous change in conditions that alter the preferences of actors. To subsume, post agreement behaviour as employed here will describe those processes that take place directly after the formal consent over them. Domestic actors do not play a direct role and the control over the negotiations is provided by the delegations. When we ask for compliant behaviour, it is not the overall state compliance, but rather the compliance of the delegation that negotiates in the realm of an international institution.4

3 Reasons for compliance

One of the major concerns in International Relations was to explain why states decide to engage in and succeed to establish enduring international cooperation. Different theoretical strands provide conditions for when we can expect cooperative behaviour. It is important to comprehend these conditions, because if we want to understand post agreement behaviour, we must need to know when delegations want to stick to their promises and under which conditions cooperation is likely to break down. Why should the same actors that agreed at the international negotiation table act in one or the other way?

4 Liberal theory (Moravcsik 1997; Slaughter 1993) serves only implicitly for post agreement bargaining. It relies on subnational entities to explain state behaviour at the international level, but the mechanism described here involves only governments. The positions of the domestic actors like courts, legislature or administrative agencies only matters in so far as governments might anticipate these positions and eventually adopt them. In contrast to two level games (Putnam 1988), which provides a strategic game during the international negotiations due to the interplay between governments pointing at binding domestic positions, the pure adoption of a domestic position does not have these steps. Even though I do not deny the relevance of domestic influences for a more broader picture of compliance in general, I consider the governments’ position as decisive and consider it to be the unitary actor here.
Table 1: Classical Prisoners Dilemma

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3.1 Rational approaches

In the rational world actors follow a logic of consequence and are driven by the achievement of their goals. They seek to maximize their utility given a fixed and exogenous set of preferences (DiMaggio and Powell 1983; Riker 1980). Contractual approaches to compliance rely on this rationale. What do I get from behaving in the agreed way? They start from the premise that in principle all actors have an interest in cooperation when they can realize absolute gains. Since international politics is characterised by an underlying cooperation problem, international cooperation is easily prone to failure. However, certain institutional provisions may mitigate these problems. For this reason, states try to establish regimes that help them to overcome these cooperation problems.

What detains states to put into practice what they first agreed upon? The most classical example of such a cooperation problem is the Prisoners Dilemma (Keohane 1984; Snidal 1985; Taylor 1976). The central challenge of two rational actors is their inability to establish a pareto optimal result. If both players cooperate, they will be able to reach the welfare maximizing outcome, which in the example in Table 1 is $3 + 3 = 6$. If both defect, they obtain the welfare minimum $1 + 1 = 2$. In those cases where one of the players chooses to cooperate and the other one does not, the defecting partner receives his individually maximum pay-off 4 and the other one receives the individual minimum outcome 0.

Given this incentive structure, each player will always chose to play the defecting behaviour. Assuming that the other player cooperates, player 1 could improve the cooperative pay-off 3 by defection to 4. Should the partner defect, the best possible solution were to defect, too and secure a pay-off of 1 instead of 0.

But the players may overcome this unfavourable situation through non-specific as well as specific forms of retaliation. When they repeat their interaction endlessly, a player faced with a situation like a Prisoner's Dilemma will not only consider the outcome now, but take future pay-offs into account as well. He knows that his defection may lead to a breakdown of the other's cooperative behaviour. The “folk theorem” now states that even if he discounts future pay-offs, there will be Nash equilibria that lead to a stable cooperative behaviour. In the light of a long shadow of the future, cooperation will become the dominant strategy, even though defection would provide a player with a short time benefit (Fudenberg and Tirole 1991; Guz-
Contractual explanations now use this endless repetition of the Prisoners Dilemma to explain enduring cooperation. The long shadow of the future allows actors to cooperate on a continuous basis, which may in the extreme replace a third party enforcer having the power to oblige the players to cooperate. The preference for present gains in comparison to future pay-offs will determine the necessary prospect for cooperative behaviour (Koremenos, Lipson and Snidal 2001). The larger the discount of future gains, the higher is the likelihood for defection. Simmons (2000); Victor, Raustiala and Skolnikoff (1998) have studied these reputation effects empirically.

The potential gains from cooperation may be influenced through the pure prospect for repetition. Regimes play an important role for international cooperation because they allow to exchange information more easily. Providing monitoring tools, they help to reduce uncertainty about the behaviour of others and address cooperation traps out of misinformation. Asymmetric information hides the real intentions of the actors. An actor \( A \) always faces the risk when she interacts with a partner \( B \) who may defect with a high probability. Consequentially, actor \( A \) will have a low intention to begin cooperation in the first place. A group of states may face the problem of moral hazard when one partner secretly behaves differently than agreed, exposing the group in total a higher risk (Keohane 1984). The extent to which international institutions provide informations determine the degree by which they can mitigate international conflicts. The more information international institutions provide, the lower the likelihood for non-cooperation.

The potential gains from cooperation can be influenced through specific forms of retaliation through third party enforcers. Yarbrough and Yarbrough (1997) show how delegated dispute settlement may help to overcome cooperation problems and lock in on a cooperation equilibrium path. Just like in repeated games, dispute settlement mechanisms may serve to coordinate on equilibria that favour cooperation. The magnitude of potential enforcement is the driver that brings potential defectors into compliance (Downs, Rocke and Barsoom 1996). The higher the expected value of sanctions, the larger the cooperation problem that can be solved.

The degree of legalization of the dispute settlement may have an impact on the level of compliance (Keohane, Moravcsik and Slaughter 2000). Interstate dispute settlement which relies on the direct negotiations between governments provides for different dynamics than transnational dispute resolution where even private actors may file complaints and the adjudication is delegated to independent judges. The formal structure of dispute resolution has a systematic impact. Other things being equal, more transnational forms of dispute resolution produce higher levels of compliance. They are capable to mediate effects of bargaining
asymmetries due to economic power or institutional capacity (Smith and Tallberg 2005).

3.2 Sociological approaches

In contrast to approaches based on material cost-benefit calculations, sociological approaches suggest different mechanisms through which compliance to international contracts can be explained. These theories depart from the idea that international negotiations are a social event like any other and that in consequence international institutions can promote socialisation between the participants. Individuals who enter these forms of interaction rarely emerge the same (Johnston 2001: 488). They can undergo socialisation processes that may endogenously change individuals’ preferences and thus provide the bases for cooperative behaviour of states as a whole.

In contrast to more encompassing definitions that define socialization at a macro level (Alderson 2001; Flockhart 2006; Harrison 2004), the focus of socialization here is more fine grained. Since the mechanisms described address the political elites that are involved in the international negotiations, socialization needs to take place at the individual level. In this case, socialization is a “process of inducting actors into the norms and rules of a given community. Its outcome is sustained compliance based on the internalization of these new norms” (Checkel 2005: 804). I distinguish between two types of socialization. The first one concerns the roles the actors can adopt on the basis of cognitive frames they develop to orient themselves in society. “To arrive at shared definitions of reality, individual actors transmit an exterior and objective reality, while at the same time this reality, through its qualities of exteriority and objectivity, defines what is real for these actors” (Zucker 1991: 85). These cognitive frames drive the way information is processed and action orientations are derived. It determines which information is accepted, how it is interpreted and how actors derive their judgements and guidance for behaviour (Scott 2008; Hazel and Zajonc 1985). “What a creature does is, in large part, a function of the creature’s internal representation of the environment” (D’Andrade 1984: 88). Actors act in a certain way because they simply do not think of other alternatives. They do not favour certain behaviour, but simply follow scripts and routines because actors take them for granted as “the way we do these things” (Scott 2008: 58).

What are the conditions that convince actors to take over certain action? Checkel (2005: 810f.) provides a number of conditions under which members of delegation may be intrinsically inclined to comply. This theoretical strand succeeds to provide a micro foundation for the old neo-functional claim that continuous interaction within a supranational institution provides for a greater identification - which in the end leads to deeper regional integration.

5Checkel (2005) refers to the outcomes as Type I and Type II internalization.
A longer and sustained interaction between actors will more easily result to the adoption of roles than a shorter one. However, previous experience in other negotiation surroundings may amplify this effect. When actors already have experience in other regional or international institutions, they will adopt these roles more easily than those that have less experience.

Next, actors may try to follow an appropriate conduct given the social situation they are in. They have beliefs about what should be done and in addition how this goal should be reached. These rules are once again determined in the interaction of the individual with its environment, and they may get persuaded by their correctness (Beyers 2010; Hasenclever, Mayer and Rittberger 1997; Johnston 2001, 2005). Acting according to rules that correspond to these values and norms is perceived as positive. The reason why they behave in a normatively correct way is thus less a rational cost-benefit calculation, but rather emotionally rooted. Being in line with the norms will typically cause feelings of pride and honor, trespassing them causes shame or disgrace (Scott 2008: 56). However, the evaluation of the situation is no utility calculation.

What are the conditions under which an actor might be easily influence by the persuasive attempts and consequently comply to agreed upon behaviour? Again, Checkel (2005: 813) provides testable hypotheses. On the one hand, characteristics of the addressee to socialization may have an influence. New actors with uncertain information about the process will be more open towards socialisation than those that come with already deeper convictions. On the other hand, characteristics of the sender can have an impact. If the sender is an authority within a group, it has stronger socializing capability.

3.3 Improvements and deterioration of compliance

There are a number of mechanisms that explain the willingness to cooperate at the international level. But as explained above, international cooperation does not only consist of the formal act of signing a treaty, government still need to put into practice what they agreed upon before. When they decide to renegotiate, they do not fulfil their promises but rather defect from cooperative behaviour and cooperation breaks down. The agreement in the first place has changed the status quo and a new round of bargaining emerges. What promotes post agreement behaviour that delays the compliance of the delegations? And what improves it? I rely on the above mentioned mechanisms for cooperation to explain actors’ motives.

When actors decide to renegotiate out of rational reasons, their cost-benefit calculation must have resulted in a decision in favour of at least temporary non-compliance. The defection now must pay-off. Since preferences can not change endogenously in this approach, something must have happened that changed the pay-off of the defecting player.
To begin, exogenous shocks may play a role. They might affect the government's preferences directly. Elections may result in a different government coalition that can have other preferences than the one that struck a deal. The new government may be reluctant to comply to the previously signed agreement and try to renegotiate.

It may be that the institutional set-up was changed and modified the pay-offs for future cooperation. The shadow of the future would be considerably shorter and induce defection now. The information flow might have changed and hence reduced the prospect for cooperation likewise. Finally, enforcement capacities can have altered and lead actors to reconsider their prospect for cooperation. But given that all these modifications require institutional changes, they do not seem to be very probable explanations for a different conduct of states.

However, one thing does change when playing prisoners dilemmas in practice. Because they are not played simultaneously, but rather sequentially, governments may observe the action of their partners. Defecting states may abuse the cooperation of their partners and reap the gains of their endeavour. Under the circumstances that a defecting government prefers gains now over gains in the future, the already cooperative governments need to react with side payments if they want to reach a cooperative behaviour. They could make concessions in other decisions and thus try to “buy” the cooperation of the until then defecting partner.

The following hypotheses would explain post agreement bargaining out of rational considerations.

H 1a: Post Agreement Bargaining may be a result of exogenous shocks on the preference of the actors.

H 1b: Post Agreement Bargaining may be a result of a change of the institutional set-up which then alters the actors’ pay-offs.

H 1c: Post Agreement Bargaining may be a result of package deals.

We so far considered rational explanations that can influence the compliance behaviour of government after international negotiations. I now turn to sociological issues. Since socialization is the adoption of rules, the causal link that can be made will express a relationship between the rules that are inherent in a group and the amount to which the actors will adapt to them and behave accordingly. The group we are interested in here, is the international institution and we would like to know under which conditions the delegations abide to their norms and conventions.

Which behaviour should the individuals display when they stick to them? Without any further knowledge, one can not say anything about the norms within a certain international institution: do they support compliance and cherish the deals they make? Or are actors more
reluctant towards it and do not take them too seriously? Role playing as well as normative considerations provide different mechanisms on which they ground their action. Theory tells us that the longer and the more regular actors participate in an institution, the more will they cognitively adopt the rules and standards that are commonplace. The more actors are socialized, the more they know about the role the group expects them to play. In consequence, they will be able to align their action more closely to the inherent rules of the institutional context. Experienced actors are less prone to commit errors and less “noise” will be in their actions. In consequence, the more actors participate and the more they become socialized, the clearer they are in the expression of their intentions.

But there can be normative considerations, too. Suasion processes make actors believe that abiding by the rules is the right thing to do. These mechanisms will work best when there is an authority within the group that makes these suasion attempts. Acting according to the rules of a group not only works best when we observe experienced members of a delegation, but also when there are those with more authority in comparison to the others. The existence of authorities should amplify the above mentioned mechanism.

In conclusion one should be able to expect the following relationships:

H 2a: Delegations depart from the inherent rules in an international institution the less experienced they are with this institutional context.

H 2b: Delegations comply to the inherent rules in an international institution when there are authorities present that represent this institution.

4 Post agreement behaviour in the Southern Common Market

Having set the theoretical foundations to explain post agreement behaviour, I now turn to an empirical case to test the theoretically derived expectations. The Southern Common Market (Mercosur) was founded between Argentina, Brazil, Paraguay and Uruguay in 1991 and aimed to establish a common external tariff and a common market. After an introduction into the institutional rules for decision making, I explain why it is a good idea to study it and which behaviour we should expect.

4.1 Rules for cooperation

Even though Mercosur was founded in 1991, it only established its current institutional set up in the Protocol of Olivos (POP) in 1994. Figure 1 displays the rules schematically. According to this treaty, the member states unanimously take decisions in one of the three decision bodies,
the Common Market Council (CMC), the Common Market Group (CMG) or the Trade Commission (TC) (Bouzas, Veiga and Torrent 2002; Dreyzin de Klor 2010; Lavopa 1996; Wehner 1999). Afterwards, each member state incorporates the decisions on the national level and the governments then communicate successful incorporation to the Secretariat. But, according to Article 42 POP, a regulation is not legally in force yet. Only 30 days after every member state successfully incorporated, the regulation develops its binding character in the Mercosur countries. Incorporation of one single state in the Southern Common Market thus prepares the effect of a Mercosur regulation, but it does not trigger it, yet. The institutional design makes sure that rules enter into force at the same time in all countries.  

Second, effective dispute settling mechanisms can help to overcome coordination problems often involved in trade regimes (Downs, Rocke and Barsoom 1996; Yarbrough and Yarbrough 1997; Fearon 1998). However, Mercosur’s institutional provisions remain comparably limited with this respect and largely intergovernmental in character (Pena and Rozemberg 2005; Rozemberg 2003; Zanoto 2006). Even though there exist ad-hoc tribunals and since the Protocol of Olivos in 2002 a Permanent Review Court, the national governments largely control adjudication. They allow access to the dispute settlement to governmental litigants only and have a strong influence in the choice of the arbiters. Two schemes that are used to gauge the strength of international dispute resolution stress its limited character. Yarbrough and Yarbrough (1997) introduced a classification for dispute settlement in international trade into four categories. According to their categorisation, Mercosur’s dispute settlement system would file into the second weakest category, where in the

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Alejandro Pastori, who was the legal advisor of the Uruguayan Foreign Minister during the negotiations of the Protocol of Ouro Preto in 1994, compared this procedure to a swimming pool. All swimmers would step close to edge. Only if everyone was ready, all would jump at the same time. (Interview with the author in Montevideo, April 2009)
maximum a third party can settle a dispute and advice retaliatory measures, but neither implement nor control their implementation (Bouzas et al. 2008: 100). Keohane, Moravcsik and Slaughter (2000) provide a systematic for the degree of legalization in international dispute resolution. Krapohl, Dinkel and Faude (2009) suggest that Mercosur’s dispute resolution displays at best a moderate level of legalization. Although the institutions do exist for conflict adjudication, their extent of independence, access and legal embeddedness do not provide for an effective enforcement of non-compliance.

4.2 Towards an explanation of its post agreement behaviour

There is a number of reasons why Mercosur is a great case to study. To start, there is variation we can explain. In contrast to the claim that “trade agreements are generally highly likely to be self enforcing” (Simmons 2010: 285), Mercosur has an incorporation record that is far from being perfect. Figure 4.2 shows each member state’s performance and depicts the ratio of the incorporated decisions over all those that require incorporation for each year and depicts that the values never exceed 80%. Even though this dismal record poses a much lamented problem for daily politics (Bouzas, Veiga and Torrent 2002; Peña 2003; Pena and Rozemberg 2005; Ventura and Perotti 2004), it provides an academically interesting puzzle to account for.

Mercosur’s institutional design for incorporation is one of the most mentioned reasons in

![Figure 2: Each Members’ Incorporation Performance in the Southern Common Market](image-url)
the literature for its dismal incorporation performance. Since the regulations officially only enter into force when all member states incorporate it, the last country to realize this step can deliberately delay the overall process. Almeida (2009), Perotti et al. (2004) and Bouzas et al. (2008) criticise this proceeding and consider it as one of the major stumbling blocks in Mercosur’s institutional design. Ventura (2005: 169ff.) states that the system is an odyssey in incorporation. It is claimed to be a mechanism that is not only too complicated, but also little favourable to the efficiency of the decisions jointly taken (Schmidt 2009: 524ff.). From a rational perspective, however, the situation looks different. As a matter of fact, Mercosur’s institutional set-up manages to solve the often cited cooperation problem in international relations. The rules the member states established prevent unilateral defection to the detriment of others. In Table 1 we saw that non-cooperation is a dominant strategy. Free riding on the cooperation of others will enable the defecting state to reap all the benefits, leaving the former ones with a minimal pay-off. In consequence, all states do have strong incentives to cheat and only direct or non-direct retaliatory measures produce stable equilibria. How does Mercosur’s institutional design solve this issue?

The big difference to existing international regimes is the behaviour in the case of unilateral defection. Mercosur’s rules assure that the status quo only changes when all participants engage in cooperation. As long as one of the states is still defecting, nothing will happen. Table 2 shows how this changes the pay-offs: Just like in the prisoners dilemma, welfare is maximized when all cooperate and it is minimized when all defect from the agreed action. The difference lies in the mixed strategies, when one of the players defect and the other cooperates. Due to Mercosur’s rules, players now gain a utility of 1 which is simply the outcome from the status quo. It is easy to see that the Nash equilibrium is now on mutual cooperation. This holds for the one-shot as well as for reiterated versions of the game. The necessary precondition for free riding–some coordinate on a common course of action and others profit from it without participating–is undermined. 7

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Table 2: Compliance game in Mercosur

Some argue that in practice incorporation in one of the members already triggers a compliant behaviour in that particular state and that the provisions laid down in the Protocol of Ouro Preto do not prevent this. The consequence would be a juridical tension between on the one hand a nationally valid decision and on the other hand one that does not need to be in force, because the other member state did not take any action, yet. However, this does not make any difference for the strategic behaviour of the states. Since a member state

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But, just like in any other repeated sequential game, players might try to link one round to another one in order to realize package deals. The change from a collective action problem situation to a pure coordination problem did not affect this principle problem. Because in practice the game is not played simultaneously, actors can observe the behaviour of others. Once all others have moved and prepared incorporation, the last player waiting can have a strategic incentive to blackmail its partners. Either they make concessions in another decision, or she will delay the incorporation or even prevent it at all. Given that, in practice, pay-offs need not necessarily be symmetric, this threat can be convincing. Package deals can still be a cooperation problem to the participating delegations.  

To sum up, from a rational perspective, all states should act in accordance to the decisions they commonly took before. According to the rational logic compliance to a decision should always follow, since it is a pareto improvement for all actors. But, as seen before, empirically we can observe a great amount of non-cooperation. Given that the classical cooperation problem has been solved, we should not observe any non-compliant behaviour out of these reasons. Mercosur's institutional design furthers cooperative behaviour and should lead to a compliant post agreement behaviour.

The other influence on strategic behaviour is the amount of enforcement. Strong mechanisms are an effective way to face eventual compliance problems and can improve compliance (Downs, Rocke and Barsoom 1996). But since Mercosur's dispute settlement relies on weak tools to solve its problems like interstate negotiations and diplomatic channels rather than the delegation to a third party adjudicator (Alter 2002, 2006), the prospects for a real influence of its conflict solution bodies are comparably dismal. Mercosur’s dispute settlement mechanism does not develop enough leverage to account for non-incorporation in areas that require deep cooperation. The incentives and pressures generated by the ad-hoc tribunals and the permanent appeals court will not be enough to assure incorporation (Alter 2002: 66). As a consequence, we should observe that once non-compliant behaviour occurs, members will not be able to effectively deal with the defectors (Almeida 2009: 162). Any deviation is not obligated to actually behave in the way foreseen in an incorporated Mercosur decision, the strategic interaction remains unaltered and stated as above.

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8One of large assumptions made in these models is the unitary actors assumption. It is not enough to have institutional possibilities for strategic behaviour, but one necessarily requires actors that are capable to coordinate the respective national delegations so that they can make use of the opportunities the institutions provide. In Mercosur the Ministries of Foreign Affairs play a central role in Mercosur's institutions. They are represented in all three decision bodies and are entitled to preside and coordinate the Common Market Group (POP Art.11) and the Trade Commission (POP Art.17). This important role is not only written down in the treaties, it is also practiced. Interviews with representatives from other ministries affirm their firm grip on the day to day business. Apparently, the Ministries of Foreign Affairs have an important gate keeping function for all regulations that are passed down from the supranational level. They are the central agent responsible to distribute Mercosur regulations to other ministries for incorporation and can therefore serve to coordinate all post agreement behaviour.
from the accorded course of action can not be brought back in line be direct, but only through indirect forms of retaliation.

What should we be able to observe given the theoretical expectations? From a rational perspective, actors should have a strong interest in compliance once they have accorded to a decision. But, when three countries have incorporated, the last member now can try to realise the strategically favourable position and engage into package deals. The delegation will only consent to incorporation when it received a side payment in one of the other areas. Only then will they restart the incorporation process. I expect that the last delegation takes comparably more time in the post agreement phase than its partners. This effect will be stronger, the more a country that has already complied to a decision will potentially gain from this cooperation.\(^9\)

But there are more features that allow not only to test the strategic elements posited, but the sociological ones, too. It seems to be the case that \textit{a priori}, the national delegations deeply defend their national interest when they come to negotiate over policy issues. These are often opposing positions that lead to intense negotiations (Gonzalez 1999; Taccone and Nogueira 2001). However, Gómez-Mera (2005) showed that socialization does take place between the delegations and that this has played an important role to overcome conflicts and crises within Mercosur.

These claims suggest that there is enough room for sociological explanations: National delegations to Mercosur meet repeatedly and on a regular basis which is a necessary condition for the mechanism to work. The CMC gathers twice a year, the CMG four times and the Trade Commission on a monthly or bi-monthly basis. Since the meetings differ with respect to their frequency, socialization should occur on different levels. Moreover, the three decision bodies are hierarchically structured: The CMC is the highest one, the CMG the middle and the TC the lowest one. One could expect normative socialization effects in those cases where members from a higher decision body take part in negotiations at the lower level. The decision bodies that meet on a more regular basis should be more open towards socialization processes and reveal the rules more clearly that are accepted within a certain group. A more regular participation of the delegates will sustain this effect in a similar vein. Likewise, the participation of a member of a higher decision body will exert a higher normative push towards more socialization, too.

\(^9\)Interestingly, explorative interviews allowed for both kinds of behaviour. Those with important positions in Mercosur or national administrations denied that member states make use of these opportunities. However, mid level bureaucrats and former members of staff do mention this behaviour.
5 Empirical Evidence

I empirically test the theoretical claims using multivariate statistics. I quickly present the technique and the variables used, provide an overview over the results and assess the theoretically claims made above.

5.1 The data set: dependent and explanatory variables

The empirical basis of this investigation is the data set the Mercosur Secretariat uses to keep track of the member states' incorporation performance. It contains the status quo of their efforts as of 2008 and comprises all 1700 decisions that have been taken under the institutional structure of the Protocol of Ouro Preto since 1994.

I restrict the sample for my analysis with two respects. First I only consider those cases that need incorporation by the member states. Moreover, I limit the analysis to regulations that concern all four member states and require incorporation by all of them. Since I am interested in the behaviour of the last member state, at least three of the member states must have made their move and incorporated a Mercosur regulation. The overall number of 1700 cases thus reduces to a sample of 511 cases.

Using this data I then calculate two lags I am interested in. Lag 3 is the time that passes between the successful incorporation of the second country and the third one. Likewise lag 4 is the time that elapses between incorporation in the third country and the fourth one. There are two important measurement issues, because one can distinguish between incorporation success and timeliness.

The measurement of the former is comparably harder, because especially during the first years, Mercosur's member states incorporate the commonly made regulations with one or more legal measure. Which one should be considered to measure the “real” incorporation? The first one or the last one reported? I decided to focus on the first one notified to the Secretariat to calculate success and timeliness. Taking account of a similar debate in the European Union (e.g. Giuliani 2003; Kaeding 2006; Mastenbroek 2003), I chose this operationalization out of two reasons. Given the information at hand, it is not always possible to unequivocally determine whether an incorporation process was truly finished once a first legal measure was notified. I nevertheless stick to the first measure, because it is a clear sign that the delegation has passed a Mercosur regulation to the national level and that incorporation has begun. Moreover, more often than in the European Union, Mercosur's legal norms are incorporated with one legal tool only. Decision CMC 20/02 furthered this aspect, introducing the

10 Regulations which concern Mercosur's own institutions, but not the respective member states, are directly binding and do not need to be incorporated.
Table 3: Summary Statistics for being the Third and the Fourth Member Country to Incorporate

<table>
<thead>
<tr>
<th></th>
<th>Argentina</th>
<th>Brazil</th>
<th>Paraguay</th>
<th>Uruguay</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Lag 3</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Frequency</td>
<td>136</td>
<td>116</td>
<td>130</td>
<td>132</td>
</tr>
<tr>
<td>Mean duration in days</td>
<td>412.7</td>
<td>328.2</td>
<td>438.5</td>
<td>416.8</td>
</tr>
<tr>
<td>(Standard Deviation)</td>
<td>(579.6)</td>
<td>(444.6)</td>
<td>(567.3)</td>
<td>(493.8)</td>
</tr>
<tr>
<td><strong>Lag 4</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Frequency</td>
<td>139</td>
<td>82</td>
<td>153</td>
<td>140</td>
</tr>
<tr>
<td>Mean duration in days</td>
<td>819.9</td>
<td>825.7</td>
<td>874.7</td>
<td>1116.4</td>
</tr>
<tr>
<td>(Standard Deviation)</td>
<td>(953.2)</td>
<td>(955.7)</td>
<td>(880.3)</td>
<td>(1291.7)</td>
</tr>
</tbody>
</table>

obligation to pass the regulations without alterations in the wording and making this problem disappear almost completely.

How often are the countries the third or the fourth one to take action? The frequency of the countries in being the third one to incorporate is similar across countries (Table 3). The situation looks different when it comes to the last state that incorporates. Here, Brazil is least often the decisive member, while the other partners are the laggards more often.

Table 3 provides a quick overview over the durations, too. When being the third country, Brazil is the swiftest incorporator on average, the other states follow with about three months difference. The comparably large standard deviation is due to the right skewness of the data.

For lag 4, the member states have a mean duration being at least twice as high which can be partly attributed to the right censored character of the data. Now, Uruguay is evidently different from its partners and takes on average eight months longer than its partners. Again, the standard deviation is comparably large because the values are skewed to the right.

In addition to the dependent variables, I use a number of explanatory variables. I control for the differences between the countries using dummies and take Argentina as the reference category. I apply the same coding to contrast the three decision bodies, taking the Common Market Council as reference.

A number of variables measure characteristics of the Mercosur regulations. I distinguish between those regulations that have an annex with technical details providing additional technical information to a decision. Some authors claim that Mercosur’s style of rule-making is in general suffering from ad-hoc decisions which are often hastily drafted. I propose that regulations carrying an annex with technical details are better prepared than the others. Due to the complexity and level of technical detail, they are likely to be well prepared in one of multiple negotiation fora in beforehand rather than drafted in the hour.

11The regulations can be obtained on the website of Mercosur’s Secretariat.
Furthermore, I control for the complexity of a regulation. A number of proxies have been developed to measure this concept. Krehbiel (1991) uses the number of laws cited in an act, Epstein and O’Halloran (1999) takes the number of committee hearings in the US congress. For the European Union Franchino (2000b,a) employs the length of directives, Kaeding (2006) the number of recitals in the beginning of a directive and Steunenberg and Kaeding (2009) the number of articles in a given legal text. I make use of the latter concept and gauge the complexity of a legal Mercosur norm with the length of the texts. I take the natural logarithm to model its diminishing marginal effect.

Next, I have a look at the novelty of regulations. Research on the European Union commonly distinguishes between new and unprecedented regulations on the one hand and topics that have already been addressed before on the other one. EU directives are transposed better if their content relates to the already existing institutions or regulatory traditions (Börzel 2000; Börzel and Risse 2003; Duina 1997; Knill and Lenschow 1998; Mastenbroek and Kaeding 2007; Thomson 2007). I operationalize this concept using the number of references to existing Mercosur regulations cited in the preamble. The more references, the more a certain agreement relates to already existing rules.

A dummy captures a change in governments while a Mercosur regulation is in incorporation. Since the great majority of incorporation occurs without the participation of the legislature, I consider only alterations in the executive. The dummy flags a different president or a change in the presidential coalition after presidential elections.

Finally I use another dummy variable to characterise the decision making process even further. Mercosur disposes of more than 200 different negotiation fora that draft regulations and prepare them for votation in one of the three decision bodies. These fora are differentiated according to these three bodies and the CMC, CMG or the TC can receive suggestions from their own preparatory fora. But regulations can come from other levels, too which I then capture with a dummy.

5.2 The method: event history analysis

I rely on survival analysis for estimation. This statistical technique maps time to events and suits the kind of data where on the one hand the unit of analysis carries information about different, mutually exclusive states and on the other hand the time it takes until they occur. The present data set contains first the success or failure of incorporation and second the time that elapses between two member states incorporating a decision. Survival analysis suits the estimation problem especially well, because it takes account of both of these variables. In addition it can account for right censored data, because cases that still require the incorporation at the national level nevertheless contribute to the estimation equation.
The central variable of survival models is the failure time $T$ which specifies the time that elapses until the event of interest occurs. We are interested in two distributions of it (Box-Steffensmeier and Jones 2004; Therneau and Grambsch 2000). The first one is simply the probability density function $f(t)$ which provides the probability distribution of the event times. Its corresponding cumulative density function is $F(t)$ and integrates $f(t)$ over time. The second function of interest is called the survivor function which is defined as $S(t) = 1 - F(t)$. It returns the probability that the time $T$ until the event occurs equals or exceeds $t$. Finally, both functions provide the ratio $h(t) = f(t)/S(t)$. This hazard ratio makes a statement about the rate that events happen at $t$, given that so far they have not taken place.

There are a number of ways to estimate this hazard rate. Here, I rely on the Weibull model and explicitly fix the parametric form of the baseline hazard. This model needs to parametrize the baseline hazard and can run easily into specification errors. Being aware of the caveats of this step (Box-Steffensmeier and Jones 2004; Golub 2007), I justify this proceeding out of several reasons. First, given the non parametric estimate of the hazard rate, the assumed distribution of the baseline hazard suggests that this is a good approximation of time dependency. Second, theoretically it makes sense to assume a declining probability for an event over time. Incorporation is most likely to occur in the beginning and the probability that it does take place at a certain moment in time will constantly sink thereafter. Finally, I cross validated my estimations with a semi parametric approach and estimated Cox models. These specify the hazard rate without making an explicit assumption of the evolution of a baseline hazard over time. The results did not show any substantive difference, neither with respect to the point estimates, nor with their uncertainty.

5.3 The results: Incorporation Performance in Mercosur

Table 4 shows the two models I base my results on. The first one reports the effect of the covariates on incorporation in the lag 3, the second model for lag 4.

As to the third lag, countries do not differ significantly to the hazard with which they incorporate. Regulations that stem from one of the two decision bodies are incorporated better, but not on a conventionally significant level. A change in the government slows down incorporation strongly. The interaction between the decision body and a change in government does not have a statistically significant effect. Longer regulations take more time to be incorporated. The number of referrals in the preamble and a technical annex hardly have any effect on incorporation and the effect seems to be too uncertain to refute the possibility that it is not zero. Finally, those regulations that come from either bargaining in the decision body itself or in one of its preparatory negotiation fora cause significantly more problems during incorporation.
Table 4: Systematic influences on the incorporation in the lag three and the lag 4 in Mercosur

<table>
<thead>
<tr>
<th></th>
<th>Lag 3 Value</th>
<th>Std. Error</th>
<th>Lag 4 Value</th>
<th>Std. Error</th>
</tr>
</thead>
<tbody>
<tr>
<td>Intercept</td>
<td>4.43 (0.35)</td>
<td>5.77 (0.28)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Brazil</td>
<td>-0.22 (0.14)</td>
<td>0.22 (0.12)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Argentia</td>
<td>0.04 (0.13)</td>
<td>-0.15 (0.09)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Paraguay</td>
<td>0.07 (0.13)</td>
<td>0.72 (0.11)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>CMG</td>
<td>-0.22 (0.17)</td>
<td>-0.22 (0.14)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>TC</td>
<td>-0.29 (0.24)</td>
<td>-0.46 (0.21)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>CMG x government change</td>
<td>-0.56 (0.33)</td>
<td>-0.66 (0.28)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>TC x government change</td>
<td>-0.55 (0.04)</td>
<td>-1.14 (0.35)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>government change</td>
<td>1.81 (0.02)</td>
<td>2.00 (0.27)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Length in words (log)</td>
<td>0.13 (0.11)</td>
<td>0.16 (0.04)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>References in preamble</td>
<td>-0.02 (0.13)</td>
<td>-0.03 (0.02)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Annex</td>
<td>0.00 (0.35)</td>
<td>-0.19 (0.08)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Origin equals decision body</td>
<td>0.53 (0.69)</td>
<td>0.56 (0.10)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Log(scale)</td>
<td>0.01 (0.03)</td>
<td>-0.42 (0.04)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Chisq | 188 | 420 |
df    | 12  | 12  |
p     | 0   | 0   |
N     | 511 | 511 |

Notes: Survival models on the time between decision in Mercosur and the respective incorporation in the member countries.

The picture looks different for the fourth lag. Now, we can observe a remarkable difference between the Mercosur countries. In comparison to the reference country Argentina, Brazil and Uruguay both incorporate significantly worse and Paraguay better. The decision bodies differ remarkably, as well. With the Common Market Council being the reference category, regulations which are decided in the Common Market Group and the Trade Commission both perform better, in the latter case on a conventional statistically significant level. A change in government during incorporation affects incorporation again strongly negatively. Both, the point estimate and the significance level display a strong effect. The model contains interaction effects between the decision bodies and a change in government which turns out to be significant for both, the Common Market Group and the Trade Commission. When contrasted to the Common Market Council, government changes do not have such a strong effect on the incorporation performance. The more often a decision body meets, the stronger this effect. Whenever a regulation carries an annex, incorporation has a higher hazard. The same
holds for the number of citations in the preamble, but without a pronounced statistical ef-
fect. Finally, a Mercosur regulation that has been adopted in the same level where it has been
decided is again incorporated with more difficulties.

What do these results tell us in the light of the above mentioned hypotheses? Rational consid-
erations predicted that an exogenous change in preferences will lead more easily to problems
during incorporation. As a matter of fact, we observe such a strong effect when a change in
government occurs. It is more pronounced for lag 4, which suggests that while in the former
case incorporation might be delayed due to domestic reasons only, in the latter case effective
renegotiation may additionally halt the process at the supranational level. Delegations may
be willing to reopen discussions and negotiate over side payments. In addition, renegotia-
tion seems to be easier in those instances where the delegations actively participated in their
drafting. They better know each detail and can anticipate later blocks more easily.

But the results so far suggest socialization effects, too. To begin, it is remarkable that the de-
cision bodies do have an effect on incorporation performance. Theoretically, we expected
that the more often and the more regular they meet, the stronger will be the socialization be-
tween the delegations. The statistical results show that a more regular interaction between
the delegations leads to an attenuation of incorporation problems. Decisions from the Trade
Commission cause comparably less incorporation problems than the ones from the Com-
mon Market Council. The interaction effect between the decision bodies and the government
change stresses this point. An exogenous shock in the preferences will cause less problems
in the decision bodies with a higher degree of socialization.

6 Conclusion

International cooperation is a complex policy process which requires coordination of various
actors in different stages. This paper takes a closer look at one of them, the post agreement
behaviour of delegations after international negotiations. The focus on one mechanism only
allows for the concentration on one group of actors. Even though it is not a complete expla-
nation of the question “why do states comply?”, it nevertheless provides a first and thorough
step into this direction.

I analysed the incorporation behaviour of Mercosur’s member states in 511 cases and pro-
pose two major conclusions. First, the institutional design underlying international coop-
eration in the realm of Mercosur should further compliance with its decisions. However,
even though incentives for defection that stem from potential free riding are circumvented,
compliance problems persist. This finding suggests that cooperation problems like the often
cited Prisoners Dilemma do not seem to have such a strong effect for cooperation problems
as conventionally assumed. Second, I suggest that rather post agreement bargaining can be one important cause for non compliant behaviour. Exogenous shocks on the actors preferences deteriorate the chances for incorporation substantively and may consequently lead to renegotiations. This effect, however, can be mitigated through decision bodies that meet on a more frequent and regular basis and that are more open to suffer from socialization effects.
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