
45 Example: the forest burning in Indonesia was tolerated by the government, although the existing law prohibited such activities. For the details and further examples see A. Rest, Zur Notwendigkeit eines Internationalen Umweltgerichtshofes, in: Liber Amicorum, Sele/Undervelderen, The Hague/London/Boston 1996, pp. 575; p. 579.


48 What is necessary is a new understanding of sovereignty which can meet the environmental challenges of our world in transition. Cf. S. Bhatt, Ecology and International Law, in: Indian Journal of International Law 1982, pp. 422

49 (21) ILM 1982, pp. 1261


54 López-Ostros v. Spain, ECHR Series A, Vol. 30/3/C

55 The judgement of 26 August 1997 in the case of Balmer-Schafroth and Oth- ane, The Indispensability of an International Court of the Environment, such as those prohibiting massive pollution of the atmosphere or of the seas” as an international crime. Cf. YILC 1980, Vol. II, Part Two, pp. 30; at p. 32.

56 Art. 19(d) provides: “the serious breach of an international obligation of essential importance for the safeguarding and preservation of the human environ- ment, such as those prohibiting massive pollution of the atmosphere or of the seas” as an international crime. Cf. YILC 1980, Vol. II, Part Two, pp. 30; at p. 32.


58 Convention of 21 June 1993, in: (32) ILM 1993, pp. 1228


62 Art. 19(d) provides: “the serious breach of an international obligation of essential importance for the safeguarding and preservation of the human environ- ment, such as those prohibiting massive pollution of the atmosphere or of the seas” as an international crime. Cf. YILC 1980, Vol. II, Part Two, pp. 30; at p. 32.


65 PCA, Optional Conciliation Rules of 1 July 1996. All Optional Rules con- cerning Conciliation and Arbitration are published by the International Bureau of the PCA, Peace Palace, The Hague.


67 Optional Rules of 20 October 1992

68 Optional Rules of 6 July 1993

69 Optional Rules of 1 July 1996

70 Optional Rules of 1 July 1996

71 Environmental Disputes and the Permanent Court of Arbitration: Issues for Consideration, Background Paper for the Secretary-General of the PCA prepared by Ph. Sands. (FIELD, March 1996)


76 Cf. PCA, 96th Annual Report, Nos. 18–22, at p. 9

77 PCA, 96th Annual Report, No. 21, at p. 9.

78 For the numerous recommendations coming from 54 States and several Inter- national Organisations see: The Global Demand for an International Court of the Environment, International Report 1998 of the International Court of the Environment Foundation (ICEF), Rome 1998.
was directed towards the achievement of a general liberalization of trade. During this initial stage measures such as automatic reduction of tariffs, along with the elimination of restrictions on trade between the member countries, were adopted with a view towards arriving at a zero tariff and no “non-tariff” restrictions for the entire tariff area by 31 December 1994.

On August of 1994, at a summit held in Buenos Aires, Argentina, the foreign and economic ministers of the four member countries signed a final agreement on the definitive implementation of Mercosur, establishing the union of customs by January 1st, 1995, as the main goal. In December 16, 1994, the four Presidents of the Mercosur countries met in Ouro Preto, Brazil, and reached the “Protocol of Ouro Preto” (POP), the agreement that defined the institutional structure of Mercosur and enacted the common market since January 1st, 1995. Among other measures, the POP principally allowed the adoption of a Common External Tariff (CET) for the purposes of the customs union and the harmonization of macroeconomics and sectoral policies.

The process was envisioned by the original members of the group as a common market of at least 240 million people inhabiting a surface of 12,000,000 sq. km or 7,500,000 sq. miles, with an output of well over $1 trillion. The market will allow goods and services to be freely traded among member countries and to permit the unrestricted movement of factors of production as labour and capital. Besides the main goal of market integration, the Parties to the agreement also recognized that the real meaning of the integration should embrace other goals. In that sense, the adoption of a common commercial policy, the coordination of market integration, the Parties to the agreement also recognized that the real meaning of the integration should embrace other goals. In that sense, the adoption of a common commercial policy, the coordination of macroeconomics and sector policies, and the harmonization of national policies were placed within the institutional structure of Mercosur given by the “Protocol of Ouro Preto – Additional Protocol to the Treaty of Asuncion – Additional Protocol to the Treaty of Asuncion (TA) where the Paraná Valley is given by the “Protocol of Ouro Preto – Additional Protocol to the Treaty of Asuncion (TA)”.

The definitive institutional framework of the Mercosur is given by the “Protocol of Ouro Preto – Additional Protocol to the Treaty of Asuncion on the institutional structure of the Mercosur of 1994”. This additional protocol also embodies an Annex related to the “General procedure for reclamation before the Commerce Commission of the Mercosur”. As Pedro Tarak explains in his work about the region, the process of integration “… is an institutional system of negotiation, adoption of decisions, resolution of commercial conflict, characterized by the juridical effect of the supra-nationality …”. The author also states that the integration does not create a supranational institutional system similar to the European Union; and he emphasizes that the enforcement of the supranational decisions – despite their mandatory character – is within the power of each country Party of the treaty.

The protection of the environment is given an important place within the process and is recognized in the preamble to the Treaty of Asuncion (TA) where the Parties agree that the integration “… must be achieved through the efficient use of the available resources and the preservation of the environment …”.

Most of the documents adopted during the transition period recognized the importance given to the protection of the environment in the preamble of the TA. In June 1992, in the valley of Las Leñas, City of Mallingue, Mendoza, Argentina, Mercosur ministers adopted a timetable for the coordination of policies of different areas. Many environmental directions were placed within the authorities given to the technical “working groups” in charge of the development of policies of the process of integration. In addition, the “Specialized Meeting of Environmental Issues” (in Spanish “Reunión Especializada de Medio Ambiente”, hereinafter REMA), was summoned in 1993 for the first time by the Common Market Group (CMG). The CMG – executive institution of the group – summoned the REMA with the purpose of the analysis of the environmental legislation of the four countries of the region in order to harmonize the activities of the different working groups and to eliminate environmental restrictions to free trade.

Finally, the Protocol of Ouro Preto also triggered the adoption of new documents regarding environmental protection of free trade activities. The most relevant resolutions are related to the harmonization process of environmental legislation and the coordination of sectoral policies of the different member countries. This article focuses its analysis on the evolution in the consideration of environmental legal issues within the legal framework of the Mercosur and its influence in the process of integration.

Discussion

1. Overview of the general legal framework of the Mercosur

The definitive institutional framework of the Mercosur is given by the “Protocol of Ouro Preto – Additional Protocol to the Treaty of Asuncion on the institutional structure of the Mercosur of 1994”. This additional protocol also embodies an Annex related to the “General procedure for reclamation before the Commerce Commission of the Mercosur”.

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a. Institutions and authorities

The institutions are endowed with different authority and can be classified relying on their functions as follows:

a) Policy-making: the principal and highest policy-making body is the Common Market Council (CMC), the political "arm" and the legal representative of the group. The CMC is composed of the ministers of economic and foreign affairs respectively. The presidency of the council rotates on a semester basis and gathers the Presidents of the four countries at least twice a year. The CMC adopts supranational “decisions” on a consensus basis and the governments of the four country Parties have the mandatory duty to enforce the decisions.21

Second, the Common Market Group (CMG) is the executive branch of the CMC and observes the enforcement of the original legislation of the group. With headquarters in Montevideo, Uruguay, the CMG is the principal body responsible for proposing draft resolutions to the CMC and making the necessary arrangements to comply with the CMC’s decisions. The CMG also adopts programmes and approves the general budget of the Mercosur. The group is coordinated by the ministers of foreign affairs and works with the support of alternate members representing governmental areas such as foreign and economic affairs and the central treasury. The group also is authorized to create “technical working subgroups” that support its activities and to call “special meetings” for the analysis of inter-sectoral issues such as foreign and economic affairs and the central treasury. The CMG adopts “resolutions” on the same supranational consensus basis and with the same duties of individual enforcement for the four countries.

Finally, the Mercosur Trade Commission (MTC) is the responsible body for the coordination of a common trade policy and the supervision of the enforcement of the common external tariff (CET). The MTC also proposes rules and amendments to the enacted regulation of commerce and customs and is the recipient authority of the different claims of particular entities, corporations and governments. The MTC adopts “directives” on the same basis explained for the CMC and CMG.

b) Consultative: first, the Joint Parliamentary Commission (JPC), supports the activities of the policy making bodies in the incorporation of the regulations of the Mercosur within the juridical systems of the four countries of the region. It is composed of representatives of the different national parliaments of the Parties.

Second, the Economic and Social Consultative Forum (ESCF), is a body of intergovernmental and inter-sectoral nature that gathers principally the production sector, unions and associations of each of the four countries.

Both institutions are able to give the CMC “recommendations” through the CMG.22

c) Administrative: the Administrative Secretariat of the Mercosur (SAM), is the administrative support of the other policy-making and consultative bodies and is in charge of the publication of the Official Bulletin of the Mercosur.

2. Environmental legal protection in the Mercosur

a. Treaty of Asuncion

As explained above in the introduction, the protection of the environment is given an important place within the process of integration. The preamble of the Treaty of Asuncion declares that the integration “... must be achieved through the efficient use of the available resources and the preservation of the environment ...”.24

The preamble is the only section of the treaty that contains references to the protection of the environment. However, the preamble tells governments that the process of integration must be developed within a framework, which includes the protection of the environment among other principles that should be observed.25

b. The Declaration of Canela26

The Declaration of Canela is the written document of the summit of Presidents held in the city of Canela, Brazil in 1992. In that meeting, the presidents of the countries of the Mercosur analyzed and adopted a regional common position upon the agenda that would be discussed at the “United Nations Conference on the Environment and Development (UNCED '92).” Although the document is not adopted within the legal framework of the Mercosur, the declaration contains the common political position of the region on issues such as biodiversity, global change, water resources, human settle-
branch of the CMC received instructions from the different “working groups”, regarding the protection of the environment. Many of the instructions were related to the harmonization of the different legislations of the four countries. In fact, working group No. 7 on Industrial and Technological Policy and working group No. 9 on Energy Policy were instructed on the identification of the asymmetries between the different legislations in order to propose a harmonization scheme.31

Other instructions were indirectly related to the protection of the environment. In that sense, each working group has different assignments, as follows:
- No. 1 on commercial issues: analysis of subsidized products;
- No. 2 on customs issues: analysis of the classification of dangerous substances if they may harm the environment;
- No. 3 on technical standards: analysis of the qualities of food products, characteristics of containers and materials in contact with food;
- No. 5 on land transportation: analysis of the transportation of goods by highways and railroads;
- No. 6 on maritime transportation: adoption of a multi-lateral agreement for the sector;
- No. 8 on agricultural activities: must track the legislation and policies of the sector in order to achieve the sustainability of agricultural products and the environmental protection of the activities of the sector;
- No. 11 on labour relations and employment: analysis of the international conventions of the International Labour Organization regarding the environmental protection of the workplace.29

d. Special Meeting on Environmental Issues.30 (REMA)

After the meeting of Las Leñas, the CMG – considering the need for analysis of environmental legislation within the countries of the region and the interdisciplinary character of its legislation – issued Resolution No. 22/92 to create the REMA. This group is aimed at developing the coordination of the activities of the different groups charged with environmental assignments. The REMA has the authority to analyze the environmental legislation in force in the different member countries and to propose actions and recommendations to be developed within the various areas. The different working groups with environmental responsibilities (see above) have the duty to participate in the REMA in order to harmonize their activities.31

The first meeting of the REMA established the general goals. Among other issues, the main goal is to propose recommendations to the CMG in order to assure adequate protection of the environment within the general framework of the process of integration. The REMA is also given the authorization to establish adequate internal and external conditions of competitiveness for the goods produced in the Mercosur.

The first meeting also established the following functions for the REMA:
- identification of general and operating criteria for environmental protection;
- formulation and proposal of basic directives on environmental policy;
- coordination and orientation of the activities of the other working groups;
- identification and analysis of international agreements related to the protection of the environment and directly related to the general objectives of the Mercosur, in order to propose the incorporation of the international principles into the juridical systems of the four countries;
- analysis of environmental legislation of member countries of the region and identification of asymmetries and the proposal of adoption of common criteria.32

It is also important to describe the second meeting of the REMA33 where the group worked on the proposal for the following directives:
- achievement of efficiency in the management of natural resources and in the development of sustainable activities;
- consideration of the environmental costs in the cost structure of the production of goods;
- mitigation of probable environmental impacts of the actions of the Mercosur;
- systematization of procedures for enforcement of international agreements;
- strengthening of the authority of the institutions of the Mercosur through the incorporation of information, education, training and research institutions into the decision making process.

In order to achieve the goals of the directives mentioned above, the REMA establishes the following means of implementation:
- use of environmental impact assessment in the localization and development of certain activities;
- adoption of rules for the management and disposition of hazardous wastes; and,
- adoption of standards of quality for solid, liquid and gaseous discharges.34

The most important meeting of the REMA was the third one, where the four countries discussed the harmonization process of environmental legislation.35 The meeting recommended the CMG approval of the “Basic directives on environmental policy.”36 The CMG finally issued Decision No. 10/94, approving the recommendation of the REMA and defining the real meaning of the harmonization of environmental legislation established as one of the principal goals of the REMA.

The decision establishes that the process of integration must assure the harmonization of environmental legislation between the country Parties. It also recognizes that “… harmonization does not mean the establishment of a single legislation …”37 The decision also states that the comparative analysis of the enacted legislation must consider the present enforcement of the rules and that in case of loopholes, the adoption of rules that consider the environmental issues involved and assure impartial conditions of competitiveness in the Mercosur.38 The decision recognizes that the harmonization process encompasses the harmonization of legal
procedures for the issuing of permits and the realization of monitoring activities on the environmental impact of the activities developed in areas of shared ecosystems.\textsuperscript{39}

In general, the decision represents the document that reflects the reaffirmation of the main goals of the REMA and of many of the issues that were recommended in the first two meetings described above. In that sense, the decision recognizes that the inclusion of the environmental costs in the analysis of the cost structure of any productive process will help to achieve single conditions of competitiveness between the four countries.\textsuperscript{40} The decision also claims the improvement of the coordination of common environmental criteria in the negotiation and implementation of international agreements with influence in the process of integration\textsuperscript{41} and for the promotion of the strengthening of the institutions for the achievement of sustainable management.

Among other issues, the decision recognizes the importance of the adoption of non-pollutant practices in the use of natural resources,\textsuperscript{42} the adoption of sustainable management in the use of renewable natural resources in order to guarantee their future use,\textsuperscript{43} the minimization of discharges of pollutants through the development and adoption of environmentally sound technologies, recycling activities and proper management of wastes.\textsuperscript{44}

Finally, the sixth meeting is relevant for the analysis because the Parties reviewed the institutional role of the REMA. In that sense, the group recommended to the CMG the upgrading of the consideration given to environmental issues in the process of integration in order to allow the total implementation of the "Basic directives for environmental policies" adopted by the CMG in Res. no 10/94. The REMA argues that "... [it] is not conceivable a CMG that does not assign relevant consideration to environmental issues when the increase of the international trade as a consequence of the process will have a significant impact on the environment."\textsuperscript{45}

e. The "Declaration of Taranco"

The "Declaration of Taranco" is a document adopted by the Ministers and Secretariats of the environment of the Mercosur in the city of Montevideo, Uruguay on June 21, 1995. In this document, the authorities recognize the performance developed by the REMA throughout its history and achievements in the process of harmonization of environmental legislation and other original goals.

Principally, they consider that the increasing importance of many regional and international environmental issues such as the evolution of the ISO-14000 procedures, the duty of the countries in implementation of Agenda 21 and the environmental impact assessment of the hydro-highway Paraguay-Parana, must be addressed properly by Mercosur. Such reasons made the participants of the meeting to consider appropriate the proposal to upgrade the category of the REMA largely requested and recommended in previous meetings. The CMG accepted the recommendation and issued Res. No 20/95, enacting working group No 6 on environmental issues.

f. The "Working Sub-group No 6" (SGT No 6) on environmental issues

The first meeting of the new group took place in Montevideo on October 18/19, 1995. The group discussed and adopted the "action plan" for 1996–1997 to be recommended to the CMG, which in general described the goals of the group.\textsuperscript{47} The SGT No 6 is the renewed version of the ex-REMA and must continue with the achievement of the goals originally assigned to the special meeting. In particular, the plan recognizes the existence of many priorities to be developed by the group. The most important assignments are as follows:

- analysis of the harmonization of non-tariff restrictions related to the protection of the environment;
- regulation of the Custom Code, taking into consideration environmental issues in the procedures of control in the border areas;
- definition of common strategies for international conventions and agreements related to the protection of the environment that could affect the process of integration, in particular the implementation of Agenda 21 and other multilateral agreements;
- establishment of adequate conditions of competitiveness between the countries Parties to the Mercosur and third countries;
- follow-up of the evolution of the ISO-14000 process and the analysis of the impact in the process of integration;
- elaboration of a draft legal environmental document for the Mercosur, based on the principles enacted in the basic directives of Res. no 10/94;
- design, development and operation of an environmental information system to support the decision-making process;
- development of an environmental green seal for the Mercosur;
- improvement of the cooperation process with the CEE on environmental issues;
- development of a procedure for the transboundary movement of goods that possess risks for human health and the environment.\textsuperscript{48}
g. Environmental legislation of the Mercosur

In addition to the documents, meetings and declarations considered above, the Mercosur adopted many regulations for the different areas in the process of integration. The rules can be classified upon the following basis: 49

a) regulations that reflect the need for harmonization of the enacted legislation: the CMG adopted resolutions related to the following areas: 
   - technical standards: creation of the national structure for the incorporation of products according to the international ISO and IEC directives; 50
   - adoption of technical regulations for food aromatic and flavouring additives; 51
   - rules for the use of pesticides in selected agricultural products; 52
   - rules for additives of food containers, 53 and food containers 54
   - the “rules for the technical harmonization of security and sound emissions of motorcycle issues”, 55
   - sound emissions in vehicles, 56 and maximum limits for emissions of pollutant gases. 57
   - industrial and technological policy: adoption of the “programme of cooperation in quality and productivity” 58
   - b) regulations that reflect the need for coordination of sectoral policies: the CMG adopted the “Code of behaviour for the introduction and release of agents of biological controls into the environment” 59
   - and the “Basic directives for environmental policies”; 60
   - c) regulations that reflect both the need for coordination of sectoral policies and the harmonization of the enacted legislation: the CMC adopted the “Agreement on transport of dangerous goods”. 61

Conclusion

The protection of the environment is given an important place in the process of integration and the Treaty of Asuncion considers it a goal that must be achieved in the development of the process. The Parties have the duty to harmonize their environmental legislation to achieve the goal of integration. However, the process is not intended to provide a common environmental regulation for the four countries of the region.

In conclusion, the improvement of the consideration of environmental issues with the recent creation of the “working group on environmental issues” gives the authorities the possibility to introduce those issues within the decision-making process of the Mercosur.

The adoption of regulations containing environmental considerations will take place along with the consolidation of the process of integration. Many factors such as the growing influence of the new ISO-14000 rules, the duty of implementation of Agenda 21, but principally, the impact on the environment that comes with the increase of trade, will encourage the adoption of a comprehensive environmental regulation for the activities of the region.

References

1 Mercosur countries envision the Treaty of Asuncion as the final step in bringing about the ultimate goal of the development of a common market of the Latin American Integration Association (ALADI). The ALADI was enacted by the Governments of Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador, Mexico, Paraguay, Peru, Uruguay and Venezuela through the adoption of the “Treaty of Montevideo of 1980” with the purpose of establishing a gradual and progressive Latin American common market. This intent was followed by the Argentine-Brazilian Integration Treaty of 1988, which provided for the creation of a common market by 1998, and of the Buenos Aires Charter of 1990, also signed by both countries, which reduced to five years the period in which to create a common market.

2 The WTO gives regional trade agreements an important place within its formal agenda. The main question is, however, Brazil’s compatibility with the WTO multilateral trading system. The WTO requires that “the purpose of a regional trade agreement is to facilitate trade between the constituent territories and not to raise barriers to the trade of other WTO members which are not parties to the agreement.”

3 The question is central to both Article XXIV of the GATT Agreement 1994 and Article V of the GATS. In that sense, WTO decided to establish a Committee on Regional Trade Agreements in February 1996. The Committee was primarily created to centralize efforts and to examine everything related to the WTO. To date, 144 regional trade agreements have been notified to the GATT/WTO. By the end of 1997, the Committee will have continued or started to examine around 44 regional trade agreements, including the MERCOSUR.


5 Treaty of Asuncion (T.A.), art. 5.

6 As at the inaugural sessions of the atom union in January 1995, approximately 80 percent of all products traded – about 8,000 categories of goods – began to be traded duty-free within the bloc. The parties agreed to keep lists of exceptions, including textiles, steel, automobiles, and petrochemicals, which will remain protected by domestic tariffs for a period of four years until 2001.

7 The Economist Survey on Mercosur – 12/10/96 http://www.demon.co.uk/hamaraty/mercosur.html

8 T. A. Preamble

9 T. A. Preamble

10 T. A. art. 20, provides for the accession to Mercosur through negotiation.

11 At the most recent summit of the Common Market Council held in June 1996, in San Luis, Argentina, the preliminary association of Chile to Mercosur was signed. An “Agreement of Economic Complementation MERCOSUR-Chile” was approved by the CMC (MERCOSUL/CMC/DEC Nº 04/96). (Visited 4/21/97) <http://www.demon.co.uk/Itamaraty/mercosur.html>

12 Mercosur and the country members of GRAN (Grupo Andino - Group of the Andes) agreed to exchange lists of products with tariff reductions, which will open the way for the creation of a free trade area between the two blocks. The lists to exchange must specify those products, which will have a zero tariff, those with a ten years term, and the so-called “sensitive” which will demand more time and negotiations. One of the present areas of discord involves the certificate of origin of the products, that is Mercosur demand to Boliva to protect its own capital-goods industry. The Economist Survey on Mercosur – 12/10/96 (Visited 4/21/97) <http://www.demon.co.uk/hamaraty/mercosur.html>


14 The agreement to establish the FTAA was the principal outcome of the Americas Summit held in Miami in December 1994. The first hemisphere meeting of Trade Ministers held in Denver, Colorado on 30 June 1995, established seven working groups to address a range of issues including market access, customs procedures and rules of origin, investment, standards and technical barriers to trade, sanitary and phytosanitary measures, subsidies, anti-dumping and countervailing duties. The last meeting of Presidents was held in Santa Cruz de la Sierra, Bolivia, in December 1996. Secretariat of the Summit of the Americas in collaboration with the Sustainable Development Network of Bolivia and Virtual Production Services (visited April, 21, 1997) <http://coord.rds.org.bo>

15 The 1992 meeting culminated in the signature later that month of an inter-institutional cooperation agreement aimed at passing on Europe’s experiences of regional integration, provided for exchanges of information, training, technical assistance and institution-building. In November 1994, both Parties agreed to a
two-stage proposal for further strengthening bilateral relations which would ultimately lead to the conclusion of an EU-Mercosur free trade agreement covering industrial goods and services, with provision for the gradual liberalization of agricultural trade. Officials from both blocks revealed to news agencies that they would be signing the first free trade agreement among regional economic blocks in 1999. (See Mercopress News Agency Home Page. Visited March 20, 1998, URL: http://www.falkland-malvinas.com)

In the view of “The Economist”, the adoption of a system to settle disputes is imperative because “...in practice, disputes have been settled politically, by the Mercosur presidents themselves. Until now, this system has worked: to safeguard the whole project, the presidents have been prepared to compromise and, when need be, rewrite the rules. But this carries a cost, in reducing certainty...” (The Economist Survey on Mercosur – 12/10/96 (Visited 4/21/97) <http://www.demon.co.uk/lamaraty/mercous.html>.

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The forest area in the EU of 130 million hectares, represents 36 per cent of the total European area. Of this, 87 million hectares are exploitable forests (managed for wood production and services). The proportion of private forests is 65 per cent, with 12 million forest owners. The Strategy, according to the Commission, should be considered as an essential contribution at EU level to the implementation of the international commitments on the management, conservation and sustainable development of forests, as advocated by the 1992 UN Conference on Environment and Development (UNCED), the Ministerial Conferences on the Protection of Forests in Europe (Strasbourg 1990, Helsinki 1993 and Lisbon 1998), as well as the international Conventions (climate change, biodiversity, desertification, transboundary air pollution), and the 5th Environmental Action Programme Towards Sustainability. These are to be implemented by means of national or sub-national forest programmes as part of measures taken by the EU when they can offer value added help.

The Treaties on European Union make no provision for a comprehensive common forestry policy. Within the Community context, forests and related industries have been until now run directly by the Member States or as part of the Common Agricultural Policy (CAP) or Struc-