with the chapeau of article XX of the GATT were all considered. The first point was not even questioned by Brazil as the discussion concentrated on the legality of the trade barriers that had been lifted.

The panel followed the consolidated method of interpretation of article XX, beginning with the verification of the paragraphs, then analysing its conformity with the elements of the chapeau, which has been consolidated ever since "EC – Asbestos". The panel's first step was to evaluate whether the Brazilian measure sought to protect animals and vegetation. The panel interpreted this point in a particularly interesting way, agreeing with the European Union, citing that according to a **literal interpretation of paragraph b of article XX, the GATT does not permit the protection of the "environment" as such, but merely animals and vegetation.** This is an important issue since it restricts the scope of protection in other disputes. The environment is a wide concept which covers a diverse range of objects and forms of interaction between these objects, in addition to the concepts of "animals" and "vegetation" as previously outlined. Here a literal interpretation of the text is favoured, as seen in other WTO environmental disputes, however in this case it goes beyond the expectations of the various interests involved.

The panel then analysed whether the strategy of establishing an acceptable level of risk was legitimate (art.XX, b). This followed the interpretation adopted in the European Community – Asbestos case, which allowed the States to establish acceptable levels of risk within a structured approach to the analysis of risk.

The Dispute Settlement Body maintained its previous position when it stated that sanitary protection could be affected directly or indirectly. It is of little significance whether the restriction on tyre imports serves indirectly to protect human health, it is important to ascertain whether there is a causal relationship between the action (the import ban) and the protection sought (human health).

## THE *CHAPEAU* OF ARTICLE XX, WHICH REFERS TO THE NEED FOR THE MEASURE.

The European Union held that Brazil did not need to ban the importation of tyres to achieve its objectives. It alleged that Brazil should have encouraged or ensured that the retreading of tyres produced in Brazil took place, that these tyres were then used in private vehicles, as well as launching awareness campaigns or using public money to ensure retreaded tyres were used in official vehicles. These measures would improve the low levels of tyre retreading capacity in Brazil, reduce the use of vehicles in Brazil and encourage the use of public transport in urban areas. With respect to tyres which had already been retreaded, more hard-line campaigns about the longer term use of tyres should have been encouraged, as well as better care for vehicles and compulsory technical inspections, in addition to campaigns to raise society's awareness of better driving practices.

Brazil defended itself arguing that none of these measures, even if they were all employed together, would have a real impact upon the problem because of the scope of the measure and because the difference in the price of the two products was significant. In terms of risk analysis and taking into account Brazil's freedom to set its own levels of risk, the Panel acknowledged the need for the Brazilian measures.

Considering the second part of the *chapeau*, in order to decide whether the entry of retreaded tyres via MERCOSUR or following court injunctions was arbitrary or unjustified, a more detailed analysis is needed.

With respect to the first point (MERCOSUR), important discussions took place regarding possible future disputes. The panel acknowledged that the fulfilment of the MECROSUR Ad hoc Arbitrary Tribunal measure was not unjustifiable because it emanated from a body with regional jurisdiction. *This was only the case due to the fact that the volume of tyres imported following this decision was so small*. If the volume of tyres imported had been significant, the measure would have been considered arbitrary. Here the lack of deference shown by the multilateral organisation to the regional system can be observed. The legitimacy of the regional treaties is not brought into question, but the practical effect of the measures.

This is a characteristic of the fragmentation of international contemporary law, more striking when considering the different values which advance at varying speeds within each sub-system of international law. The MOX factory dispute,

between Ireland and the United Kingdom, for example, shows that international precedents can advance in parallel without the legal recognition of a pendent lawsuit, nor consideration of the mechanisms for conflict resolution outlined by the same States in different treaties.[8]

The crux of the dispute lies in the second argument: the unequal treatment of exporters, as some companies (those with injunctions) are allowed to import and others are banned by Brazil. The Dispute Settlement Body considered that Brazil was enabling the importation of used tyres from some European companies and not others in an arbitrary manner. In fact the volume of tyres imported has increased 1000% since the start of the injunctions. The Dispute Settlement Body acknowledged the practical difficulties in relation to the different governmental authorities in Brazil, but made it clear that Brazil is responsible, as a whole, for complying consistently with international law. It made clear it clear that what is important in this relationship is the final series of measures taken, as well as the analysis of these. Brazil's position was thus contrary to the requirements of international law. From a pragmatic view point, it is important to note that the criteria for the decision is based upon the empirical *consequence*s of the State's actions.

According to the panel:

> "The **Panel** finds, therefore, that, since used tyre imports have been taking place under the court injunctions in such amounts that the achievement of Brazil's declared objective is being significantly undermined, the measure at issue is being applied in a manner that constitutes a means of unjustifiable discrimination. (...) Consequently, the **Panel** also concludes that since used tyre imports have been taking place under the court injunctions in such amounts that the achievement of Brazil's declared objective is being significantly undermined, the

[8] MALJEAN-DUBOIS, S. et MARTIN, J.-C. L'affaire de l'Usine Mox devant les tribunaux internationaux *in* Journal du Droit International, v. 134, n.2, 2007, p. 437-472.

> measure at issue is being applied in a manner that constitutes a means of unjustifiable discrimination where the same conditions prevail"[9]

The Appellate body went even further. Even though the panel had not accepted the European Community's arguments, the Appellate body annulled the "first instance" decision, as it held that Brazil could not comply with the MERCOSUR decision without also allowing the importation of European tyres. This meant indirectly that it considered MERCOSUR's decision contrary to article XX, b of the GATT. According to the decision, even though the MERCOSUR Ad hoc Arbitrary Tribunal is a valid jurisdictional body or quasi-jurisdictional body, it is not able to pronounce in favour of a measure against the protection of human health, animals and vegetation, and then this decision be used as justification for an environmental exception at the WTO. It does not in fact matter whether Brazil alleges environmental issues or not in the MERCOSUR case, it is the practical final result that is important.

The WTO Dispute Settlement Body thus stands as a higher level appeal body than the Arbitrary Tribunal, not in legal terms, but in terms of the effectiveness of its decisions. MERCOSUR decisions are only valid globally when in line with WTO decisions. According to the Appellate body, Brazil could have used in its defence article 50, b of the Treaty of Montevideo, which deals not only with environmental issues, but also environmental exceptions.

In the words of the Appellate body:

> "In this case, the discrimination between MERCOSUR countries and other WTO Members in the application of the Import Ban was introduced as a consequence of a ruling by a MERCOSUR tribunal. The tribunal found against Brazil because the restriction on imports of remoulded tyres was inconsistent with the prohibition of new trade restrictions under MERCOSUR law. In our view, the ruling issued by the MERCOSUR arbitral tribunal is not an acceptable rationale for the discrimination, because it bears no relationship to the legitimate objective pursued by the Import Ban that falls within the purview of Article XX(b), and even goes against this objective, to however small a degree. Accordingly, we are of the

[9] WT/DS332/R, paras. 7.306 et 7.310

> view that the MERCOSUR exemption has resulted in the Import Ban being applied in a manner that constitutes arbitrary or unjustifiable discrimination."[10]

In this case Brazil has two options: the first is legally acceptable but politically and environmentally unacceptable – to comply with the two decisions (MERCOSUR and the WTO) and accept the Uruguayan and European tyres. The second is legally complicated at an internal level, but environmentally acceptable: to disregard the MERCOSUR decision in order to prevent the en masse entry of European tyres.

Slaughter and Burke-White state that the future of international law is domestic, using the argument that sovereignty is conveyed through the capacity to bring about advances in international law and that international law should be better incorporated into national law, respecting traditions and building universal values. The difficulty of the challenge varies according to the degree of State involvement at an international level, its internal capacity to resist or impose its wishes or shape the negotiation process. In the case of the regional systems of integration, there is a new challenge which depends upon the strength of the institutional structure established by the States. In more recent and less structured international organisations such as MERCOSUR, the future of international law seems to be regional. The new international right to trade, established from 1995 onwards, is imposed with levels of conviction and effectiveness well beyond those that the States are used to in other systems of integration (with the exception of the European Union, which already has more solid regional institutions). The logic of global interpretation, including that used by the Dispute Settlement Body, inspired in Anglo-Saxon law, is imposed upon regional systems of integration with different legal traditions (MERCOSUR, of a continental European tradition). Doing so, they force changes in the course of the natural evolution of regional court decisions.

In practice, the decision by the Dispute Settlement Body shapes the actions of the regional arbitrators and raises questions over how a regional decision would be considered critically by the Dispute Settlement Body. It is widely known that

[10] WT/DS332/AB/4, para. 228

States are able to request the establishment of another panel at the WTO should they be dissatisfied. Due to the difference in sanction powers and capacity to see through measures, the WTO decision will prevail. In other words, the only possible solution to avoid a "revision" of the regional decision is to apply the WTO rules. It is in this way that the precedents and forms of interpretation of the law set by the Dispute Settlement Body become universal.

Here one is dealing with the influence of one court over another, but different from traditional processes of cross-fertilisation. Traditionally cross-fertilisation is relevant when the influence of one court over another is applied, as it is voluntarily in human rights. Often in human rights a more coherent interpretation is used by different courts to perfect the application of law, for example, in relation to the refusal to extradite those sentenced to death. Many courts are inspired by the position of the European Court of Human Rights, which considers the time the prisoner spends on death row inhumane and degrading and denies the extradition of prisoners or demands the commuting of the sentence[11]. In terms of international trade law, another court's logic is used, if needed, when it is the only possible way to guarantee the legitimacy and the utility of the regional body for conflict resolution.

## PART II – FROM THE NATIONAL TO THE INTERNATIONAL SPHERE: THE CONFLICT OF ORDERS

[11] European Human Rights Commission. Soering versus United Kingdom. (nº14038/88). Decision dated 7.07.1989. For decisions against extradition to Iran and China see the European Court of Human RIghts, s. Aspichi Dehwari c. Netherlands. (nº 37014/97) Decision dated 22.06.1999 and European Court of Human RIghts. Yang Chun Jin c. Hungary. (nº 58073/00) Decision dated 08.03.2001. Constitutional Court of Italy. Cassazione penale 1996, p. 3258, nota Dionatellevi. Decision dated 26.06.1996. Decision by South African Supreme Dispute State vs Makwangane and Mchnu, from 1995. Consult, DELMAS-MARTY, Mireille. Les forces imaginantes du droit (II). Le pluralisme ordonné. Paris : Seuil, 2006, p. 50-65.

It is interesting to reflect upon the conflict between internal and international orders. According to international order, there is only one State, in this case, Brazil. The actual results demonstrate the extent of compliance with international norms. Internally a battle ensues between the Executive and the companies from the tyre sector. As one can see, the Executive, in particular the Ministry of the Environment, sought to prevent the importation of used tyres while the companies wanted to import them. The protagonists in this battle, at a national level, are the Legislative and the Judiciary.

Thanks to the Justice system the companies benefit from *inter partes* injunctions. When granting the injunctions, the Brazilian judges believe that they are temporarily attending the rights of a said company, which contended a specific case. In practice, by considering the set of decisions as arbitrary discrimination of international trade, forces Brazil to make the free importation of used tyres possible. Even if the battle had practically been won internally (a large proportion of imported used tyres was barred by the Executive), the fact that there was a small remaining percentage (9.2%) was enough to guarantee the Dispute Settlement Body's observation that there was an increase in the quantity over the last few years and consequently the condemnation of Brazil. This resulted in the reversal of the decision and the free importation of tyres.

On the 12$^{th}$ December 2007 the Federal Supreme Court suspended the effects of the injunction gained by one of the largest import companies (BS Colway, from the State of Paraná). Should the decision be confirmed, Brazil will need to establish the WTO panel, which itself is not possible politically, or risk suffering commercial retaliation at the hands of the European Union. This will result in the *inter partes* decisions made by the Judiciary changing Brazilian legislation and the opening up of trade to the importation of used tyres. As alleged in the premiss, the lack of coherence among State authorities is illegal in the eyes of international law. Under international economic law, a solution favouring free trade is found. It is of little importance whether the lack of coherence was in fact favourable to the protection of the environment.

The tyres case provides very good examples for a brief theoretical analysis of the implications of the discrepancy in international and national orders for resolving legal disputes. There are many possible interpretations of the issue, however the

approach to the problem will be circumscriptive, with a discussion of the following points: 1) disjunction of internal and external orders, 2) the legal and political sense (or lack of) of the decisions and 3) consequentialism as a proposal for minimising the economic risk.

### 4.1. THE DISJUNCTION OF INTERNAL AND EXTERNAL ORDERS

Law traditionally operates based upon the idea of auto-centrality and the idea that the sovereign limits of legal decisions fall within the geopolitical space of the State. It happens that globalisation, fed by a constant technological revolution, is increasingly becoming an irrefutable reality.

Market integration is inevitable and despite the traditional authority of the law and the capacity to mobilise institutional forces to implement legal decisions, the governing authorities consider themselves, in a post-globalisation world, increasingly powerless to make the internal legal order prevail over the external.

Currently, the decision making context in which a judge finds him/herself pronouncing on economic and market issues is, without doubt, much more complicated than at the end of the XIX century, and the first half of the XX Century, when the paradigm of individualist legal positivism had some kind of effective force. Increasing social complexities and the speed of technological transformations are incompatible with the order of a responsive judge, who operates in private law based upon a *pacta sunt servanda* and who sees public law as the empire of strict legality founded on a "constitutional order".

The tyres case shows that a legal non-decision is a *de facto* decision in favour of free trade and one against the protection of the environment. There are various reasons why a decision can take time to be taken. These could to a certain extent convincingly legitimise the delay in the Judiciary's action. It could be alleged that there are many cases to be decided upon and that the work load does not allow the decision to be pronounced in a reasonable period of time or secondly that they are awaiting those that see the slow consideration of cases as a threat to the environment. Another plausible reason is that the complexity of the conflicts that are taken to the Supreme Federal Court require specific attention, rendering a swift decision impossible.

Although these justifications can be considered as legitimate and they explain the delay in the pronouncing of the decision on the tyres case, none of them will alter the reality that the speed of the decisions taken by the international forums will condition market behaviour. The State may be damaged by this or profit by default from a "sovereign" decision pronounced by the Supreme Federal Court.

In a continental State like Brazil, with a low level of internationalisation (or internalisation) relative to the economy and society (but also in other similar States like China, Russia and India), the legal system is still characterised by the centrality of internal law. It is thus still difficult to argue that the Judiciary should be obliged to speed up its decisions to show the coherence of the State as a result of external pressure. A pragmatic vision of the results, in terms of the well-being of the population of a country, should not result in the adequacy of the speed of the responses provided by internal institutions being relinquished to that of the international instances. By ignoring or disregarding the WTO decision as an important factor in terms of orientating decisions and the speed at which these are taken, the internal bodies are promoting a *disjunction*[12] of the internal and external orders for pronouncing decisions on trade disputes.

The disjunction of the internal and external orders can be understood as a conflict between the principles of legality, (expressed in the case for freedom of initiative) and of the efficiency of public policies (here specifically in terms of the protection of the environment). There is to a certain extent an intrinsic incompatibility between the values of free initiative (individualist focus) and the realisation of efficient public policies (collectivist focus). Meanwhile, leaving a dispute, in which the limits of the two principles need to be defined, unresolved, the Judiciary ends up worsening the apparent incommensurability of their coexistence. The regulatory function of the norms with their essential quality of previsibility is impaired, given that in practice the commercial sector's expectations are subordinated to the benchmarks (norms), in other words, to the WTO decisions.

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[12] On the notion of disjuntion: Legalizando o ilegal: propriedade e usurpação no Brasil, Revista Brasileira de Ciências Sociais, Fev. 1993, a.8, n.21, p.68-89; HOLSTON, James et CALDEIRA Teresa P. R. In press (1997). e Democracy, law, and violence: disjunctions of Brazilian citizenship. In AGUERO, F., STARK, J. (eds.) Fault lines of democratic governance in the Americas. Felipe Agüero, and Jeffrey Stark, editors. Miami: North-South Center Press and Lynne Rienner Publishers.

## 4.2. INTERNAL/EXTERNAL ORDERS AND THE QUESTION OF CRISIS

Crisis is associated with the inability to provide satisfactory responses to problems, which when left unresolved, worsen[13]. There is a crisis in law which although unrelated to the crisis of the State, manifests itself, in one of its forms, as a progressive deterioration of the organisation of the legal system, with a degradation of constitutionalism and the growing balance between the authorities (mainly as a result of economic globalisation from the 1980s onwards). The legal and political structures left by the Liberal State, in the XIX century and by the Social State in the XX century, underwent a period of crisis and transformation and in a similar way so does the law.

The loss of confidence in normative solutions is a clearer expression of the loss of legitimacy, given that real life conditions are more diverse than the normative repertoire in force. Legitimacy conditions the functioning of the law as a decision making system, measuring it and securing it, by means of acquiescence.

One of the important exceptions to the crisis of law, a topic examined in great detail during the 80s and 90s, is the institutional question. Following this criteria, by not producing acceptable responses to the problems they are faced with, the institutions responsible for administering the law make the levels of conflict worse and lose legitimacy while *locus* with the solution of conflicts. Clear examples of this loss of legitimacy are found in the search for specialised arbitrage by companies when they need to resolve company conflicts and citizens' reticence to seek solutions via lawsuits.

The decision in the tyres case can be seen as characteristic of the institutional crisis within the Judiciary, as the Supreme Federal Court's non-decision resulted, by default, in a "decision" which did not favour the preservation of the environment and consumer rights.

Economic globalisation and the growing expansion of a law parallel to that of the States leads to the recognition of a "*Lex mercatoria*" which is imposed due to the need for swift action in decisions which impact upon the economic life of

[13] FARIA, José Eduardo. (organizador) *Direito e globalização econômica: implicações e perspectivas*, São Paulo, Malheiros, 1996, pág. 9

companies, especially those which operate on a trans-national scale. One observes the movement of legitimacy from the traditional forums of decision, such as the Judiciary, to others such as arbitrary tribunals and mediation offices, which are considered more efficient.

Decisions are pronounced in a manner that respects the internal sovereignty of the Sate, but with disregard for the global market implications of these very decisions. The concept of sovereignty, confined to the geo-political limits of the State, is insufficient to explain the legal phenomenon and make a system for the resolution of conflicts work in a globalised international market. *Lex mercatoria* is enforced as the most important *ratio* in the economic order of global interests, among which are the producers of tyres. The asynchrony between the logical evolution of international law and the perception of international law by national law enforcers is one of the most striking characteristics of contemporaneity[14].

There are three important aspects to the tyres case which illustrate difficulties in the decision making process and with the model of conflict treatment in practice: 1) the complexity; 2) ambiguity/conflict of interests and 3) the role of the social, non-legal control mechanisms[15].

By complexity one understands the multiple specialisations encouraged by industrialisation, as well as the multiplicity of relationships of production where social forms encompassing relations as diverse as advanced capitalism and tribal forms live together simultaneously. Such conditions demonstrate the problems associated with the classification of the conflict, as well being able to predict the consequences of the decision. In the tyres case there are various issues at stake, such as the public health of communities living near landfill sites, the aforementioned possibility of the tyre shell serving as a breeding ground for diseases, as well as highly complex issues related to the tyre manufacturers' freedom of action on the international market.

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[14] DELMAS-MARTY. Les forces imaginantes du droit (III). Le pluralisme ordonné. Paris : Seuil, 2008.

[15] LOPES, José Reinaldo de Lima. A função política do Poder Judiciário in: José Eduardo Faria (Ed.) Direito e Justiça: A função social do Judiciário. 1ed. São Paulo, Ática, 1989, v.1, p. 124-129.

Ambiguity/conflicts of interests relates to the contradictory demands from different social groups in Brazilian society. On the one side are the businessmen and on the other, groups defending the environment, as well as workers in tyre retreading companies who want to preserve their jobs and even the Ministry of Health, charged with ensuring the success of public health policy.

The existence of social non-legal mechanisms of control shows that there are methods based on persuasion and incentives which are more effective than pressure. The function of persuasion and incentives, using instruments of positive sanction to resolve conflicts, is more appropriate for modern societies. Legal thought is unable to move away from the idea of sanctions and the repression of deviations from the norm. The use of the media by those involved in the conflict for publicity purposes, the battle against misinformation, political pressure with the appeals for the financing of campaigns, the rhetoric of job losses following the decrease in economic activity, pressure from the trade unions for keeping jobs and consumer demands all contribute to the dispute, which ends up adjusting the expectations of all those involved in the problem, including the Judiciary[16].

### 4.3. THE LEGAL AND POLITICAL SENSE OR LACK OF SENSE OF THE DECISION

The Judiciary's impartiality presupposes its immunity from external influences which could condition or cause bias in its decisions. Its distancing from the ups-and-downs of daily life must not, however, make it impervious to reality. Under the pretext that it does not make decisions under pressure, it is unacceptable that the urgency of a decision be disregarded when it impacts upon the economic life and implementation of public policies, which have dramatic consequences upon peoples' daily lives.

The ideal of judicial security, understood as the reasonable knowledge and previsibility of the normative meaning of a command, can only be verified if decisions are actually pronounced. By not coming to a decision the Court does not

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[16] Brazilian society has become a complexly structured society, in which significant possibilities by far overtake normative previsibility. On the notion of structural complexities consult, LUHMANN, Niklas, *Sociologia do Direito*, Rio de Janeiro, Edições Tempo Brasileiro, 1983, 2 volumes.

contravene the principle of legality. The delay in pronouncing a decision is in accordance with internal legal order, however in terms of the consequences of its implementation, the resultant decision lacks in legal and political sense, as the Executive no longer has the previsibility to successfully implement a public policy on sanitary and environmental protection.

### 4.4. THE EFFECTS OF THE DECISION FROM A PUBLIC POLICY POINT OF VIEW

Legal decisions, especially those related to the implementation of public policy, have a relentless impact upon reality. Any decision taken has consequences which should be examined when the Judge makes his/her choices. Even a non-decision results in consequences in the real world. The consequence of the non-decision in the tyres case was clearly the recognition and adoption by the market of the WTO decision as a standard form of orientation in such cases. It is also possible that the Court did not take into account the consequences of the non-decision which seems to be much more serious than first suggested.

During the seventies and eighties a series of authors who became known for reintroducing the concern over the consequences of decisions to the legal field appeared. This is something that had perhaps been overshadowed during the pre-eminence of theoretical discourse which shaped legalist positivism, something that was in vogue in the twentieth century[17].

A particularly good example of an author who writes on the reintroduction of consequentialsim to legal reasoning is Neil MacCormick. In his *Legal Reasoning and Legal Theory,*[18] he constructs a theory which provides both a descriptive and propositive analysis of the decision making process, illustrating it with examples of decisions taken by Scottish and English courts and the reasons why these were taken. The legal decision can, in some cases, result from a process of deduction, however in others, perhaps the majority of cases, it is not just a question of deduction, but of complex judgment in which questions of relevancy (this does not exist in the French version) interpretation and classification are taken into

[17] Examples are Ronald Dworkin, Neil MacCormick and Manuel Atienza.
[18] MACCORMICK, Neil. *Legal Reasoning and Legal Theory*. Oxford: Clarendon Series, 2004.

consideration. The decisions should be consistent and coherent. The assertion that the consequences of a decision is what determines its prevalence over other possibilities is more important for this current analysis.

Although rules and legal principles contribute to a decision being taken, especially in issues involving public policy, it is always vital to consider the consequences of the court decision[19]. In summary, MacCormick states that within the limits of formal justice, the consistency and coherence of the decision, and within the semantic limits of the principles and the various possible interpretations offered by the analogy, legal reasoning is essentially consequentialist[20]. In the majority of cases more than one decision can be considered as just, coherent and consistent with the normative system as a whole. These decisions are taken based on principles and rules, using decisions taken by other courts or even the same court as a precedent. In these cases the final decision is taken by means of considering the consequences of the decision on world events.

The inaction of the Supreme Federal Court, resulting in a non-decision in the tyres case, caused a problem for the implementation of the measures for protecting the environment and public health, the implementation of which, as stated by the Constitution, is carried out by the State. The disjunction in the position of the Executive and that of the Judiciary is resolved by means which were originally not intended for this. For example, the alteration of the provisional measures by the Executive in order to regularise issues which should follow the normal legislative process. The usurpation of the legitimacy of the Legislative as a house of law is a closing vicious circle. This is yet another of the day-to-day criticisms of the relationship between the authorities in Brazil.

On the other hand, the Supreme Court decision, following that of the WTO's, is in some specific cases, clearly based upon the decision taken by the Dispute Resolution Body. In accordance with the judges' explicit wishes, the decision was influenced by the consequences of the *erga omnes* effect of the decision which a priori only held *inter partes* effect. Supreme Federal Court decisions create precedents which should contribute in the long run to the reduction in injunctions

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[19] HARRIS, J. W. *Legal Philosophies.* Oxford: Oxford University Press, 2004, p. 217

[20] MACCORMICK, Neil. *Rhetoric and the Rule of Law.* Oxford: Oxford University Press, 2005. Especially Chapter 6.

and to conformity with WTO decisions. If the annulment of the injunctions occurs before the deadline for the implementation of the panel, the problem will fall once more into the hands of the Executive. In this case the decision will be of a global nature. If there is a failure to comply with the MERCOSUR decision, Brazil will be in effect accepting the European tyres and will have to face the Supreme Federal Court and Legislative's decision. If Brazil fails to comply, it will force MERCOSUR decisions to fall into line with WTO decisions and Brazil will win on the environment.