GENERAL AGREEMENT ON

TARIFFS AND TRADE

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SOUTHERN COMMON MARKET (MERCOSUR)

The delegations of Argentina, Brazil and Uruguay, signatory countries of the Treaty of Asunción which are contracting parties to the GATT, transmitted on 2 July 1992 the attached information concerning the above-mentioned Treaty for the creation of the Southern Common Market (MERCOSUR).[1]

[1]The Annexes to this document will be deposited with the secretariat and will be available for consultation by delegations (Room 2010, tel: 739 52 27).

92-0943

THE TREATY OF ASUNCION

Background

The Treaty of Asunción[1] falls within the objectives of the Latin American Integration Association (LAIA) and was incorporated in the LAIA legal régime as an Economic Complementarity Agreement on 29 November 1991. The Treaty of Asunción is accordingly open to accession by all LAIA member States.

Its object is the constitution of a Common Market - MERCOSUR - incorporating the Republic of Argentina, the Federative Republic of Brazil, the Republic of Paraguay and the Eastern Republic of Uruguay. Its immediate precursor was the integration process leading to the formation of a Common Market incorporating Argentina and Brazil, initiated by the Foz de Iguazú Declaration of 30 November 1985.

The Foz de Iguazú Declaration[2] was the first step in a process which led to the signature between 1985 and 1989 of twenty-four bilateral agreements encompassing much of the trade between the two countries.

The integration objectives set out in the Foz de Iguazú Declaration received further political support with the signing of the Buenos Aires Act[3] on 16 July 1990.

In that Act, Presidents Carlos Saul Menem and Fernando Collor, agree on behalf of their respective Governments "to establish a Common Market between the Republic of Argentina and the Federative Republic of Brazil, to be constituted in its final form by 31 December 1994".

Pursuant to this decision, at the end of 1990 Argentina and Brazil concluded an Economic Complementarity Agreement in the framework of the Latin American Integration Association (LAIA)[4], whereby they systematized and deepened existing trade agreements between the two countries.

The principles and objectives set out in the Buenos Aires Act not only boosted the Argentina-Brazil integration process, but also laid foundations on which the creation of the Southern Common Market (MERCOSUR) could later be based.

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[1] See Annex No. 1, Treaty of Asunción

[2] See Annex No. 2, Foz de Iguazú Declaration

[3] See Annex No. 3, The Buenos Aires Act of 16 July 1990

[4] See Annex No. 4, Economic Complementarity Agreement in the framework of LAIA.

Negotiations on the formation of MERCOSUR were launched at a meeting held in Buenos Aires on 5 and 6 September 1990[5], during which agreement was reached on the structure of the future Treaty to establish MERCOSUR. The agreed modalities and procedures drew essentially on the Argentina-Brazil integration process.

It was also decided that MERCOSUR would have its own legal régime, separate from the bilateral agreements already existing between the four participating countries.

The negotiations were concluded on 26 March 1991 with the signature of the Treaty of Asunción, which came into full effect on 29 November 1991, following constitutional ratification by all the signatories.

Analysis of the Treaty and its annexes

General characteristics

The MERCOSUR Treaty is designed to contribute to the development of States parties by increasing their mutual trade and their trade with third countries.

This objective is part of a process aimed at opening up the economies of the four countries concerned to the region and the world.

In keeping with the strategy of liberalizing and deregulating their economies in general and their external sector in particular, the Treaty provides for the implementation of a common external tariff by 1995. It explicitly defines the characteristics of the tariff, specifying that it must encourage "the external competitiveness of States parties" (Article 5). It would be pointless to apply policies at the sub-regional level which conflicted with the measures applied nationally by members of MERCOSUR to open up and liberalize their economies.

The Treaty of Asunción comprises twenty-four articles and five Annexes. It is not strictly speaking the Final Agreement of the Common Market but rather a framework for the creation of the economic area, which "must be formed by 31 December 1994" (Article 1).

The Treaty also provides that the definitive institutional structure of MERCOSUR must have been adopted by the same date (Article 18).

The Treaty establishes the essential mechanisms and parameters for the formation of the Common Market. Hence, it cannot and must not be compared to other integration treaties such as the Treaty of Rome instituting the European Economic Community.

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[5] See Annex No. 5, Buenos Aires meeting of 5 and 6 September 1990 (Act)

Consequently, it contains some provisions that will be applied only during the transition period which runs from its entry into force on 29 November 1991 to 31 December 1994 (Article 3).

Article 5 specifies the main economic and trade policy instruments to be used in setting up MERCOSUR, namely:

(a) A trade-liberalization programme to be implemented according to a timetable of automatic and linear tariff cuts. The programme provides that by 31 December 1994, an across-the-board zero tariff must apply in all four countries and all non-tariff barriers must have been removed.

It should be noted that, as regards the timetable for implementation of the Treaty, specific exceptions are made for Paraguay and Uruguay (Article 6).

(b) A programme for the co-ordination and harmonization of macro-economic policies to be implemented gradually and in step with the programmes for tariff reductions and the removal of non-tariff restrictions.

(c) A common external tariff to promote the competitiveness of the States parties vis-à-vis third countries.

(d) Sectoral complementarity agreements.

The preamble

The preamble sets out the main objectives of the Treaty, which include:

- Acceleration of development with social justice.

- Conservation of the environment.

- Macro-economic and sectoral co-ordination based on the principles of progressivity, flexibility and balance.

- Achievement of adequate integration of the economies of States parties into the international economy.

- Promotion of the scientific and technological development of the States parties, in order to modernize their economies and improve living standards.

The preamble also states that the Treaty must be regarded as a step forward in the Latin American integration effort, in accordance with the objective laid down in the Treaty of Montevideo, 1980[6], constituting the LAIA.

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[6] See Annex No. 6, Treaty of Montevideo.

Purposes and principles

The Common Market implies: (Articles 1 and 2)

- The free movement of goods, services and factors of production.

- The establishment of a common external tariff and the adoption of a common trade policy vis-à-vis third countries.

- The co-ordination of macro-economic and sectoral policies to ensure appropriate conditions for competition among the States parties.

- Harmonization of legislation.

- Reciprocity of rights and obligations among States parties, including those covered by the most-favoured-nation clause and national treatment (Article 8). In addition, the Treaty contains other self-explanatory principles whereby States parties undertake to maintain commitments and agreements entered into in the framework of the LAIA.

Provisions have been adopted enabling States parties to pursue integration with other Latin American countries, while ensuring that the interests of the other members of the Common Market are not impaired.

The Treaty provides that all advantages granted to third countries not members of LAIA shall automatically be extended to States parties.

Organizational structure

Articles 9-15 establish the bodies to be responsible for the administration and implementation of the Treaty during the transition period. The Treaty provides for a special conference to be held before 31 December 1994 for the adoption of the definitive institutions of the Common Market.

The provisional bodies established by the Treaty are the Council of the Common Market and the Common Market Group.

The Council is the supreme body of MERCOSUR and is responsible for the political aspects of implementation. Its membership must include the Ministers for Foreign Affairs and of the Economy and Finance of each State Party, but meetings may also be attended by other Ministers or authorities of ministerial level. The presidency is exercised in rotation.

At least once a year, the Council must sit with the attendance of the Presidents of the four States parties, in order to give the Treaty political impetus at the highest level.

The Common Market Group is the executive body: it has broad powers of initiative and proposes the necessary measures for the administration of

the Treaty. It is responsible for ensuring sectoral and macro-economic co-ordination and initially establishing the timetable of activities leading to completion of the Southern Common Market.

It is composed of representatives of the Ministries of Foreign Affairs and the Economy and Finance and from the Central Banks of the four States parties. Where appropriate, it may call upon the private sector to be represented.

The Group is responsible for establishing sub-groups for negotiations on specific subjects, which deal with the different aspects of sectoral and macro-economic co-ordination.

The Common Market Group has an administrative secretariat with its headquarters in Montevideo. No provision has been made for a technical Secretariat, as what is needed is a support unit to facilitate the task of the Common Market Group.

Voting

Decisions in the above-mentioned bodies are always taken by consensus, all States parties being present (Article 16).

Duration, withdrawal and accession

The Treaty is of unlimited duration, in order to sustain and perpetuate the political will to establish the Common Market (Article 19).

Any State party may withdraw from the Treaty in accordance with the established procedure.

In accordance with Article 20, the Treaty is open to accession, subject to negotiation, by the other member countries of the LAIA as from five years after its entry into force.

Applications for accession will be considered before the end of the five-year period in the case of LAIA countries which do not belong to a sub-regional integration scheme or extra-regional association.

Parliaments and the application of the Treaty

Article 24 establishes a MERCOSUR Joint Parliamentary Committee, and provides that the Executive of each country shall keep the Legislature permanently informed of Common Market developments.

Annexes

Trade Liberalization Programme.[7]

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[7] See Annex No. 1a, Treaty of Asunción - Trade Liberalization Programme.

This programme is contained in Annex 1 of the Treaty. Its main features are:

- A programme for progressive, gradual and automatic liberalization in respect of products not included in the lists of exceptions (non-sensitive products).

According to the corresponding timetable, the programme began on 30 June 1991 with a 47-per-cent tariff cut followed by a 7-per-cent reduction every six months until a zero tariff is reached on 31 December 1994.

- A special reduction programme in respect of products included in the lists of exceptions (sensitive products).

All tariff cuts are calculated in relation to the tariff level in force at 1 January 1991.

The number of exceptions for each State party is as follows (corresponding to the number of NALADI items)[5]:

Argentina	394
Brazil	324
Paraguay	439
Uruguay	960

The content of the lists of exceptions and the selection of those to be progressively withdrawn are determined by each country.

Argentina and Brazil will withdraw their exceptions at a rate of 20 per cent a year up to 31 December 1994, while Paraguay and Uruguay have an additional year ending at 31 December 1995 as well as initially lower withdrawal percentages, in accordance with Article 6 of the Treaty.

Article 11 of the trade liberalization programme develops Article 1 of the Treaty as regards the necessary co-ordination of the agreed macro-economic and sectoral policies of the States parties, beginning with policies on trade flows and the configuration of the productive sectors of the States parties, in order to ensure compliance with the timetable for tariff cuts and for the formation of the Common Market.

General régime of origin[8]

The rules of origin applying during the transition period are contained in Annex II of the Treaty. By and large they follow the lines of the LAIA régime of origin, and are supplemented with provisions on origin contained in existing agreements between the States parties.

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[8]See Annex No. 1b, Treaty of Asunción - General Régime of Origin.

Dispute settlement[9]

This is dealt with in Annex III of the Treaty.

Annex III provides that the definitive dispute settlement system must be adopted before 31 December 1994 and that, within 120 days following the entry into force of the Treaty, the Common Market Group must devise and submit to governments a dispute settlement system to apply during the transition period.

The dispute settlement system to apply during the transition period was adopted in accordance with the above provision.

It was established by means of the Protocol of Brasilia, adopted on 17 December 1991.[9]

Under the system, disputes arising between member countries of MERCOSUR concerning the interpretation or application of the provisions of the Treaty of Asunción or failure to comply with them are settled in the first instance by means of direct negotiations. If the negotiations fail to settle the dispute, any of the parties is entitled to refer the question to the Common Market Group, which will evaluate the situation and may request the advice of experts selected from a roster, and may subsequently make recommendations.

If the dispute cannot be settled by means of the above procedures, recourse may be had to arbitration. The matter will be referred to an "ad hoc" Tribunal consisting of three arbitrators, who must be jurists of recognized competence in the relevant field. The Tribunal will rule on the basis of the provisions of the Treaty of Asunción, the agreements concluded within its framework, the decisions of the Council of the Common Market Group, and the relevant principles and provisions of international law. The Tribunal must hand down its decision in writing within a period of sixty days, which may be extended for a maximum of thirty days.

The Protocol is an integral part of the Treaty of Asunción and will come into force once the four countries have deposited their respective instruments of ratification with the Government of Paraguay.

Safeguard clauses[10]

The safeguard régime contained in Annex IV is applied by means of two mechanisms, a specific mechanism which applies to products and a general, comprehensive mechanism.

The régime establishes that the States parties should resort to safeguards only in exceptional cases.

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[9] See Annex 1(c), Treaty of Asunción - Dispute settlement.

[10] See Annex 1(d), Treaty of Asunción - Safeguard clauses.

In order to apply safeguards, the States parties must receive authorization from the Common Market Group, which is granted only under certain conditions.

Specific safeguards, which concern products, may be requested when imports of a given product cause injury or threaten serious injury to a market as a result of a significant increase in imports of that product from other States parties to MERCOSUR over a short period of time (Articles 1 to 6).

The general, comprehensive mechanism contained in Article 7 of the Annex establishes that, during the transition period, any State party that considers itself affected by serious difficulties in its economic activities may request the Common Market Group to hold consultations so that the necessary remedial measures may be taken.

Working groups[11]

In accordance with the provisions of Annex V, the Common Market Group established ten working groups for the purposes of co-ordinating macro-economic and sectoral policies, as follows:

(1) Trade issues
(2) Customs matters
(3) Technical standards
(4) Trade-related monetary and fiscal policies
(5) Land transport
(6) Maritime transport
(7) Industrial and technological policy
(8) Agricultural policy
(9) Energy policy
(10) Macro-economic policy

In view of the fact that the above list is not restrictive and other sub-groups may be created as and when circumstances require, in accordance with Section B of the Treaty, a further working sub-group was subsequently established:

(11) Labour relations, employment and social security.

The working groups have held regular meetings and have made considerable progress in view of the fact that during the first phase of the formation of MERCOSUR, the automatic mechanisms (tariff reduction and elimination of non-tariff measures), must be implemented in step with the co-ordination of macro-economic policies.

Pursuant to Article 11 of the Treaty of Asunción, the Council of the Common Market met for the first time in Brasilia and was attended by

[11] See Annex 1(e), Treaty of Asunción - Working sub-groups.

Presidents Carlos Menem, Fernando Collor, Andrés Rodríguez and Luis Alberto Lacalle on 17 December 1991.

At the meeting, the four Presidents expressed their firm resolve to promote all necessary measures to achieve the objectives laid down in the Treaty within the established period, and to ensure that the "MERCOSUR" dimension is increasingly incorporated in their respective decision-making processes.

They also signed the Protocol of Brasilia concerning dispute settlement, which is described above, and approved the following measures, amongst others:

- Certificate of origin: a system of administrative procedures and sanctions in the event of fraud;

- A framework for regulating sectoral complementary agreements;

- The rules of procedure for the Common Market Group;

- The establishment of Ministerial meetings and specialized meetings; and

- The timetable and venue of subsequent meetings.

The agreement expressed by the four Presidents with regard to the orientation of economic policy is also of fundamental importance. They highlighted the following priorities in this regard:

(a) Economic stability to be achieved by means of policies of austerity in the monetary and fiscal areas.

(b) The opening-up of economies to achieve more competitive integration in the international economy.

(c) Increased modernization of economies, by means of deregulation and privatization.

In addition, the Council of the Common Market, under explicit guidance from the Presidents, decided to establish the following guidelines for 1992:

(a) To conduct a more detailed examination of the definition of the common external tariff on the basis of the agreed methodological criteria.

(b) To adopt measures to ensure the necessary conditions for fair competition in trade between MERCOSUR countries and with external markets.

(c) To pursue deregulation of transport between MERCOSUR countries with a view to reducing costs substantially and stimulating private investment.

(d) To give maximum priority to measures aimed at establishing technical standards which ensure quality and international competitiveness and facilitate expansion of trade between MERCOSUR countries and protection of the legitimate interests of consumers.

(e) To promote initiatives for the implementation of projects which allow the optimum use of the energy resources of MERCOSUR.

(f) To co-ordinate positions in multilateral economic forums, particularly GATT, the Cairns Group, etc.

In addition, in view of the great interest generated by the Southern Cone integration process, the Presidents recommended that the Common Market Group establish contacts with a view to examining possible ways of linking MERCOSUR to other Latin American LAIA countries and to other economic groups, and requested that the Common Market Group and the EEC pursue their examination of the draft co-operation agreement and that contacts be established with Japan.

Lastly, the four Presidents decided to hold the next meeting of the Council of the Common Market on 26 June in Las Leñas.

As they are implemented, the Protocol of Brasilia and the other decisions adopted in December 1991 are shaping the institutional framework of MERCOSUR; in other words, they are consolidating the legal institutions which will govern the relations of Argentina, Brazil, Paraguay and Uruguay within the integration process.

On 30 March and 1 April the fifth meeting of the Common Market Group was held in Buenos Aires. Matters discussed at the meeting included implementation of the decisions of the Council of the Common Market. The Common Market Group also adopted the first sectoral agreement, on the iron and steel sector, approved the establishment of the MERCOSUR Standardization Committee and of a Special Meeting on Environment, agreed to convene a meeting to examine intellectual property and trademark issues, and defined strategies to publicize MERCOSUR effectively in all areas.

Ministerial declarations at the signature of the Treaty

At the signature of the Treaty of Asunción on 26 March last, Declaration No. 1 of the Foreign Ministers of the four founding countries was issued[12].

Declaration No. 1 highlights that the Common Market falls within the framework of the LAIA and draws attention to its importance for the achievement of the objectives of the Treaty of Montevideo, 1980.

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[12] See Annex No. 8, Declaration No. 1 of the Ministers for Foreign Affairs of the four MERCOSUR countries (Argentina, Brazil, Uruguay and Paraguay)

The Ministers also expressed their conviction that the prospects opened up by the consolidation of sub-regional agreements are favourable to the development and integration of the region as a whole.

They also reiterated their Governments' political will to ensure that the Treaty of Asunción contributes to increasing trade flows and to securing the integration of the members' economies into the international market on a competitive basis.

APPENDIX I

Total Exports of Member Countries by Destination, 1986-1991

(Millions of dollars)

Exporting country and year	MERCOSUR	Other LAIA	Total LAIA	Rest of world	Grand total
Argentina					
1986	834	653	1,557	6,295	8,852
1987	768	548	1,314	5,046	6,380
1988	875	886	1,731	7,374	9,135
1989	1,428	960	2,388	7,179	9,587
1990	1,833	1,285	3,128	8,225	12,353
1991	2,089	1,163	3,262	8,973	12,225
Brazil					
1986	1,215	1,664	2,879	19,503	22,382
1987	1,306	1,721	3,027	23,202	28,229
1988	1,562	2,186	3,748	30,041	33,789
1989	1,493	2,288	3,761	30,602	34,383
1990	1,285	1,954	3,279	28,136	31,414
1991	2,303	2,616	4,919	26,717	31,836
Paraguay					
1986	133	19	152	81	233
1987	127	31	138	195	353
1988	155	41	196	314	510
1989	388	34	422	587	1,009
1990	379	47	426	533	959
1991	259	88	327	410	737
Uruguay					
1986	383	33	426	672	1,090
1987	328	35	364	842	1,206
1988	335	42	377	1,018	1,395
1989	528	60	588	1,008	1,596
1990	594	73	670	1,038	1,708
1991	557	77	634	840	1,374
TOTAL					
1986	2,635	2,379	5,014	25,551	30,565
1987	2,530	2,333	4,863	29,285	34,148
1988	2,927	3,155	6,062	38,747	44,829
1989	3,835	3,344	7,179	39,378	46,355
1990	4,091	3,412	7,503	38,931	46,434
1991	5,208	3,924	9,132	37,040	46,172

APPENDIX II

Total Imports of Member Countries, by Origin 1986-1991

(Millions of dollars)

Importing country and year	MERCOSUR	Other LAIA	Total LAIA	Rest of world	Grand Total
Argentina					
1986	831	766	1,597	3,127	4,724
1987	1,003	722	1,725	4,093	5,818
1988	1,170	605	1,775	3,547	5,322
1989	869	520	1,388	2,812	4,201
1990	834	512	1,346	2,731	4,077
1991	1,853	462	2,315	4,698	7,011
Brazil					
1986	1,232	707	1,939	13,618	15,557
1987	916	980	1,896	14,684	16,580
1988	1,171	784	1,955	14,100	16,053
1989	2,252	1,220	3,472	16,368	19,866
1990	2,417	1,342	3,759	18,532	22,291
1991	2,411	1,520	3,931	19,010	22,941
Paraguay					
1986	262	6	268	310	578
1987	247	15	265	330	595
1988	241	13	254	320	574
1989	281	20	301	459	780
1990	404	40	444	904	1,350
1991	437	58	485	965	1,460
Uruguay					
1986	268	82	350	327	677
1987	455	109	564	[illegible]	1,155
1988	454	83	587	538	1,125
1989	533	82	615	625	1,240
1990	560	129	689	726	1,415
1991	655	95	750	799	1,549
TOTAL					
1986	2,593	1,561	4,154	17,362	21,538
1987	2,621	1,829	4,450	19,698	24,148
1988	3,076	1,495	4,571	18,505	23,076
1989	3,935	1,842	5,777	20,284	26,061
1990	4,216	2,023	6,238	22,895	29,133
1991	5,356	2,135	7,491	25,470	32,561