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SOUTHERN COMMON MARKET (MERCOSUR)

Statement by Ambassador F. Peña, Representative of Argentina

I should like to add to the presentation made by my colleague Ambassador R. Barbosa of Brazil (COM.TD/W/496) and refer in particular to the legal and institutional aspects of MERCOSUR in line with our aim of furnishing the fullest possible information in the spirit of transparency that we want to prevail in MERCOSUR.

I shall refer to five points: firstly, the linkage between MERCOSUR and the Latin American Integration Association (LAIA), secondly the institutional structure of MERCOSUR, thirdly the legal instruments with which we are working, fourthly how in practice decisions are negotiated and made in MERCOSUR and lastly, the fifth point, the external relations of MERCOSUR.

First point, the linkage with LAIA: in our opinion, this is central for understanding MERCOSUR, in other words it is absolutely impossible to understand MERCOSUR without situating it in the commercial, economic and institutional structure of LAIA. MERCOSUR is part of a series of bilateral and multilateral conventions which the Latin American countries have developed among themselves within the framework of the 1980 Treaty of Montevideo and which are known in the legal terminology of LAIA as regional scope agreements or partial scope agreements. It is only if LAIA negotiations on trade, integration and economic complementarity are carried out under those instruments that the latter take effect without application of the most-favoured-nation clause established by the Treaty of Montevideo that set up LAIA in 1980. Accordingly, from the legal aspect, the Treaty of Asunción - the legal instrument establishing MERCOSUR - is part of the Treaty of Montevideo which set up LAIA in 1980 and was presented to GATT under the Enabling Clause; that Clause made it possible in 1980 to establish LAIA, moving on from the initial stage which had commenced in 1960 when the Latin American countries established the Latin American Free Trade Association (LAFTA).

The Treaty of Asunción is registered in LAIA as Economic Complementarity Agreement No. 18. It is one of the many partial scope agreements that have been concluded under Resolution No. 2 of the LAIA Council of Ministers. This is of fundamental importance for us, since any decisions or additional protocols approved in MERCOSUR in pursuance of the

Treaty of Asunción are also registered in LAIA, and thanks to this they have direct legal effect in our countries as a consequence of the delegation of authority by the legislative powers to the executive powers when the 1980 Treaty of Montevideo, establishing LAIA, was approved. Such is the legal and institutional linkage between MERCOSUR and LAIA.

The second point I should like to address is the institutional structure of MERCOSUR. There are basically two types of bodies: those that make political decisions and the executive bodies with powers of initiative. In first place among the political decision-making bodies is the Council of MERCOSUR which meets every six months at the level of Ministers for Foreign Affairs and Ministers of the Economy, and at least once a year with the attendance of the Presidents of the four States parties. In fact, it has been decided that all the meetings of the Council every six months should take place with the attendance of the Presidents. There have already been two meetings of the Council, the first on 17 December 1991 at Brasilia, two weeks after the Treaty entered into force in November of last year, and the most recent on 26 June last, at Las Leñas, Argentina. The second political decision-making bodies are the meetings at ministerial level: the meeting of Ministers of the Economy and Presidents of Central Banks, the meetings of Ministers for Education and the meetings of Ministers for Justice. These last two meetings underline the fact that for our countries, in the broader framework of LAIA, MERCOSUR is not merely an integration project for trade and economic matters, but an integration project that covers all aspects of activity for our respective countries.

The principal executive body with powers of initiative is the Common Market Group. This Group, which meets at least once every three months and has done so regularly since the Treaty entered into force, is composed of four members and four alternates from each of the countries, who are officials representing the ministries with responsibility for the various fields of work of MERCOSUR: the Ministry of Foreign Affairs, Ministry of the Economy, and the Central Banks. It is co-ordinated by the Ministries of Foreign Affairs, and Ambassador Barbosa and myself are the co-ordinators for Argentina and Brazil respectively; there is one co-ordinator for Paraguay and another for Uruguay, making four for the Common Market Group as a whole. The Common Market Group has established eleven working sub-groups which meet prior to the meeting of the Common Market Group. Participating in their work are approximately 500-600 medium and high-level officials from the four Governments, with functional assistance from an Administrative Secretariat furnished by the Government of Uruguay and to which the Governments of Brazil, Argentina and Paraguay have loaned the services of administrative officials. The eleven working sub-groups in which preparatory technical work is carried out for decisions by the Common Market Group are the following: trade issues, customs matters, technical standards, monetary and fiscal policies, land transport, maritime transport, industrial and technological policy, agricultural policy, energy policy, co-ordination of macro-economic policies, and labour matters. The rules of procedure of the Common Market Group have stipulated conditions for the participation of representatives of the private sector in the activities of these working sub-groups. In addition to the Common Market

Group and the working sub-groups, we have already had two specialized meetings at executive level and the possibility of organizing others is being envisaged. One of these is the specialized meeting on tourism, the second is the specialized meeting on environment, and the third specialized meeting just established is concerned with science and technology.

In the third place I should like to outline how these bodies express themselves from the legal aspect, and this is an important point for understanding the functioning of MERCOSUR. The bodies express themselves through communiqués and acts (official records) which are instruments with political value. The communiqués are the form in which the Presidents express themselves when they meet every six months. The acts record the results of each of the meetings of the Council and the Common Market Group. In the second place, the Council expresses itself through decisions which are numbered consecutively for each year and adopted by consensus. In third place, the Common Market Group, the executive body, expresses itself through resolutions which are also numbered consecutively for each year and adopted by consensus. The communiqués, acts, decisions and resolutions are published in the Official Gazette of each of our countries and transmitted formally to LAIA, so that the instruments with which MERCOSUR operates are assured of publication.

In December of last year, an additional Protocol to the Treaty of Asunción was approved by the four Governments and signed. This instrument, known as the Protocol of Brasilia, establishes a dispute settlement mechanism for MERCOSUR. The Protocol has been approved by the National Congresses and is expected to enter into force shortly. I would underline four characteristics of this Protocol which is a key instrument for understanding the functioning of MERCOSUR. In the first place, it is applicable for any dispute arising between member States concerning the interpretation, application or failure to comply with the Treaty, decisions or resolutions, in other words any legal instrument emanating from the MERCOSUR bodies is protected or covered by the Dispute Settlement Protocol. In the second place, the Dispute Settlement Protocol makes provision as a last resort for an arbitration procedure which is of a mandatory character, so that the decisions of the Arbitration Tribunal, which is an ad hoc body, are also binding on the member States.

Each case is put before an ad hoc Tribunal consisting of one arbitrator for each of the parties to the dispute and a third arbitrator, appointed by mutual agreement, who may be a citizen of any country in the world, in other words not necessarily a citizen of a MERCOSUR member country.

The last feature of the Dispute Settlement Protocol that I should like to underline is that it provides the possibility for any person, any natural or legal person, to trigger the mechanism that in the last resort leads to application of the arbitration procedure. This means any natural or legal person of any of the States parties to MERCOSUR, not necessarily one of the Governments, so that this could be the case for an undertaking, whether domestic or foreign, to the extent that it is a legal person of one of the member countries.

In the fourth place, I should like to explain how decision-making functions in practice. Guidelines are laid down by the Treaty of Asunción and in communiqués from the Presidents who at their first meeting established operating instructions. These are public documents. On the basis of those guidelines, which may be supplemented by others approved by the meeting of Ministers for the Economy, which are also public documents, the Common Market Group instructs the working sub-groups to prepare recommendations which can subsequently take the form of resolutions of the Common Market Group or decisions of the Council of Ministers. This means that there is an internal logic in the institutional functioning of MERCOSUR which although for the moment it does not provide for the establishment of community bodies (termed supra-national) nevertheless provides a linkage between the political decision-making body, the competent technical bodies and strong participation by the private sector. I should like to illustrate participation by the private sector with the case of sectoral agreements.

As Ambassador Barbosa has explained, sectoral agreements are provided for in a decision of the Council of Ministers laying down guidelines for drawing up sectoral agreements. Such agreements are negotiated by entrepreneurs in the framework of the sub-group on industrial policy, whenever it meets, and in parallel a meeting takes place with the participation of 500 to 600 local entrepreneurs and foreign entrepreneurs. This is open to participation by any enterprise operating in MERCOSUR. Once a sectoral agreement proposal is made by the entrepreneurs, it must be aligned with the decision establishing the guidelines, including the article banning cartels and restrictive trade agreements; the Common Market Group verifies whether each sectoral agreement would contribute to the objectives of MERCOSUR and if that is so approves the agreement which is then formalized in LAIA so that it takes full effect in law within the framework of the Treaty of Montevideo. Lastly the agreement is protected by the Dispute Settlement Protocol, which allows any enterprise that considers itself affected by the sectoral agreement to have recourse to the dispute settlement mechanism, with mandatory arbitration. All this is published in the Official Gazette so that all necessary transparency is ensured. To date, one sectoral agreement has been concluded and formalized in LAIA, namely the agreement on the iron and steel sector, while the preparation of sectoral agreements in other sectors of MERCOSUR is already at an advanced stage.

Lastly I should like to refer to the matter of foreign economic and trade relations. As mentioned by Ambassador Barbosa, the Treaty of Asunción provides that in the course of the transitional period the MERCOSUR member countries are to co-ordinate their positions in trade negotiations with other LAIA countries and with third countries. To date action in this area has been taken at three levels: in the first place, at the level of LAIA by reason of the fact, as already mentioned, that MERCOSUR is part of LAIA and is part of the participation of each of our four countries in LAIA. Independently, our countries are parties to a large number of complementarity, trade and co-operation agreements with other LAIA member countries. In the second place, the four MERCOSUR

countries have concluded with the United States a consultation agreement on trade and investment known as the "Four plus One" which is a framework agreement covering trade and investment. Under this agreement two meetings have already taken place, the most recent one on 28 May in Buenos Aires with the object of exchanging detailed information on what each of the parties is doing to develop the concept of free trade throughout the hemisphere, basically in the case of the United States its Free Trade Agreement with Canada and the proposed agreement with Mexico and Canada (NAFTA) and in the case of the four MERCOSUR countries, of course, the MERCOSUR agreement.

In the third place, a meeting was held last May at Guimaraes, Portugal between the Ministers for Foreign Affairs of the MERCOSUR countries and the twelve Ministers for Foreign Affairs who comprise the Council of Ministers of the European Economic Community, leading to signature of an Agreement on Institutional Co-operation with the Commission of the European Economic Community. At the summit meeting held at Las Leñas on 26 June last, the Presidents of the MERCOSUR countries expressed their great satisfaction over the progress made in relations with the European Economic Community and on the same day, in their Lisbon declaration, the Heads of Government of the European Economic Community referred to relations with MERCOSUR and to the instructions given to the Commission of the European Economic Community to explore new modalities leading towards an institutionalized relationship between MERCOSUR and the European Economic Community.