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SOUTHERN COMMON MARKET (MERCOSUR)

Request by the United States for notification under Article XXIV and for the establishment of a working party

The following communication, dated 4 June 1992, has been received from the Office of the United States Trade Representative in Geneva, with the request that it be inscribed on the Agenda of the 19 June Council meeting.

At the March Council meeting, the delegation of Brazil, on behalf of the members of the Southern Common Market, notified the trade aspects of the Treaty of Asuncion under the Decision of the CONTRACTING PARTIES of 28 November 1979, concerning Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries, also known as the Enabling Clause. At the February and March meetings of the Council, the United States and other GATT contracting parties had stated that, as a customs union or an interim agreement leading to the formation of a customs union, the Southern Common Market should be notified under the provisions of Article XXIV, not under the Enabling Clause as a more limited preferential trade arrangement.

Article XXIV is the principal GATT provision addressing the formation of free-trade areas and of customs unions. The Enabling Clause was established to address, inter alia, preferential trade arrangements that do not meet the criteria of Article XXIV, and can in no way be considered to replace the longstanding substantive and procedural provisions of Article XXIV. Since the inception of the General Agreement, these provisions have been the principal benchmark against which the CONTRACTING PARTIES have assessed the trade implications and effects of large general trade preference systems that depart from the most-favoured-nation treatment requirement in Article I.

The formation of the Southern Common Market, a customs union comprising over 200 million people and a combined Gross Domestic Product of almost half a trillion dollars, cannot be considered in the same context as the limited selective preferences previously justified under the Enabling Clause. Previous attempts by the United States and other contracting parties to elicit adequate information concerning the provisions and coverage of trade preferences covered by the Enabling Clause have not been successful, as the contracting parties applying these preferential measures

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have declined to fully comply with requests for information, formal notification, and full review. It is clear that the Enabling Clause is not adequate to ensure the level of transparency necessary for free-trade areas or customs unions, and was not designed to address such agreements.

GATT contracting parties have a right to insist that a trading area of the size and importance of the Southern Common Market not evade the obligations of Article XXIV. The members of the Southern Common Market should announce their willingness to abide by its provisions and address the legitimate trade interests of the contracting parties in its formation.

Consequently, the United States requests that the members of the Southern Common Market indicate their willingness to comply with the provisions of Article XXIV in the establishment of the Southern Common Market, including those relating to the establishment of a common customs tariff as provided for in Article XXIV:6. The United States further requests that, in accordance with the provisions of Article XXIV:5(a) and XXIV:7 of the General Agreement, a working party be established to examine, in the light of the relevant provisions of the General Agreement, the provisions of the Treaty of Asuncion concerning the establishment of the Southern Common market, taking into account other relevant documents, and to report to the Council.