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EXAMINATION OF THE SOUTHERN COMMON MARKET AGREEMENT

Note on the Meeting of 1 May 1997[1]

Addendum

Chairman: Mr Stuart Harbinson (Hong Kong)

1. The Committee on Regional Trade Agreements continued the examination of the Agreement establishing the Southern Common Market (MERCOSUR) at its Tenth Session. The meeting took up the following topics:

- General Remarks
- Elimination of Duties, Charges and Other Restrictions Applied in the Parties' Trade
- Coordination of Macroeconomic Policies
- Establishment of a Common External Tariff and the Adoption of a Common Trade Policy in Relation to Third States or Groups of States
- Rules of Origin
- Measures Affecting Imports from Third Countries
- Services
- Other Areas
- Calculation of the General Incidence of Duties Before and After the Formation of the Customs Union

General Remarks

2. The Chairman reminded delegates that this was the third meeting at which the MERCOSUR Agreement (Agreement) was being examined. He drew the attention of delegates to the new documentation that had been received from the Parties, and said that document WT/COMTD/1/Add.4/Rev.1, which contained comprehensive answers to questions posed by delegations, would serve as the principal document for the day's session. The other documents were also helpful and would serve the invaluable purpose of shedding light on the main features and mechanics of the Agreement. Document WT/COMTD/1 Add.6 and 7 referred to the relevant MERCOSUR Directives, Resolutions and Decisions, as well as the Schedules of Exemptions and the timetable for harmonising the Common External Tariff. Document WT/COMTD/1/Add.8 contained statistical information, while documents WT/COMTD/1/Add.9 and 10 contained summary records of the first and second examinations. He informed delegates that an informal document providing a summary of all the relevant documentation submitted to the Secretariat by the Parties would be distributed shortly.

[1]The meeting was convened in WTO/AIR/574.

3. The representative of Paraguay, speaking on behalf of MERCOSUR, welcomed the opportunity of having their Agreement examined by the Committee with the view of establishing its consistency with the relevant multilateral trade rules. The relatively short existence of MERCOSUR proved that it was a dynamic organization contributing to the expansion in world trade. MERCOSUR was committed to the principles underpinning the multilateral trading system, and was aware that its policies must not detract from them. Multilateral and regional trade liberalization were not mutually exclusive, and could assist each other in the common aim of reducing or abolishing barriers to international trade. The Parties to the Agreement had provided detailed information including comprehensive answers to the questions posed by delegations demonstrating their commitment to the overarching principle of transparency. Questions outside the scope of the Committee had even been answered. The Parties were confident that their Agreement was consistent with the relevant multilateral rules. Their commitment to the principles underpinning the multilateral trading system was affirmed by the Heads of State and Government at their recent meeting at (Fortaleza) in Brazil, in December 1996. The leaders renewed their faith in the principles of "open regionalism", through which they believe they would be able to harness their regional potential, and at the same time contribute to the expansion of world trade. As a test of its faith in the multilateral trading system, the Parties had invited the Director-General of the WTO, Mr. Renato Ruggiero, to participate in the forthcoming summit meeting of MERCOSUR, which would be held in Asunción, Paraguay, on 18-19 June 1997.

4. Another representative of Paraguay, speaking on behalf of MERCOSUR, said that since the last meeting (September 1996), a number of important developments had taken place confirming the Parties' determination to establish a functional customs union as soon as possible. Since January 1995, a number of steps had been taken to deepen and consolidate the customs union . At the eleventh meeting of the Council of the Common Market at Fortaleza, Brazil in December 1996, the Parties made substantial progress in agreeing on a framework for the realization of the objectives of the Ouro Preto Protocol and MERCOSUR's Action Programme 2000, and generally those set by the Asunción Treaty. In that context, the Parties had agreed to apply the provisions of the WTO Agreement on Sanitary and Phytosanitary Measures and also to ensure that their common rules on safeguard measures conform to the WTO Agreement on Safeguards. To ensure the faithful implementation of these Agreements, a Committee on Trade Defence and Safeguards had been created, whose membership and *modus operandi* would be determined by the Trade Commission. A Protocol for the Defence of Competition had been adopted to guarantee competition in the customs territory. The scope of the Protocol was quite broad, as it applied to acts undertaken by physical or legal persons, in public or private law, that attempt to inhibit, restrict or distort competition in the customs territory.

5. The Common Market Group, which is the Executive Body of the MERCOSUR, had met on two occasions this year to review the progress that was being made by subsidiary bodies in achieving the agreed objectives, especially in the area of technical regulations. The Trade Commission, which was the main body responsible for ensuring that the instruments of common trade policy, were properly implemented, for improving them, and providing a regulatory framework for the Customs Union had adjusted its operations in the light of the new rules of procedure and the consultancy mechanism, which were established under the Ouro Preto Protocol. Consumer protection was high on the agenda of the Committee, which had already adopted the first chapters of the future Protocol for the Defence of the Consumer covering issues such as the basic rights of the consumer, safety of products, advertising and contractual guarantees. A number of subsidiary bodies had been established to strengthen the institutional framework of MERCOSUR. A Headquarters Agreement had been concluded between MERCOSUR and Uruguay, under which a Secretariat would be established in Montevideo. The Parties had already named the first Director-General of the Secretariat in accordance with the established rules. The office of the Director-General would be rotated among the member countries. Within the framework of ALADI, MERCOSUR had concluded free-trade agreements with Chile and Bolivia. The agreements provided for a transitional period of ten years, within which tariff and non-tariff barriers would be abolished. Discussions for a free-trade area were currently underway between MERCOSUR and Mexico

and the member states of the Andean Group. In addition, MERCOSUR was promoting an hemispheric free trade agreement (FTAA) by the year 2005. The third summit was scheduled for May 1997 at Belo-Horizonte, Brazil and it was expected that progress would be made by Ministers from the thirty-four countries. A cooperation agreement had been concluded between MERCOSUR and the European Union, and in furtherance of that Working Groups on Goods, Services, Norms and Disciplines had been established to study how trade relations might be broadened. As MERCOSUR was committed to the principles of open regionalism, it has had contacts with many countries and organisations with the view of developing mutually beneficial trading relations and strengthening the multilateral trading system.

Elimination of Duties, Charges and Other Restrictions Applied in the Parties' Trade

6. The representative of the United States welcomed the provision of new information by the Parties. It was her hope that it would facilitate the examination process. Answers previously provided by the Parties to the questions submitted by her delegation were not comprehensive. She stressed the importance of transparency to the examination process.

7. The representative of the European Communities welcomed the provision of new information by the Parties and said that it would help clarify some outstanding issues. However, some of the answers to the questions posed by his delegation were not very clear. Some answers were lacking in detail thus making it difficult to appreciate the mechanics of the agreement. He sought clarification of the liberalization mechanism of MERCOSUR , particularly as regards the products subject to the adaptation regime. Was it probable that the Parties would add new products to this list in the near future? Referring to question 108 and Annex 1 to the Treaty of Asunción, he further sought clarification of the agricultural regime of the Parties. It appeared that the time-period provided in the pre-existing agreements had expired. What were the implications of that for those agricultural products? He finally asked for details about the technical standards regime of the Parties.

8. The representative of Brazil, speaking on behalf of MERCOSUR, said that the Parties had agreed not to extend the coverage of the adaptation regime by including new products. Data would be provided to show the volume of trade in these products. Responding to the question on technical barriers to trade, he affirmed that the Parties were committed to harmonising their legislation in accordance with the relevant rules of the WTO. To date about 400 of such measures had been harmonized. Harmonization in the parlance of MERCOSUR meant either the adoption of a technical standard applicable to all the member countries or the maintenance of a national standard which was duly justified by Article 50 of the Montevideo Treaty or the relevant rules of the WTO.

9. The representative of Argentina, speaking on behalf of MERCOSUR, confirmed that there was an agreement on agricultural products as at January 1991. That agreement, however, expired in 1994 with the result that all the rules governing intra-MERCOSUR trade in agricultural products and trade with third countries became part of the general regime of MERCOSUR. Thus, as far as intra-MERCOSUR trade was concerned, there was no differential treatment for agricultural products, except for those coming under the special regime. As regards trade in agricultural products with third countries, the CET was applicable to a number of agricultural products. Where it was not applicable, national rules prevailed.

10. The representative of the European Communities said that he had noted the response to question 107 that no new products would be subjected to the adaptation regime. He invited the Parties to explain the inconsistency between their statement and the answer to question 22A, which talked about the possibility of temporary exceptions being granted for a maximum of 20 products per year. The representative of Argentina said that question 22A referred to the list of products to which the

CET was not being applied, while question 107 referred to restrictions being maintained on intra-trade.

11. The representative of Korea welcomed the provision of detailed information by the Parties. He, however, found the trade liberalization scheme confusing, particularly regarding the list of exceptions. It was his delegation's understanding that there were two categories of exemptions. The first one covered products under the "adaptation regime", namely the 300 products from Argentina, Brazil and Uruguay, and the 399 products for Paraguay. The other one covered automotive and sugar products. Could the Parties confirm whether he was correct in his understanding? His delegation would be obliged to receive the relevant data covering trade in these exempted products. Turning to the time-table for the gradual elimination of duties and charges for the products falling within the "adaptation "regime, he asked whether the Parties were on course to achieving their targets. He noted that two years had passed since the implementation of the CET. He asked whether the Parties would establish a time-frame for the elimination or harmonization for the remaining non-tariff measures by the end of July 1997 as had been indicated? Would the Parties furnish the Committee with the time-table and the necessary documentation? Could they also give an indication when the measures would be phased out or harmonized? He further drew the attention of the Parties to the non-tariff measures listed in Annex II of WT/COMTD/1, and asked why the Parties thought that those measures did not fall within the ambit of Article XXIV:8?

12. The representative of Paraguay underlined the importance of distinguishing between intra-trade restrictions with restrictions maintained by member countries in their trade with third countries. The "adaptation regime" had relevance to trade among the member countries, while the other exemptions applied to third countries. Since January 1995, the Parties had liberalized tariffs imposed on goods originating in each other's territory. Brazil and Argentina, who were supposed to liberalize their trading regimes in 1995, had fulfilled their obligations, while Uruguay and Paraguay were on course to meeting their obligations by the year 2000. The Parties were committed to lowering barriers in the sugar sector and were currently examining the options available to them. The representative of Brazil said that the Parties adopted in December 1994 a draft resolution which laid down the future policy in automobiles. A copy of the resolution and other relevant resolutions had been deposited with the Secretariat. The Parties should have a common regime in automobiles by the year 2000. Elements of the regime were currently being negotiated. As regards the elimination of non tariff barriers, he said that the issue was being considered by a Working Group, and it was expected that the deadline would be met by the Parties. The terms of reference of the Group mandate it to make recommendations to the Common Market Group with the view of devising an appropriate framework for harmonization or the elimination of all restrictions. The Parties undertook to furnish the Committee with the final list as soon as it was agreed upon. He stressed that the Parties had eliminated most non-tariff restrictions and the remaining ones had been listed in the Treaty of Asunción. He reaffirmed the determination of the Parties to eliminate all non-tariff barriers. The representative of the European Communities thought it would be helpful to explore the link between the responses provided to questions 2 and 22. The fact that there were exceptions to the CET suggested that there were internal boundaries. The distinction between the external exception process and the internal adaptation process was not easy to delineate.

13. The representative of Argentina in attempting to clarify the situation said that in 1995 a list was complied of products which were subject to tariffs in intra-MERCOSUR trade. The tariffs for these products were established at a certain level under a special regime called the "adaptation regime". In some instances, the level of tariffs for products in "adaptation list" exceeded the CET. Where this was the case, an exception was provided to the implementation of the CET. Apart from this list, a separate list of exceptions was being maintained by each member state. There were 300 such products included in the list of Argentina, Brazil and Uruguay. Paraguay's list consisted of 399 products. Notification of the special regime was made by the Parties in 1995. Interested delegations could verify the lists and see the affected products. The Parties were committed to phasing out the special regime

for these products, so it could be expected that the exceptions to the CET would be eliminated in the not-too-distant future.

14. The representative of the United States said that a study by the Inter-American Development Bank showed that the excepted products constituted about 12 per cent of the tariff schedule of the Parties, and about 23 per cent in terms of inter-regional commerce. The representative of Brazil disagreed with the figure of 23 per cent given by the representative of the United States. He said that a study carried out by them indicated that the figure was not more than 5 per cent.

15. The representative of Japan welcomed the provision of information by the Parties, and said that it would facilitate the examination process. He, however, asked whether the Parties could explain in writing the main features of the special regimes, namely the adaptation regime and the separate lists being maintained by the Parties. He drew attention to the contradiction between the figures provided by the Parties and the United States, and asked whether the figure of 5 per cent provided by the Parties included or excluded the automobiles and sugar sectors. His delegation would be obliged if the Parties could state definitively the share of "excepted products" in intra-trade of the Parties. He asked if the Parties could provide information on the non-tariff barriers being maintained by them, especially the intended changes to the regime at the end of July 1997. Turning to automobiles, he asked for details of the bilateral agreement between Argentina and Brazil, particularly the basis of the tariff quotas established in the Agreement. Was this arrangement consistent with the WTO Agreement? Presumably, the justification for such an exceptional arrangement was the existence of MERCOSUR itself. If that was the reason, how could the Parties justify the special regime, which was projected to last until the year 1999. It would be correct to assert that the Parties would not have free-trade until the year 2000, the same year the CET would be fully operational.

16. The representative of Paraguay said that they were prepared to meet Japan and other delegations with the view to explaining the "adaptation regime" to them. He reaffirmed that a time-table would be established at the end of July 1997 for the removal or harmonization of non-tariff barriers.

17. In addressing the adaptation regime, the representative of Brazil said that it should be borne in mind that there were restrictions applicable to only third countries, and there were those applicable to intra-trade between the Parties. Restrictions on intra-trade imposed by Brazil and Argentina were to be phased out by 1 January 1999, while those imposed by Paraguay and Uruguay by 1 January 2000. Given the autonomy of the Parties to maintain their individual tariffs in some sectors for a while, it was clear that some of the tariffs being maintained by the individual member states would be higher than the CET. Member states were obliged to progressively abolish duties on these "excepted products" within the time-frames, and afterwards adjust the rate of duty to the CET.

18. The representative of Brazil said that some member states' tariffs on automotive products including spare parts were being maintained under the special regime.

19. The representative of Australia welcomed the provision of information by the Parties, and thought that it would facilitate the examination process. Australia was supportive of the attempts by the MERCOSUR countries to liberalize trade and investment. He sought clarification of the agricultural regime of the Parties. Could the Parties confirm that the agricultural sector was now governed by MERCOSUR's general framework including the CET, with the exception of products falling under the special regime. His delegation would appreciate if the Parties could identify which document contained all the relevant information on the agricultural regime. The representative of Australia was referred to WT/COMTD/1/Corr.1. He further wanted the Parties to confirm whether agricultural products not falling under the general regime were subject to the "adaptation regime", while there were separate regimes for automobiles and the sugar sectors. The representative of Argentina said that was the case.

20. The representative of Korea asked whether the Parties had responded to question number 11(g) concerning the elimination or harmonization of non tariff barriers. A representative of MERCOSUR said that they had already responded to the question. The Parties had begun work in this area on the basis of Articles XX and XXI of GATT 1994 and Article 50 of the Treaty of Montevideo. A time-table would be established at the end of July 1997 for the harmonization or elimination of non tariff barriers.

21. The representative of Paraguay said that non tariff barriers existing in the member sates were listed in one of the annexes to the Treaty of Asunción. The Parties had agreed that those barriers had to be harmonized or eliminated in accordance with the provisions of Article XX and XXI of GATT 1994. The provisions of these two articles were largely reflected in Article 50 of the Treaty of Montevideo. It was intended to examine each non tariff barrier in the light of Articles XX, XXI of GATT 1994 and Article 50 of the Montevideo Treaty with the view of determining whether a particular measure had to be eliminated or harmonized among the member states. Where a particular measure could not be justified either under Articles XX or XXI of GATT 1994, it would be eliminated. Some measures would apply with equal effect in all the member states, while others would apply only in the territory of a member state provided that those measures were in conformity with the relevant rules.

22. The representative of the European Communities queried whether the list of measures fell within the ambit of Article XXIV:8(a)(i). He doubted whether Articles XX and XXI of GATT 1994 could provide the legal basis for the action contemplated by the Parties. These two Articles provided exceptions to obligations under the GATT, and as such it was highly improbable that they could be relied upon to adopt the measures contemplated by the Parties.

23. The representative of Colombia asked which percentage of the Parties' trade was governed by special provisions. It would be appreciated if this point could be clarified. Could the Parties confirm whether the figure of 5 per cent given by them included trade in automobiles and sugar products? Were there any restrictions in place on trade in these products among the Parties? The representative of Paraguay reiterated that there was the "adaptation regime", which should not be confused with the special regimes existing for sugar and automobiles sectors. The figure of 5 per cent excluded trade in automobiles and sugar products. He confirmed that there were restrictions among the Parties as far as trade in the automobiles and sugar sectors were concerned.

24. The representative of the United States asked whether the difference in the figures provided by them (23 per cent) and the Parties (5 per cent) was because of the exclusion of trade in the automobiles and sugar sectors from the proportion of trade subject to the special regime. In other words, did trade in these two sectors account for 18 per cent of intra-trade? She also sought clarification of MERCOSUR's automobiles policy, which was under a special regime different from the adaptation regime.

25. The representative of Argentina challenged the figure of 23 per cent produced by the Inter-American Development Bank. That figure was incorrect, even if you included trade in automobiles and sugar sectors. With regard to their automobiles policy, he stated that the Parties had concluded bilateral agreements as part of their obligations under the Latin American Integration Asociation (ALADI). These agreements pre-existed the Asunción Treaty, and were due to be phased out by the year 2000, when the Parties would have a common policy in the automobiles sector.

Coordination of Macroeconomic Policies

26. The representative of the European Communities asked whether the Parties had notified the MERCOSUR Action Plan for the year 2000. A representative of MERCOSUR said it was notified to the Secretariat in September 1996.

Establishment of a Common External Tariff and the Adoption of a Common Trade Policy in Relation to Third States or Groups of States.

27. The representative of the United States reiterated their view that the parties had broken a number of tariff bindings. It had been almost two years since they were broken, but the Parties had not taken any steps to invoke the procedures required to modify their schedules, including the provision of appropriate trade and tariff data. The notification made by the Parties last autumn did not satisfy the relevant rules of the WTO. The notification referred to the Enabling Clause, which had no provision for the modification of schedules, and referred to Article XXIV:6 which did provide for the modification of schedules in respect of customs unions. It was the considered view of the United States that the provisions of Article XXIV:6 could not be invoked, unless notification of the relevant agreement was made under the provisions of Article XXIV. A legal notification to modify schedules entailed the meeting of some obligations in accordance with the rules of the WTO. Such notifications should under normal circumstances be made to the Council for Trade in Goods and not the Committee on Trade and Development. The Parties had failed in their obligation to tender the relevant documents disclosing the nomenclatures and applied tariffs that existed before the CET went into force. This had made it difficult for the Secretariat to carry out the analysis required under Article XXIV:5 of GATT 1994. Did the Parties have any intention of replacing their individual schedules with a single schedule? Given the numerous exceptions to the CET, would a product which had satisfied the customs requirements of a member state be admitted free of further customs duties in other member states.

28. The representative of Korea said that paragraph 4 of the Uruguay Round Understanding on the Interpretation of Article XXIV mandated the commencement of compensatory negotiations before modification or withdrawal of concessions. Paragraph 5 anticipated the carrying out of negotiations for a reasonable period of time before the modification or withdrawal of concessions. A combined reading of these two paragraphs would seem to indicate that an appropriate time-period should be given to interested third parties for substantive negotiations prior to the establishment of a CET. It was clear that the Parties had not respected these procedural requirements. Notwithstanding the clear breach of the rules by the Parties, his delegation welcomed their preparedness to enter into negotiations with interested parties. To facilitate the compensation negotiations, it would be helpful if the Parties could furnish interested Members with the relevant tariff data and other documentation. It was his understanding that new data had been recently received by the Secretariat from the Parties. It was his wish that the data consisted of statistics of imports of the relevant products under individual tariff lines for the previous three years and broken down by WTO country of origin. Given the complexity of the subject, a reasonable period of time would be needed to examine the information submitted by the Parties. His second comment related to the exceptions to the CET. It was his understanding that there were at least five broad exemptions to the CET; these included the capital goods sector, information technology and the telecommunications sector and automotive and sugar sectors. His delegation would appreciate receiving the relevant trade data in respect of the proportion of trade in these products in the total trade between the four member states, and between them and third countries. The provision of this data would be important for several reasons; it would assist the Committee to form a general view of the scope of the CET. He reserved his delegation's right to express an opinion on the consistency of the Parties' agreement with the WTO Agreement, until after the examination of the relevant trade data. His third comment was in relation to the response provided by the Parties to question 26A, which in their opinion, held the key to unlocking whether or not the agreement was consistent with the relevant rules of the WTO. He then proceeded to quote from the response provided by the Parties: "Moreover, MERCOSUR considers that, the timetables indicated above, comply with

the criterion established in Article XXIV:5(c)". If this quotation was anything to go by, then it meant that the Parties were of the view that their agreement was an interim agreement for the creation of a customs union. Could the Parties confirm whether this interpretation was correct?

29. The representative of the European Communities shared the views expressed by Korea and the United States. It was his delegation's hope that the parties would commence negotiations under Article XXIV:6 as soon as practicable. It was important for the Parties to provide interested Members with current information. For the agreement to be held consistent with the WTO rules, the Parties needed to satisfy the provisions of Article XXIV:8(a) of GATT 1994. Two questions raised by Korea and other delegations were important, as they threw light on the consistency or otherwise of the CET. The first question related to the volume of trade covered by the agreement, and the second question related to the special arrangements and the time-frame for their elimination. The answer to question 111 was quite unhelpful, as it referred Members back to question 22A, which in turn provided that member states of MERCOSUR had the right to request for derogations from the application of the CET in respect of twenty products per year. It appeared this would be in addition to the list of products under the special regimes. Would it be correct to assert that a sizeable proportion of the Parties' trade was not subject to the CET. It would be interesting to know how the Parties intend to bring these excepted products into the coverage of the CET. Could the parties respond to the question posed by the United States as to whether a product which had cleared the customs formalities of a member state including the payment of customs duties would be admitted free of further customs duties in the other member states. It appeared that in the case of MERCOSUR, products legally cleared in one member state would continue to face border restrictions and tariffs in other member states. Could the Parties confirm that after the transitional period, products legally imported into a member state would enjoy unhindered access in the other member states.

30. The representative of Australia asked when the Parties intended to commence negotiations under Article XXIV:6 of GATT 1994. Was the CET going to be used as the benchmark rate for purposes of Article XXIV:6 negotiations. Australia was particularly concerned, as the rates on some products of export interest to them had been increased. The duty on alumina, for example, had been increased contrary to the obligations of the Parties.

31. The representative of Canada welcomed the provision of general information by the Parties, but highlighted the lack of the relevant information required to make an assessment under Article XXIV:5 of GATT 1994. This had delayed the process, which was at any rate long overdue. There were some deficiencies in the statistics submitted by the Parties. According to paragraph 3 of the Uruguay Round Understanding, the Parties should not take into account preferential trade when establishing the list of major suppliers. It appeared that the Parties ignored this provision and took into account preferential trade in their analysis. There was also a problem with the import statistics, some of which were provided at the four-digit level. Could the Parties confirm whether interested Members would retain their rights under Article XXVIII after the expiration of the six-month period following the circulation of the notification to modify concessions on 6 November 1996 by the Parties?

32. The representative of Argentina sought to address the question posed by the United states in relation to their entitlement to avail themselves of the provisions of Article XXIV:6, since their agreement was notified under the Enabling Clause. He said that nothing in the Article XXIV or the Understanding affected the right of the Parties to invoke the provisions of Article XXIV:6, especially where there seemed to be an omission on the part of the draftpersons. If this explanation was not acceptable to the United States, the Parties would have the issue examined by their lawyers and communicate at a later date their opinions to the Committee. As regards the question posed by Canada, it was clear that the deadline could be extended by mutual agreement between the Parties and interested members. In relation to the possibility of replacing the schedules of the individual member states with a single schedule, he confirmed that it was the intention of the Parties to do so as soon as practicable. With

respect to the question on whether or not a product legally imported into a member state would be entitled to free circulation in other member states, he said that would depend on a number of things. During the transitional period, the tariffs imposed on certain products were bound to differ from one member state to another. If the customs duties imposed by one member state is lower than the CET, then upon the goods leaving the territory of that state to another member state which applied the CET, the difference between the duty paid and the CET would have to be paid in the second member state. Similarly, if the product on which duty had been paid was an excepted product, then on leaving the territory of one member state for another which imposed a rate in excess of the CET, the difference between the duty paid and that of the new member state would have to be paid. In the third scenario of where all the member states applied the CET with no exceptions, goods legally imported into one member state would have free circulation within the customs territory. In all cases, evidence had to be adduced that duty had been paid on the goods in the first state.

33. The representative of Brazil in responding to the question posed by the European Union concerning the right of member states to request for derogations from the application of the CET in respect of twenty products per year, said that this was a temporary measure which was triggered by the shortages of a particular product in a member state. Member states wishing to avail themselves of this temporary measure had to seek authorization from the Commerce Commission before deviating from the application of CET. The request had to state which products were in short supply, the quantity sought to be imported into the country and the duration of the measures. He said that the European Union had a similar arrangement.

34. The representative of Argentina in addressing the question posed by Korea in relation to Article XXIV:5(c) said he agreed that the Article had to be interpreted narrowly. Given the fact that the customs union would be fully operational by the year 2000, the Parties could be deemed to have complied with this Article.

35. The representative of Australia restated his earlier question, namely whether column 8 of document WT/COMTD/1/Add.5/Rev.1 should be regarded as the proposed bound rate for purposes of the negotiations to be conducted under Article XXIV:6 of GATT 1994. The representative of Argentina answered no. The CET could not be considered to represent the proposed bound tariff rates. He went on to say that MERCOSUR was waiting to commence negotiations with interested parties after the expiration of the ninety-day period, which begun to run from 18 April 1997, the day the relevant document (WT/COMTD/1/Add.8) was circulated to Members.

36. The representative of the European Communities asked the Parties if they could explain the significance of column 8 of document WT/COMTD/1/Add.5/Rev.1, as his delegation was under the same mistaken impression as Australia. The representative of Australia said that in calculating the effects of a regional trade agreement on the interests of a third country, it was necessary to know the tariff treatment before and after the implementation of the agreement. If the CET did not represent the proposed binding, it could be difficult for countries to calculate the extent to which their interests would be affected.

37. The representative of the United States referred to the notification issue, and suggested that his delegation meet with the Parties bilaterally to resolve the problem.

38. The representative of the European Communities sought further clarification of the principles governing the free movement of goods within the customs territory, where those goods were not subject to any of the special regimes. The representative of Argentina said in response that once the imported product had cleared the customs formalities in the first member state, the goods would be admitted in the other member states upon the production of the relevant documents including evidence of payment of the CET.

39. The representative of the European Communities thanked the representative of Argentina for his explanation, but said it was diametrically opposed to the written answer provided to question 114. The answer read that products originating in third countries and in transit through a member state of MERCOSUR were liable for duty assessment upon reaching their final destination ie. another member state of MERCOSUR. The representative of Argentina said the reply to question 114 envisaged goods entering the customs territory through an external frontier. Goods in transit from a third country would not be liable for the payment of duties in the country of transit, but in the country of their final destination.

Rules of Origin

40. The representative of Switzerland welcomed the provision of information by the Parties, and said that would facilitate the examination process. As it was the intention of the Parties to establish a customs union, it was important for the WTO to monitor the evolution of MERCOSUR. His delegation had some questions on the rules of origin of MERCOSUR, but had decided to put them in writing to the Parties.

Measures Affecting Imports from Third Countries

41. The representative of the United States asked whether the Parties could provide information on the status of their draft common regulations on safeguards, anti-dumping and countervailing measures. The representative of Korea associated his delegation with the question posed by the United States, and said that it appeared that the Parties had a common safeguard regime in place, and that common regulations on dumping and subsidies were in the process of being drawn up. Was it the intention of the Parties to establish common non-preferential rules of origin?

42. The representative of the European Communities associated his delegation with the questions posed by the representative of Korea, and requested if the Parties could provide some insights into how they intended to implement and administer the common regimes that they had or intend to set up?

43. The representative of Paraguay confirmed that the Parties had in place a common safeguards regime. Implementation issues and other relevant issues were currently being studied by a specific Committee, which has been charged with the responsibility of administering the agreement. Copies of the MERCOSUR's safeguards agreement could be obtained from the Secretariat. The Parties had not as yet finalized their agreements on anti-dumping and subsidies.

44. The representative of Japan asked whether products originating in other members states of MERCOSUR would be exempted from a safeguard measure imposed by a member state. The representative of Paraguay said that the Treaty of Asunción and the logic of the customs unions dictated the exemption of products originating in partner countries from the adoption of safeguard measures.

Services

45. The representative of the European Communities referred to question 118, and asked whether the Ad-Hoc Services Group would submit the framework agreement on services before 30 September 1997. If yes, would it be preferential arrangement or would the benefits be extended on an MFN basis? The representative of Paraguay said that it was expected that the framework agreement would be submitted to the Council of Ministers for consideration on 30 September 1997.

In response to the second question, he said that liberalisation would not necessarily be on an MFN basis. However, any liberalisation among the member states of MERCOSUR should benefit third countries. The services sectors of the MERCOSUR countries were already open and transparent, as a result of the substantial offers that were tabled by them during the Uruguay Round.

Other Areas

46. The representative of the United States referred to questions 69 and 70 which were about the automotive regime of MERCOSUR. He said that his government was consulting Brazil over the its national automotive policy. He asked if the Parties could provide information on the main elements of their automotive policy. It appeared that their policy infringed a number of WTO rules and needed to be remedied. The representative of Paraguay said that the Parties were in the process of creating a common regime for automobiles. It was expected to be implemented in the year 2000. Before that time, it would be premature to express an opinion on its consistency or otherwise with WTO rules. The Parties were committed to the WTO and would ensure that their automotive regime fully complied with the relevant multilateral rules.

47. The representative of the United States said that Brazil had earlier in the year imposed certain financing restrictions on imports with the view of discouraging the importation of foreign products. This measure made it more expensive to import amounting to a surcharge on imports. It was his delegation's understanding that other members of MERCOSUR and two neighbouring countries were exempted from the application of this measure. It was as such very clear that this policy was discriminatory in its effect on other Members of the WTO. Could the representative of Brazil clarify whether the measure applied only to trade financing for imports, or to all trade-financing of foreign exchange transactions, and whether it applied to the financing of imports of services? It was his delegation's further understanding that the measure was imposed to arrest Brazil's growing trade deficit with its trading partners. Whereas his delegation appreciated the problem facing Brazil, it was his delegation's view that the measure was counter-productive, and it infringed the WTO rules. He urged the Brazilian authorities to withdraw this measure, given its inconsistency with WTO rules. The representatives of Switzerland, Korea and the European Communities associated their delegations with the statement just made by the United States. A representative of MERCOSUR said that the issue was beyond the remit of the Committee, as the measures complained of was not adopted by MERCOSUR. It was the national policy of Brazil, and as such the issue should be taken up with the Brazilian government. The representative of the United States said that this issue could not properly be described as a bilateral issue, as it had a discriminatory effect on Members of the WTO. While it did not impose barriers to the trade of other members of MERCOSUR, it raised barriers against the trade of third countries. The representative of the European Communities associated his delegation with the comments made by the representative of the United States.

48. The representative of the European Communities said that his delegation had submitted supplementary questions on agriculture and sanitary and phytosanitary measures. One of such questions was question 129. It seemed that the answer provided by the Parties was incomplete. He invited the Parties to furnish his delegation with the list of harmonized measures as soon as practicable. The representative of Brazil said that the list would be made available as soon as possible.

49. The representative of Korea said that his delegation was satisfied with the way the examination had proceeded. The mechanics of the agreement had been revealed, although some important points remained blurred. The progress that had been made at today's meeting should pave the way for the Committee to conclude the examination of MERCOSUR very soon. Korea had held exploratory talks with MERCOSUR member countries, and was convinced that they were committed to the underlying principles of WTO. MERCOSUR would be a building block for the multilateral trading system and

strengthen it in the near future by contributing to an expansion in world trade. Korea was interested in deepening its trade ties with MERCOSUR.

50. The Chairman thanked Korea for its positive assessment of today's meeting. Whereas the bulk of the work had been done, there remained some outstanding factual issues which had to be cleared up and other interpretational issues. He suggested that the Secretariat go through the record of the meeting and identify those outstanding factual issues, and with the help of the Parties and available information attempt to codify the factual issues and prepare their responses. With regard to the interpretational issues, he said that it might be difficult to resolve all of them at today's meeting, and that it would be advisable to leave them until the second stage of the examination process, namely the drawing up of the conclusions. These issues could be the subject of informal consultations at a later date. He thanked the Parties and delegations for their good will and enthusiasm.

Calculation of the General Incidence of Duties Before and After the Formation of the Customs Union

51. The representative of Argentina said MERCOSUR's views on this issue were well known. They had made clear their preferred method of calculating the general incidence of duties on imports during the relevant period, namely the three years preceding the establishment of the customs union (1992, 1993 and 1994). Whereas it was possible to choose the years 1989-1991, it was the view of the Parties it could give rise to complications. The Parties have furnished the Committee with the relevant trade data for the period 1992-1994, so it should not be difficult to make an assessment. As regards which tariffs should be taken into account for purposes of the comparison with the CET, it was the view of the Parties that the Committee should use national tariffs as applied by the four member states in 1994, the year preceding the establishment of the CET. These suggestions would help the Committee to carry out the assessment required under Article XXIV:5 of GATT 1994. Referring to the data submitted by them for the years 1992-1994, he said a distinction was made between intra-MERCOSUR trade and trade with the outside world. The statistics covered trade between the Parties and the outside world. No distinction was made of trade between the Parties and the signatories to the ALADI arrangement. This was because of some technical problems, and the fact that trade between the two sides was not substantial. The preferences did not cover all tariff lines. Furthermore, the parts and components of a particular product could receive different treatment. Some might attract preferential treatment, while other parts, especially those from other areas of the world, would be subjected to the normal tariff regime. The Parties would supply the Secretariat with any outstanding information, so as to enable it to carry out the assessment required under Article XXIV:5.

52. The representative of Korea was not sure whether the Parties' suggestions amounted to proposals for deviating from the normal standard and procedures used to establish the general incidence of duties. It was his understanding that the relevant base period was the three years before the entry into force of the Treaty establishing the customs union, and not the three years preceding the introduction of the CET. The representative of Argentina admitted that his proposal was a new method, and said that the selection of the three years (1988, 1989 and 1990) preceding the going into force of the Asunción Treaty would give rise to complications. On the contrary, the selection of 1992, 1993 and 1994 as the base period would facilitate the exercise which had to be undertaken. As regards the second proposal, it was the view of the Parties that using national tariffs as they existed in 1994 in each of the four member states would facilitate the assessment under Article XXIV:5.

53. The representative of the European Communities said that his delegation had taken careful note of the proposals and explanations offered by the representative of Argentina. His delegation wanted to study the proposals and would comment on them later.

54. The Chairman said that it was imperative that the Committee agree on the methodology, so as to enable the Secretariat to proceed with the assessment. Failure to agree on the methodology would mean convening another meeting to discuss the methodology to be adopted.

55. The representative of the United States agreed with Chairman's concerns, but said that her delegation would need a few days, probably one day to reflect on the issue. The representatives of Japan, Australia and the European Communities agreed with the view expressed by the United States. The Chairman suggested that the Committee revert to this issue through informal consultations. His suggestion was accepted by the Parties.

56. The representative of Korea asked which tariffs would be used for the comparative analysis. It was his understanding that the tariffs which would be used as the benchmark after the creation of the customs union was the CET. Would it be the CET as it existed on 1 January 1995, or the year 2005 when it would take full effect? A representative of MERCOSUR replied that the CET had, in principle, been fixed for each product. It was the intention of the Parties to use the CET as it existed on 1 January 1995, with some minor exceptions as and when necessary. In essence, the proposal was for a comparison to be made between national tariffs existing in each of the member states in 1994 and the CET, without taking into account the transitional exceptions. As it was the intention to align all tariffs to the CET, it would make sense to choose it as the benchmark rate. The representative of the United States said that whereas her delegation agreed that pre-customs union tariff rates should be the 1994 national tariff rates, they had difficulty in accepting that the post customs union rates should be the final CET rates. This would distort reality and not reflect the effective rate of protection. It would be better to use the rates applied by each member state on 1 January 1995. Ignoring the exceptions is also not an accurate picture of the situation that occurred when the CET went into effect.

57. The Chairman said that he was satisfied with the progress that had been made. Only a few factual issues had to be clarified. The Secretariat and the Parties would clarify them, and make available to Members any new relevant information. The issues upon which no consensus was achieved on their interpretation would be taken up later during consultations on the conclusions. The issue of the calculation of the general incidence of duties would require more informal consultations which he intended to carry out soon. The meeting was adjourned.