RESTRICTED
WT/COMTD/1/Add.9
28 April 1997
(97-1836)

WORLD TRADE ORGANIZATION

EXAMINATION OF THE SOUTHERN COMMON MARKET AGREEMENT

Note on the Meeting of 10-11 October 1995[1]

Chairman: H.E. Mr. Christen Manhusen (Sweden)

1. The Working Party began the examination of the Agreement establishing the Southern Common Market (MERCOSUR). The meeting took up the following topics:

- General Remarks
- The Elimination of Duties and Charges and Other Restrictions in the Parties' Reciprocal Trade
- The Coordination of Macroeconomic Policies
- The 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
- National Treatment
- Commitments Under Latin American Trade Integration Association
- Accession
- Dispute Settlement
- Trade Data
- Trade Creation/Trade Diversion
- MERCOSUR and Integration Efforts in the Western Hemisphere
- Services
- Other Areas
- Transparency in Implementing the Agreement

General Remarks

2. The Chairman introduced the first meeting of the Working Party on the Southern Common Market Agreement (MERCOSUR) between Argentina, Brazil, Paraguay and Uruguay. He noted that the Agreement would be examined in light of the relevant provisions of the GATT, including Article XXIV and the Enabling Clause. As the process of establishing a common market had advanced over the past year, the Parties had submitted a text of the Additional Protocol to the Treaty of Asunción, which set out the institutional structure of MERCOSUR.

3. The representative of Uruguay, speaking on behalf of the MERCOSUR Parties, said that the Working Party exercise would serve transparency and predictability. The Parties were of the view that the MERCOSUR integration process was complementary to the multilateral trading system and

[1]The meeting was convened in WTO/AIR/159.

fully in line with the relevant GATT rules. Having been crafted with these rules in mind, the Agreement was signed on 26 March 1991. Its purpose was to promote the development of the four countries through the creation of an extended economic area which would deepen participation in the international economy. As a first stage towards the attainment of these objectives, a transition period lasting until 31 December 1994 was to allow time for implementing the Trade Liberalization Programme. This Trade Liberalization Programme included total tariff reduction and the elimination or harmonization of non-tariff measures. On 1 January 1995 the customs union entered into force, which entailed a common external tariff (CET) and standards for its application, as well as the coordination of trade policies with respect to third parties.

4. The representative of Uruguay then described the Trade Liberalization Programme in greater detail. Appearing as Annex 1 of the Asunción Treaty, the Trade Liberalization Programme established gradual, linear and automatic tariff reduction among the Parties. There was an initial 47 per cent reduction in tariff levels in each country, followed by reductions of 7 per cent every six months, resulting in a zero tariff by 31 December 1994. In the view of the Parties, this tariff reduction programme was a decisive factor behind the substantial increase experienced in intra-MERCOSUR trade. However, certain products had been listed as exceptions or had been the object of safeguards during the transition period, as permitted in Annex 4 of the Asunción Treaty. In August 1994 the Parties established a timetable to bring tariffs for such exceptions down to zero, as part of what was called the Regime for the Final Adaptation of MERCOSUR. Linear and automatic reductions in tariff levels were to take place over a four-year period for Argentina and Brazil and over a five-year period for Uruguay and Paraguay. The aim was both economic and political, as the reductions promoted smooth structural adjustment and exposed the various sectors to more competitive conditions. Turning to non-tariff restrictions, he stressed that Article 5(a) of the Asunción Treaty called for the elimination of all restrictions to trade by 31 December 1994. The MERCOSUR Parties had drawn a distinction between non-tariff restrictions which had to be eliminated, and non-tariff measures which would be subject to a harmonization process. For the most part, measures requiring harmonization were those which concerned plant and animal health, technical standards, environmental protection and security. Elimination was already under way, and the harmonization process was in different stages of implementation and was being supervised by MERCOSUR's Trade Commission.

5. The representative of Uruguay then turned to the CET, saying it was a fundamental aspect of the effort to open the MERCOSUR economies. MERCOSUR's CET was set fully pursuant to the provisions of Article XXIV:5. The weighted average of the CET was lower than the weighted averages of the tariffs previously applied by the individual Parties. The CET tariff levels ranged from zero to 20 per cent. While the CET entered into force on 1 January 1995, there were five categories of exceptions. First, there were national exceptions. The Parties had decided in August 1994 to allow Argentina, Brazil and Uruguay to maintain a maximum of 300 items as exceptions to the CET until 1 January 2001, and to allow Paraguay up to 399 items as exceptions. The Parties had subsequently drawn up schedules for these national exceptions. The second category of exceptions was that of capital goods. For this category, the national tariffs of the four countries were to converge towards a CET of 14 per cent, with Argentina and Brazil adjusting to this level by the year 2001 and Uruguay and Paraguay doing so by 2006. The third category of exceptions involved computer and telecommunications goods. The national tariffs would converge at a 16 per cent rate by 1 January 2006. The other categories of exceptions were the automotive and sugar sectors. Due to the special characteristics of these two sectors - both from an economic and a social point of view, and in view of the fact that production and marketing in these sectors, globally, were subject to extremely special rules - it was agreed that they would receive special treatment. A special group was created to adapt the sugar sector to the customs union. For the automotive sector, a technical *ad hoc* committee was established to draw up a proposal for a common MERCOSUR regime to enter into force on 1 January 2000. There was also approval of the lists of products to be excepted from the CET on the basis that they were a part of the Regime for the Final Adaptation to the customs union. Regarding standards for the application

of the CET, it was agreed that there would be not only a common nomenclature in MERCOSUR, but also a customs code, rules on customs procedures, and standards on customs valuation, which would be determined according to WTO rules. MERCOSUR rules of origin had as their fundamental basis the provisions of the WTO (as did all MERCOSUR instruments of trade policy) and of the World Customs Organization. The origin of products listed as exceptions to the CET had to be verified when the products were circulating among the MERCOSUR countries. These products had to meet the general requirement for a change in the tariff position, when applicable, or regional value-added requirements of 60 per cent.

6. The representative of Uruguay then turned to other instruments of trade policy. In December 1994, MERCOSUR's executive organ, the Council of the Common Market and the Common Market Group, had approved a series of decisions and resolutions for implementing the customs union, to bring the CET into force on 1 January 1995 and to set out the common trade policy measures required to apply it. Among those measures, the Parties were presently updating rules on unfair practices against third parties, using as a basis the elements approved in the Uruguay Round. There were also common regimes for rules of origin, free zones, export processing zones and special customs areas, as well as a MERCOSUR customs code, which was in the course of legislative approval, and a set of customs standards, which were of an operational nature and which had been harmonized and applied commonly by the Parties. A new institutional structure was created for MERCOSUR, which was currently undergoing parliamentary ratification by the Parties. The Trade Commission of MERCOSUR was established to enforce the CET and the common trade policy. The Commission, in turn, set up a number of technical committees to implement the Agreement according to various timetables and to analyze specific areas. Among these were the Technical Committee on Tariffs Nomenclature and Classification of Goods; the Technical Committee on Customs Affairs, dealing with all issues of competence of the national customs administrations of the Parties, aside from those handled by the previously mentioned technical committee; and the Technical Committee on Trade Rules and Disciplines, dealing with rules of origin, free zones, export incentives and special import regimes. Also, there were the Technical Committee on Public Policy Distorting Competitivity, which drew up proposals for harmonizing or dismantling measures of public policy that had distortive effects on competition within the region; the Technical Committee on Defense of Competition; the Technical Committee on Unfair Practices and Safeguards, which drafted common regulations on unfair trade practices and on safeguards vis-à-vis third parties; and the Technical Committee on Consumer Defense. Finally, there were the Technical Committee on Non-Tariff Restrictions and Measures; the Technical Committee on the Automotive Sector, which was preparing a draft common regime for the automotive sector for consideration by the Trade Commission before 31 December 1997; and the Technical Committee on the Textiles Sector, which took into account the WTO's Agreement on Textiles and Clothing. In addition, there was a special group set up for the sugar sector, which, as mentioned, was involved with the Regime for Final Adaptation to the customs union.

7. The representative of Uruguay then spoke about MERCOSUR's coordination of macroeconomic policies, noting that this was conceived of as a process to be developed gradually, rather than as a target to be met by a set date. While the process had thus far not materialized in the shape of specific agreements, frequent contacts at various levels by the Parties' economic authorities had resulted in preliminary guidelines for macroeconomic coordination. Priority was to be given to macroeconomic policy mechanisms most directly linked to trade. The coordination of sectoral policies had also been subject to intense technical work, covering such areas as industry, agriculture, energy, transport, labour and social security, allowing for a growing convergence of policies in the Parties' sectors. Macroeconomic policies would be assessed twice a year at meetings of the Council of the Common Market and at meetings of the Parties' economics ministers and central bank governors. The Parties would seek to maintain macroeconomic balances in fiscal, monetary and exchange areas, as these were important not only for the countries independently, but also for the regional integration process as a whole.

8. The representative of Uruguay then provided an overview of the institutional structure of MERCOSUR. MERCOSUR was a legal personality under international law, having the authority to contract, to appear in court, to conclude headquarters agreements, etc. The legal personality was exercised by the Council of MERCOSUR at the ministerial level. The role of negotiating and signing agreements could be delegated by express mandate. There were six organs, which were the Council of the Common Market, the Common Market Group, the MERCOSUR Trade Commission, the Joint Parliamentary Commission, the Economic Social Consultative Forum, and the MERCOSUR Administrative Secretariat. The only bodies with decision-making power were the Council, the Common Market Group and the Trade Commission. The Council, made up of foreign relations ministers and economic ministers, was the highest body of MERCOSUR, responsible for drawing up policy and taking decisions to ensure that different targets were met. The Common Market Group was the executive body, comprised of representatives from the foreign affairs ministries, the economic ministries and the central banks. The Trade Commission was responsible for assisting the Common Market Group. It also enforced trade policies and followed matters related to trade with third parties. It was coordinated by the foreign affairs ministries. The Joint Parliamentary Commission was the body which represented the parliaments of the Parties. Its main function was to speed up domestic legislative adoption and implementation of MERCOSUR standards and rules, and it also helped in the harmonization work of the integration process. It was comprised of members of the parliaments. The Economic and Social Consultative Forum was the consultative body representing economic and social concerns. The MERCOSUR Administrative Secretariat was the support body of the whole MERCOSUR system and was the only organ with permanent headquarters. The Administrative Secretariat maintained the official archives of MERCOSUR documents and carried out authenticated translations for MERCOSUR. It regularly informed the Parties of the measures implemented by each of them. All MERCOSUR decisions were taken by consensus and were mandatory, whether taken by the Council, the Group, or the Trade Commission. Once a rule was agreed upon, the Parties were to adopt necessary measures to ensure its implementation and were then to inform the Administrative Secretariat. The Secretariat was to announce this, and the rules would come into effect 30 days later. The MERCOSUR dispute settlement system was aimed at solving disputes linked to the Asunción Treaty, was well as any disputes stemming from the interpretation of or non-compliance with the guidelines from the Trade Commission. Prior to judicial proceedings, there was a settlement procedure for claims or complaints presented to the Trade Commission. Before the full CET process was to be completed, the Parties were to adopt a permanent dispute settlement system.

9. The representative of Uruguay then discussed MERCOSUR in the broader context of the multilateral trading system. He said the MERCOSUR integration process was important not only because it offered greater opportunities for the region's economic development, but also because it could contribute to growth in world trade. The main economic indicators showed MERCOSUR to be in line with the goal of achieving open economies. Thus, resources within the region should be allocated in a way which responded to price signals of the world market. This goal was consistent with the aims set out in the preamble of the Agreement Establishing the WTO, which called for increasing real income and effective demand through mutually advantageous understandings geared toward the elimination of discriminatory treatment in international trade and the substantial reduction of tariffs and other barriers to trade. The MERCOSUR Parties had demonstrated the will to meet these goals, not only at a regional level but also at a multilateral level. With its envisaged maximum import duty of 20 per cent, the CET was in keeping with the position that regional integration could make a positive contribution to liberalization and the expansion of trade in goods and services. MERCOSUR had been a part of the Latin American Trade Integration Association (LAIA) which was examined on a biannual basis by the Committee on Trade and Development. This had led the Contracting Parties to establish a Working Party on MERCOSUR. MERCOSUR should be examined in light of the relevant provisions of the Enabling Clause and Article XXIV. In the Parties' view, MERCOSUR complied with those provisions for a number of reasons. First, the customs union substantively encompassed all the trade of the Parties, as called for in Article XXIV:8. Second, the Trade Liberalization Programme was geared

toward the elimination of tariffs and the removal of other barriers to trade between the Parties as of 1 January 1995 (with the exception of a limited number of items, which, as noted, were subject to an adaptation process for the progressive and automatic elimination of the present duties over a specified period of time), as called for in Article XXIV:7. Third, as of 1 January 1995, the CET had been in effect (with the exceptions referred to earlier), as called for in Article XXIV:7 and 8. Fourth, the weighted average of the CET was considerably lower than the weighted averages of the tariffs which the Parties had applied prior to the entry into force of the CET, as called for in Article XXIV:5; the harmonized trade laws were considerably less restrictive than prior to the start of the integration process, as called for in Article XXIV:5 and 8. Finally, the tariff reduction had been carried out in accordance with the timetable established. In short, integration added dimension to the market, allowing greater economies of scale and specialization of labour and encouraging investment and technological development. It also furthered the aims of the multinational trading system by being open, predictable and transparent. MERCOSUR thus constituted a prerequisite for the full participation of the region in trade.

10. The representative of Venezuela said his delegation had been carefully following the developments in MERCOSUR, in view of the considerable economic magnitude of this sub-regional entity whose combined GDP represented more than 50 per cent of Latin American GDP, and which constituted a 190 million-persons market. As expressed in the documentation submitted, the Asunción Treaty was part of the 1980 Montevideo Treaty, of which Venezuela was also a member, and both Treaties shared the objective of a common market. Furthermore, the MERCOSUR Parties and the members of the Cartagena Agreement, together with other Latin American countries, had begun to coordinate for the creation of a Latin American FTA for the year 2005. Concerning this examination, his Government expected that the conclusions would confirm the MERCOSUR customs union's conformity with the provisions of Article XXIV, as well as with the Enabling Clause. In this respect, the information provided made it possible to affirm that this was an economic integration experience that was in line with Article XXIV:5(a), in that the customs duties applied since the customs union's creation had not on the whole increased with regard to trade with non-Parties. MERCOSUR also seemed to comply with paragraph 8(a) of the Article XXIV, as it had for the most part eliminated the customs duties and other restrictive trade regulations on the trade among the Parties. As the Committee had been told, the schedules of exceptions to the tariff reductions were limited in coverage, and a timetable had been set for the convergence of those exceptions into the CET over a maximum period of six years (up to 2001). It was also important to verify that MERCOSUR had shown positive results, in terms of trade creation, during its short life to date. As indicated in the Appendix to document W/COMTD/1, between 1990-1993, imports within the MERCOSUR countries had grown by 123 per cent; this growth had occurred without prejudice to the imports by MERCOSUR countries from the rest of the world, which had grown by 56.2 per cent over the same period. This corroborated the estimate appearing in Annex 5 of the same document which said there had been US$7.3 billion worth of trade creation. The figures indicated, therefore, that MERCOSUR was beginning to stand out as a successful example of open economic integration which had remained intact, despite the national crisis in the region at the end of 1994, which had had a considerable impact on international reserves and on the exchange rates of Latin American countries, despite the fact that the region's economies had been considerably better prepared in facing this crisis than they had been in the early 1980s, in terms of non-tariff measures, rules and standards. His delegation welcomed the MERCOSUR Parties' efforts to follow WTO provisions, especially their incorporation of the WTO rules into national law. Venezuelan foreign policy was aimed at achieving a strategic association for mutual benefit with the MERCOSUR countries. The high priority which his authorities attached to that objective reflected the impact of regional integration and rising intra-Latin American trade on total exports from Venezuela. Those trade ties with MERCOSUR countries had been intensifying in recent years, particularly those with Brazil. For example, discussions on electrical intra-connection between the southern states of Venezuela and the north of Brazil were currently underway, and progress had been made in association plans between the state petroleum corporations of Venezuela and Brazil. All of this pointed to the commencement

of negotiations for a formal economic integration agreement between Venezuela and MERCOSUR in the near future.

11. The representative of the European Communities welcomed the MERCOSUR Parties and said his delegation approached regional integration in an open and positive spirit. Regionalism, however, should not distract members from the need for further multilateralization. It therefore seemed imperative to ensure that regional trade agreements (RTAs) conformed with the multilateral disciplines and acted as a catalyst for further liberalization at the multilateral level. The Community was of the view that the revival of integration in Latin America - of which MERCOSUR was a good example - would contribute to the consolidation of democracy and foster economic development in the countries of the region. MERCOSUR, with its 190 million people, its GDP of approximately US$500 billion, and it's volume of internal trade, could undoubtedly contribute to political and economic stabilization. His delegation therefore was approaching this meeting with no preconceived ideas, but rather with an open spirit, moved by concerns for transparency and compliance.

12. The representative of the United States thanked the MERCOSUR Parties for their informative introductory statement. Her delegation supported economic integration and trade liberalization as a means of fostering the growth of both individual countries and the global trading system at large. It was a positive sign that the Parties, while concerned with consolidating and expanding the disciplines agreed to by the four countries, had remembered to look outward and to participate in trade liberalization in other fora. Her delegation noted the Parties' efforts to enter into arrangements with a variety of other countries and regional groups, including the free-trade area (FTA) exercise that was taking place in the Western Hemisphere. Because sub-regional trading groups played such an important part in the global trading system, RTA examinations were critical. With the expansion of global trade and the proliferation of sub-regional arrangements, it was increasingly important for Members to understand fully the implications of these agreements for trade, on both a country and a multilateral basis. This awareness would enable all countries to take full advantage of opportunities offered by economic integration activities; it also ensured that the WTO disciplines which Members had worked so hard to establish would continue to be the guiding principles of all trade agreements. Her delegation thanked the MERCOSUR Parties for the work they had done and would do to help Members understand this important RTA.

13. The representative of Switzerland said his delegation welcomed the MERCOSUR countries' efforts toward greater economic integration. Those integration efforts could bring about development of trade in the MERCOSUR region, and in turn promote the economic development of the Parties. The regional integration of MERCOSUR might also lead to increased integration in world trade, which, of course, was linked to respect for multilateral rules for trade, particularly those of the WTO. In assessing compatibility with the relevant provisions of the Enabling Clause and GATT 1994, his delegation considered the Working Party to be in a preliminary phase, which was to be marked by transparency. He thanked the MERCOSUR Parties for the information they had provided, which allowed Members to have a better picture of the present situation, particularly regarding the updating of the CET and the schedule of exceptions.

14. The representative of Japan welcomed the MERCOSUR Parties and thanked them for the information provided. It was well known that his delegation regarded RTAs as a major derogation from the fundamental WTO principle of most-favoured-nation (MFN) treatment. RTAs were being established in increasing numbers and had grown in size and scope, surpassing all expectations held at the time of the drafting of the GATT; today, they covered a significant portion of world trade. Considering this state of affairs, Japan considered it necessary to examine the relationship between the multilateral trading system and RTAs. His delegation, representing one of the major trading countries not participating in any RTAs, wished to reiterate the following views: First, RTAs should be governed by the strict disciplines of the relevant WTO provisions, with parties bearing in mind the fact that RTAs

constituted a major derogation from the MFN principle. Second, it was important that any negative effects of RTAs on a third party be minimized, and that the benefits accruing from the resulting expansion of trade be shared. Third, his delegation considered it important to review the operation of an RTA on a regular basis, in addition to examining it at the time of its creation or expansion. Fourth, it should be understood that the Enabling Clause, while allowing preferential treatment among less-developed countries, did not relax the GATT requirements concerning RTAs. It was clear that the MERCOSUR Agreement sought to establish a CET and to eliminate tariffs among the Parties; the Working Party should be examining whether the Agreement met the requirements of Article XXIV. However, in spite of the clear efforts by the MERCOSUR Parties, more time and information were needed to examine the Agreement thoroughly.

15. The representative of Canada said this examination was particularly important because of the significance of the MERCOSUR Agreement for Latin America. MERCOSUR was the biggest market in Latin America and constituted Canada's primary trading partner in the region. His delegation wanted to understand fully all the changes that had been implemented in the trade regimes of the four countries, so as to assess the impact on Canadian exporters. His delegation wished to express disappointment in the delays in the scheduling of the examination and in the submission of some of the necessary information. He thanked the Parties for their detailed introductory statement, but added that some time would be needed to digest the new information. This first meeting was nevertheless important for achieving transparency; it was only through enhanced understanding that Members would be able to assess whether the Agreement was in conformity with WTO rules. In that respect, his delegation would pay particular attention to the implementation of the CET, notably in relation to the Understanding and the obligation to submit documentation and engage in consultation on tariff policy matters. His delegation would also focus on the establishment of common policies at the sectoral level so as to know whether duties and other regulations of commerce, as a whole, were not made more restrictive by the application of a common regime.

16. The representative of Korea thanked the MERCOSUR Parties for their detailed introductory explanation. His delegation shared the concern expressed by the delegation of Japan with respect to the proliferation of RTAs.

17. The representative of Mexico welcomed the Parties, saying his delegation viewed RTAs as potentially complimentary to the multilateral trading system. The process of MERCOSUR integration was broad and complex. It was an extremely important Agreement, both at a regional level and in terms of world trade.

18. The representative of Colombia joined other delegations in welcoming and thanking the MERCOSUR Parties. The Agreement was very important to Latin American countries. In the view of his delegation, this type of integration did not hamper world trade liberalization, but rather was an essential component of it, enabling countries at differing levels of development to participate more effectively in world trade. The examination exercise was a reflection of Members' shared philosophy of ensuring RTA compatibility with the multilateral trading system. He expected the MERCOSUR examination to clarify issues regarding the significance or the scope of the Agreement and to shed light on improvements that could be made. The MERCOSUR integration process could be useful not only in achieving better and more balanced development for the Parties, but also for serving as an example for other countries involved in integration processes.

19. The representative of Norway stated that his delegation regarded RTAs as complementary to the multilateral trading system so long as they complied with the relevant WTO provisions. If RTAs also contributed to economic and social developments in the countries involved, they should be regarded in an even more positive light. He then thanked the Parties for the information they had offered.

20. The representative of Australia also expressed thanks to the Parties for their comprehensive opening statement. His delegation was generally pleased with the responses provided to questions it had submitted.

21. The representative of Chile wished to highlight the importance of the liberalization goals and the integration process which had come about in the Latin American area, of which MERCOSUR was an important example. Argentina, Brazil, Uruguay and Paraguay had introduced a customs union to the area, while Chile and Mexico had opted for FTAs. Also, Chile was at present negotiating a type of free-trade association with MERCOSUR, which her delegation hoped would further increase trade, not only among Chile and the MERCOSUR Parties, but also among third parties, in keeping with the concept of open regionalism. She expected this examination to conclude successfully, showing the compatibility of this Agreement with Enabling Clause and other WTO provisions.

22. The representative of Uruguay said that, indeed, MERCOSUR entailed an open integration process. MERCOSUR was never intended to be a closed fortress of import substitution. The Parties were looking beyond their own integration process and were fully involved in a hemisphere integration process, as mentioned by the representative of the United States. Also, a framework agreement was being negotiated with the EC for liberalization of trade. In addition, the Parties were involved in preliminary discussions for an economic cooperation association with Australia and New Zealand. The open integration process within the framework of MERCOSUR was not theoretical in nature; over the last four years, its four developing countries had undertaken an enormous task and had implemented important structural adjustment programmes, and they had committed themselves to expanding the integration process outwards, becoming involved in other integration processes.

23. The Chairman directed attention to the questions and replies found in documents WT/COMTD/1 and the accompanying Corrigendum 1 and Addendum 2. He suggested that the Working Party proceed section by section, according to the major headings of the main document.

The Elimination of Duties and Charges and Other Restrictions in the Parties' Reciprocal Trade

24. The representative of Korea said that the MERCOSUR introductory statement had indicated that quantitative restrictions were being eliminated. On the other hand, the response from the MERCOSUR countries to the written questions had stated that the remainder of non-tariff restrictions would be eliminated or harmonized by 31 December 1994. These responses seemed to conflict. Was there a fixed schedule for the elimination of the remainder of the non-tariff restrictions? If not, how did the MERCOSUR Parties justify this in connection with Article XXIV:8(a)?

25. The representative of Japan said he had the same question as his Korean colleague. His delegation also wished to have a list of the products to be exempted from the eliminations and wanted to know the criteria for such exceptions.

26. The representative of the United States said that Article XXIV required duties and other restrictions of commerce to be eliminated on substantially all the trade, within a reasonable amount of time. Some of this had been addressed, but her delegation would appreciate a listing of those items that would be excluded from harmonization at the end of the time-period, as well as a brief explanation of the phase-out schedules that were to take longer than the ten-year time period provided for in the Understanding. Her next question was on the statistical tax that Argentina maintained. While the response in the second part of document WT/COMTD/1/Add.2 indicated that this tax did not apply to MERCOSUR countries, but it did not indicate whether the level of the tax still corresponded to the actual costs associated with maintaining the statistical base. Another question was whether the MERCOSUR Parties had adopted any self-help or safety measures among themselves that were different

from those applied to third parties; if so, what was the justification for the differential treatment? A fourth question concerned the way MERCOSUR designated specific points of entry into each country to facilitate the movement of goods, particularly agricultural products. How did this port system operate? Was it open to imports from third parties? What approval documents were used in this system? Her delegation would appreciate a copy of the documents. Finally, there appeared to be differences between the treatment afforded to products of free-trade zones in Brazil and Argentina and products of free-trade zones in Uruguay and Paraguay. For example, products from the Tierra del Fuego and Manaus free-trade zones reportedly could enter the trade of Brazil and Argentina duty-free regardless of origin, while exports from the Uruguayan and Paraguayan free-trade zones were subject to rules of origin and the CET. How did MERCOSUR intend to eliminate the inconsistencies in the treatment of products in these free-trade zones?

27. The representative of the European Communities said his delegation would appreciate receiving the complete list of the headings of the Harmonized System that were not yet duty-free and an indication of the trade volume involved for each of these products. Also, the EC wished to receive more detailed information on the non-tariff measures that were still in force in the areas of technical standards, plant and animal health, and environmental protection and safety; it also was interested in learning the details of how those measures would be harmonized. What was the basis for harmonization of those measures? Moving on, he requested a listing by Party of all measures adopted according to Article 50 of the Treaty of Montevideo. Document L/7540 listed some of those in the reply to question 1.8, but his delegation would like to have a complete list of the measures in force. He then noted that the reply to question 1.2 in document WT/COMTD/1 indicated that MERCOSUR's safeguard clauses were based on GATT Article XIX but that they were adapted to the institutional functioning of MERCOSUR. What exactly was this adaptation and what were the peculiarities of the institutional framework? Referring to a question put forward by the representatives of Korea and Japan, he said that his delegation, as well, looked forward to having information on the criteria for eligibility for the adaptation regime. Finally, regarding non-tariff restrictions, he noted that the reply to question 1.3 in WT/COMTD/1 stated that the MERCOSUR countries had made a distinction between non-tariff restrictions to be eliminated and other measures of a non-tariff nature. What was the criteria for distinguishing these two sets of measures?

28. The representative of Australia said his question related to the United State's inquiry on the statistical tax. He wished to receive additional information on the cost of services rendered, as well as an explanation as to why the statistical tax was now collected on a smaller volume of trade. He also sought clarification in relation to his delegation's original question 1.9, where it had sought confirmation on the existing rate of this statistical tax. MERCOSUR's response had confirmed the existence of the statistical tax at 3 per cent on all imports bound in its national list. In the follow-up Australian question on the elimination of Article VIII charges and duties among MERCOSUR Parties (question 110), MERCOSUR confirmed that all trade among MERCOSUR Parties would be exempt from such duties and charges. In that context, he requested either the delegation of Argentina or MERCOSUR to indicate the Article justifying this statistical tax and to offer its view on how obligations of Article 2:1(b) of the Understanding would be met.

29. The representative of the United States said that in the past Argentina had rebated taxes on some exports. Was this still the case? Was there different treatment on this rebate for MERCOSUR Parties than for third parties?

30. The representative of Uruguay said he would first take up the question put forth by several delegations concerning non-tariff restrictions. The MERCOSUR Parties had identified all non-tariff measures affecting trade. They then had classified these as to whether they were covered by Article 50 of the Treaty of Montevideo, which in their view was basically a transcription of GATT Articles XX and XXI. These were then categorized according to whether they pertained to public morality; security

(e.g., regulation of imports and exports of weapons); human life or safety; plant or animal safety; the trade of gold or silver; articles of national heritage or of archaeological, artistic, or historical value; and the export use or consumption of nuclear materials, radioactive material, or any other material that could be used in the development or use of nuclear energy. If the measures fell into one of these categories, they were deemed to transcend trade matters and were classified as measures to be harmonized among the countries in such a way as to limit effects on trade. The Parties had taken this inventory and were now in the process of harmonizing the measures. The work was being done by a technical committee of the Trade Commission, referred to in his introductory statement. Those non-tariff measures which did not fall into one of the categories of Article 50 just mentioned were slated for elimination. The following was the list of measures that did not meet the legitimate objectives contained in GATT Articles XX and XXI and Article 50 of the Treaty of Montevideo: In the case of Argentina, there were measures dealing with the production of fowl and eggs for reproduction, a requirement for a statistical or health inspection certificate for imports of tobacco, and restrictions on imports of alfalfa lucerne seeds. In the case of Brazil, the Parties had eliminated a prohibition on the import of pleasure craft boats, the pre-approval requirement for the import of wheat flour, and the pre-approval requirement for imports of sugar, alcohol, honey and residual honey. In the case of Paraguay, the Parties had eliminated the prohibition on imports of a long list of products which had been covered by Decree 1869 of 1994. Finally, in the case of Uruguay, there had been a waiver on the pre-authorization requirement for the import of wheat flour. None of these measures were covered by the exceptions allowed by GATT Articles XX and XXI or by Article 50 of the Montevideo Treaty. The remainder of the measures (e.g., sanitary and phytosanitary measures) were being harmonized, and in this way an attempt was being made to preserve the non-trade objectives while obtaining common regulation or harmonized regulation, so as to avoid any trade-distorting effects within the region. The process for the elimination of non-tariff restrictions would continue. The United States had asked whether any standards or rules had been adopted regarding health and safety and whether there had been any harmonization of such rules which would not apply among the MERCOSUR Parties, but which would apply to third parties; the answer was no. The existing harmonization of sanitary and phytosanitary rules did not imply any discriminatory treatment. For agricultural goods, MERCOSUR had adopted a regime concerning sanitary and phytosanitary measures prior to the completion of the Uruguay Round. The regime had been approved initially in August 1993 and was a virtual transcription of the Agreement on Sanitary and Phytosanitary Measures (SPS). In view of the positive effect of this Agreement in establishing criteria and a procedure for the implementation of sanitary and phytosanitary non-tariff type restrictions, the Parties adopted this internally in MERCOSUR and were adjusting the regime legally and institutionally to the SPS Agreement. Subsequent to the adoption of this SPS regime, a series of quarantine measures had been adopted regarding trade in certain fruits and vegetables. These had been harmonized amongst the four countries. Because these SPS measures concerned production activities for these products, they would be annexed to the SPS Agreement.

31. The representative of Uruguay then turned to the question on the treatment of free zones. MERCOSUR treated goods coming from all free zones as goods coming from third parties. In other words, these goods were subject to the CET. There was a provision in the Agreement on this matter, which stipulated that exceptions could be granted to this principle. However, a decision was adopted in August of 1994 that the Member States shall apply the national tariff in force to goods coming from free-trade zones, industrial free zones, export-processing zones and special customs zones or areas. The delegation of the United States had referred to special customs zones; this concerned Article 6 of that decision, in that the special customs areas existing in Manaus in Brazil and Tierra del Fuego in Argentina, which had been set up on account of their particular geographical location, would be able to operate under the present regime until 2003. Regarding safeguard clauses, he said that the safeguard regime referred to by the distinguished EC delegate applied during a transition period, which ended on 31 December 1994. There was currently no intra-MERCOSUR safeguard regime in force. Thus, the question regarding the adaptation was not relevant. There was, however, a MERCOSUR working group which was working on a safeguard regime for imports from third parties. The technical

committee responsible for drafting this proposed regulation was to submit the draft to the executive body of MERCOSUR by the end of the year. The draft they were working on took as a basis the existing rules and standards. Regarding tariffs, there was the adaptation regime which applied to products on the list scheduled for final adaptation to MERCOSUR. The adaptation regime was temporary and would run for four years for Argentina and Brazil and for five years for Paraguay and Uruguay. The second characteristic of the adaptation regime for those products was that the tariffs were subject to a linear and automatic reduction on a yearly basis. This tariff reduction regime was open even to WTO Members for consultation. This information was available in documentation the Parties had provided. The four countries had agreed on the products and the rate of tariff reduction. The eligibility criteria were the following: First, those products that had been covered by safeguards by any of the countries over the transition period (i.e. from 1990 to 1994) were included. Second, the Trade Liberalization Programme for the transition period had established a process for tariff reductions every six months. Originally, the list of products that would be exempted from this tariff reduction programme had been determined individually by the Parties, and products were being eliminated from this list at the end of every year. A limited number of these products had not had a tariff reduction as of 31 December 1994. Of the goods not affected by the tariff reduction as of August 1994, countries could choose those products that would remain as exceptions to the Trade Liberalization Programme. In short, eligible products were those that had been covered by safeguards over the transition period or those products which remained on the list of exceptions to the Trade Liberalization Programme as of August 1994. After the transition period, there would be no such exceptions in intra-MERCOSUR trade. In addition, there was a mechanism whereby Parties could individually take some products out of the adaptation regime and speed up the tariff reduction process.

32. The representative of Argentina took up the question which concerned the application for export rebates. In view of the fact that MERCOSUR was a single customs territory and thus had the same characteristics as an internal or domestic market, tax rebates did not apply to products that had already reached full liberalization. There were some cases, such as capital goods, where such rebates continued to apply. Regarding the statistical tax, he said that, in addition to the information provided, his delegation would be able to provide information bilaterally or in the WTO body dealing with market access. This was not a MERCOSUR problem.

33. The representative of the United States referred to the statement made in the MERCOSUR introduction that there was a liberalization time-frame of twelve years for capital goods and telecommunications. How did the four- and five-year phase-out periods for the tariffs mesh with the twelve years for capital goods and telecommunications?

34. The representative of Uruguay explained that the reference to a four-year period for Argentina and Brazil and a five-year period for Paraguay and Uruguay concerned the time-periods set for the total elimination of residual tariffs on the limited list of products which were still subject to tariffs in trade among the MERCOSUR Parties. The list had been drawn up on the basis of criteria already referred to, and there were linear and automatic tariff reductions until the zero tariff was reached. This applied to intra-MERCOSUR trade. The reference to capital goods and telecommunications referred to a different issue - i.e. the CET - and in this regard, were exceptions to the CET. The four MERCOSUR Parties would have a CET of 14 per cent for capital goods as of 1 January 1995. The phase-out deadline for capital goods was the year 2001 for Argentina and Brazil and 2006 for Uruguay and Paraguay. The gradual achievement of a 16 per cent rate for information technology was the same for all four countries, and would be reached by 2006. The United States' delegation had thus referred to two different issues. Capital goods and information technology were exceptions to the CET, whereas the four and five-year phase-out period concerned the overall elimination of tariffs on intra-MERCOSUR trade.

35. The representative of Korea said his delegation had that day posed one question concerning the time-limit by which the non-tariff restrictions would be phased out. If there were going to be some remaining non-tariff restrictions, how could they be justified in connection with paragraph 8(a) of Article XXIV? A related question concerned the newly introduced non-tariff restrictions. In the wake of the consultations conducted by the Balance of Payments Committee regarding import quotas for automotive products, his delegation had asked a question on the effects of these new restrictions on the MERCOSUR Parties. The answer indicated that this essentially would depend upon reciprocal treatment by other Parties. Would that be the general mode of application for the newly-introduced non-tariff restrictions?

36. The representative of Japan said his delegation's first question concerned SPS measures. After harmonization was finished, would the MERCOSUR Parties implement those measures independently or implement common measures for MERCOSUR? The second question concerned data. With respect to exceptions to the elimination of duties on reciprocal trade between the Parties, could the MERCOSUR Parties provide trade data and indicate their share of total trade.

37. The representative of Uruguay referred to the question by the delegation of Korea and said there was no deadline or time-frame for harmonization or elimination of the non-tariff restrictions. What remained were some which required a lengthier procedure in the national jurisdictions of the four countries, due to the fact that they had a constitutional basis or were of a certain legal nature. As to their compatibility with Article XXIV:8(a), the Parties were of the view that these restrictions were marginal and did not constitute restrictive regulations of commerce. Turning to the question concerning linking work to that of the Balance of Payments Committee, the idea seemed inappropriate, given the Working Party's terms of reference. Regarding the question on the automotive sector, for the sake of transparency and maintaining the cooperative and informative approach, he would refer to the MERCOSUR regime and not the individual policies of Parties. The Council of Ministers of the Common Market had resolved in December 1994 that the automotive regime of MERCOSUR, both in its internal trade as well as in any foreign relations of MERCOSUR, should be regulated by a common automotive regime, which would be drafted by the Trade Commission. This common regime was to enter into force on 1 January 2000, and the common regime for the automotive industry was to be approved by 31 December 1997. This proposal had to contain the following elements: total liberalization of intra-zone trade for products in the automotive sector; a CET for the automotive sector; and absence of national incentives which could distort competition in the region. He then addressed the question put by the delegation of Japan concerning SPS and whether there would be a single measure or independent measures for each Party. The task undertaken in the corresponding technical committee was to harmonize standards and rules, so there would be reciprocal treatment without necessarily implying a unification of legislation. In some cases it might be necessary to have a single rule or standard, but the general criterion was to harmonize legislation and regulations in the SPS areas. The aim of this harmonization process was to ensure that the effects on trade be similar - in other words, to avoid any distortions to trade which might stem from the application of different rules. The principle was not to seek single legislation. As to the quantitative aspect referred to by the delegation of Japan, the adaptation regime - i.e. the products which at present still were and transitionally subject to the application of customs duties within MERCOSUR - covered 4.76 per cent of overall intra-MERCOSUR trade.

38. The representative of Korea clarified that his question had been the following: when a new non-tariff restriction was introduced, would that restriction be applied to other Parties to MERCOSUR on the same lines as it was applied to non-parties?

39. The representative of Venezuela said he hoped that the Working Party would conclude that MERCOSUR was compatible with WTO rules. He referred to the time-frame among Parties for the convergence of tariffs in the adaptation regime and said perhaps he and the representative of Uruguay

had been referring to different issues in question 3.2. The Chairman said chapter 3.2 would be addressed later. The representative of Uruguay also reserved his comment until then.

Macroeconomic Policies

40. The representative of the United States asked for an update on the harmonization of fiscal, monetary or financial policies. He noted that the tax treatment imposed by the four MERCOSUR Parties differed substantially, particularly with respect to indirect taxes on business operations. This might lead capital and economic activity to concentrate in a country with a more favourable policy. He wondered what plans MERCOSUR had to address such issues.

41. The representative of the European Communities asked for updated information on the sectoral policies that had been decided upon in document L/7540. He requested a summary of the discussions leading to decisions.

42. The representative of Uruguay said that the MERCOSUR Parties had not set any target dates or specific goals for macroeconomic commercial policies. They were drawing on historical experience. He noted that the ministers of economics and the governors of central banks held their meetings within the framework of the Council of MERCOSUR, which served as a forum for the exchange of information between the highest authorities. Regarding sectoral policy areas, progress had been made in such areas as transborder transport. A working group had been established to look at energy issues, though no specific policy had evolved. Concerning the varying tax levels among the countries, a working group had been established which had identified asymmetrical aspects resulting from the different constitutional structures.

The Establishment of a CET and the Adoption of a Common Trade Policy in Relation to Third States or Groups of States

43. The Chairman noted the Corrigendum with regard to paragraphs 3.2 and 3.8.

44. The representative of the United States said she shared the disappointment expressed by several delegations about the pace of the submission of information, particularly regarding tariff and trade data. Since countries might break tariff bindings in the process of forming a customs union, there were specific procedures that had to be followed, including the notification of the tariff schedules for the new customs union to allow for necessary compensation. Her delegation was of view that Brazil had broken a number of its tariff bindings in the process of adopting the MERCOSUR CET. This breach of bindings had not been properly notified and had not resulted in negotiations to provide compensation to the affected parties. Furthermore, the lack of precise data made it difficult to assess the impact of these violations. For example, there were problems with three years of import data relating to Brazil's Uruguay Round nomenclature. Moreover, it appeared that the other three MERCOSUR Parties had not broken any bindings, though a lack of precise data prevented an actual determination. She stressed that WTO rules clearly specified that negotiations with affected Members were to begin prior to the breach of tariff bindings. She requested the parties to MERCOSUR to provide complete tariff and services schedules, for both intra-MERCOSUR and third party trade, which would indicate the degree to which rates had changed for the start of compensation negotiations. Since the MERCOSUR Parties currently maintained their WTO Schedules as individual governments, tariff and services schedules for MERCOSUR as a customs union did not exist in the WTO sense. In August 1995 MERCOSUR had considered a request for an expansion of the list of exempted products. Did such a list exist now, and were there changes envisioned? She asked if the MERCOSUR Parties required legislative approval to make changes to the CET or to the rates charged on products currently excluded from it, and she

requested copies of the relevant national legislation. The representative of Uruguay replied that MERCOSUR would provide comments in writing and would also provide preliminary answers to these questions.

45. The representative of Japan said his delegation had found a wide range of exceptions to the CET, namely capital goods, information technology and telecommunications equipment and nationally sensitive commodities. Moreover, the convergence of the exceptions to the CET would in some cases take eleven years. Some of the exceptions were common among the four Parties, and others were national exceptions decided individually. The question of the CET's conformity with Article XXIV:8(a)(ii) needed further attention. He asked the MERCOSUR Parties to elaborate on the criteria for determining exceptions, to explain the rationale for the eleven-year transition period, and to provide trade data for those exceptions indicating their share of total trade. Because Article XXIV:5(a) required that the duties and other regulations of commerce should not on the whole be higher or more restrictive than the general incidence of the duties and regulations of commerce applicable in the constituent territories prior to the formation of such a union, his delegation welcomed the news that the trade-weighted average, or CET, was lower than rates of MERCOSUR Parties prior to the formation of the union. However, more detailed information to substantiate this would be appreciated. A CET level exceeding the tariffs of the Uruguay Round Schedule of each Party constituted a breach of GATT Article II obligations. In such a case, in accordance with GATT Article XXIV:6 and the Understanding, the procedure set forth in Article XXVIII had to be commenced before tariff concessions were modified or withdrawn in connection with the formation of a customs union. His delegation had noticed that this procedure had not been respected with the coming into force of the MERCOSUR CET, and the interests of third parties had been adversely affected. He asked for a listing of the CET, particularly for tariff lines that exceeded the level of the bound tariff rates of the Uruguay Round. His delegation requested the MERCOSUR Parties to commence Article XXVIII negotiations. In this regard, his delegation would appreciate import statistics for the relevant products by country of origin over the last three years. He also requested an indication of which principle suppliers were affected. Finally, with respect to agriculture, he asked how the MERCOSUR Parties dealt with commitments in market access, domestic support and export subsidies.

46. The representative of Australia said that the MERCOSUR Parties had noted in their reply that the CET would be fixed in total conformity with the provisions of Article XXIV:5 and that the Parties would respect all other GATT obligations, including Article XXIV:6. However, he shared some of the doubts expressed by the representative of the United States and requested an opportunity for consultation on this point.

47. The representative of Canada noted that MERCOSUR was a customs union and not an FTA. He stressed that timely documentation would allow an assessment as to the need for Article XXIV:6 negotiations. He referred to information submitted by the Parties to the Secretariat and suggested that its content be clarified, particularly regarding tariff lines where there might be a need for a renegotiation under Articles XXIV:6 and XXVIII. He asked if information had been submitted on trade patterns and supplier rights and on the methodology involved, particularly regarding the treatment of other preferential trade under the LAIA.

48. The representative of the European Communities asked for more information on the CET, particularly whether the list of exceptions had been enlarged by the different Parties.

49. The representative of Poland referred to the replies to questions 3.6 and 3.7 in WT/COMTD/1 and noted that the information on the CET was based on weighted averages. He asked whether this rule was applicable now or whether it would be applicable in the future. He wondered whether MERCOSUR tariffs would be lower than those set individually by Parties previously, and whether the CET was an average of the full tariffs or set line-by-line.

50. The representative of the United States asked for a brief description about the treatment of agriculture in MERCOSUR.

51. The representative of Uruguay was surprised that, in speaking of Articles XXIV:6 and XXVIII, delegations had not made reference to the official communication, found in document L/7615, which had been submitted by the MERCOSUR Parties shortly after the adoption of the CET in December 1993. This had stated that the Parties were willing to review its application and hold consultations with interested delegations, pursuant to paragraph 4 of the Enabling Clause and Article XXVIII. He asked that the document be included among the examination documents. Information had been submitted that morning detailing the adaptation regime for products temporarily subject to the application of intra-MERCOSUR duties in each of the countries; this would help the WTO Secretariat to assess whether MERCOSUR entailed a higher degree of tariff protection than the Parties had previously had individually. The Parties had provided information on national tariffs and import trade over the last available three-year period, as well as information on tariffs applicable to products that were temporarily exempted and the level of tariffs to be applied when the target tariff was reached. He would soon provide information on the national tariff nomenclature of each Party and their adjustment towards the CET. The information would verify that MERCOSUR had lower tariff protection than the previous levels of the four individual customs territories. Regarding the notification of changes in autonomous tariffs, his delegation was not of the view that such an obligation existed. Rather, there was an obligation to notify when there was a withdrawal of concessions through individually implemented bindings. A MERCOSUR mechanism had been established in August 1995 to deal with the possible introduction of provisional exceptions. The Parties would notify the Secretariat of any decisions taken in this regard. He explained that Resolutions 7 and 22 of the Common Market Group allowed for the CET to be temporarily lowered to allow equilibrium of supply and demand. Regarding agricultural issues, his delegation would respond in greater detail at a later date. At this stage, each country was responsible for the implementation of its commitments under the WTO Agreement on Agriculture.

52. The representative of the United States asked if the MERCOSUR Parties intended to withdraw their individual Schedules for goods and services, or to merge them into the MERCOSUR Schedule. She noted that before a binding was broken, notification must take place, which had not been the case. She said the Enabling Clause did not provide a legal basis for a country to modify its schedule as a result of a customs union; Article XXIV:6 allowed such modification with reference to Article XXVIII. This in mind, she asked by what legal basis the Parties intended to modify their Schedules and at what stage they planned to do so. Her delegation was of view that MERCOSUR was legally vulnerable on this point.

53. The representative of Uruguay said MERCOSUR would soon notify its modification of individual bindings. As far as exceptions to the CET were concerned, some tariffs would be kept higher than the bound rate on certain items. He emphasized that the MERCOSUR Parties would fully comply with Article XXVIII and the accompanying Understanding on the Interpretation of Article XXVIII of GATT 1994.

Rules of Origin

54. The representative of the United States asked how MERCOSUR's rules of origin adhered to the principles set out in Annex II, paragraph 3(a) of the GATT Agreement on Rules of Origin, which required that rules of origin be clearly defined. She asked if the MERCOSUR Parties had considered making any changes to the rules of origin since the Treaty of Asunción was signed. If so, she wanted explanations as to the rationale behind the changes and as to the process for renegotiation. She noted that either governmental bodies or private sector designates were authorized to issue certificates for specific sectors and said her delegation wished to know what mechanism existed among the different

groups to address questions about individual decisions or about the consistency of practices. By Articles 3 and 4 of Annex II to the MERCOSUR Agreement, the Parties could establish or determine more specific requirements of origin. She asked if these rules were published and notified to the WTO, and whether they were developed as a comprehensive exercise or as a result of *ad hoc* individual cases which then tended to evolve into rules. She cited that no centralized authority regulated the certificates of origin, which determined the products which benefitted from the MERCOSUR preferential tariff rates. It appeared that the certificates had to be issued by a producer or exporter, then certified by an official department or authorized association. She wondered if the certificates would be valid for 180 days from the date of their issue, or if the date of certification was not relevant to the period of validity. Concerning Articles 11 and 12, she asked if a declaration was the same thing as a certification. Concerning Article 13, she asked if a certificate of origin would cover all imports of such goods for 180 days, or for a particular shipment. She wondered if advice to an importer from one country was considered binding on another, in conformity with Annex II of the WTO Agreement on Rules of Origin. If not, she asked if relief would be allowed to an importer that had relied on conflicting advice. She then asked how importers and exporters could obtain an independent review of an origin determination.

55. The representative of Korea referred to the opening statement by the representative of Uruguay who which had indicated that products would be eligible for intra-regional trade if the regional value-added content was 60 percent or more. He asked if there had been a change in tariff headings, as the response contained in document L/7540 had put the figure at 50 per cent. If so, what had been the rationale for the change?

56. The representative of Japan said his delegation was also interested in Articles 3 and 4 of Annex II of the MERCOSUR Agreement, and asked for an update on MERCOSUR developments along this line. Was the harmonization of rules of origin to be completed within three years of the initiation of work? What rules of origin would be applied in the interim?

57. The representative of Canada asked whether there were other marking rules besides rules of origin that were applied in the context of origin determination. He asked if, for certain sectors or industries, there were other conditions required to obtain preferential treatment, such as performance requirements.

58. The representative of Uruguay said his delegation was of view that the Agreement on Rules of Origin was not part of GATT 1994 and consequently would not be an integral part of the final report of this examination. However, since rules of origin were becoming increasingly relevant in international trade, he agreed to respond in writing to questions. He said MERCOSUR had clear and straightforward rules. Prior to 31 December 1994, MERCOSUR had maintained four national tariffs and differing degrees of protection. Thus, there had been a regime for rules of origin at 50 per cent, as referred to by the representative of Korea. Once the customs territory would be consolidated, there would no longer be a regime for rules of origin for intra-MERCOSUR trade, due to the CET. Since 1 January 1995, MERCOSUR had two possibilities for the application of rules of origin, one being for products which were exempt from the application of the CET and one being for those which had inputs that comprised more than 40 per cent of the final total f.o.b. value. Before 31 December 1994, the figure had stood at 50 per cent; with integration, the figure had been changed to 60 per cent.

59. The Chairman noted a correction in paragraph 5.3 found in Corrigendum 1.

Measures Affecting Imports from Third Countries

60. The representative of Japan asked about anti-dumping and countervailing duties and whether they would exclude intra-MERCOSUR trade in the case that such measures were invoked by an individual

Party. He requested explanations of the legal grounds for these measures and of the rationale for safeguard measures and balance of payment measures.

61. The representative of the European Communities was aware that MERCOSUR was in the process of drafting legislation on safeguard measures. His delegation requested more detail on the time-frame envisaged and the proposed common set of rules governing unfair practices. He requested the relevant anti-dumping and circumvention legislation and asked whether a product imported into one MERCOSUR Party was subject to an anti-dumping investigation in the entire grouping.

62. The representative of the United States said she appreciated the explanations about the harmonization of non-tariff measures but had found them somewhat general. Article XXIV clearly stated that there should be an examination of the general incidence of duties and other regulations of commerce to ensure that they were not more restrictive after the customs union was in place. Would measures be more restrictive, going to the lowest common denominator? In terms of Annex II, what did the citation of a regulation mean? Would a regulation cited for elimination be eliminated without the promulgation of additional legislation? She asked what would result from the restrictions designated for harmonization and what sort of timetable existed for decisions by the Common Market Group.

63. The representative of the European Communities asked the representative of the United States whether the issue concerned non-tariff measures.

64. The representative of the United States said questions related to how the harmonization on specific measures would occur, and whether the particular objectives for harmonization in sectors such as plant and animal health, food safety, and technical standards would follow WTO standards. She requested a synopsis of the three documents mentioned in the response to question 53. She then asked what sort of consultations on unfair trade practices were envisioned by the Parties. The purpose of anti-dumping and countervailing duty measures should not be to restrict imports, but rather to offset the margin of unfair trade and injury. The Parties had stated that they had approved common regulations to restrict imports that were the subject of dumping or subsidies by non-Parties, yet they had also stated that they would apply only domestic legislation to restrict imports resulting from unfair trade practices. Was it the Parties' intent to harmonize the administration of their domestic legislation or to administer a common law? Finally, she asked if the Parties envisioned a unified approach to regulating unfair trade, perhaps through a single institution, and whether dumped or subsidized imports within MERCOSUR would be treated differently than imports from third parties.

65. The representative of Uruguay said he had already referred to non-tariff measures that were incompatible with Article 50 of the Treaty of Montevideo and Articles XX and XXI of the GATT, and noted that this information had partially addressed questions referring to the elimination of illicit non-tariff measures. The process of harmonization was being carried out by the respective technical committees of the Trade Commission and included sanitary and phytosanitary regulations as well as technical standards. Technical committee procedures included consultation and notification as set out in MERCOSUR decisions, which were based on multilateral rules. The technical committees were in their initial phases and had no specific timetables. All WTO requirements for the harmonization of standards would be taken into consideration.

66. The representative of the European Communities sought clarification on whether the same type of harmonization process applied to anti-dumping and circumvention legislation.

67. The representative of Uruguay said that, regarding legislation on unfair trade practices, the work being done in the relevant technical committee had advanced. The purpose of this regulation was not to inhibit imports, but rather to ensure compensation as a result of possible dumping situations.

68. The representative of Canada said his delegation had submitted many detailed questions in relation to trade remedies, as found in document WT/COMTD/1/Add.2. He hoped that his delegation would receive more detailed answers to these technical issues.

69. The representative of the United States requested specific replies to each of the points raised in the set of questions her delegation had submitted. The representative of Uruguay replied that his delegation would reply in written form.

National Treatment

70. The representative of the United States asked why Article 7 of the MERCOSUR Agreement was necessary, since the WTO already had provisions against discriminatory treatment. Her delegation was interested in the significance and application of the Article. The representative of Uruguay replied that national treatment was evident in a customs union; while it appeared to be unnecessary, it was included for convenience.

Commitments Under the LAIA

71. The representative of the United States noted that Article 8 of the MERCOSUR Agreement protected the interests of members of the LAIA. She wondered why similar provisions protecting the interests of other WTO Members were not mentioned. The representative of Uruguay replied that the rights of other WTO Members were ensured through the numerous MERCOSUR decisions referring to WTO rules.

Accession

72. The representative of Australia requested an updated report by the MERCOSUR Parties regarding Chile's potential membership. The representative of Uruguay replied that such an issue went beyond the terms of reference of this Working Party. The Chairman asked the representative of Australia to take up the issue at a somewhat later stage to allow the opportunity for the spokesman of MERCOSUR to consult with the delegation from Chile.

73. The representative of the United States asked about the existing arrangements MERCOSUR had with other countries and its future accession intentions. The representative of Uruguay replied that MERCOSUR was in the process of negotiating with other members of the LAIA and that MERCOSUR already had preferential arrangements with them through bilateral agreements signed in the context of the Treaty of Montevideo. These agreements were subject to review by the WTO on various occasions.

Dispute Settlement

74. The representative of the United States asked whether international arbitration was the next step in the dispute settlement process if problems could not be solved by consensus, or whether MERCOSUR had considered having a panel process similar to that of the WTO. She asked for an explanation of the dispute settlement process and for another copy of the Brasilia Protocol which established this mechanism.

75. The representative of Canada asked what would happen if a dispute were not settled by consensus. Would a decision be binding on the Parties, and would there be any possibility of retaliatory measures if a panel's decision were not implemented? Could a matter ruled by domestic courts also be brought before a panel proceeding, and would there be an election process to prevent the same matter from being judged by the two different institutions? He requested more detail on all the procedures involved in the dispute settlement process, and asked whether private parties could participate in this process.

76. The representative of Uruguay registered his surprise that delegations had not in this regard made reference to document WT/COMTD/1/Add.1, which reprinted annexes to the Ouro Preto Protocol. Although his predecessor had already provided the Secretariat with the Brasilia Protocol on Dispute Settlement, he would submit an additional copy. He noted that international experts from outside of MERCOSUR had commended its dispute settlement instruments, which allowed for direct negotiations and provided for speedy procedures that were binding in nature. Within a 30-day period, there would be the possibility of compensatory measures. In addition, private parties would have access to arbitration, or the possibility to lodge complaints. The dispute settlement process involved detailed procedural aspects with timetables for the constitution of a forum, the appointment of arbitrators, etc. The Administrative Secretariat of MERCOSUR in Montevideo conducted courses on these procedures. It would accept requests for any further documentation and information.

Trade Data

77. The representative of the United States reiterated her delegation's request for trade data.

Trade Creation and Trade Diversion

78. The representative of Japan said it was important to review how regional arrangements contributed to the expansion of global trade and how resources would be optimally utilized. He referred to paragraph 11 of the Understanding, regarding the periodic reporting requirements of customs unions and FTAs, and asked MERCOSUR to carry out this requirement without delay.

79. The representative of the European Communities said that since the customs union had only recently come into effect, perhaps preliminary data on trade creation and diversion could be presented at the next meeting of the Working Party.

80. The representative of Uruguay said the issue of trade diversion or creation was a theoretical exercise to some extent. Perhaps the examination was not the appropriate forum for such a discussion. Since the CET was implemented on 1 January 1995, he only had a relative idea of trade effects. With the resources of four developing countries, MERCOSUR already had a statistical method which enabled it to monitor the situation. The Parties planned to share such data at the next meeting.

81. The representative of Australia was of view that an analysis of trade creation and trade diversion was pertinent to the analysis of conformity with Article XXIV, which itself was a derogation from MFN treatment. Any discussion in relation to Article XXIV should ensure that third parties were not commercially disadvantaged by the creation of these customs unions or FTAs. However, he was of view that the results of Article XXIV examinations were usually not very conclusive, as the disciplines of the rules governing Article XXIV remained weak.

MERCOSUR and Integration Efforts in the Western Hemisphere

82. The Chairman said there was a correction with regard to paragraph 12.1 in Corrigendum 1.

Services

83. The representative of the United States noted that Article 1 of the MERCOSUR Agreement stated that its goal was to promote the free movement of goods, services and factors of production. However, the Agreement did not address liberalization of trade in services. She asked how the MERCOSUR Parties planned to address this area.

84. The Representative of Uruguay noted that this particular question went beyond the mandate of this Working Party and should possibly be considered in another body. He said that MERCOSUR would comply strictly with the GATS, and was not adopting any measures which would be restrictive in this area.

85. The representative of the United States asked whether MERCOSUR would notify its services provisions under Article V of the GATS. The representative of Uruguay replied that MERCOSUR would fully comply with all the provisions of GATS, in particular with Article V.

Intellectual Property Rights

86. The Chairman noted a correction with regard to paragraph 14.1.

87. The representative of the European Communities asked for an overview of MERCOSUR competence in the area of intellectual property rights.

88. The representative of the United States noted that the Common Market Group recently adopted two intellectual property rights protocols regarding copyrights and trademarks. She asked what the legal effects of these protocols were. She wondered if MERCOSUR had any intention to issue further protocols affecting other areas of intellectual property, such as patents. Were MERCOSUR policies different from the minimum disciplines established by the TRIPS Agreement?

89. The representative of Uruguay said MERCOSUR had a working party to deal with trademarks. It had reached a preliminary agreement which would become part of the national legislation of the four countries. The TRIPS issue was not a part of the mandate of Working Party.

90. The representative of Peru noted that MERCOSUR had concluded an agreement for the promotion and protection of investment from outside its area. He asked what the legal status would be for a bilateral agreement signed by a third party with a MERCOSUR member prior to the entry into force of the MERCOSUR Agreement.

91. The representative of Uruguay said MERCOSUR had decisions on the promotion and protection of investment from outside the region. It would present copies of these decisions to the Secretariat for distribution. He said that national jurisdictions were fully respected with regard to the treatment of foreign investment from outside the region. Moreover, all bilateral agreements which pre-dated the MERCOSUR Agreement would be fully respected.

92. The representative of the United States said she was aware that two MERCOSUR Parties had investment arrangements that were notified to the Committee on TRIMs as transitional arrangements

which in this case were five years. However, the two other MERCOSUR Parties did not have such arrangements. Therefore, she wondered how MERCOSUR intended to deal with this situation. She asked whether the Parties that had notified these measures would phase them out more quickly than was allowed, and whether there were other similar situations. The representative of Uruguay replied that his delegation would respond to the question in writing.

Transparency in Implementing the Agreement

93. The representative of the United States noted that MERCOSUR generated a number of decisions and protocols whenever its governing bodies met. She wondered if the documents existed in English and if these decisions generally required authorization by the respective legislators of the four countries. She then asked what types of decisions could be implemented without legislative approval, and what mechanisms existed to enforce their full implementation. What other central institutions existed to handle the day-to-day operations of MERCOSUR? Finally, she asked if the Secretariat maintained a Web Site.

94. The representative of Uruguay said that official documents were issued in the languages of Parties. He noted that all decisions were to be made public. The Administrative Secretariat was considering having an official bulletin by electronic computer media to broaden direct access to MERCOSUR official documentation.

95. The representative of the United States hoped that the Secretariat would receive the necessary data far in advance, to allow proper preparation for the next meeting and to facilitate bilateral discussions.

96. The representative of Uruguay thanked the participants of the Working Party and stressed that the MERCOSUR countries were complying not only with Article XXIV, but also with Article XXVIII. He extended the offer for bilateral consultations with other Members to allow for the greatest possible transparency.