

SOUTHERN COMMON MARKET (MERCOSUR) AGREEMENT

Replies to the Additional Questions and Comments
Submitted to the Working Party¹

Addendum

Question 1.3(b)

1. **Can States Parties to MERCOSUR provide a description of those non-tariff restrictions which have been eliminated to date within the MERCOSUR or are in the process of being eliminated and, in addition, a listing of those measures of a non-tariff nature which are currently subject to a harmonization process as monitored by the Trade Commission?**

2. **Could the States Parties to the MERCOSUR indicate those non-tariff restrictions being eliminated in response to the new requirements contained in various Agreements, Understandings, and Decisions implemented as part of the Uruguay Round Agreements? (In particular, those non-tariff measures which have been eliminated to date or are in the process of elimination where such elimination requires Parliamentary approval in response to the requirements outlined in the Agreement on Sanitary and Phytosanitary Measures and the Agreement on Technical Barriers to Trade.)**

The list of non-tariff restrictions (NTR) already eliminated by MERCOSUR countries is attached.

The list of restrictions that will be eliminated appears as Annex II of document WT/COMTD/1.

With regard to the measures subject to a harmonization process, Technical Committee No. 8 of the MERCOSUR Trade Commission (CCM) is finalizing the work concerned.

Questions 1.9, 1.10 and 6.1

1. **Article 7 of the Treaty of Asunción provides that "In the area of taxes, charges and other internal duties, products originating in the territory of one State Party shall enjoy, in the other States Parties, the same treatment as domestically produced products." Annex I of the same treaty notes that "This concept does not cover fees and similar charges corresponding to the approximate cost of services rendered".**

2. **Could the States Parties to the MERCOSUR clarify whether or not their exports to the Argentine Republic are subject to the Argentinean statistical tax of 3 per cent? Paragraph 1(a) of Article VIII of the GATT provides that "fees and charges of whatever character ... shall be**

¹Whenever feasible, additional questions and comments were grouped under headings which refer to the numbering of questions in document WT/COMTD/1, of 2 May 1995.

limited to the approximate cost of services rendered". In 1993 Argentinean imports totalled \$16,786 {world imports including MERCOSUR} versus \$12,573 {world imports minus MERCOSUR imports} based upon the c.i.f. value of imports, in millions of dollars. Under this scenario, a statistical tax of 3 per cent represents a charge ranging from \$503,000,000 if levied on all world imports to \$377,000,000 if based only upon non-MERCOSUR imports.

3. Could the Government of the Argentine Republic provide an outline of those costs associated with maintaining an import statistical base?

Article 7 of the Treaty of Asunción applies with respect to other fees and charges. With the formation of the Customs Union, intraregional trade is excluded from the application of other fees and charges.

The 3 per cent tax bound in the Argentinian offer corresponds to "other fees and charges".

Questions 3.14 and 3.15

1. The "Understanding on the Interpretation of Article XXIV of the General Agreement on Tariffs and Trade 1994" provides that the evaluation under Article XXIV: 5(a) shall be "based upon an overall assessment of weighted average tariff rates and of customs duties collected. This assessment shall be based on import statistics for a previous representative period to be supplied by the customs union, on a tariff line basis and in values and quantities, broken down by the WTO country of origin."

2. Can Parties to the Agreement confirm whether or not these import statistics for a previous representative period have been provided to the WTO to enable discussions to take place under the relevant provisions of the GATT 1994 and Article XXIV?

3. Given that the MERCOSUR Common External Tariff was implemented on 1 January 1995, why have the members not submitted Article XXVIII documentation to the WTO? (Ref: "Understanding on the Interpretation of Article XXIV of the General Agreement on Tariffs and Trade 1994" - paragraph 4.) When will this be done?

As mentioned in the reply to question No. 11 in document WT/COMTD/1, Annex V to that document gives the results obtained from studies carried out on the trade creation or diversion effects, which show the positive impact of integration on creation of trade with third countries.

The MERCOSUR States Parties are preparing the statistics as requested.

Question 3.16

1. Under the requirements outlined in the "Understanding on the Interpretation of Article XXIV of the General Agreement on Tariffs and Trade 1994" (see paragraph 11) Customs unions "shall report periodically to the Council for Trade in Goods ... on the operation of the relevant agreement. Any significant changes and /or developments in the agreements should be reported as they occur."

2. Have the Parties to the Agreement reported any significant changes and/or developments to date in 1995 to the Council for Trade in Goods?

Before the MERCOSUR was presented to this Working Party, the latest measures approved in the MERCOSUR were communicated to the WTO Secretariat for circulation.

Questions 12.2 and 12.3

1. Under the Treaty for Asunción can individual States Parties to the MERCOSUR enter individually into separate reciprocal preferential treaties with other countries, free-trade areas or customs unions?

Formation of the MERCOSUR presupposes that preferential trade agreements with other countries have to be negotiated by the member countries together.

Agriculture

1. Will the MERCOSUR countries be adopting common agriculture programmes or maintaining individual agricultural programmes? If the countries are adopting common programmes, what will be the nature of these programmes? Who will be administering these programmes?

It has not been envisaged so far that the MERCOSUR States Parties will adopt common agricultural programmes.

2. Please provide detailed information on MERCOSUR members' proposed 'harmonization of those measures which cannot be eliminated, as in the case of technical standards, animal and plant health provisions, etc.' Who will administer these measures?

With regard to sanitary and phytosanitary measures that predate the adoption of the Uruguay Round Agreements, the States Parties have adopted the MERCOSUR Agreement on Sanitary and Phytosanitary Measures (ACSAFIM) which incorporates the rights and obligations of the WTO Agreement in this field.

The ACSAFIM is administered by the MERCOSUR Health Committee.

This Committee consists of representatives of the animal and plant health services of States Parties and consists of Sub-committees for Animal Protection and for Plant Protection. The two Sub-committees have standing working groups for specific areas whose members are technical experts of the services of the States Parties.

Sanitary and phytosanitary measures will be harmonized on the basis of the application of the principles set out in the ACSAFIM and the WTO SPS Agreement.

3. Who will assume responsibility for ensuring compliance with the commitments of the MERCOSUR countries under the WTO Agreement on Agriculture (i.e. minimum and current access, export subsidies, internal support)? Specifically, will responsibility for compliance rest with the authorities in individual countries or with some supra-national body (i.e. a MERCOSUR Secretariat)?

Each country is responsible for implementing its commitments under the WTO Agreement on Agriculture.

4. Under the Uruguay Round Agreement on Agriculture, Brazil has notified export subsidy outlay and quantity reduction commitments for a large number of products. Uruguay has also notified export subsidy commitments for three products. The other MERCOSUR Parties do not appear to have notified such export subsidies. This means that only Brazil and Uruguay have export subsidy entitlements for notified products. Can the Parties confirm that these individual country commitments for export subsidy reductions will be maintained?

Yes. See the answer to the previous question.

In the case of Argentina and Paraguay, there is no commitment for the reduction of subsidies; they do not at present have any export subsidies.

5. Brazil has notified commitments with respect to domestic support reductions, while the other MERCOSUR countries do not appear to have done so. Can the Parties confirm that this individual country commitment for domestic support reduction will be maintained?

With regard to domestic support policies Brazil did not make any reduction commitments as the domestic support provided in the base period is lower than that permitted by the "*de minimis*" clause for developing countries, that is to say, a global measurement of support value of up to 10 per cent of the value of agricultural production.

6. Brazil seems to be the only MERCOSUR country which has established a tariff rate quota, in this case for wheat. Please provide details on how this TRQ will be administered under a common tariff.

The existing tariff quota for wheat in Brazil's schedule of concessions in GATT does not come from the tariffication process in the Uruguay Round but rather a concession that already existed in Schedule III - Brazil prior to the Uruguay Round. As such it will be examined in the consultations under Article XXIV:6 in the same way as the other concessions of the four countries that predate the process of formation of the Customs Union.

Standards

The MERCOSUR Agreement does not contain any chapters or articles on non-tariff barriers such as Technical Barriers to Trade or Sanitary and Phytosanitary Measures. Annex V of the Agreement contains a list of Subgroups "for the purposes of coordinating macroeconomic and sectorial policies" which includes Subgroup 3: Technical Standards. According to the GATT WP Report on MERCOSUR (L/4750), the Subgroup has several working groups working on harmonization of standards and regulations of the Parties. The questions below are with regard to the working groups under Subgroup 3 on Technical Standards:

1. What is the selection process for areas for harmonization? For example, who decides and how is it decided?

The areas for harmonization are those regulations that could constitute technical barriers to trade. The regulations are dealt with by subject area in commissions, sub-commissions and working groups.

The commissions are appointed by the Common Market Group.

The subject areas are analysed and discussed in these three forums under the general guidelines established by the national coordinators of Working Subgroup No. 3 (SGT No. 3) and when agreement

is reached among the four States Parties a proposed recommendation is forwarded to the Common Market Group for possible approval as a resolution. SGT No. 3 deals with the harmonization of Technical Regulations.

2. Is the word "standard" meant to cover mandatory government regulations? Are the harmonization initiatives under Subgroup 3 restricted only to government regulations or are they also touching on voluntary standards developed by industry?

Until December 1994 the Subgroup bore the title "Technical Standards", and dealt with both mandatory government regulations and voluntary standards. As from 1995 this Subgroup was renamed the Technical Regulations Subgroup; it and is in the process of drawing up its programme of work, which will be devoted exclusively to mandatory technical standards.

3. What is meant by harmonization? Does it mean that one single standard or regulation will be adopted by all Parties as in the European Union?

The harmonization that has been carried out was initially based on the legislation of States Parties, with the purpose of arriving at uniform provisions that meet the requirements of the Agreement on Technical Barriers to Trade and are applied both within the region and in trade with third countries. Consequently, henceforth harmonization means that the States Parties will adopt mandatory standards with the same content.

4. What is the procedure for adopting the decisions of these working groups by individual signatory countries?

Resolutions are adopted by the Common Market Group and not by the Working Groups. Each country may have different procedures for the incorporation of these resolutions at the national level.

5. Are the working groups adopting international standards in their harmonization work such as recommendations of the Codex or the ISO?

Yes.

6. Who participates in these working groups? For example when the subject of harmonization is government regulations on Pesticide Residues, are the discussions only between government representatives? How do you take into account the inputs of industry or interested individuals?

The participants are representatives of government bodies connected with the issue under consideration, who are permanently in touch with the private sectors concerned by the subject.

7. Are the following agreements reached under the Subgroup (mentioned under paragraphs 17 and 18 of the WTO document L/7540) available for dissemination to interested WTO Members:

- **Agreement on harmonization and recognition of certification and testing services;**
- **Agreement on the system certifying quality inspectors;**
- **Agreement on the conditions for mutual recognition of structures for certification, accreditation of laboratories and inspection bodies;**
- **Bases for the preparation of a single list of enterprises certified by the certification structures of the MERCOSUR countries;**
- **Mutual recognition of calibration services;**
- **Calibration services provided by MERCOSUR countries eligible for recognition by the European Community.**

The points mentioned are in the process of harmonization by the Industrial Quality Commission and the Industrial and Scientific Metrology Commission.

8. Are the various working groups under Subgroup 3 open to non-signatory countries?

Only participation of signatory countries is provided for.

9. Were any new working groups or new schedules for the existing working groups developed since the date when the schedule of working groups was submitted to the GATT (summer/fall of 1994).

See the reply to question 2 in this section.

Trade remedies

1. Does MERCOSUR entail obligations (additional to those applicable under the WTO regarding the application of anti-dumping/countervail)?

2. Will MERCOSUR parties apply trade remedies to intra-MERCOSUR trade?

3. Are there any disciplines on the use of subsidies between members of MERCOSUR in addition to those which exist under the WTO?

4. Will MERCOSUR countries conduct anti-dumping/countervail investigations and take such trade remedy actions against non-MERCOSUR countries on a country-by-country basis or on a bloc-basis?

5. How will existing trade remedy actions against non-MERCOSUR parties be dealt with (i.e. will an existing anti-dumping action be extended to the MERCOSUR common market)?

6. Does MERCOSUR contain provisions on the application of competition laws between member States. If so, does the use of competition laws between partners substitute, in any way, for anti-dumping laws?

7. Is there an agreement between MERCOSUR parties, which commits them to uphold obligations regarding anti-dumping, countervail and government subsidies with respect to MERCOSUR members and other countries which are not party to the agreement (i.e. is there an official MERCOSUR document which supplies the answers to the previous questions)?

8. We understand that the States Parties to MERCOSUR restrict imports resulting from unfair practices by applying domestic trade remedy legislation. Is this legislation used against other member countries? If not, what system is presently in place to deal with "unfair" imports from other member countries, now that the transition period has passed?

9. We understand MERCOSUR intends to negotiate a common set of rules governing trade remedies and safeguard procedures. Would this imply a set of harmonized rules in each country administered on a national basis, or will there be a centralized, collective administration? Could the parties elaborate on the nature of these rules? When will these common rules be established?

10. If a collective trade remedy administration is put in place, how will trade problems among member countries be dealt with? When will these procedures be established?

The common regulations on countervailing duties and anti-dumping measures have not yet been approved. The draft is at an advanced stage, and is in line with the WTO provisions in this area. For the time being national legislations are applied.

The MERCOSUR Treaty has no provisions on the application of competition laws among its member States. By a decision of the Common Market Group, the objective exists of establishing a competition statute, the preparation of which has been entrusted to a Technical Committee of the Trade Commission.

11. We understand that provisions for safeguard actions within MERCOSUR expired on 31 December 1994. Has the application of these clauses been prolonged or replaced by other provisions? How do States Parties now intend to deal with the potential problem of a surge of imports from one MERCOSUR country to another of an item for which tariffs were recently greatly reduced?

12. Do all the conditions of Article 3 of Annex IV (safeguard clauses) have to be met for the special safeguard provisions to be triggered?

13. What are the applicable tariffs on imports subject to safeguard action?

14. Re: Article 4 of Annex IV (safeguard clauses)

How are quota levels established, i.e. based on historic import level? Would these quotas apply for all MERCOSUR members?

15. The English version of the safeguard clause uses the term "damage" and "serious damage" to refer to potential injury emanating from increased level of imports. Was the meaning of the term "damage" meant to be identical to the "serious injury" requirements found in the WTO Agreement on Safeguards or does it refer to a lower injury threshold similar to the notion of "damage" found in the WTO Agreement on Textiles?

16. Article 3 states that each country shall be responsible for determining the existence of damage or threat thereof. Will this damage determination be carried out by governments or by independent agencies?

17. What is the inter-relationship between the MERCOSUR safeguard clauses and the WTO Agreement on Safeguards?

18. Which safeguards regime (MERCOSUR or WTO) will apply when the flow of increased imports originate from both MERCOSUR and non-MERCOSUR countries?

The common regulations on safeguards provide for the application of the measures agreed in the Uruguay Round and are in conformity with the WTO Agreements. They are in the final stage of preparation. The intraregional Safeguards Clause concerned the period that ended on 31 December 1994 and is no longer applicable.

Dispute settlement

1. In the settlement of disputes, on what basis does the Common Market Group evaluate a dispute and make recommendations for the resolution of it?

2. In the settlement of disputes, do members of the Common Market Group continue to represent the interests of their countries or are they to act in a neutral capacity? For example,

is it possible that the Common Market Group could find a solution, which parties to the dispute find unacceptable?

3. In the event that the Common Market Group is unable to find a solution and the dispute is referred to the Council, what is the process for resolving the dispute? Can the Council rule on whether a country, in carrying out its investigation of a MERCOSUR partner's trade practices, made a determination that is inconsistent with either that country's domestic legislation or any requirements contained in MERCOSUR?

4. In the event of a dispute involving multiple parties, does the Council consider the dispute on a binational or multinational basis?

5. Does the Council have the authority to overturn a decision made by the domestic courts of one of the parties to MERCOSUR. If so, are the Council's recommendations binding? Are there avenues for appeal of a Council recommendation?

6. Have the parties to MERCOSUR adopted a permanent dispute settlement system referred to in Annex III? If so, we would appreciate further information on this dispute settlement system.

7. What is the relationship between the WTO and MERCOSUR dispute settlement procedures?

Dispute settlement in MERCOSUR is governed by the Brasilia Protocol (see points 9.1 and 9.2 of WT/COMTD/1). Where relevant the Protocol of Ouro Preto is also applicable. These instruments do not provide for the participation of the Common Market Council.

Rules of procedure

1. Are the rules of procedure for the Common Market Group publicly available? If so, could a copy of these rules of procedure be supplied to members of the Working Party?

The Common Market Council (CMC) approved the rules of procedure for the Common Market Group (GMC) by Decision No. 4/91, which is annexed hereto.²

Investment

1. Does/will MERCOSUR impose obligations additional to those contained in the WTO on the treatment of member parties' investment?

2. Would disputes over investment be evaluated by the Common Market Group?

3. In the event that the Common Market Group fails to find a solution for a dispute over investment, would the dispute be referred to the Council of the Common Market?

MERCOSUR reached two agreements on promotion and reciprocal protection of investments, one governing investments from within the region and the other for investments from outside the region. The agreements reached by MERCOSUR in this area already provide for a dispute settlement procedure that does not include any role for the Common Market Group. The Protocol, which governs investments from outside the region, provides for recourse to international arbitration for disputes arising between an investor and a State Party.

²Copies of that Decision, in Spanish, are available in Room No. 3006.

Financial services

- 1. Does/will MERCOSUR impose obligations regarding member parties' treatment of one another's financial and other services additional to those contained in the WTO?**
- 2. Would disputes over financial and other services be evaluated by the Common Market Group?**
- 3. In the event that the Common Market Group fails to find a solution for a financial or other service dispute, would the dispute be referred to the Council of the Common Market?**

The States Parties have made their offers individually in the Uruguay Round. As yet there is no agreement on trade in services within MERCOSUR. See the reply to question 13.1 of the original set of questions in document WT/COMTD/1.

ANNEX

NON-TARIFF IMPORT RESTRICTION ELIMINATED BY MERCOSUR COUNTRIES

Argentina

1. Prior approval for imports of poultry and eggs for reproduction.
Decree No. 4452/62, repealed by Article 1 of Decree No. 2199/90. Eliminated
2. Requirement of a statistical/sanitary inspection certificate for tobacco imports.
Decree No. 12507 2215144. Repealed (derogation)
3. Restrictions on imports of alfalfa seeds.
Resolution No. 42/88. Repealed (derogation)

Brazil

1. Import prohibition on leisure/recreational vessels.
Law No. 2410 of 29/01/1995.
DECEX Order No. 8/91. Eliminated
2. Prior authorization for imports of wheat flour.
SECEX Circular No. 21/94 of 30/03/1994. Eliminated
3. Prior approval for imports of sugar, alcohol, honey and molasses.
Law No. 8117/90 and Decree No. 99865/90. Repealed (derogation)

Paraguay

1. Import prohibition on various products.
Decree No. 1869/94. Repealed (derogation)

Uruguay

1. Prior authorization for imports of wheat flour.
Decree No. 12/11/93. Repealed (derogation)