WORLD TRADE ORGANIZATION

RESTRICTED

WT/COMTD/1/Add.4/Rev.1

11 April 1997

(97-1558)

Original: Spanish

SOUTHERN COMMON MARKET (MERCOSUR) AGREEMENT

Questions and Replies

Revision

The present document, which contains the updated replies from MERCOSUR appearing in document WT/COMTD/1/Add.4 and replies to the new questions raised in the context of the review undertaken in the Committee on Regional Trade Agreements, has been received from the delegation of Paraguay in its capacity as Pro-Tempore Chairman of MERCOSUR.

REFORMULATION OF ANSWERS TO THE QUESTIONNAIRE WT/COMTD/1/Add.4

I. ELIMINATION OF DUTIES, CHARGES AND OTHER RESTRICTIONS APPLIED IN THE STATES PARTIES' TRADE

1. Could the Parties explain the criteria for selecting products for inclusion in the Adaptation Regime?

The final Adaptation Regime of the Southern Common Market (MERCOSUR) (Decisions Nos. 5/94 and 23/94), consists of a list of products for each country. Products were selected according to criteria of eligibility established for those products which were included in the Lists of Exceptions of the Economic Complementarity Agreement (ECA) No. 18 (Treaty of Asunción), or as products to which safeguard clauses applied as provided for in Annex III of the Treaty of Asunción. The Adaptation Regime, which applies to a fixed and limited group of products, aims to facilitate the processes of reorganization and structural change for specific sectors of production.

2. Was the ceiling foreseen for the national exceptions of 300 products each for Argentina, Brazil and Uruguay and 399 products for Paraguay reached? Can this ceiling be changed?

The list of exceptions applying to trade with third countries was set out in Decision 7/94 by the Council of the Common Market (CMC). Since MERCOSUR has had to adapt its nomenclature based on the Spanish and Portuguese versions adjusted to the amendments to the Harmonized Commodity Description and Coding System, and to the single version in Spanish, which the prescribed limits have currently been exceeded, in no way has the range of exempted products in question been changed. It is not foreseen that the ceiling of exceptions, established by Decision 7/94 of the CMC will be changed.

3. Could the Parties provide a complete list of the headings of the Harmonized System that are still not duty free? Could they indicate the trade volume involved for each of these products?

See document WT/COMTD/1/Corr.1 (Decision 24/94).

Any changes arising in the list will be submitted by MERCOSUR in due course.

The trade volume affected by the Adaptation Regime will be submitted as soon as possible.

The States Parties have submitted to the Secretariat of the WTO total import figures for 1995 in their national nomenclature in effect in 1994. They hope to submit information using statistical data based on the MERCOSUR Common Nomenclature (MCN) as soon as possible.

4. Please provide a description of the extent to which the duties, charges and other measures have already been eliminated on the Parties' reciprocal trade. Please list sectors or products which are still protected, either by tariffs or by non-tariff barriers, and the current schedule for the removal of the remaining barriers.

Duties and charges on trade within MERCOSUR have been eliminated for all products with the exception of those included in the adaptation list for each country and in the lists of products of the automotive and sugar sectors. In order to harmonize or remove non-tariff barriers, MERCOSUR has created a special Technical Committee. The list of non-tariff measures has already been submitted and appears in document WT/COMTD/1/Add.2 of 9 October 1995. The list of measures to be removed was included as Annex II to document WT/COMTD/1.

5. The Parties explained that in the automotive sector, an ad hoc technical committee was set up to draft a proposal for a common MERCOSUR regime. Can the Parties clarify whether the MERCOSUR regime leads to the elimination of duties and other restrictive regulations of commerce with regard to the automotive trade between constituent territories of the customs union?

The basic guidelines of the Common Automotive Regime, which will come into force as from 1 January 2000, cover the following points:

1. Free trade within the common market;
2. Common External Tariff;
3. Harmonization of national incentives which distort competition in the region.

6. As stipulated in GATT Article XXIV.8, a customs union is required to eliminate duties and other restrictive regulations of commerce with respect to substantially all the trade between the constituent territories of the union.

(a) Concerning the exceptions to the elimination of duties on reciprocal trade between the States Parties:

(i) Could MERCOSUR provide a list of those tariff lines to be exempted, the trade data of those products indicating their share in the whole reciprocal trade?

See reply No. 3. MERCOSUR does not envisage any permanent exception.

(ii) Could MERCOSUR explain the criteria for exempting those products?

Reply in previous item (i).

(b) With respect to the exceptions to the elimination of other restrictive regulations of commerce, could the States Parties to the MERCOSUR provide a list of the exemptive restrictive regulations?

(i) With respect to restrictions subject to a harmonization process, could the States Parties to the MERCOSUR provide a list of those restrictions?

The non-tariff barriers which will not be eliminated will be harmonized. MERCOSUR has already submitted the list in Annex II to WT/COMTD/1.

(ii) Please explain the criteria for exempting those regulations.

The criteria which will be used are in accordance with Article 50 of the 1980 Treaty of Montevideo and with Articles XX and XXI of the GATT/94. For further clarification see WT/COMTD/1 (Spanish), page 5.

(iii) Could States Parties to the MERCOSUR indicate the time-frame of the elimination/harmonization of the relevant regulations?

At its XXIV Meeting in Fortaleza, Brazil (December 1996), the Common Market Group of MERCOSUR agreed to establish a time-frame for the elimination or harmonization so as to set, by 31 July 1997, dates at which the measures and restrictions could be eliminated and harmonized.

7. Annex II (restrictions for limitation and/or harmonization by Subgroups) lists literally hundreds of measures that are either slated for elimination or harmonization.

(a) At what stage is this process? Have import restrictions identified in Annex II by the Common Market Subgroups been eliminated or harmonized by all the MERCOSUR Parties?

See reply 6(b)(iii).

(b) What precisely does the citation of a regulation in Annex II mean? Will a regulation cited for elimination simply be eliminated without promulgation of additional legislation?

Any elimination and/or harmonization of restrictions will be the subject of a decision by the CMC or resolution by the GMC and in accordance with Article 42 of the Ouro Preto Protocol, where necessary will be incorporated in or removed from, as appropriate, the domestic legal systems through the procedures laid down by the legislation of each country.

8. The representative of MERCOSUR mentioned in his opening statement to the Working Party that some non-tariff restrictions are being eliminated among the members of MERCOSUR. Is there any time limit for the complete phasing out of existing non-tariff restrictions? If not, how can the residual restrictions be justified in terms of the obligation of a customs union to eliminate duties and "other restrictive regulations of commerce" with respect to substantially all the trade between the constituent territories of the union, as set forth in paragraph 8(a)(i) of Article XXIV of GATT 1994?

See reply 6(b)(iii).

Another related question concerns any non-tariff restrictions which may be introduced following the implementation of the trade liberalization programme, such as Brazil's 1995 import quota on automotive products. Are such restrictions equally applicable to member and non-member countries of MERCOSUR, or are they applicable to the members of MERCOSUR on a reciprocal basis?

Restrictions applied by Brazil in 1995 were withdrawn in the same year.

9. Please specify the existing non-tariff restrictions currently applicable among the member countries of MERCOSUR.

See reply 4.

10. Does MERCOSUR contemplate the retention of any barriers to trade after the phase out period is complete?

See replies 6(a)(i) and 6(b)(ii).

11. What will result from restrictions listed for harmonization?

(a) Is there a timetable for decisions by the Common Market Group, and are there consequences in trade terms if that timetable is not adhered to?

See reply 6(b)(iii).

The definition of the timetable presupposes the commitment of the States Parties to meet it. If the timetable is not adhered to, this does not entail *per se* any consequences in terms of trade.

(b) What is the process for determining how a restriction is harmonized? At what level will restrictions be applied? The most restrictive, least restrictive? Will harmonization of an import standard result in identical import requirements for all MERCOSUR Parties?

To harmonize a measure, first of all the legal regimes which are to be harmonized are identified, after which a harmonization formula is agreed at the most appropriate level to meet the objectives of the Treaty of Asunción. The measures to be harmonized must be identical for all parts of MERCOSUR.

(c) How do MERCOSUR harmonization objectives comply with the requirement of the World Trade Organization Agreement on the Application of Sanitary and Phytosanitary Measures, in particular provisions requiring measures to be based on risk assessment, as appropriate to the circumstance (Article 5.7), and that measures are adapted to the characteristics of the area to which the product is destined (Article 6.1)?

Under Decision 6/96 of the Common Market Council, the WTO Agreement on the Application of Sanitary and Phytosanitary Measures was adopted as the regulatory framework for the application of sanitary and phytosanitary measures by the States Parties of MERCOSUR. In order to implement the Decision, the new structure created under the auspices of Technical Subgroup No. 8 (Agriculture) of MERCOSUR, will consist of:

- Animal Health Committee;
- Plant Health Committee;
- Committee for Products of Animal Origin; and
- Committee for Products of Plant Origin.

The work on harmonizing sanitary and phytosanitary measures and the work undertaken in different spheres of the Common Market Group will have to be in line with the disciplines set down in the WTO Agreement on the Application of Sanitary and Phytosanitary Measures.

(d) How do the objectives of harmonizing sanitary and phytosanitary measures within political borders coincide with the international trend towards application of such measures based on regionalization?

See reply 11(c).

(e) Does harmonization of an import standard for a given product imply that product will move without restrictions among MERCOSUR Parties?

Products will move in accordance with the requirements set out in the harmonized standard.

(f) What are the objectives of MERCOSUR's harmonization efforts for non-tariff import restrictions for: plant health, animal health, food safety, technical standards (including processed foods), and environmental protection. (Please address each area individually.)

With regard to animal and plant health, the objectives of the harmonization of non-tariff import measures are based on the need to avoid the spread of certain diseases and/or illnesses and to preserve

the health of plants and animals, in order not only to safeguard the interests of the region, but also to adapt to international standards in these areas, such as the Rome International Plant Protection Convention and the International Office of Epizootics. For technical standards, the application of harmonized internal standards or regulations on classification, quality control or marketing of products destined for international trade are designed to make it easier for minimum levels for the four States Parties to be met.

The harmonization objective of environmental provisions in MERCOSUR is to promote sustainable development, so as to satisfy the economic and social needs of the existing population, without compromising the needs of future generations, that is to say, that environmental measures do not become barriers to free trade in the region and likewise that free trade does not become a factor which damages the environment.

(g) Specifically, what are the expected results regarding harmonization of each of the following restrictions listed in Annex II:

The guidelines on restrictions and non-tariff measures are determined by Decision 3/94 of the CMC and by Resolution 123/94 of the GMC which provide that the Technical Committee of the CMC must: consolidate and update the list of restrictions and measures to be eliminated and subject to harmonization, respectively; identify unnotified restrictions and measures and propose the timetable for their elimination and harmonization; and draft harmonization proposals.

The listed measures subject to this programme do not correspond to the "other restrictive regulations of commerce" concept referred to in Article XIV.8(a)(i) and are compatible with the WTO rules. MERCOSUR has put together a preliminary list of non-tariff measures and as a result these have been classified in three groups: harmonized, eliminated or justified. Work is progressing on these measures in the harmonization process.

(i) Technical standards, page 23, Uruguay, to be harmonized, Measure 63: pre-inspection for importation of food products;

This measure is being studied by "Technical Subgroup No. 3"; specific results regarding its harmonization have not been achieved to-date.

(ii) Technical standards, page 26, Argentina, to be harmonized, Measure 70: pre-inspection of fresh, dried and dehydrated fruit;

This measure is being studied by "Technical Subgroup No. 3"; specific results regarding its harmonization have been achieved to-date.

(iii) Agricultural policy, page 41, Brazil, to be harmonized, Measure 116: wines: prohibition on imports in containers larger than one litre;

Under the MERCOSUR Grape and Wine Growing Regulations, Resolution 45/96 of the GMC, this prohibition is being eliminated.

(iv) Agricultural policy, page 49, Paraguay, to be harmonized, Measure 172: establish sanitary regulations for imported meat destined for internal consumption.

The outcome envisaged by the harmonization of this measure is to allow free movement of this product in the region, whilst protecting human and animal health.

(h) How are third countries informed of new import policies and procedures developed through the harmonization process?

The Pro-Tempore Chairman of MERCOSUR undertakes to notify the decisions and resolutions to the WTO, where appropriate.

(i) How will third parties be assured that the harmonization will not create new barriers to current trade with MERCOSUR Parties? Specifically, will harmonization result in new market access restrictions for third countries exporting to any of the individual countries in MERCOSUR?

Harmonizations achieved upon by the States Parties of MERCOSUR seek to facilitate trade. With regard to trade with third countries, MERCOSUR will scrupulously meet its WTO obligations.

(j) What is the relationship between the plant quarantine activities in MERCOSUR and the plant health activities of COSAVE? How are these two activities linked? Do they have separate missions?

COSAVE is a purely technical regional organization, that is, its assessments and standards are considered as options for implementation by the member countries. As regards MERCOSUR, the resolutions adopted are binding: the States Parties have a binding obligation to implement agreements which they have signed. However, it is important to point out that, as a general rule, COSAVE technical regulations are endorsed by MERCOSUR and prepared for adoption and implementation by the member countries.

(k) What is the regional body for animal health matters (i.e., the counterpart of COSAVE in the animal health area)? To what extent have harmonization efforts been carried out in the area of animal health?

The Ministries and Ministers of Agriculture of the CONASUR member countries (Argentina, Brazil, Paraguay, Uruguay and Chile) constitute the Regional Committee for Animal Health (CORESA) with the main objective of coordinating and increasing regional capacity to prevent, lessen and avoid impact and risks of problems affecting the production and marketing of live animals, and animal products, sub-products and by-products, taking into account the animal health situation, sustainable economic development, human health and environmental protection.

Harmonizations agreed upon under CORESA were mostly endorsed by MERCOSUR in the animal health area.

12. What non-tariff measures are still in force on technical standards, plant and animal health, environmental protection and safety? Could the Parties provide more details on how these measures will be harmonized?

See reply 4.

13. Could the Parties provide specific information on the type and coverage of the resolutions so far adopted regarding the harmonization of standards?

The list of harmonized technical standards and their implementation status has been transmitted to the Secretariat for consultation by interested delegations.[1]

14. Could the Parties clarify the meaning of "as a whole" in "the duties covered by Article VIII of the General Agreement are fixed as a whole in accordance with the provisions of that Article and the obligations assumed by the States Parties to MERCOSUR in the Uruguay Round", in the reply to question 1.10 of WT/COMTD/1?

The meaning of "as a whole" is that this is in accordance with the provisions of Article VIII of the General Agreement of GATT.

15. Could the Parties mention every measure in force in each country adopted in the situations envisaged in Article 50 of the 1980 Treaty of Montevideo?

It is understood that the non-tariff measures which the States Parties have adopted and which are being examined by the Technical Committee (CT 8 - Non-Tariff Restrictions and Measures) of the Trade Commission respond to the situations foreseen in Article 50 of the 1980 Treaty of Montevideo. The Technical Committee (CT 8) has classified these measures of the States Parties as follows: harmonizable, justifiable, or to be eliminated. See replies 4 and 11.

II. THE COORDINATION OF MACROECONOMIC POLICIES

16. Please update the information provided in WT/COMTD/1 on the plans MERCOSUR members have in the area of economic harmonization, whether in fiscal, monetary, or financial policy areas, and indicate what progress has been made in this area.

The document "MERCOSUR Action Programme to the year 2000" has defined the courses of action, based on macroeconomic coordination as defined in Article 1 of the Treaty of Asunción, placing emphasis on the overall assessment of the economic problems of the region as an initial stage for future coordination. In this context, and with regard in particular to financial policy, there have been discussions about procedures for harmonizing accounting standards, consolidated supervision of financial institutions, among other aspects, and it has already been agreed to issue financial standards based on the Basel Agreements.

Likewise, agreements have been reached in the insurance market relating to particular services (multimodal transport and civil liability) and there have been periodical assessments of the regional monetary and exchange situation, and of trends in capital markets and of the standards regulating them, with a view to future harmonization.

17. The tax burdens imposed by the four MERCOSUR members differ substantially. Brazil in particular has a complicated tax structure with a greater variety of indirect taxes on business operations than the other countries. The net effect of differing levels of tax burden is to potentially concentrate capital and economic activity in a country with more favourable tax treatment. What are MERCOSUR's plans for addressing such tax and fiscal issues?

Studies have begun on aspects of fiscal policy which distort regional trade flows.

18. Could the Parties provide an updated version of all the Decisions or Resolutions adopted by the high-level bodies of MERCOSUR on the coordination of sectoral policies?

---

[1]This documentation is available in the Secretariat (Office 3006) for consultation by interested delegations.

Decision No. 8/93 of the CMC "Minimum Regulations of the Capital Market"; No. 10/93 of the CMC "Adoption of Principles and Standards set down by the Basel Committee"; No. 12/94 of the CMC "Adoption of the Principles of Consolidated Banking Supervision"; and Resolution No. 120/94 of the GMC "Civil Liability Insurance".

These decisions and resolutions have already been submitted to the WTO.

III. THE ESTABLISHMENT OF A COMMON EXTERNAL TARIFF AND THE ADOPTION OF A COMMON TRADE POLICY IN RELATION TO THIRD STATES OR GROUPS OF STATES

19. A number of changes in tariff rates by individual members of MERCOSUR since 1 January 1995 have created substantial uncertainty as to what the current rates are. Please provide a complete tariff schedule for both intra-MERCOSUR and third country trade.

The CET (Common External Tariff), the Lists of Exceptions, Adaptation, Exceptions resulting from Adaptation, Capital Goods, Information Technology and Telecommunications, and special import regimes of the States Parties are available in document COMTD/1 Annexes I and II. See lists of the four countries.

20. In document WT/COMTD/1, the reply to question 3.6 gives the information that the common external tariff (CET) is constructed as "a weighted average whose level will be lower than the tariffs applied by the States Parties prior to signature of the Treaty of Asunción". While the reply to question 3.7 states that the weighted average is lower than that applied individually by the member countries prior to the conclusion of the Treaty of Asunción. We would like to know whether this principle has already been respected since 1 January 1995 or is scheduled for next year? Is this rule applicable for all tariff items (item-by-item) or for the average rate of incidence?

In the CET effective as from 1 January 1995, the weighted average (the average rate of incidence) of the tariffs is lower than the national tariffs which were applied previously by each State Party of MERCOSUR. In order to compare the average rates of incidence in accordance with Article XXIV:5 and the relevant Understanding of the Uruguay Round, it would be necessary to carry out the calculation on the basis of import data from the period 1988-90 (prior to the Treaty of Asunción) and to make a comparison with the data for 1995.

The problem which arises in carrying out this comparison derives from the different national tariff nomenclatures used by each country in the period 1988-90 and the great difficulty in developing a table of correlation or equivalence between these nomenclatures and the Common Nomenclature of MERCOSUR.

Given this technical difficulty, and despite having evidence that average rates of incidence of national tariffs from 1988-90 are higher than those of the CET 1995, the States Parties of MERCOSUR consider it appropriate to carry out the comparison using the period 1992-94. This could speed up the examination of the consistency of MERCOSUR with Article XXIV. For this purpose, we have already submitted to the Secretariat of the WTO the import data for this period and, we will shortly provide a correlation between each national nomenclature in force in 1994 and the common MERCOSUR nomenclature.

We hope that the Secretariat of the WTO would be able to carry out a comparative analysis of the average rates of incidence for the information of all the member countries.

21. Certain temporary exemptions were made to the MERCOSUR common external tariff following the meeting of the Common Market Group held in April 1995. Could the Parties confirm that the 20 per cent duty which was originally foreseen for footwear products will be returned to as from 1 April 1996?

The States Parties are applying the appropriate rates in accordance with the Common External Tariff.

22. We understand that at the Asunción meeting in August 1995, the members of MERCOSUR considered requests for an expansion of the list of exempted products, or, at a minimum, the right to add items to replace other items already on national "exemptions lists" every 90 days.

(a) Please describe the outcome of this decision.

Through Resolution 69/96 MERCOSUR allows temporary exceptions to the Common External Tariffs of up to 20 products per year per State Party due to supply shortages in the region. This Resolution will be in force until July 1998. The applications by each country must be agreed by consensus in the MERCOSUR Trade Commission.

The Trade Commission's guidelines relating to the implementation of Resolution 69/96 are available in the Secretariat for consultation by interested delegations.

The ceilings of the national "lists of exceptions" have not been changed. (See reply 2.)

(b) Does a final list of exceptions now exist?

See reply 22(a).

(c) Do you envision additional changes to the lists?

See reply 22(a).

(d) Please summarize the exceptions each of the MERCOSUR Parties is entitled to and the list each has adopted. Please also provide the full, final exceptions list to the members of this Working Party.

See reply 19.

(e) What process will MERCOSUR use to ensure that its WTO partners are notified of changes that are made to the CET and individual country tariff schedules?

The Pro-Tempore Chairman of MERCOSUR regularly notifies the WTO Secretariat of the Decisions and Resolutions approved by MERCOSUR.

23. Please describe MERCOSUR's plans with regard to a common sugar regime.

In accordance with Decision 16/96, the Ad Hoc Sugar Group has until May 1997 to submit a proposal to the GMC for a tariff reduction scheme for the sugar sector.

24. We understand some products were exempted from the application of the CET as of 1 January 1995. What is the specified time schedule for the gradual inclusion of such exempted products into its CET schedule?

For the 300 exceptions of Argentina, Brazil and Uruguay, the time-limit is the year 2001, Paraguay can exempt its 399 products from its list to the CET until the year 2006. For capital goods, the time-limits for Argentina and Brazil last until the year 2001 and for Paraguay and Uruguay, until the year 2006. In the case of the information technology sector, all the countries have until 2006 for its gradual inclusion into the CET. See reply 2.

25. Could the Parties specify the products for which the convergence period is expected to last until 2006?

See reply 24.

26. There is a wide range of exceptions to the CET and the convergence of the exceptions to the CET will in some cases take 11 years. In this respect, we think that this CET is exceptional and that thorough examination is needed to secure the compliance of the CET of the MERCOSUR with Article XXIV.8(a)(ii), which reads "substantially the same duties".

(a) From this point of view, can the MERCOSUR members elaborate on the rationale or criteria for setting down such exceptions and the reason for the 11-year transition period?

The CET is designed to encompass all tariff items. The CET convergence guidelines for existing exceptions have already been established (see reply 24). Exceptions still existing after 2001 have a defined convergence and account for a low volume of trade. MERCOSUR considers this procedure preferable to simply excluding these products, with no fixed timetable for their inclusion in the CET. Moreover, Mercosur considers that the timetables indicated above comply with the criterion established in Article XXIV:5(c).

(b) Could the MERCOSUR provide us with trade data on those exceptions and also data indicating their shares in the whole trade?

Mercosur will provide this information as soon as possible.

27. MERCOSUR envisages five categories of exceptions to the application of a CET. Is there an estimate available of the magnitude of MERCOSUR's trade affected by these exceptions? In other words, what amount of total imports from member countries would have been subject to such exceptions on the basis of import statistics for, say, 1994?

Mercosur will provide this information as soon as possible.

28. In order to establish a customs union, as stated in Article XXIV.5(a), "the duties and other regulations of commerce… shall not 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 union…".

See reply 20.

(a) Could MERCOSUR provide a comparison of the overall level of tariff rates between the CET and each State Party's applied rate on the basis of the trade-weighted average of applied rates?

See reply 20.

(b) Could MERCOSUR explain the situation concerning the establishment of common regulations of commerce, and could MERCOSUR confirm that the common regulations are not more restrictive than the previous regulations of each State Party?

In neither of the cases, be it in the common regulations effective as from 1 January 1995, or in the regulations which are being drafted, have provisions and obligations been established which could be considered more restrictive than the regulations previously applied by each State Party of MERCOSUR.

Likewise, the standards that have been or are being prepared, which affect trade with third countries, have been developed in accordance with the WTO Agreement and the commitments of the States Parties of Mercosur as members of the WTO.

29. In the case where the level of tariffs of the CET goes beyond that of the Uruguay Round schedule of each member country, this would constitute a breach of the obligation provided in Article II of the GATT. In such a case, in accordance with Article XXIV.6 of GATT and the Understanding on the Interpretation of Article XXIV of GATT 1994, the procedure set forth in Article XXVIII must be commenced before tariff concessions are modified or withdrawn upon the formation of a customs union. However, the CET was enforced as of 1 January 1995 without respecting this procedure and, as a result, the interests of a third country have been adversely affected.

(a) For this reason, could the States Parties to the MERCOSUR provide a list of the CET lines which exceed the level of the bound tariff rates of the Uruguay Round?

MERCOSUR has already provided the WTO with the list of CET lines of which the duties exceed the bound tariff rates of the Uruguay Round. Document WT/COMTD/1/Add.5/Rev.1.

(b) Could the States Parties to the MERCOSUR also submit the relevant data necessary for Article XXVIII negotiations:

(i) Statistics of imports of the relevant products involved, by country of origin, for the last three years (i.e. from 1992 to 1994 and their average); and

MERCOSUR will provide this information as soon as possible.

(ii) an indication of which countries are affected by order of principal supplying countries and countries with a substantial interest?

MERCOSUR will provide this information as soon as possible.

30. While it is envisioned in Article XXIV that countries may break tariff bindings in the process of forming a customs union, there are specific procedures that must be followed to notify the breach of a binding, to negotiate compensation with affected countries and to replace the tariff schedules of individual countries with a schedule for the new customs union. It is our analysis that one MERCOSUR Party - Brazil - has broken a number of its tariff bindings in the process of adopting the MERCOSUR CET. WTO rules clearly specify that negotiations with affected countries are to begin PRIOR to the breach of tariff bindings. When does Brazil intend to notify these modifications to its bound tariffs properly, provide the required trade and tariff data and begin compensation negotiations?

Brazil fulfils all its obligations under the WTO. Together with the other MERCOSUR partners, Brazil has notified the tariff items which will be subject to a change in the bound duty. MERCOSUR has already shown its willingness to engage in joint consultation with the aim of assessing the changes which the States Parties are seeking to make in their individual schedules of concessions.

31. The MERCOSUR Parties currently maintain their WTO schedules as individual governments. A WTO tariff and services schedule for MERCOSUR does not exist, but the individual schedules of Argentina, Brazil, Paraguay and Uruguay exist. What intentions do the Parties have to withdraw their individual schedules and replace them with a MERCOSUR schedule in the WTO?

See document L/7615 of 23/12/94.

32. In accordance with Article XXIV.5 and the associated Uruguay Round Understanding, the WTO Secretariat is charged with producing an assessment of the general incidence of the duties and other regulations of commerce before and after the formation of the MERCOSUR customs union. This assessment is to be made on the basis of the weighted average applied tariff rates. This information is vital for the Working Party's assessment of the consistency of the MERCOSUR Agreement with Article XXIV. To date, the MERCOSUR countries have supplied only part of the information requested and required for this analysis. When do the MERCOSUR Parties plan to supply this information?

See reply 20.

33. In the United States, specific Congressional authorization is required to alter tariff levels. Do any or all of the four MERCOSUR countries require legislative approval to make changes to the CET or to the rates charged on products currently excluded from the CET? Please provide copies of the relevant pieces of national legislation.

Argentina is sending a copy of Article 75 and Article 76 of the 1994 National Constitution and a copy of Law on Ministries, Article 19, which provides for the power to set tariffs.[2]

The Brazilian Government is empowered by the legislature, to alter tariffs (Law 3244, of 14.08.37).

In Paraguay no legislative approval is required to alter the CET. Law No. 1095/84 is applicable, Article 10 of which provides: "The Executive Branch is empowered to: (a) Establish and alter levels of customs duties and charges on imported goods."

In Uruguay no legislative approval is required to alter tariff levels: Laws Nos. 14629 of 5 May 1977 and 12670 of 1959 are applicable. These laws empower the Government to set and alter tariff levels.

34. Please specify through which legal instruments MERCOSUR has implemented, or plans to implement, the zero internal tariff and the CET.

MERCOSUR has provided for the zero tariff for trade among its members through Common Market Council Decisions Nos. 5/94 and 24/94. The Common External Tariff (CET) is applied pursuant to Common Market Council Decisions Nos. 7/94 and 22/94.

[2]This documentation is available in the Secretariat (Office 3006) for consultation by interested delegations.

Argentina applies the CET pursuant to Decree 2.275/94 and 998/95 as amended.

Brazil applies the CET pursuant to Decree No. 1767, of 28 December 1995 and No. 1840, of 29 April 1996.

Paraguay applies the CET and the zero internal tariff, with its particular exceptions, pursuant to Decrees Nos. 12.056 and 15.512/96.

Uruguay applies the CET and the zero internal tariff with its exceptions pursuant to Decrees 564/94 and 568/94, as amended.

35. Could the Parties explain the features of the institutional functioning of MERCOSUR which required the adaptation of the provisions of the Safeguard Clause as laid down in Article XIX of GATT? Could the Parties provide a copy of this legislation?

Decision 17/96 of the Council of the Common Market, which approves the "Regulation relating to the application of measures of safeguards for imports originating from non-member countries of the Common Market of the South (MERCOSUR)", is in accordance with Article XIX of the GATT 94 and with the WTO Agreement on Safeguards.

36. What kind of trade policy instruments do the Parties envisage adopting? What trade measures have already been adopted? Under what criteria are they implemented? Are they in conformity with the Uruguay Round provisions? If so, please explain how.

The common trade standards which have been drawn up so far in MERCOSUR cover aspects related to Common Trade Policy and the Common External Tariff, such as customs administration, non-tariff restrictions, standards of origin, technical standards, anti-trust measures, consumer protection and safeguards.

Common regulations on unfair trade practices (dumping and subsidies) are being drawn up.

Standards which have been drawn up or are being drawn up, which affect trade with third countries, have been developed in accordance with the WTO Agreement and the commitments of each State Party to MERCOSUR as a member of the WTO.

The document "MERCOSUR Programme of Action to the Year 2000" approved by the Council of the Common Market in Decision 9/95 outlines the objectives and the actions/guidelines which will guide the MERCOSUR negotiations in order to develop and strengthen the framework for integration.

All the trade policy provisions adopted by the States Parties to MERCOSUR will be notified to the WTO in due course.

IV. RULES OF ORIGIN

37. MERCOSUR's Rules of Origin appear to provide for the following:

- **The tariff heading of the product in question must be different from that of the third country inputs used during production;**

- **if the tariff change did not occur in production, or if the change in tariff heading happened only through "simple assembly" or other non-substantial means, then the imported product is examined to see if it meets a "reverse content" test (i.e. the c.i.f. value of imported inputs/parts cannot be greater than 50 per cent for the product to be eligible for the preferential tariff rate).**

General questions:

(a) How do the Rules of Origin for MERCOSUR products adhere to principles set out in Annex II, paragraph 3(a), of the Agreement on Rules of Origin in the GATT 1994, which require that rules be clearly defined?

It is considered that the rules of origin which apply to intra-MERCOSUR trade are compatible with the Agreement on Rules of Origin in the GATT 1994 and that they are defined clearly.

(b) Is MERCOSUR currently considering making any changes to the rules of origin agreed to at the time the Treaty of Asunción was signed? If so, what is the impetus for those changes and what process will be used for renegotiating the rules of origin?

The Treaty of Asunción of March 1991 set out in its Annex II the rules of origin to be applied during transition period 1991-94. As from 1 January 1995, it was agreed that a new set of rules of origin would come into force, to be applied only for products included in the list of exceptions of the States Parties.

(c) No centralized authority regulates certificates of origin to determine which products should enjoy the MERCOSUR preferential tariff rates. Currently, either governmental bodies or private sector designates are authorized to issue certificates for specific sectors. Attachment II to the Agreement contains rules and guidelines governing the decisions of these organizations, but what mechanism exists to address questions either about individual decisions or about the consistency of practices among the different groups?

Each State Party has a body responsible for the issuing and application of rules of origin. The body in question is empowered to delegate the issuing of certificates of origin to other public organizations or higher level entities at the national, state or provincial level. An official department is responsible for the supervision of the issuing of certificates of origin.

The Common Market Group, the Trade Commission and the Technical Committee No. 3 "Trade Rules and Disciplines" of this commission, are the bodies of MERCOSUR with the powers and capacity to adopt decisions of any kind in this area. Directive 12/96 of the Council of the Common Market ensures compatibility of procedures between the different certifying bodies and entities.

38. MERCOSUR's opening statement to the Working Party indicated that eligibility for intra-regional trade will be granted to products with a minimum regional content of 60 per cent or which undergo a change in tariff heading within the region. This statement contradicts the 50 per cent regional content requirement stated in MERCOSUR's original response to questions posed by contracting parties, as contained in document L/7540 of 26 October 1994. Has there been any change in the regulations and policies of MERCOSUR members leading to an agreement on a higher regional content requirement? If so, what was the rationale for introducing a stricter requirement?

The Rules of Origin in force during the transition period 1991-1994 were applicable until 31 December 1994 and set down a 50 per cent national content requirement for each State Party of MERCOSUR. The Rules of Origin in force from 1 January 1995 were approved by Decisions 6/94 and 23/94 of the CMC. The national content requirement has risen to 60 per cent, but allows for regional accumulation by considering goods of a MERCOSUR State Party as national products of the other MERCOSUR States Parties for the purposes of this requirement. See reply 37(b).

39. Will MERCOSUR adopt common non-preferential rules of origin and in which sectors will they be applicable? Could a copy be provided?

At the moment MERCOSUR does not have common non-preferential rules of origin. In some countries non-preferential rules of origin are applicable for some sectors.

40. With respect to rules of origin, the work programme concerning harmonizing rules of origin will be completed within three years of initiation of the work as stipulated in Article 9 of the Agreement on Rules of Origin. Can it be taken for granted that the results of the work programme will be reflected in the rules of origin of MERCOSUR? Until such a time, what kind of rules of origin will be applied?

Concerning the possible adoption of non-preferential rules of origin the results of the WTO's Working Party in this area will be taken into account.

The preferential rules of origin are applicable in intra-MERCOSUR trade in accordance with Additional Protocol VIII of the Latin American Integration Association (LAIA) Economic Complementarity Agreement on rules of origin, equivalent to Decisions Nos. 694 and 2394 of the CMC.

41. At the first meeting of the Working Group, the Parties informed that the goods originating from free zones, processing zones, etc. will be subject to the CET with some exceptions. Could the parties specify what these exceptions are?

Goods originating from free zones or export-processing zones are considered to be from outside the area and as such are subject to the payment of the Common External Tariff (CET), except for products exempted from the CET, to which the duty provided for in the lists of exceptions will apply.

42. What will be the rule or origin applicable to goods coming from free zones, processing zones etc.?

Insofar as the Common External Tariff (CET) is levied on the goods, a certificate of origin is not required.

43. Please describe the treatment afforded to products of free-trade zones in MERCOSUR.

See replies 41 and 42.

44. In Articles 3 and 4 of Annex II to the MERCOSUR Agreement, specific requirements of origin are mentioned. Could MERCOSUR explain the developments among member countries on this point?

See reply 38. See Decisions Nos. 6/94 and 23/94. (Annex III Doc. WT/COMTD/1)

45. Articles 3 and 4 of Annex II indicate that State Parties to MERCOSUR may establish/determine "more specific requirements of origin".

(a) Are these published rules?

Yes.

(b) Are they developed by MERCOSUR countries as a comprehensive exercise or are they are the result of ad hoc individual cases which evolve into rules?

MERCOSUR develops rules as a comprehensive exercise, which must be approved by consensus in all cases.

(c) Were these specific requirements notified to WTO?

The list of products with specific requirements of origin currently in effect appears in Decision 23/94, communicated to the WTO (WTO/COMTD/1) which was submitted in December 1994.

46. Is a certificate of origin requested for the importation of all products from third countries or just for certain products? What information, apart from the country of origin, is required? Could a copy be provided?

In cases where an importing country grants a preference on a product, a certificate of origin must be requested for the preference to be obtained. The relevant text has already been submitted in Document WT/COMTD/1, Annex III.

47. The sequence appears to be that the certificate/declaration of origin has to be issued by a producer or exporter, after which it is "certified" by an official department or authorized association. According to Article 13, it is valid for 180 days "from the date of their issue".

(a) Does this mean that the date of certification is not relevant to how long a period it is valid?

The period of 180 days runs from the date on which the certificate of origin is issued by the authorized association. The producer is not authorized to issue this certificate.

(b) If an association delays certification for 179 days after the producer issued it, would that mean that the certificate is only good for one day, the 180th after it was "issued" by the producer?

See replies 47(a) and 47(c).

(c) Articles 11 and 12: is a "declaration" the same thing as a "certification"?

They are not equivalent. The "declaration" is carried out by the producer in order to obtain the certificate and the "certification" is the act of issuing the certificate.

(d) Article 13: does this mean that a certificate of origin can be a "blanket" for all imports of such goods for 180 days? Or does it mean that the certificate is good only for a particular shipment for 180 days?

The certificate of origin is only good for a particular shipment.

48. Rulings/appeals:

(a) How will importers and exporters obtain binding advice or guidance in the form of ruling, as WTO Parties agreed to ensure in Annex II to the WTO Agreement on Rules of Origin?

(b) Is advice from an importer to one country "binding" on another country? if not, is there relief for an importer who has relied on the advice from one MERCOSUR country as to origin when, in the opinion of another MERCOSUR country, it was incorrect?

(c) What avenue is available to importers and exporters to obtain an independent review of an origin determination (e.g. a situation under Article 16), as WTO Parties agree to ensure in Annex II to the WTO Agreement on Rules of Origin?

Since MERCOSUR is an intergovernmental body, both questions and complaints by individuals must be addressed to the joint bodies through national organizations. The four States Parties also have their own legal provisions for challenging administrative actions, which provide a satisfactory guarantee of compliance with the law.

One of the functions of the MERCOSUR Trade Commission is to take decisions on the administration and application of trade policy instruments agreed upon by the States Parties. It can also consider the applications made by individuals to their respective national sections and either settles them directly or transmits them to the Common Market Group for a decision.

V. MEASURES RELATED TO IMPORTS FROM THIRD COUNTRIES

49. Could the Parties explain the situation as regards regulations concerning unfair trade practices? What is their specific coverage? Has any piece of legislation been adopted? If so, please provide copies. If not, when are these expected?

The States Parties of MERCOSUR have ratified the Uruguay Round Agreement on Implementation of Article VI and the Agreement on Subsidies and Countervailing Measures. Common rules are also being developed in the area of unfair trade practices (dumping and subsidies).

50. Could the Parties explain in detail the common set of rules governing unfair trade practices they are working on?

See reply 49. Technical Committee 6 is addressing the issue and has not yet reached this level of definition in its work.

51. Can it be understood that if a State Party invokes safeguard measures, the safeguard will be invoked without excluding trade with other States Parties?

The "Regulations Concerning the Application of Safeguard Measures for Imports Originating from non-member countries of MERCOSUR" was approved through Decision 17/96. Guidelines have been drafted concerning the application and/or improvement of this regulation.

52. Is it correct to understand that one common safeguard will be applied by MERCOSUR? If this is the case, could a copy of the legal instrument and more information on how the safeguard instrument will function, for instance which authority will apply the instrument, how will the injury be determined, etc. be provided? Will a single MERCOSUR instrument also be created for anti-dumping and anti-subsidies proceedings? Could the Parties provide a copy of the common regulations on safeguards in relation to third countries?

See replies 35, 49 and 51.

53. Anti-dumping and countervailing duties:

(a) Could the States Parties to MERCOSUR provide a synopsis of the three documents (mentioned in the response to question 5.3 of document WT/COMTD/1) approved pursuant to Article 4 of the MERCOSUR Agreement? What sort of consultations and exchanges of information on unfair trade practices are envisioned among the Member States?

The documents to which the reply to question 5.3 of document WT/COMTD/1 refers are:

- Decision 3/92: "Procedure for complaints and consultations on unfair trade practices applicable during the transition period". This is an anti-dumping system which was in effect in the MERCOSUR region in the transition period.

- Decision 33/92: Extension of time-limits to meet objectives set out in the Treaty of Asunción for the transition period.

- Decision 63/93: Procedure for the exchange of information in connection with anti-dumping investigations relating to imports from one of the MERCOSUR States Parties. Information is exchanged between MERCOSUR members before or when commencing an investigation. The objective of this exchange is transparency among the partners of MERCOSUR in anti-dumping investigations.

(b) The purpose of anti-dumping and countervailing duty measures is not to prevent or even restrict imports but rather to offset the margin of unfair trade or the injury caused by it. The Parties have stated that common regulations have been approved by MERCOSUR to restrict imports which are the subject of dumping or subsidies by non-Member countries, yet the Parties have also stated that they will only apply domestic legislation to restrict imports resulting from unfair trade practices.

(i) Is it the Parties' intent to harmonize the administration of their domestic legislation in the context of MERCOSUR or to administer a common law? If the latter is the case, when do the Parties foresee the adoption of a common law?

In 1993 the Council of Ministers of MERCOSUR approved Common Regulations on Subsidies and Countervailing Measures which was duly submitted to the GATT Working Party. When the Uruguay Round negotiations were concluded, the common set of rules had to be adapted to the agreements stemming from the Uruguay Round negotiations. For this reason, a new common set of MERCOSUR rules on subsidies is currently being drawn up, which will come into force as soon as they are approved.

MERCOSUR has never had common anti-dumping regulations, but is currently drawing them up. For the moment, each State Party maintains and applies its domestic legislation in the area of

anti-dumping. Subsidies and countervailing measures have been duly notified to the relevant committees of the WTO.

(ii) In the future, do the Parties envision a unified approach to regulating unfair trade from non-Member nations, perhaps administered by a central institution? If so, what might be the central institution?

See reply 49.

(iii) Will dumped or subsidized imports from other MERCOSUR countries be treated any differently from such imports from non-Member countries? Within the context of creating a common market, is it the Parties' intent to abolish unfair trade regulations between Member States?

In accordance with the Protocol for the defence of competition approved by Decision 18/96 of the CMC, MERCOSUR States Parties will continue applying domestic legislation until 2000 in the area of dumping. As from this date, MERCOSUR will have to decide on the application of a common set of rules for the defence of competition.

54. Please make available the relevant anti-dumping and countervailing duties legislation. Please explain also how an anti-dumping proceeding which is carrying out the anti-dumping or countervailing duty investigation and the injury investigation would work? Will a product imported into one MERCOSUR country be subject to an anti-dumping or countervailing duty covering the total territory of the MERCOSUR countries? Will future measures be equally applicable to imports in every MERCOSUR country? In what respect is the situation different during and after the transition period? Does this also imply that existing national anti-dumping and countervailing duty legislation will disappear? If so, by what date? What will happen with national anti-dumping and countervailing measures that are in force?

See replies 49, 50 and 53(b).

55. Can it be understood that, if a State Party invokes anti-dumping or countervailing duty measures, these will be invoked without excluding trade with other States Parties? If this is not the case, can MERCOSUR explain the legal grounds for this?

To date, national provisions are applied which also apply to other countries of MERCOSUR. Anti-dumping and countervailing duties will be applied to the country under investigation in accordance with international usage.

56. Can it be understood that if a State Party invokes balance-of-payments measures, these will be invoked without excluding trade with other States Parties? If this is not the case, can MERCOSUR explain the legal grounds for this?

GATT Article XVIII and the Uruguay Round Understanding will be respected in this regard.

VI. NATIONAL TREATMENT

57. Please confirm that Article 7 has no detrimental effect on the rights of WTO Members.

Article 7 of the Treaty of Asunción has no detrimental effect on the rights of other WTO Members.

VII. MERCOSUR'S EXTERNAL RELATIONS[3]

58. Please confirm that Article 8 does not impair the rights of WTO Members.

Article 8 of the Treaty of Asunción does not impair the rights of other WTO Members.

59. Please describe MERCOSUR's plans regarding the accession of new countries to the Agreement, as well as MERCOSUR plans for other types of association with other countries, short of accession.

Commitments under the LAIA

The purpose of negotiations between MERCOSUR and other member countries of LAIA, including those referred to in Article 25 of the 1980 Treaty of Montevideo, is to replace bilateral agreements in force prior to the formation of the Customs Union with new agreements between MERCOSUR and each country. The progress made towards the conclusion of these new agreements currently varies.

Resolution GMC 9/95 was approved in 1995, authorizing the ad hoc MERCOSUR-LAIA group to pursue negotiations on the extension and renegotiation of both bilateral agreements with other LAIA countries as well as those referred to in Article 25 of the 1980 Treaty of Montevideo.

Since it was not possible to conclude negotiations to enable these agreements to come into effect on 1 January 1996, it was decided to extend the bilateral agreements previously in force until 31 December 1996.

Agreements for free-trade areas have been signed with Chile and Bolivia, with effect from 1 October 1996 for Chile and from 1 March 1997 for Bolivia.

With the other countries of the Andean Group, agreements continue to be negotiated for the creation of free-trade areas. Bilateral agreements which were previously in force have been extended until 30 September 1997.

In the case of Mexico an agreement is being negotiated which will fix tariff preferences.

European Union

In December 1995, MERCOSUR signed with the European Union a Framework Agreement on Interregional Cooperation laying down the basis for the gradual reciprocal liberalization of trade between the two regions in the medium term.

The cooperation agreement underlined both Parties' political will to establish, as an ultimate objective, an interregional association and a gradual reciprocal liberalization of all trade, taking into account the sensitivity of certain products and in accordance with WTO rules. In addition, both Parties initiated regular political dialogue to supplement and reinforce the rapprochement between the European Union and MERCOSUR.

[3]Includes questions under sections 7 (Commitments under LAIA), 8 (Accession) and 12 (MERCOSUR and integration efforts in the western hemisphere) in document WT/COMTD/1.

Free-Trade Area for the Americas

The decision to conclude the negotiations on a Free-Trade Area for the Americas (FTAA) at the latest by the year 2005 was adopted by the Presidents and Heads of State of the Americas at a meeting held in Miami, United States, in December 1994.

Seven Working Groups were set up in June 1995. On 21 March 1996 the second meeting of Ministers for trade took place in Cartagena, Colombia, during which reports from the various groups were received, and the Deputy-Ministers were instructed to direct and evaluate the work of these groups.

The following Working Groups have been set up:

1. Market Access;
2. Customs Procedures and Rules of Origin;
3. Investments;
4. Technical Standards and Barriers to Trade;
5. Sanitary and Phytosanitary Measures;
6. Subsidies, Anti-Dumping and Countervailing Measures;
7. Small Enterprises;
8. Government Procurement;
9. Intellectual Property;
10. Services; and
11. Competition Policy.

Group 12 on the Settlement of Disputes will be established at the meeting of Trade Ministers at Bello Horizonte as agreed in the Ministers' Declaration of Cartagena of 21 March 1996.

MERCOSUR - United States Framework Agreement on Trade and Investment

In June 1991 a framework agreement was signed between the MERCOSUR States Parties and the United States ("Rose Garden Agreement") for trade and investment promotion. Numerous meetings have taken place pursuant to this agreement.

MERCOSUR/JAPAN

A first meeting took place on 1 October 1996 in San Pablo, Brazil. Discussions are under way with a view to arranging a second meeting during the second half of 1997.

MERCOSUR/CIS - RUSSIA

A first meeting with the Commonwealth of Independent States took place in Brasilia on 25 November 1996. The second meeting is planned for the first week in July 1997, in Moscow (2 to 3 July 1997) and St. Petersburg (4 to 5 July 1997).

MERCOSUR/INDIA

A first meeting between the Foreign Ministers of MERCOSUR and India took place in New York during the Fifty-First General Assembly of the United Nations.

MERCOSUR - ANZCERTA ("Australia-New Zealand Closer Economic Relations Trade Agreement") Talks

MERCOSUR is developing closer links with Australia and New Zealand, the ANZCERTA member countries. A further meeting is scheduled to consider ways of strengthening economic relations between the two regions.

MERCOSUR/PANAMA

A first meeting is planned during the XXV meeting of the Common Market Group due to take place in Asunción on 23 April 1997.

VIII. SETTLEMENT OF DISPUTES[4]

60. Please provide a complete description of the MERCOSUR dispute settlement system. Please explain the relationship of the Brasilia Protocol to the dispute settlement system.

The MERCOSUR Dispute Settlement System is set out in Annex III of the Treaty of Asunción; the Protocol for the Settlement of Disputes in the Common Market of the South: Brasilia Protocol (document WT/COMTD/1); and the Additional Protocol to the Treaty of Asunción on the Institutional Structure of MERCOSUR: Ouro Preto Protocol, which refers to the systems of dispute settlement in the Brasilia Protocol, effective in this area. These documents were submitted to the WTO Secretariat in due course.

61. Is international arbitration an integral part of the dispute settlement process?

No, however the Protocol of Brasilia provides for the establishment of an ad hoc arbitration tribunal for the settlement of disputes between States Parties when direct negotiation and mediation by the GMC and its experts have failed.

62. Is MERCOSUR giving any consideration to the creation of a panel process, similar to that used in the WTO?

See reply 60. Arbitration is provided for in the Brasilia Protocol, but the possibility of creating a panel process is not.

IX. TRADE CREATION/TRADE DIVERSION[5]

63. Now that MERCOSUR has been in operation for nearly a year, can the States Parties please provide preliminary data on the trade creation and trade diversion effects of MERCOSUR?

Statistical data show that the implementation of MERCOSUR was an integral part of the unilateral processes of trade liberalization carried out by the States Parties. In the period between 1990, the year when the Treaty of Asunción was signed, and 1995, together with a considerable increase in intraregional trade there was also a significant growth in imports by countries of MERCOSUR from third country suppliers, which grew by 120 per cent (from US$25 billion to US$55.1 billion). That

[4]Section 9 of document WT/COMTD/1.

[5]Section 11 in document WT/COMTD/1.

is an annual average rate of over 20 per cent, more than double the average growth of world trade during that period.

At the same time, the participation of the economically more dynamic regions as markets for imports from MERCOSUR increased, which is evidence of the increasing economic efficiency of the regional grouping. In 1995, for example, the item "machinery and tools" accounted for a larger share of Brazilian exports to NAFTA than to MERCOSUR (21 per cent against 18 per cent). The same was also true with respect to iron and steel products (13.2 per cent against 7.3 per cent).

X. SERVICES[6]

64. In Article I of the Treaty establishing MERCOSUR, the Parties state that their goal is the "free movement of goods, services and factors of production…". However, the Agreement does not address liberalization in services trade.

(a) How do the MERCOSUR States Parties plan to address the question of free trade in services?

The MERCOSUR States Parties have decided to address the question of trade in services through the study of a special protocol which will form part of the texts instituting the common market among the four States Parties. In order to maintain political and legal consistency, MERCOSUR has considered it appropriate to use as a model the General Agreement on Trade in Services (GATS) adopted by the WTO. However the MERCOSUR Agreement Project is adjusting its articles in line with its own ends, which is the formation of a regional common market.

(b) Will coverage be universal; if not, which sectors will be excepted?

The MERCOSUR draft agreement in the area of trade in services has universal coverage and does not exclude any services sector in principle.

(c) Will the same rules apply whether services providers are established or cross-border? If not, please list the difference.

The MERCOSUR draft agreement includes the four modes of delivery of services envisaged in the GATS, thus including services which are already established (commercial presence) and cross-border provision.

(d) Will this liberalization provide for the elimination of substantially all discrimination?

Yes. The MERCOSUR draft agreement proposes the elimination of all forms of discrimination in trade in services among the States Parties within a 10 year time-limit envisaged in the liberalization programme.

(e) What is the planned timetable for liberalization in services?

See reply 64(d).

[6]Section 13 in document WT/COMTD/1.

(f) Can MERCOSUR member States indicate whether such liberalization will raise the overall level of barriers for contracting Parties not members of the MERCOSUR Agreement?

The Agreement Project will not raise the overall level of regulations (barriers) for WTO Members which are not part of MERCOSUR.

(g) Do the MERCOSUR countries provide national treatment in some or all services sectors to services providers of other MERCOSUR countries? If so, what is the provision or decision by which this treatment is offered? Is such national treatment extended to service providers from third countries?

The draft agreement provides for national treatment in accordance with the GATS model. For the rest, see reply 64(f).

(h) Do the MERCOSUR States Parties have any plans to harmonize professional standards, for example, in the accounting, legal, engineering and medical fields?

The harmonization of professional standards within MERCOSUR is currently being examined at ministerial level, and in working groups and specialized meetings with contributions from different professional associations. The complexity of rules, educational systems, special sets of rules for exercising a profession and others means that extensive and in-depth negotiations are required to identify areas of agreement and to agree on their implementation in the territories of the MERCOSUR States Parties.

XI. OTHER AREAS[7]

65. Articles 38 and 42 of the Protocol of Ouro Preto indicate that all MERCOSUR decisions and findings are binding on all four Parties to the Agreement.

(a) Is this correct? If so, how is this provision enforced?

This is correct. When rules are incorporated into domestic law in accordance with Article 42 of the Protocol of Ouro Preto, the domestic legislation is enforced through the courts of each State Party.

(b) Please provide an update on the 11 working groups that have been established by MERCOSUR. What progress has been made in each of the groups?

The information requested is available in the Secretariat for consultation by interested delegations.[8]

66. Since Argentina has exempted MERCOSUR members from the statistical tax on imports, we would appreciate an explanation of the new cost calculations for assessing this tax on non-MERCOSUR imports.

[7]Section 14 in document WT/COMTD/1.

[8]This documentation is available in the Secretariat (Office 3006) for consultation by interested delegations.

For reasons of transparency, since the question refers to one of the member States, MERCOSUR reiterates that the statistical tax applied by Argentina is totally consistent with the GATT 1994.

67. Could the Parties provide a complete listing of the export duties (or measures having equivalent effect) presently in force on raw hides and skins on "wet-blue products" and on finished leather? Is there a proposal for the elimination of these charges and if so could the Parties provide details?

Through Resolution 154/96 an Ad Hoc Leather Group was created under Working Group 7 "Industrial Policy", in order to assess the situation of the chain of production of leather and footwear in MERCOSUR. Working Group 7 will submit a proposal to the GMC for the treatment of the sector of leather and footwear manufacture, from the standpoint of the development of trade within and outside MERCOSUR. The proposal will encompass what is laid down in Resolution GMC 154/96.

Argentina has export duties on leather in accordance with Resolution ME 722/95, which is available in the Secretariat for consultation by interested delegations.

Paraguay does not have export duties on any product.

Under Decree 456/84, Uruguay currently has export duties on the leather products mentioned in Decree 432/83, which is available in the Secretariat for consultation by interested delegations.[9]

68. We understand that MERCOSUR has designated specific points of entry into each country to facilitate the movement of goods, particularly agricultural products. Could you explain how this designated port system operates? Is it open to imports from third countries? What approval documents are used in this system, if any, and can you provide a copy of that approval document?

There is no port selection system in the sense of directing trade. Resolution 8/94 of the GMC specifies the border points that are the most important operationally, where there would be an integrated control mechanism.

69. Please describe MERCOSUR's plans with regard to creation of a common automotive regime?

See reply 5.

70. Several MERCOSUR countries have instituted or are considering instituting trade-related investment measures, primarily in the automotive area. Argentina's investment regime requires a specified amount of local content, Uruguay provides an import duty preference on finished vehicles to local car assemblers and spare parts producers that export their own products. The effect of such distortionary measures was emphasized by the recent appeal of Brazil to the Committee on Balance-of-Payments Restrictions to justify new TRIMs in response to existing MERCOSUR TRIMs.

(a) Since all inconsistent TRIMs properly notified to the TRIMs Committee by developing countries must be eliminated within five years, is MERCOSUR considering the earlier removal of TRIMs to eliminate the problems caused by such distortionary measures?

[9]This documentation is available in the Secretariat (Office 3006) for consultation by interested delegations.

Decision 29/94 of the CMC provides for the establishment of a common regime as from 1 January 2000, which will be compatible with WTO rules.

(b) In addition to the automotive sector, do the MERCOSUR Parties have other inconsistent measures notified to the TRIMs Committee under the transitional arrangements? What are their intentions with respect to the elimination of such measures?

No.

71. Concerning the recently adopted MERCOSUR Agreement on promotion and protection of investment, how are bilateral agreements previously signed by a MERCOSUR member with a third country affected?

Bilateral agreements previously signed by a State Party of MERCOSUR with third countries will not be affected.

72. What kind of competence does MERCOSUR as such have in the area of intellectual property rights?

MERCOSUR does not have supranational bodies and therefore all its decisions are taken at intergovernmental level, for which the formula of additional protocols to the Treaty of Asunción is adopted. Issues related to intellectual property rights are handled by Working Group No. 7. Working Group No. 7 submits its results for examination by the GMC, for approval by the Council of the Common Market.

73. Which precise action has been taken in this area up to date (please provide copies of any relevant documents such as proposals for regional treatment of intellectual property rights.)

A "Protocol of Harmonization of Rules on Intellectual Property in MERCOSUR in the Area of Trade Marks, Indications of Source and Appellations of Origin" has been agreed. It was ratified by the Republic of Paraguay, as Law No. 912, on 1 August 1996.

In order for this Protocol to enter into force, ratification is required by two States Parties of MERCOSUR.

In the case of Brazil, the protocol is at the legislative stage. It is anticipated that the Protocol will be approved in the next six months.

<u>Questions applicable to both the Trade Mark and Copyright Agreements</u>

74. What is the status of this Agreement?

See reply 73.

(a) Have its form and content been finalized?

The Protocol on "Trade Marks, Indications of Source and Appellations of Origin" has been finalized in terms of its form and content, but for the most part refers to national legislations.

(b) Which MERCOSUR countries have accepted it to date?

The Protocol was approved by the Council of the Common Market of the member countries of MERCOSUR, and has been submitted for ratification to the different parliaments. To date it has been legally ratified in the Republic of Paraguay.

(c) If it has not yet been signed by member States, what is the schedule for doing so?

There is no timetable. It depends on the time taken by procedures in each of the parliaments.

75. Once it has been signed by member States, what status will it have in their domestic legal systems?

In accordance with their particular legal systems, once the international agreements are signed by the State Parties, the procedure of Article 42 of the Protocol of Ouro Perto will be followed. A text explaining the integration of MERCOSUR rules into the legal systems of the States Parties is available in the Secretariat for consultation by interested delegations.[10]

(a) Will it have to be ratified by their legislatures?

Yes.

See reply 74(c).

(b) Will additional legislation be required to bring it into force on a national level? If so, what is the likely schedule, form and content of that legislation?

See reply 75.

(c) Will this system have retroactive effect?

None of the legislation provides that the laws will have retroactive effect.

76. Why has an Agreement of this type been pursued?

(a) What perceived deficiencies in the legal regimes of the member States are being addressed by this Agreement?

(b) What perceived inconsistencies in the legal regimes of the member States are being addressed by this Agreement?

As a customs union MERCOSUR has perceived the need to have harmonized legislation on intellectual property. It has chosen to approach the issue using a step-by-step methodology.

The "Protocol on Trade Marks, Indications of Source and Appellations of Origin" is the first step in these negotiations.

In their attempts to harmonize, the States Parties are taking into account prevailing international agreements in the area.

[10]This documentation is available in the Secretariat (Office 3006) for consultation by interested delegations.

77. What treatment will foreign nationals be granted under this regime?

(a) Will national treatment or most-favoured-nation treatment be provided?

(b) If not, what must foreign nationals do to get this type of protection?

The member countries of the Paris Union and the WTO are covered by national treatment (Article II) under the Paris Convention and of Article III of the TRIPS Agreement. As a consequence, the "Protocol on Trade Marks, Indications of Source and Appellations of Origin" lays down this principle in its Article III.

78. Will any administrative mechanism be established to carry out these Agreements and any other future arrangements contemplated by them?

MERCOSUR does not have an administrative body which enforces its decisions. When individuals find that the rights conferred by agreements reached within the framework of MERCOSUR have been impaired, they must submit their complaint to the National Section of the Trade Commission, and the dispute will be settled in accordance with the provisions of Article 25 of the Protocol.

79. When must the provisions of these Agreements be fulfilled?

Article 26 provides as follows: "the present Protocol, which forms part of the Treaty of Asunción, will come into force for the first two States which ratify it 30 days after the deposit of the second instrument of ratification. For the other signatories it will come into force 30 days after the deposit of their instruments of ratification in the order in which they were deposited".

Questions concerning the Agreement on Trade Marks

80. Why does Article 6 not specifically provide that personal names, numbers and letters are within the scope of trade mark subject matter, as required by Article 15.1 of the TRIPS Agreement?

See reply 77.

81. On what grounds will an application for a trade mark be denied if it "affects the rights of third parties", as set forth in Article 9.3? Would this preclude the registration of a mark in one MERCOSUR country if someone had made some minor amount of use of the mark in another MERCOSUR country? What if the mark was well known and the prior use was in bad faith? In any event, what purpose is this provision intended to promote?

The provisions of Article 9 of the "Protocol on Trade Marks, Indications of Source and Appellations of Origin" seek to safeguard the rights of persons who, in good faith, are using a trade mark within the member countries of MERCOSUR peacefully and in an uninterrupted manner. This does not prevent the nullity of a trade mark applied for in bad faith which demonstrably affects the rights of third parties, and is in keeping with Article 17 of the TRIPS Agreement.

82. Why does Article 9.4 provide that an application will be denied if the mark is likely to cause confusion with an existing mark and require that the applicant must know or ought to know that his mark is similar to the existing mark? Should it not be enough that there is a likelihood of confusion to deny registration? Additionally, why does this provision only relate to marks belonging to owners that are "established or living in any of the signatory States"? Is this not a clear violation of national treatment as required by Article 3 of the TRIPS Agreement?

Article 9.4 provides that the States Parties will in particular ban the registration of a symbol which imitates or reproduces as a whole or in part a mark which the applicant could clearly not be unaware of as belonging to an owner established or living in any of the States Parties and which could create confusion or association. This Article only concerns a mark which could be considered well-known within each State Party.

Protection given to well-known marks as such was not addressed in the Agreement: for this purpose reference was made to what is set out in the respective domestic legislations.

83. What "market" is referred to in Article 13? Does this mean that as long as the good bearing the trade mark is produced in the "market", however defined, it can be imported in parallel into a MERCOSUR country?

Article 13 provides that "the registration of a trade mark cannot prevent the free movement of trade marked products lawfully introduced, leaving it to national legislations to decide the scope with respect to the exhaustion of intellectual property rights, so that the market will be taken into account in accordance with what is provided for in each legislation".

84. By what time are all MERCOSUR countries expected to adhere to the Nice Agreement, pursuant to Article 18?

Article 18 provides that: "the States Parties which do not use the international classification of products and services for the registration of marks established by the 1957 Nice Agreement, or its current revisions and updates, undertake to adopt the necessary measures for the purposes of its application".

See reply 77.

85. What type of plant-related protection is contemplated under Article 21, and what is the deadline for the establishment of such protection?

86. What type of "effective measures" are contemplated under Article 22, and what is the deadline for the establishment of such measures?

87. What other Agreements are contemplated under Articles 23 and 24? When would such arrangements or agreements be developed/concluded?

Meetings of Working Group No. 7 to deal with these issues have not yet begun.

Questions concerning the Copyright Agreement

88. Under what grounds will full national treatment and most-favoured-nation treatment be granted to nationals of non-MERCOSUR countries? Does the answer to this question differ based on the type of protection at issue (i.e. TRIPS-level protection versus TRIPS-plus-level protection)? How does this relate to the national treatment and most-favoured-nation treatment required by Articles 3 and 4 of the TRIPS Agreement?

89. What level of proof will registrations from non-MERCOSUR countries be granted, in light of Article 6?

90. What is the intended purpose of Article 7? Would this permit under any circumstances the grant of compulsory licences? If so, would that not conflict with Article 13 of the TRIPS Agreement?

91. Does Article 8 permit the parallel importation of works from one MERCOSUR country to another? What treatment will legitimate works created outside MERCOSUR be granted? What is the relationship of this provision with Article 18? What is covered by the concept of "commercializing"? For example, can people show videos to paying customers if they legitimately purchase the videos?

92. What is the meaning of the last provision in Article 13? How will collaborators be able to "dispose freely" of the part of the audiovisual work that constitutes their personal collaboration? Does this supersede contractual obligations with the producer or employers?

93. How will MERCOSUR countries be able to assure employers that works produced by their employees can be used in the normal course of commerce, which in the area of software involves the regular modification of works created by employees, usually without their consent? Would establishing inalienable and unwaivable model rights per Article 14 not run counter to this goal?

94. Does Article 16 not inherently conflict with the language of Article 14? What variations could be placed on total inalienability and waivability?

95. Will placing a copy of a work on the market exhaust the rental right established in Article 17(e)?

96. Under what circumstances would a person be permitted to make personal-use copies of works per Article 19. The United States believes that personal use exceptions inherently conflict with the normal exploitation of copyright and cause unjustified harm to the legitimate interests of the right holder, in the absence of significant clarification of what acts are at issue.

97. How will the equitable remuneration established by Article 21 be collected? Will it be granted to nationals of non-MERCOSUR countries on a national treatment basis? If not, what criteria will be applied?

98. In Article 22, what does "maintaining essential features" mean?

99. What is the term of protection for computer programs? For works created in the course of an employment relationship?

100. Will neighbouring and related rights be granted to nationals of non-MERCOSUR countries on the basis of national treatment, including rights to equitable remuneration?

101. Will collecting societies be optional? Will right holders be able to choose the society they want to join?

102. What measures are contemplated by Article 43 and when must they be implemented?

103. What other measures are contemplated by Article 44?

GENERAL COMMENT TO QUESTIONS 88 TO 103:

The Agreement on Copyright and Related Rights was not approved by the Council of the Common Market, and as a consequence was returned to Working Group No. 7 for further study; all the Articles of the Agreement are thus subject to review.

XII. TRANSPARENCY IN IMPLEMENTING THE AGREEMENT[11]

104. Are MERCOSUR rules and legal documents available from a single source such as the MERCOSUR Secretariat in Montevideo, Uruguay? Do MERCOSUR decisions generally require authorization by the respective legislatures of the four countries? What types of decision can be implemented without legislative approval? What mechanisms exist to enforce the full implementation of MERCOSUR decisions?

All the rules and legal documents of MERCOSUR are available from the Administrative Secretariat of MERCOSUR. They will be available on the Internet very shortly. See reply 75.

105. What central institutions exist to handle the day-to-day operations of MERCOSUR, for example, the issuance of certificates of origin?

The relevant ministries and other bodies of the different countries play their part in accordance with their responsibilities.

106. As was agreed in paragraph 11 of the Understanding on the Interpretation of Article XXIV of the GATT 1994, customs unions and constituents of free-trade areas shall report periodically on the operation of the relevant agreement. How does the MERCOSUR comply with this agreement?

All the Decisions and Resolutions related to the operation of MERCOSUR are regularly notified through the Pro-Tempore Chairman.

[11]Section 15 in document WT/COMTD/1.

ADDITIONAL QUESTIONS RAISED BY MEMBERS

The following questions are submitted to MERCOSUR as agreed in the meeting of the Committee on Regional Trade Agreements on 20 September 1996. The headings refer to document WT/COMTD/1/Add.4.

The European Communities reserve the right to put forward additional questions.

I. ELIMINATION OF DUTIES, CHARGES AND OTHER RESTRICTIONS APPLIED IN INTRA-MERCOSUR TRADE

107. Can the States Parties to the MERCOSUR identify the products that are subject to the procedures for the adaptation to the trade liberalization programme (i.e. products for which intra-MERCOSUR trade has not yet been liberalized) and indicate the schedule for liberalization? Which is the intra-MERCOSUR trade volume for these products?

See reply 3.

108. According to Article 12 of Annex I on the Agreement on MERCOSUR concerning the trade liberalization programme, the provisions of this Annex do not apply to the agreements on agriculture concluded in the framework of the 1980 Treaty of Montevideo. Can the States Parties' to the MERCOSUR indicate what this means in concrete terms?

The precise meaning of this provision was to safeguard pre-existing agreements between the MERCOSUR States Parties during the transition period (21 March 1991 to 31 December 1994).

109. The MERCOSUR decision in order to harmonize the Technical Standards among their members must be compatible with the WTO Agreements, in particular the TBT Agreement. Has MERCOSUR envisaged to adopt this harmonized technical standards based on international standards and recommendations as far as possible?

Yes, MERCOSUR intends as far as possible to adopt harmonized measures on the basis of international standards and recommendations.

110. The harmonization process of Technical Standards foreseen by MERCOSUR does not talk about the acceptance of conformity assessment of products among its members. Have the member states of MERCOSUR foreseen any mechanism for the mutual recognition of conformity assessment of products in order to avoid duplication?

In the negotiating guidelines for Working Group No. 3 "Technical Regulations", a period of 18 months as from 1 December 1995 is envisaged for finishing work relating to this subject.

III. THE ESTABLISHMENT OF A COMMON EXTERNAL TARIFF AND THE ADOPTION OF A COMMON TRADE POLICY IN RELATION TO THIRD STATES OR GROUPS OF STATES

111. Can the States Parties to the MERCOSUR identify the products not yet covered by the (CET) and indicate the regime(s) in force for these products?

See answer 22(a).

112. What is the time-schedule for the elimination of the exceptions to the CET?

See replies 2 and 24.

113. While it is envisaged in Article XXIV that countries may break tariff bindings in the process of forming a customs union, there are specific procedures that must be followed to notify the breach of a binding, to negotiate compensation with affected countries and to replace the tariffs schedules of individual countries with a schedule for the new customs union. In the event that any MERCOSUR Party has broken its tariff bindings in the process of adopting the MERCOSUR CET, when is its intention to notify these modifications to bound tariffs properly, provide the required trade and tariff data and begin compensation negotiations?

See document WT/COMTD/1/Add.5/Rev.1 and reply 29(b).

IV. RULES OF ORIGIN

114. What is the tariff treatment programme for third country goods transiting one MERCOSUR member and entering another during the present transition period until full convergence on the CET is achieved in 2006?

Products from third countries in transit through one MERCOSUR member country and destined for another will pay the duty in the destination country of final consumption.

V. MEASURES AFFECTING IMPORTS FROM THIRD COUNTRIES

115. Please indicate the state of progress in the establishment of a common safeguard instrument, and, when possible, supply a copy of the legal instrument as well as information on how the safeguard instrument will function, for instance which authority will apply the instrument, how will the injury be determined etc.?

See reply 51 and Decision 17/96.

116. Do the MERCOSUR States Parties presently exclude other MERCOSUR members in the application of safeguard measures under Article XIX of GATT 1994, or is it the intention of the MERCOSUR State Parties to exclude the application of safeguard measures within the MERCOSUR?

See reply 51 and Decision 17/96.

117. Please indicate the state of progress in the establishment of legislation on anti-dumping and countervailing duties and explain how an anti-dumping proceeding would work: which authority is carrying out the AD/CVD investigation and the injury investigation? Will a product imported in on MERCOSUR country be subject to an AD/CVD investigation covering the total territory of the MERCOSUR countries? Will future measures equally be applicable to imports in every MERCOSUR country? In what respects is the situation different during the transition period and after the transition period? Does this also imply that the existing national AD/CVD legislation will disappear? If so, by what date? What will happen with national AD/CVD measures in force?

See replies 49, 50 and 53(b).

X. SERVICES

118. The Ad Hoc Services Group is to prepare a Services Framework Agreement under Decision 20/95. What are the state of play, expectations and likely timetable of the MERCOSUR Services Framework Agreement?

See reply 64. The Ad Hoc Services Group intends to submit the trademark agreement on services to the CMC before 30 September 1997.

XI. OTHER AREAS

119. Could the States Parties to the MERCOSUR inform of the situation and any possible developments with respect to export duty on leather (by Argentina, Brazil and Uruguay)?

See reply 67.

Agriculture

120. The MERCOSUR States Parties have stated (in document WT/COMTD/1/Add.2 question 3) that each country is responsible for implementing its commitments under the WTO Agreement on Agriculture. Given that the MERCOSUR is a customs union, could the States Parties to the MERCOSUR indicate if the market access concessions contained in each individual Schedule of the Parties and agreed upon under the Uruguay Round negotiations on Agriculture will be merged into one Schedule common to the States Parties to the MERCOSUR?

Yes, as a customs union MERCOSUR intends, at the appropriate time, to substitute the four national lists with a common MERCOSUR list.

121. Under the Agreement on Agriculture, Brazil and Uruguay have the possibilities to grant direct export subsidies. Will the trade with other parties of MERCOSUR be considered an export for that purpose?

Decision 10/94 of the CMC establishes the form of application and use of incentives in international trade.

While Uruguay has the option to grant direct export subsidies under the WTO Agreement on Agriculture, it is not making use of this option.

122. Export taxes are applied by some parties of MERCOSUR, e.g. for soybeans. Are such taxes to be eliminated or to be harmonized?

MERCOSUR has still not determined a policy on this matter.

Trade Mark and Copyright Agreement

Other than questions 74 to 103 of WT/COMTD/1/Add.4, the MERCOSUR States Parties are requested to reply to the following questions:

123. What kind of protection of geographical indications is contemplated by MERCOSUR under the Decision on Trademarks and Geographical Indications (CMC 8/95)? Please supply a copy of CMC 8/95. Is the protection of geographical indications subject to national treatment and MFN clause, as provided for in Articles 3 and 4 of TRIPS? How does it relate with the protection granted under national legislation of each MERCOSUR Member State?

See replies 77 to 80.

124. Is CMC 8/95 directly applicable in each of the MERCOSUR States, or is implementing or amending legislation necessary? If such implementing or amending legislation is necessary, please supply information on the state of advancement of such legislation or a time schedule for such legislation.

See replies 77 to 80.

125. Do the MERCOSUR States Parties envisage the adoption of a similar agreement concerning copyright? If yes, please supply a copy of the draft agreement and indicate the time frame for the adoption of this decision. Is this drafting of this decision undertaken in light of the relevant provisions of the TRIPS Agreement, and in particular those of Section 1 of Part II on Copyright and Related Rights?

See reply 88.

126. Do the MERCOSUR States Parties envisage the extension of this type of decision to other areas of intellectual property rights?

See reply 76.

127. Do the MERCOSUR States Parties have, or do they intend to adopt, measures to effectively combat counterfeit and imitation copyrights?

In accordance with Article 22 of the Protocol, the States Parties shall implement effective measures to curb commercial production of pirated or falsified products.

128. Could the MERCOSUR representative please provide a brief history of the harmonization of SPS measures in MERCOSUR and an overview of the current harmonization process. For example, have committees been established and if yes, what are these committees and how often do they meet? Once a standard is harmonized, is implementation mandatory or are derogations permitted and under what circumstances? How many standards have been harmonized?

See replies 11(c) and 13. The rules harmonized and approved by MERCOSUR must be implemented by the States Parties.

129. Does the harmonization process apply to all commodities (plant, animal and food) and for all types of SPS measures (human, animal and plant health and safety)? If not, what standards are being harmonized and why?

In the review carried out by Working Group 8 "Agriculture", sanitary and phytosanitary rules which could be harmonized have been identified both for plant products as for animal products. In the harmonization process carried out by Working Group 8, the following rules have so far been harmonized:

130. Does the harmonization process include only those standards which apply to imports or are domestic standards being harmonized as well? How does the harmonization of measures impact on trade between Member States? Are products being traded intra-MERCOSUR subject to controls or is there free movement of product between Member States? How are products from third countries being treated?

Harmonized rules are applied to imports from within and outside MERCOSUR. The criteria established in these rules facilitate the movement of products.

131. The concept of appropriate level of sanitary and phytosanitary protection is found in the SPS Agreement of the WTO. The Agreement recognizes that a country has the right to establish its appropriate level of protection. How is this concept being applied in MERCOSUR?

See reply 11(c).

132. When countries establish SPS measures to provide their appropriate level of protection the Agreement encourages the adoption of international standards. What consideration does MERCOSUR give to the standards developed by the international organizations identified by the WTO SPS Agreement?

See replies 11(c) and 11(f).

133. When a SPS measure is not based on a international standard, guideline or recommendation, a risk assessment must be completed? Who completes the risk assessments for harmonized standards? Does each country complete a risk assessment?

Sanitary and phytosanitary measures are adapted to rules and guidelines set out by international organizations (Rome Plant Protection Convention and the International Office of Epizootics).

134. Are the standards harmonized by MERCOSUR detailed in nature or are they guidelines? Are MERCOSUR Member States permitted to develop equivalent measures? Does each Member State have the latitude to formulate their own import requirements which would reflect the characteristics of its own agriculture situation (inspection system, pest and disease status etc.)?

Rules harmonized in MERCOSUR are of a specific nature and of mandatory application in each one of the member countries. With regard to the competencies of these States Parties, they have the latitude to formulate their own import requirements, through consultation.

135. We understand that for existing harmonized commodities MERCOSUR approval of changes to import requirements is necessary. Does this approval lead to delays in the establishment of import requirements?

Any change in the harmonized rules must be approved by the executive organ of MERCOSUR (CMC). Imports will have to comply with the requirements in force at the time of the operation.

136. How does the harmonization process impact on the existing SPS measures for imports from third countries? Are these bilateral agreements amended, where required, when standards are harmonized? If yes, could MERCOSUR explain the amendment process? Could the situation arise where MERCOSUR is unable to establish a harmonized import requirement? If yes, would the import requirement be established by the Member States? If no, how Member States would be able to fulfil their WTO commitments as specified in the SPS Agreement, Article 2(3), and justify that their SPS measure is not used as a barrier to trade in such way that constitute a barrier to trade?

See reply 11(c).

137. During the harmonization process does MERCOSUR or individual countries notify the WTO, were required, of changes to SPS measures as required by the SPS Agreement?

See reply 11(h). In the case of non-harmonized rules, it will be the responsibility of each State Party to notify them to the WTO.