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Additional Protocol to the Treaty of Asunción on the Institutional Structure of MERCOSUR

Protocol of Ouro Preto

(Ouro Preto - December 17, 1994)

The Argentine Republic, the Federative Republic of Brazil, the Republic of Paraguay and the Eastern Republic of Uruguay, hereinafter referred to as the "States Parties",

In compliance with the provisions of Article 18 of the Treaty of Asuncion of 26 March 1991.

Aware of the importance of the progress made and of the introduction of the customs union as a stage in the establishment of a common market;

Reaffirming the principles and objectives of the Treaty of Asuncion and mindful of the need to give special consideration to the less developed countries and regions of Mercosur.

Mindful of the forces for change inherent in any integration process and the consequent need to adapt the institutional structure of Mercosur to the transformations that have taken place.

Recognising the outstanding achievements of the existing bodies during the transition period,

Hereby agree as follows:

Chapter I - Structure of Mercosur

Article 1

The institutional structure of Mercosur shall comprise the following organs:

- I. The Council of the Common Market (CCM);
- II. The Common Market Group (CMG);
- III. The Mercosur Trade Commission (MTC);
- IV. The Joint Parliamentary Commission (JPC);
- V. The Economic-Social Consultative Forum (ESCF);
- VI. The Mercosur Administrative Secretariat (MAS).

Sole paragraph - Auxiliary organs necessary to attain the objectives of the integration process may be established, under the terms of this Protocol.

Article 2

The following are inter-governmental organs with decision-making powers: the Council of the Common Market, the Common Market Group and the Mercosur Trade Commission.

Section I: Council of the Common Market

Article 3

The Council of the Common Market is the highest organ of Mercosur, with responsibility for the political leadership of the integration process and for making the decisions necessary to ensure the achievement of the objectives defined by the Treaty of Asuncion and the final establishment of the common market.

Article 4

The Council of the Common Market shall consist of the Ministers for Foreign Affairs and the Ministers of the Economy of the States Parties, or their equivalents.

Article 5

The Presidency of the Council of the Common Market shall be rotated among the States Parties, in alphabetical order, for periods of six months.

Article 6

The Council of the Common Market shall meet whenever it deems appropriate, and at least once every six months, with the participation of the Presidents of the States Parties.

Article 7

The meetings of the Council of the Common Market shall be co-ordinated by the Ministers for Foreign Affairs, and other ministers or ministerial authorities may be invited to participate.

Article 8

The following are duties and functions of the Council of the Common Market:

- I. To supervise the implementation of the Treaty of Asuncion, its protocols, and agreements signed within its context;
- II. To formulate policies and promote the measures necessary to build the common market;
- III. To assume the legal personality of Mercosur;
- IV. To negotiate and sign agreements, on behalf of Mercosur, with third countries, groups of countries and international organisations. These functions may be

- delegated, by express mandate, to the Common Market Group under the conditions laid down in paragraph VII of Article 14;
- V. To rule on proposals submitted to it by the Common Market Group;
 - VI. To arrange meetings of ministers and rule on agreements which those meetings refer to it;
 - VII. To establish the organs it considers appropriate, and to modify or abolish them;
 - VIII. To clarify, when it considers necessary, the substance and scope of its decisions;
 - IX. To appoint the Director of the Mercosur Administrative Secretariat;
 - X. To adopt financial and budgetary decisions;
 - XI. To approve the rules of procedure of the Common Market Group.

Article 9

The rulings of the Council of the Common Market shall take the form of Decisions which shall be binding upon the States Parties.

Section II: The Common Market Group

Article 10

The Common Market Group is the executive organ of Mercosur.

Article 11

The Common Market Group shall consist of four members and four alternates for each country, appointed by their respective governments, who must include representatives of the Ministries of Foreign Affairs, the Ministries of the Economy (or their equivalents) and the Central Banks. The Common Market Group shall be co-ordinated by the Ministries of Foreign Affairs.

Article 12

When drafting and proposing specific measures in the course of doing its work, the Common Market Group may, whenever it deems appropriate, call on representatives of other organs of government or of the institutional structure of Mercosur.

Article 13

The Common Market Group shall hold ordinary or extraordinary meetings, as often as necessary, in accordance with the terms of its rules of procedure.

Article 14

The following are duties and functions of the Common Market Group:

- I. To monitor, within the limits of its competence, compliance with the Treaty of Asuncion, its Protocols, and agreements signed within its framework;
- II. To propose draft Decisions to the Council of the Common Market;

- III. To take the measures necessary to enforce the Decisions adopted by the Council of the Common Market;
- IV. To draw up programmes of work to ensure progress towards the establishment of the common market;
- V. To establish, modify or abolish organs such as working groups and special meetings for the purpose of achieving its objectives;
- VI. To express its views on any proposals or recommendations submitted to it by other Mercosur organs within their sphere of competence;
- VII. To negotiate, with the participation of representatives of all the States Parties, when expressly so delegated by the Council of the Common Market and within the limits laid down in special mandates granted for that purpose, agreements on behalf of Mercosur with third countries, groups of countries and international organisations. When so mandated, the Common Market Group shall sign the aforementioned agreements. When so authorised by the Council of the Common Market, the Common Market Group may delegate these powers to the Mercosur Trade Commission;
- VIII. To approve the budget and the annual statement of accounts presented by the Mercosur Administrative Secretariat;
- IX. To adopt financial and budgetary Resolutions based on the guidelines laid down by the Council;
- X. To submit its rules of procedure to the Council of the Common Market;
- XI. To organise the meetings of the Council of the Common Market and to prepare the reports and studies requested by the latter;
- XII. To choose the Director of the Mercosur Administrative Secretariat;
- XIII. To supervise the activities of the Mercosur Administrative Secretariat;
- XIV. To approve the rules of procedure of the Trade Commission and the Economic-Social Consultative Forum.

Article 15

The decisions of the Common Market Group shall take the form of Resolutions which shall be binding upon the States Parties.

Section III: The Mercosur Trade Commission

Article 16

It shall be the task of the Mercosur Trade Commission, a body responsible for assisting the Common Market Group, to monitor the application of the common trade policy instruments agreed by the States Parties in connection with the operation of the customs union, as well as to follow up and review questions and issues relating to common trade policies, intra-Mercosur trade and third countries.

Article 17

The Mercosur Trade Commission shall consist of four members and four alternates for each State Party and shall be co-ordinated by the Ministries of Foreign Affairs.

Article 18

The Mercosur Trade Commission shall meet at least once a month, or whenever requested to do so by the Common Market Group or any of the States Parties.

Article 19

The following are duties and functions of the Mercosur Trade Commission:

- I. To monitor the application of the common trade policy instruments both within Mercosur and with respect to third countries, international organisations and trade agreements;
- II. To propose to the Common Market Group new Mercosur trade and customs regulations or changes in the existing regulations;
- III. To follow up the application of the common trade policy instruments in the States Parties;
- IV. To analyse the development of the common trade policy instruments relating to the operation of the customs union and to submit Proposals in this respect to the Common Market Group;
- V. To take decisions connected with the administration and application of the common external tariff and the common trade policy instruments agreed by the States Parties.
- VI. To report to the Common Market Group on the development and application of the common trade policy instruments, on the consideration of requests received and on the decisions taken with respect to such requests;
- VII. To propose to the Common Market Group new Mercosur trade and customs regulations or changes in the existing regulations;
- VIII. To propose the revision of the tariff rates for specific items of the common external tariff, inter alia, in order to deal with cases relating to new production activities within Mercosur;
- IX. To set up the technical committees needed for it to perform its duties properly, and to direct and supervise their activities;
- X. To perform tasks connected with the common trade policy requested by the Common Market Group;
- XI. To adopt rules of procedure to be submitted to the Common Market Group for approval.

Article 20

The decisions of the Mercosur Trade Commission shall take the form of Directives or Proposals. The Directives shall be binding upon the States Parties.

Article 21

In addition to the duties and functions described in Articles 16 and 19 of this Protocol, the Mercosur Trade Commission shall be responsible for considering complaints referred to it by the National Sections of the Mercosur Trade Commission and originated by States Parties or individuals, whether natural or legal persons, relating to the situations provided for in Article 1 or 25 of the Brasilia Protocol, when they fall within its sphere of competence.

Paragraph 1 - The examination of the aforesaid complaints within the Mercosur Trade Commission shall not prevent the complainant State Party taking action under the Brasilia Protocol for the Settlement of Disputes.

Paragraph 2 - Complaints arising in the circumstances described in this Article shall be dealt with in accordance with the procedure laid down in the Annex to this Protocol.

Section IV: The Joint Parliamentary Commission

Article 22

The Joint Parliamentary Commission is the organ representing the parliaments of the States Parties within Mercosur.

Article 23

The Joint Parliamentary Commission shall consist of equal numbers of members of parliament representing the States Parties.

Article 24

The members of the Joint Parliamentary Commission shall be appointed by the respective national parliaments, in accordance with their internal procedures.

Article 25

The Joint Parliamentary Commission shall endeavour to speed up the corresponding internal procedures in the States Parties in order to ensure the prompt entry into force of the decisions taken by the Mercosur organs provided for in Article 2 of this Protocol. Similarly, it shall assist with the harmonisation of legislations, as required to advance the integration process. When necessary, the Council shall request the Joint Parliamentary Commission to examine priority issues.

Article 26

The Joint Parliamentary Commission shall submit Recommendations to the Council of the Common Market through the Common Market Group.

Article 27

The Joint Parliamentary Commission shall adopt its rules of procedure.

Section V: The Economic-Social Consultative Forum

Article 28

The Economic-Social Consultative Forum is the organ representing the economic and social sectors and shall consist of equal numbers of representatives from each State Party.

Article 29

The Economic-Social Consultative Forum shall have a consultative function and shall express its views in the form of Recommendations to the Common Market Group.

Article 30

The Economic-Social Consultative Forum shall submit its rules of procedure to the Common Market Group, for approval.

Section VI: The Mercosur Administrative Secretariat

Article 31

Mercosur shall have an Administrative Secretariat to provide operational support. The Mercosur Administrative Secretariat shall be responsible for providing services to the other Mercosur organs and shall be headquartered in the city of Montevideo.

Article 32

The Mercosur Administrative Secretariat shall carry out the following activities:

- I. Serve as the official archive for Mercosur documentation;
- II. Publish and circulate the decisions adopted within the framework of Mercosur. In this context, it shall:
 1. Make, in co-ordination with the States Parties, authentic translations in Spanish and Portuguese of all the decisions adopted by the organs of the Mercosur institutional structure, in accordance with the provisions of Article 39;
 2. Publish the Mercosur official journal.
- III. Organise the logistical aspects of the meetings of the Council of the Common Market, the Common Market Group and the Mercosur Trade Commission and, as far as possible, the other Mercosur organs, when those meetings are held at its headquarters. In the case of meetings held outside its headquarters, the Mercosur Administrative Secretariat shall provide support for the State in which the meeting is held;
- IV. Regularly inform the States Parties about the measures taken by each country to incorporate in its legal system the decisions adopted by the Mercosur organs provided for in Article 2 of this Protocol;
- V. Compile national lists of arbitrators and experts, and perform other tasks defined in the Brasilia Protocol of 17 December 1991;
- VI. Perform tasks requested by the Council of the Common Market, the Common Market Group and the Mercosur Trade Commission;

- VII. Draw up its draft budget and, once this has been approved by the Common Market Group, do everything necessary to ensure its proper implementation;
- VIII. PSubmit its statement of accounts annually to the Common Market Group, together with a report on its activities.

Article 33

The Mercosur Administrative Secretariat shall be headed by a Director who shall be a national of one of the States Parties. He shall be chosen by the Common Market Group, on a rotating basis, after consultation with the States Parties and shall be appointed by the Council of the Common Market. His term of office shall be two years and he may not be re-elected.

Chapter II - Legal Personality

Article 34

Mercosur shall possess legal personality of international law.

Article 35

In the exercise of its functions, Mercosur may take whatever action may be necessary to achieve its objectives, in particular sign contracts, buy and sell personal and real property, appear in court, hold funds and make transfers.

Article 36

Mercosur shall make headquarters agreements.

Chapter III - Decision-Making System

Article 37

The decisions of the Mercosur organs shall be taken by consensus and in the presence of all the States Parties.

Chapter IV - Internal Applications of the Decisions Adopted by Mercosur Organs

Article 38

The States Parties undertake to take all the measures necessary to ensure, in their respective territories, compliance with the decisions adopted by the Mercosur organs provided for in Article 2 of this Protocol.

Sole paragraph - The States Parties shall inform the Mercosur Administrative Secretariat of the measures taken to this end.

Article 39

The content of the Decisions of the Council of the Common Market, the Resolutions of the Common Market Group, the Directives of the Mercosur Trade Commission and the Dispute Settlement Arbitration Rulings shall be published in full, in Spanish and Portuguese, in the Mercosur official journal, together with any instrument which, in the view of the Council of the Common Market or the Common Market Group requires official publicity.

Article 40

In order to ensure the simultaneous entry into force in the States Parties of the decisions adopted by the Mercosur organs provided for in Article 2 of this Protocol, the following procedure must be followed:

- i. Once the decision has been adopted, the States Parties shall take the necessary measures to incorporate it in their domestic legal system and inform the Mercosur Administrative Secretariat;
- ii. When all the States Parties have reported incorporation in their respective domestic legal systems, the Mercosur Administrative Secretariat shall inform each State Party accordingly;
- iii. The decisions shall enter into force simultaneously in the States Parties 30 days after the date of the communication made by the Mercosur Administrative Secretariat, under the terms of the preceding subparagraph. To this end, the States Parties shall, within the time-limit mentioned, publish the entry into force of the decisions in question in their respective official journals.

Chapter V - Legal Sources of Mercosur

Article 41

The legal sources of Mercosur are:

- I. The Treaty of Asuncion, its protocols and the additional or supplementary instruments;
- II. The agreements concluded within the framework of the Treaty of Asuncion and its protocols;
- III. The Decisions of the Council of the Common Market, the Resolutions of the Common Market Group and the Directives of the Mercosur Trade Commission adopted since the entry into force of the Treaty of Asuncion.

Article 42

The decisions adopted by the Mercosur organs provided for in Article 2 of this Protocol shall be binding and, when necessary, must be incorporated in the domestic legal systems in accordance with the procedures provided for in each country's legislation.

Chapter VI: Dispute Settlement System

Article 43

Disputes which arise between the States Parties concerning the interpretation, application or non-fulfilment of the provisions of the Treaty of Asuncion and the agreements concluded within its framework or of Decisions of the Council of the Common Market, Resolutions of the Common Market Group and Directives of the Mercosur Trade Commission shall be subject to the settlement procedures laid down in the Brasilia Protocol of 17 December 1991.

Sole paragraph - The Directives of the Mercosur Trade Commission are also incorporated in Articles 19 and 25 of the Brasilia Protocol.

Article 44

Before the Common External Tariff convergence process is complete, the States Parties shall review the present Mercosur dispute settlement system with a view to adopting the permanent system referred to in paragraph 3 of Annex III to the Treaty of Asuncion and Article 34 of the Brasilia Protocol.

Chapter VII: Budget

Article 45

The Mercosur Administrative Secretariat shall have a budget to cover its operating expenses and the expenses authorised by the Common Market Group. This budget shall be funded by equal contributions from the State Parties.

Chapter VIII: Languages

Article 46

The official languages of Mercosur are Spanish and Portuguese. The official version of the working documents shall be that in the language of the country hosting the meeting.

Chapter IX: Review

Article 47

When they consider it opportune, the States Parties shall convene a diplomatic conference for the purpose of reviewing the institutional structure of Mercosur established by the present Protocol and the specific functions of each of its organs.

Chapter X: Entry Into Force

Article 48

This Protocol, which forms an integral part of the Treaty of Asuncion, shall be of unlimited duration and shall enter into force 30 days after the date of deposit of the third instrument of ratification. The Protocol and its instruments of ratification shall be deposited with the Government of the Republic of Paraguay.

Article 49

The Government of the Republic of Paraguay shall notify the Governments of the other States Parties of the date of deposit of the instruments of ratification and of entry into force of this Protocol.

Article 50

With regard to accession and denunciation, the rules established by the Treaty of Asuncion shall apply to this Protocol in their entirety. Accession to or denunciation of the Treaty of Asuncion or this Protocol shall imply, ipso jure, accession to or denunciation of this Protocol and the Treaty of Asuncion.

Chapter XI: Transitional Provision

Article 51

The institutional structure provided for in the Treaty of Asuncion of 26 March 1991 and the organs it created shall be maintained until this Protocol enters into force.

Chapter XII: General Provisions

Article 52

This Protocol shall be called the "Ouro Preto Protocol".

Article 53

All the provisions of the Treaty of Asuncion of 26 March 1991 which conflict with the terms of this Protocol or with the content of the Decisions adopted by the Council of the Common Market during the transition period are hereby repealed.

Done at the city of Ouro Preto, Federative Republic of Brazil, on 17 December 1994, in one original in the Portuguese and Spanish languages, both texts being equally authentic. The Government of Paraguay shall send an authenticated copy of this Protocol to the Governments of the other States Parties.

Argentine **Republic**
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**ANNEX TO THE OURO PRETO PROTOCOL
GENERAL PROCEDURE FOR COMPLAINTS TO THE Mercosur TRADE COMMISSION**

Article 1

Complaints submitted by the National Sections of the Mercosur Trade Commission and originated by States Parties or individuals, whether natural or legal persons, in accordance with the provisions of Article 21 of the Protocol of Ouro Preto shall be subject to the procedure laid down in this Annex.

Article 2

The complainant State Party shall submit its complaint to the Pro-Tempore Chairman of the Mercosur Trade Commission who shall take the necessary steps to include the question on the Agenda of the next meeting of the Mercosur Trade Commission at least one week beforehand. If no decision is taken at that meeting, the Mercosur Trade Commission shall, without taking further action, pass on the dossier to a Technical Committee.

Article 3

Within a maximum of thirty (30) calendar days, the Technical Committee shall prepare and submit to the Mercosur Trade Commission a joint opinion on the question. This opinion or the conclusions of the experts making up the Technical Committee, if there is no joint opinion, shall be taken into consideration by the Mercosur Trade Commission when it rules on the complaint.

Article 4

The Mercosur Trade Commission shall rule on the complaint at its first ordinary meeting following receipt of the joint opinion or, should there be none, the conclusions of the experts, although an extraordinary meeting may also be convened for the purpose.

Article 5

If a consensus cannot be reached at the first meeting mentioned in Article 4, the Mercosur Trade Commission shall submit to the Common Market Group the various alternatives proposed, together with the joint opinion or the conclusions of the experts on the Technical Committee, in order that an appropriate decision may be taken. The Common Market Group shall give a ruling within thirty (30) calendar days of the receipt by the Pro-Tempore Chairman of the proposals submitted by the Mercosur Trade Commission.

Article 6

If there is agreement that the complaint is justified, the State Party against which it is made shall adopt the measures approved in the Mercosur Trade Commission or the Common Market Group. In each case, the Mercosur Trade Commission or, subsequently, the Common Market Group shall fix a reasonable period for the implementation of these measures. If this period expires without the State against which the complaint is made having complied with the provisions of the decision adopted, whether by the Mercosur Trade Commission or the Common Market Group, the complainant State may resort directly to the procedure provided for in Chapter IV of the Brasilia Protocol.

Article 7

If a consensus cannot be reached in the Mercosur Trade Commission, or subsequently, in the Common Market Group or if the State against which the complaint is made does not comply within the period provided for in Article 6 with the provisions of the decision adopted, the complainant State may resort directly to the procedure established in Chapter IV of the Brasilia Protocol and shall inform the Mercosur Administrative Secretariat accordingly.

Before giving a ruling, within fifteen (15) days of its being set up, the Arbitration Tribunal must announce the interim measures it considers appropriate under the conditions laid down in Article 18 of the Brasilia Protocol.