

PREFERENTIAL TRADE AGREEMENT BETWEEN MERCOSUR AND THE REPUBLIC OF INDIA

The Argentine Republic, the Federative Republic of Brazil, the Republic of Paraguay and the República Oriental del Uruguay, States Parties to the MERCOSUR, and the Republic of India:

CONSIDERING

That the Framework Agreement for the creation of a Free Trade Area between MERCOSUR and the Republic of India provides for a first stage of action aimed at increasing trade, including the mutual granting of tariff preferences;

That implementation of an instrument providing for the granting of fixed tariff preferences during said first stage would facilitate subsequent negotiations for the creation of a Free Trade Area;

That the negotiations needed to implement the granting of fixed tariff preferences and to establish trade disciplines between the Parties have been conducted;

That regional integration and trade among developing countries, including through the creation of free trade areas, are compatible with the multilateral trading system, and contribute to the expansion of world trade, to the integration of their economies into the global economy, and to the social and economic development of their peoples;

That the process of integrating their economies includes the gradual and reciprocal liberalization of trade and the strengthening of economic cooperation amongst them;

That Article 27 of the Treaty of Montevideo 1980, of which the MERCOSUR Member States are signatory Parties, authorizes the conclusion of Partial Scope Agreements with other developing countries and economic integration areas outside Latin America;

HEREBY AGREE AS FOLLOWS:

Chapter I

Purpose of the Agreement

Article 1

For the purposes of this Agreement, the ‘Contracting Parties’, hereinafter referred to as ‘Parties’, are MERCOSUR and the Republic of India. The ‘Signatory Parties’ are the Argentine Republic, the Federative Republic of Brazil, the Republic of Paraguay, the República Oriental del Uruguay and the Republic of India.

Article 2

The Parties hereby agree to conclude this Preferential Trade Agreement as a first step towards the creation of a Free Trade Area between MERCOSUR and the Republic of India.

Chapter II

Trade Liberalisation

Article 3

Annexes I and II to this Agreement contain the products on which tariff preferences and other conditions are agreed for the importation from the respective territories of the Signatory Parties.

a) Annex I sets forth the products on which tariff preferences are granted by MERCOSUR to the Republic of India.

b) Annex II sets forth the products on which tariff preferences are granted by the Republic of India to MERCOSUR.

Article 4

The products included in Annexes I and II are classified in accordance with the Harmonised System (HS).

Article 5

Tariff preferences will be applied to all customs duties in force in each Signatory Party at the time of importing the relevant product.

Article 6

A 'customs duty' includes duties and charges of any kind imposed in connection with the importation of a good, but does not include:

- a) internal taxes or other internal charges imposed consistently with Article III of the General Agreement on Tariffs and Trade (GATT) 1994;
- b) antidumping or countervailing duty in accordance with Articles VI and XVI of GATT 1994, the WTO Agreement on Implementation of Article VI of GATT 1994, and the WTO Agreement on Subsidies and Countervailing Measures;

- c) other duties or charges imposed consistently with Article VIII of GATT 1994 and the Understanding on the Interpretation of Article II:1 (b) of the GATT 1994.

Article 7

Except otherwise provided for in this Agreement or in GATT 1994, the Parties shall not apply non-tariff barriers to the products included in the Annexes to this Agreement. Non-tariff barriers shall refer to any administrative, financial, exchange-related or other measure whereby a Party prevents or hinders mutual trade by virtue of a unilateral decision.

Article 8

If a Contracting Party concludes a preferential agreement with a non Party, it shall upon request from the other Contracting Party, afford adequate opportunity for consultations on any additional benefits as granted therein.

Chapter III

General Exceptions

Article 9

Nothing in this Agreement shall prevent any Signatory Party from taking actions and adopting measures consistent with the Articles XX and XXI of the GATT 1994.

Chapter IV

State Trading Enterprises

Article 10

Nothing in this Agreement shall prevent a Signatory Party from maintaining or establishing a state trading enterprise as understood in Article XVII of GATT 1994.

Article 11

Each Signatory Party shall ensure that any state trading enterprise that it maintains or establishes acts in a manner that is consistent with the obligations of the Signatory Parties under this Agreement and accords non-discriminatory treatment in the import from and export to the other Signatory Parties.

Chapter V

Rules of Origin

Article 12

The products included in Annexes I and II of this Agreement shall meet the rules of origin in accordance with Annex III of this Agreement in order to qualify for tariff preferences.

Chapter VI

National Treatment

Article 13

On matters relating to taxes, fees or any other domestic duties, the products originating from the territory of any of the Signatory Parties shall receive in the territory of the other Signatory Parties the same treatment as applied to the national products, in accordance with Article III of GATT 1994.

Chapter VII

Customs Valuation

Article 14

On matters related to customs valuation, the Signatory Parties shall be governed by Article VII of GATT 1994 and the WTO Agreement on the Implementation of Article VII of GATT 1994.

Chapter VIII
Safeguard Measures

Article 15

The implementation of preferential safeguard measures concerning the imported products which have been accorded tariff preferences established in Annexes I and II shall be carried out according to the rules agreed upon in the Annex IV of this Agreement.

Article 16

The Signatory Parties shall maintain their rights and obligations to apply safeguard measures consistent with Article XIX of GATT 1994 and the WTO Agreement on Safeguards.

Chapter IX
Antidumping and Countervailing Measures

Article 17

In applying antidumping and countervailing measures, the Signatory Parties shall be governed by their respective legislation, which shall be consistent with

Articles VI and XVI of GATT 1994, the Agreement on Implementation of Article VI of GATT 1994, and the WTO Agreement on Subsidies and Countervailing Measures.

Chapter X
Technical Barriers to Trade

Article 18

The Signatory Parties shall abide by the rights and obligations set out in the WTO Agreement on Technical Barriers to Trade.

Article 19

The Signatory Parties shall co-operate in the area of standards, technical regulations and conformity assessment procedures with the objective of facilitating trade.

Article 20

The Signatory Parties shall endeavour to conclude mutual equivalence agreements.

Chapter XI
Sanitary and Phytosanitary Measures

Article 21

The Signatory Parties shall abide by the rights and obligations set out in the WTO Agreement on the Application of Sanitary and Phytosanitary Measures.

Article 22

The Signatory Parties agree to co-operate in the areas of animal health and plant protection, food safety and mutual recognition of sanitary and phytosanitary measures, through their respective competent authorities, including, *inter-alia*, by means of equivalence agreements and mutual recognition agreements to be concluded taking into account relevant international criteria.

Chapter XII
Administration of the Agreement

Article 23

The Parties agree to create a Joint Administration Committee composed by the MERCOSUR's Common Market Group or its representatives and by India's Secretary of Commerce or its representatives.

Article 24

The Joint Administration Committee shall hold its first meeting within sixty days of the entry into force of this Agreement, when it shall establish its working procedures.

Article 25

The Joint Administration Committee shall meet ordinarily at least once every year, at such venues as shall be agreed by the Parties, and extraordinarily at any time, at the request of a Party.

Article 26

The Joint Administration Committee shall adopt its decisions by consensus and shall have the following functions, *inter alia*:

- 1) To ensure the proper functioning and implementation of this Agreement, its Annexes and additional Protocols, and continuation of the dialogue between the Parties.
- 2) To consider and submit to the Parties any modifications and amendments to this Agreement.
- 3) To evaluate the process of trade liberalisation established under this Agreement, study the development of trade between the Parties and recommend further steps to create a Free Trade Area in accordance with Article 2.
- 4) To perform other functions that may arise from the provisions of this Agreement, its Annexes and any additional Protocols.
- 5) To establish mechanisms to encourage the active participation of the private sectors in areas covered by this Agreement between the Parties.

- 6) To exchange opinions and make suggestions on any issue of mutual interest relating to areas covered by this Agreement, including future actions.
- 7) The creation of subsidiary bodies as may be necessary, inter alia on Customs, Trade Facilitation and Technical Barriers to Trade, and Sanitary and Phytosanitary Measures.

Chapter XIII

Amendments and Modifications

Article 27

Any Party may initiate a proposal to amend or modify the provisions of this Agreement by submitting such proposal to the Joint Administration Committee. The decision to amend shall be taken by mutual consent of the Parties.

Article 28

The amendments or modifications to the present Agreement shall be adopted by means of additional Protocols thereto.

Chapter XIV

Settlement of Disputes

Article 29

Any dispute arising in connection with the application of, interpretation of, or non compliance with any provision of this Agreement shall be settled in accordance with the rules established in the Annex V of this Agreement.

Chapter XV

Entry into Force

Article 30

This Agreement shall enter into force thirty days after all Signatory Parties have formally notified, through diplomatic channels, the completion of the internal procedures necessary to that effect.

Article 31

This Agreement shall remain in force until the date of entry into force of the Agreement for the creation of a Free Trade Area between MERCOSUR and the Republic of India unless terminated in accordance with Article 32 below.

Chapter XVI

Withdrawal

Article 32

Should any of the Contracting Parties wish to withdraw from this Agreement, it shall give formal notice of its intention to the other Party at least sixty days in advance. Once withdrawn the rights and obligations assumed by the Party concerned shall cease to apply, but it shall be bound to comply with obligations in connection with the tariff preferences established in Annexes I and II of this Agreement for a term of one year, unless otherwise agreed upon.

Chapter XVII

Depositary

Article 33

The Government of the Republic of Paraguay shall be the Depositary of this Agreement for the MERCOSUR.

Article 34

In fulfilment of the Depositary functions assigned in the above Article, the Government of the Republic of Paraguay shall notify the other Member States of MERCOSUR the date on which this Agreement shall enter into force.

Chapter XVIII

Transitory Provision

Article 35

Annexes I to V referred to in this Agreement shall be negotiated expeditiously with a view to early implementation of this Agreement.

IN WITNESS WHEREOF the undersigned being duly authorized thereto by their respective Governments have signed this Agreement.

Done in the city of New Delhi, on this the 25th day of January 2004, in two originals each in the Spanish, Portuguese and English languages, all texts being equally authentic. In case of doubt or divergence of interpretation, however, the English text shall prevail.

(Arun Jaitley)
Commerce and Industry
Minister,
Government of India,
New Delhi.

(Eduardo Alberto Sigal)
Under Secretary for American
Economic Integration and MERCOSUR
of the Argentine Republic

(Celso Amorim)
Minister of External Relations of the
Federative Republic of Brazil

(Leila Rachid)
Minister of External Relations of the
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Director General of Integration and
MERCOSUR of the Ministry of Foreign
Affairs of the República Oriental del
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