

**DISPUTE SETTLEMENT PROCEDURE**

**CHAPTER I**

**SCOPE**

**Article 1**

For the purposes of this Dispute Settlement Procedure, the “Contracting Parties” are Mercosur and the Republic of India. The “Signatory Parties” are the Argentine Republic, the Federative Republic of Brazil, the Republic of Paraguay and the Oriental Republic of Uruguay, Member States of Mercosur, and the Republic of India.

**Article 2**

1. Any dispute that may arise in connection with the interpretation, application or non-compliance with the provisions of the Preferential Trade Agreement between Mercosur and the Republic of India, hereinafter referred to as “the Agreement”, as well as its Additional Protocols and related instruments, shall be submitted to this Dispute Settlement Procedure established in this Annex.

2. Any dispute regarding matters arising under the Agreement that are regulated also in the agreements negotiated at the World Trade Organisation (hereinafter referred to as “the WTO”) may be settled in accordance with this Annex or with the Understanding on Rules and Procedures Governing the Settlement of Disputes of the WTO (hereinafter referred to as “the DSU”).

3. After the end of direct negotiations as established in Chapter II of this Annex, the Parties shall endeavour to reach an agreement on a single forum. If no agreement is reached on the forum, the complaining Party shall select the forum of dispute.

4. Once a dispute settlement procedure has been initiated under this Annex or under the WTO covered agreements, the forum selected shall exclude the other for the same subject matter of the dispute. However, this provision may be reviewed within 5 years of implementation of the Agreement.

5. For the purpose of paragraph 4, a dispute settlement procedure shall be considered initiated under the WTO whenever the complaining Party issues the request for consultations under Article 4 of the DSU. Likewise, a dispute settlement procedure shall be considered initiated under this Annex whenever a meeting of the Joint Administration Committee, as referred to in Article 23 of the Agreement (hereinafter referred to as “the Joint Committee”), has been requested under Article 7.1 of this Annex.

6. Notwithstanding the above, disputes that may arise in connection with anti-dumping and countervailing measures shall exclusively be submitted to the WTO under the DSU.

### **Article 3**

For the purposes of this Annex, both Contracting Parties i.e. Mercosur and the Republic of India as well as one or more Member States of Mercosur and the Republic of India, may be parties to a dispute and shall hereinafter be referred as “Party” or “Parties”.

## **CHAPTER II DIRECT NEGOTIATIONS**

### **Article 4**

1. Parties shall make all reasonable efforts to settle the disputes referred to in Article 2.1 by direct negotiations with a view to reaching a mutually satisfactory solution.

2. Direct negotiations shall be conducted, in the case of Mercosur, by the Pro Tempore Presidency or the National Coordinators of the Common Market Group, as the case may be, and, in the case of the Republic of India, by the Secretary of the Department of Commerce or his representative.

#### **Article 5**

The request for direct negotiations shall be submitted to the other Party in writing and shall give the reasons for the request and a brief summary of the legal basis of the dispute. All requests for direct negotiations shall be notified to the other Signatory Parties, to the Pro Tempore Presidency of Mercosur and to the Secretary of the Department of Commerce or his representative.

#### **Article 6**

1. The Party to which the request is made shall reply within ten (10) days after the date of its receipt.
2. The Parties shall exchange information in order to facilitate the direct negotiations. Direct negotiations shall be confidential.
3. Direct negotiations shall last no more than thirty (30) days after the date of receipt of the request unless the Parties concerned extend the consultations for a mutually agreed period in order to settle the dispute.

### **CHAPTER III**

#### **INTERVENTION OF THE JOINT ADMINISTRATION COMMITTEE**

#### **Article 7**

1. If direct negotiations fail to settle the dispute within the period established in Article 6, the complaining Party, or both Parties by mutual consent, may request in writing, for convening a meeting of the Joint Committee, with the specific purpose of dealing with the case.

2. The request shall state the facts and the legal basis of the dispute, indicating the applicable rules of the Agreement, Additional Protocols and related instruments.

3. The complaining Party or Parties shall notify immediately the request mentioned in paragraph 1 of this Article to all the Signatory Parties.

### **Article 8**

1. The Joint Committee shall meet within forty-five (45) days after the date of receipt of the request referred to in Article 7.

2. For the purpose of determining the period mentioned in the previous paragraph, the Signatory Parties shall notify immediately the receipt of the request.

### **Article 9**

The Joint Committee may, by consensus, examine jointly two or more complaints only when, by their nature, they are related.

### **Article 10**

1. The Joint Committee shall examine the dispute and give the opportunity to the Parties to present their positions and, if necessary, to give additional information in order to reach a mutually satisfactory solution.

2. The Joint Committee shall issue its recommendations within thirty (30) days of the date of its first meeting unless a Group of Experts (hereinafter referred to as ‘the Group’) is established in accordance with the paragraph 3.

3. When the Joint Committee deems it appropriate to seek the advice of experts, or when there is a request by any of the Parties to do so, it shall, within the period set forth in the previous paragraph, notify the Parties of the

decision to establish the Group, in accordance with the provisions of Article 13.

#### **Article 11**

1. For the purpose of establishing the Group, each Signatory Party, within thirty (30) days after the entry into force of the Agreement, shall provide the Joint Committee with a list of ten (10) experts, four (4) of them being nationals of countries other than the Signatory Parties.

2. The list shall comprise experts having experience in law, international trade, other matters covered by the Agreement or the resolution of disputes arising under international trade agreements. The experts shall be chosen strictly on basis of objectivity, reliability, sound judgment and independence.

#### **Article 12**

The Joint Committee shall establish a list of experts based on the names provided by the Signatory Parties.

#### **Article 13**

The Group shall consist of three (3) members as per the following :

a) Within fifteen (15) days of the notification referred to in paragraph 3 of Article 10, each Party shall choose one expert from the list referred to in Article 12.

b) Within the same period of time the Parties shall indicate, by consensus, from among those in the list, a third expert, who shall not be of a national of any of the Signatory Parties. This third expert shall preside the Group, unless the Parties to the dispute decide otherwise.

c) If the nominations referred to in sub-paragraph (a) are not made within the specified period of time, they shall be made by lot, within ten (10) days thereafter, by the Joint Committee, at the request of any Party, from the list referred to in Article 12.

d) If the nomination referred to in sub-paragraph (b) is not made within the specified period of time, it shall be made by lot, within ten (10) days thereafter, by the Joint Committee, at the request of any Party, from the list of experts referred to in Article 12. This third expert shall not be a national of any of the Signatory Parties.

e) Nominations referred to in the above sub-paragraphs shall be notified to the Contracting Parties and all the Signatory Parties.

#### **Article 14**

1. A person who has acted in any capacity in previous phases of the dispute or who does not have the necessary independence with regard to the positions of the Parties may not act as an expert.

2. In the discharge of their functions, the experts shall act with independence and impartiality.

#### **Article 15**

1. The expenses resulting from the work of the Group shall be borne in equal parts by the Parties.

2. Such expenses shall include the fees of the experts, travel expenses and other costs incurred in connection with their work.

3. The Joint Committee shall establish and fix the remuneration, fees and allowances for the experts, as well as approve related expenses.

## **Article 16**

1. Within thirty (30) days of receipt of the notification of the nomination of all the experts, the Group shall deliver to the Joint Committee its joint report. The report shall consist of two parts. The first, of a descriptive nature, shall contain an outline of the case, the arguments presented by the Parties and may reflect the opinions of individual experts, which shall remain anonymous. The second shall contain the findings and conclusions of the Group.

2. The Group's report shall be delivered to the Joint Committee in accordance with the conditions set forth in paragraph 1. The Joint Committee shall issue its recommendations within thirty (30) days after the receipt of the report. Where the Group concludes that a measure is inconsistent with a provision of the Agreement, the Joint Committee shall recommend that the Party concerned bring the measure into conformity with that provision.

3. The Joint Committee shall ensure that its recommendations are complied with.

## **Article 17**

1. The concerned Party shall comply with the recommendations of the Joint Committee within 90 (ninety) days, unless some other period of time is agreed upon by the Parties to the dispute, and accepted by the Joint Committee.

2. If, at any time up to thirty (30) days prior to the deadline for implementation determined under paragraph 1, the concerned Party considers that it will require further time to comply with the recommendations of the Joint Committee, it may inform the complaining Party of the extra period that it requires, and simultaneously will present an offer of compensation for

this additional period until it comes into compliance with the recommendations. The Parties may agree to extend the deadline for implementation determined under paragraph 1, any time within twenty (20) days after the expiry of the deadline for implementation determined previously.

### **Article 18**

1. Should the concerned Party fail to comply with the recommendations of the Joint Committee, or fail to agree or having agreed, fail to comply with the agreed compensation under Article 17, the Joint Committee shall authorize the complaining Party, upon request, to temporarily withdraw concessions having trade effects equivalent to those of the measure in dispute.

2. The complaining Party should first seek to suspend, whenever possible, concessions with respect to the same sector(s)<sup>1</sup> affected by the measure in dispute. If this is not practicable or effective, the complaining Party may suspend concessions in other sector(s), indicating the reasons to do so.

3. If the concerned Party, by written communication to the Joint Committee, objects to the level of, or the sector affected by, the suspension referred to in paragraph 1, the Joint Committee, within thirty (30) days, shall refer the matter to the original Group, which shall submit its report to the Joint Committee within thirty (30) days. Where any of the original member(s) of the Group are not available, such members shall be appointed as per the procedure laid down in this Chapter.

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<sup>1</sup> The Contracting Parties agree that for the purposes of this Article, “sector” will have the same meaning as in provisions of Article 22.3 (f) of the DSU. The Contracting Parties further agree that suspension of concessions in other sector(s) would become relevant only if, in future, the scope of the Agreement is enlarged to include other sectors besides goods.

**CHAPTER IV**  
**GENERAL PROVISIONS**

**Article 19**

1. All communications to the Joint Committee referred to in this Annex shall be transmitted to the Contracting Parties and to all the Signatory Parties.

2. All communications between Mercosur or its Member States and the Republic of India shall be transmitted, in the case of Mercosur, to the Pro Tempore Presidency or to the National Co-ordinators of the Common Market Group, as the case may be, and in the case of the Republic of India, to the Secretary of Department of Commerce or his representative.

**Article 20**

The periods referred to in this Annex are expressed in consecutive days, including non-working days, and shall be calculated as from the day immediately following the relevant act or fact. If the period begins or ends on a non-working day, the period shall be deemed to be starting or expiring on the following working day of the Party concerned.

**Article 21**

Documents and acts related to the proceedings established in this Annex shall be confidential.

**Article 22**

1. At any time during the proceeding the complaining Party may abandon its claim or the Parties may reach an agreement. In either case the dispute shall be closed. The Joint Committee shall be notified of this in order to take any necessary measures.

2. A Party is deemed to have abandoned its claim under this Annex, if it does not pursue its claim under Article 7 within twelve (12) months after conclusion of the negotiations period under Article 6.3.