

PREFERENTIAL TRADE AGREEMENT BETWEEN THE ~~SOUTHERN~~ COMMON MARKET OF THE SOUTH (MERCOSUR) AND THE SOUTHERN AFRICAN CUSTOMS UNION (SACU)

The Argentine Republic, the Federative Republic of Brazil, the Republic of Paraguay and the ~~Republic Oriental del~~ **Oriental Republic of Uruguay**, States Parties to the MERCOSUR, and the Republic of Botswana, the Kingdom of Lesotho, the Republic of Namibia, the Republic of South Africa and the Kingdom of Swaziland, Member States of SACU.

WHEREAS the Framework Agreement for the Creation of a Free Trade Area between MERCOSUR and the Republic of South Africa provides for a first stage of actions aimed at increasing trade, including the mutual granting of tariff preferences;

WHEREAS the SACU Agreement of 2002 establishes a Common Negotiating Mechanism for Botswana, Lesotho, Namibia, South Africa and Swaziland in regard to trade relations with third Parties;

WHEREAS implementation of an instrument providing for the granting of fixed preferences during said stage will facilitate subsequent negotiations for the creation of a Free Trade Area;

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

WHEREAS these negotiations have taken into account the principle of special and differential treatment for the smaller and the lesser developed economies in MERCOSUR and SACU;

[Whereas the Parties reaffirm their commitment to the Understanding between SACU and MERCOSUR on Conclusion of their Preferential

Trade Agreement signed in Belo Horizonte on the 16th of December 2004;]

WHEREAS regional integration and South-South trade, including through the creation of free trade areas, are compatible with the multilateral trading system, and contributes 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;

WHEREAS the process of integrating their economies includes the gradual and reciprocal liberalization of trade and the strengthening of economic co-operation ties among themselves;

WHEREAS the Parties reiterate their will to promote the South Atlantic as a zone of peace and cooperation;

WHEREAS Article 27 of the Treaty of Montevideo 1980, of which the MERCOSUR Member States **Parties** 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 SACU. The ‘Signatory Parties’ are the Governments of the Argentine Republic, the Federative Republic of Brazil, the Republic of Paraguay, the ~~Republic Oriental del~~ Oriental Republic of Uruguay, the Republic of Botswana, the Kingdom of Lesotho, the Republic of Namibia, the Republic of South Africa and the Kingdom of Swaziland.

Article 2

The Parties hereby agree to establish fixed preference margins as a first step towards the creation of a free trade area between MERCOSUR and SACU.

Chapter II

Trade Liberalisation

Article 3

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

- a) Annex I sets forth the preferences granted by MERCOSUR to SACU;
- b) Annex II sets forth the preferences granted by SACU to MERCOSUR.

Article 4

The products included in Annex I and II are classified in accordance with the Harmonised System (HS) 2002.

Article 5

Tariff preferences shall 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 1994 (GATT 1994);
- b) antidumping or countervailing duties in accordance with Article VI and XVI of GATT 1994, the World Trade Organisation (WTO) Agreement on Implementation of Article VI of the GATT 1994 and the WTO Agreement on Subsidies and Countervailing Measures;
- c) other duties or charges imposed in a manner that is not inconsistent with:
 - i.- Article VIII of GATT 1994; or

ii.- the Understanding on the Interpretation of Article II:1 (b) of the GATT 1994.

d) duties imposed by the Governments of the Republic of Botswana, the Kingdom of Lesotho, the Republic of Namibia and the Kingdom of Swaziland for the development of infant industries pursuant to Article 26 of the SACU Agreement 2002. In such cases, the SACU Signatory Party intending to apply any such duties shall promptly notify the Joint Administration Committee and shall enter into consultations where these duties adversely affect the preferential exports of the Republic of Paraguay and/or the [República Oriental del](#) Oriental Republic of Uruguay, aiming at a mutually satisfactory solution to the matter, which shall be notified to the Joint Administration Committee.

Article 7

Except otherwise provided for in this Agreement or in GATT 1994, the Signatory Parties shall not apply non-tariff restrictions to the exchange of products included in the Annexes to this Agreement.

Non-tariff restrictions 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

For the purposes of this Agreement, used products shall be subjected to the domestic regulations of the Signatory Parties.

Article 9

The Parties agree to negotiate a Protocol on mutual administrative assistance to be annexed to this Agreement before the implementation of this Agreement, taking into account that the Signatory Parties for MERCOSUR maintain separate customs jurisdictions.

[In order to facilitate the attainment of the objectives set out in Article 2, the Parties undertake to develop customs cooperation, as specified in the Annex VII of this Agreement.]

Chapter III Rules of Origin

Article 10

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

Chapter IV National Treatment

Article 11

In 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 applied to the national product in accordance with Article III of GATT 1994 .

Chapter V Customs Valuation

Article 12

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

Chapter VI Safeguard Measures [Exceptions]

Article 13

Nothing in this Agreement shall be construed to prevent a Signatory Party from adopting or enforcing measures consistent with Articles XX and XXI of the General Agreement on Tariffs and Trade of 1994.]

Chapter VII

Safeguard Measures

Article 143

The implementation of safeguard measures concerning the imported products that are the object of the tariff preferences established in Annexes I and II shall be carried out according to the rules agreed upon in Annex IV of this Agreement.

Chapter VIII

Antidumping and Countervailing Measures

Article 154

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

Article 165

The Signatory Parties undertake to give notice, within thirty (30) days and through their competent bodies, of the initiation of investigations in connection with dumping practices or subsidies affecting mutual trade, as well as the preliminary and final conclusions thereof.

Chapter VIII IX

Technical Barriers to Trade

Article 176

Scope And Coverage

1. The provisions of this Chapter are intended to prevent technical regulations and standards, conformity assessment procedures and metrology of the Signatory Parties from becoming unnecessary technical barriers to mutual trade.

2. This Chapter applies to all standards, technical regulations and conformity assessment procedures as defined in the WTO Agreement on Technical Barriers to Trade (TBT Agreement).
3. This Chapter does not apply to sanitary and phytosanitary measures as defined in Annex A of the WTO Agreement on Sanitary and Phytosanitary Measures (SPS Agreement).

Article 187

Definitions

For the purposes of this chapter, definitions as per Annex 1 of the WTO TBT Agreement and the decisions of the WTO TBT Committee established pursuant to Article 13 of the WTO TBT Agreement shall apply.

Article 198

General Provisions

The Signatory Parties affirm their existing rights and obligations in respect of technical regulations, standards and conformity assessment procedures with respect to each other under the WTO TBT Agreement.

Article 2019

Trade Facilitation

The Signatory Parties shall intensify their joint work in the field of standards, technical regulations, and conformity assessment procedures with a view to facilitating market access. In this process, the Signatory Parties shall seek to identify initiatives that are appropriate for particular issues or sectors.

Article 210

Cooperation

1. The Signatory Parties shall strengthen their mutual cooperation in the field of technical regulations and standards, conformity assessment and metrology in order to enhance mutual understanding of their respective systems with the aim of facilitating access to their respective markets.

2. For such purpose, the Signatory Parties undertake the following cooperation:

- a) to promote the application of the WTO TBT Agreement;
- b) to strengthen their respective bodies dealing with standardisation, technical regulation, conformity assessment and metrology, as well as their information and notification systems;
- c) to strengthen the technical reliability of standardisation, technical regulation, conformity assessment and metrology bodies;
- d) to increase participation and seek coordination of common positions at international organisations on issues related to this Chapter;
- e) to support the development and application of international standards;
- f) to exchange information on the variety of mechanisms to facilitate the acceptance of conformity assessment results;
- g) to strengthen mutual technical confidence between the competent bodies, aiming at negotiations of mutual recognition on technical regulations and standards, conformity assessment and metrology in accordance with the criteria set by relevant international organisations or the WTO TBT Agreement.

Chapter IX X Sanitary and Phytosanitary Measures

Article 221

This Chapter applies to all sanitary and phytosanitary measures of a Signatory Party that may, directly or indirectly, affect trade between the Parties. For the purposes of this Chapter, sanitary or phytosanitary measure means any measure referred to in Annex A, paragraph 1, of the WTO SPS Agreement.

Article 232

The Signatory Parties reaffirm their rights and obligations set out in the WTO Agreement on the Application of Sanitary and Phytosanitary Measures.

Article 243

The Signatory Parties agree to cooperate in the areas of animal health, plant protection and food safety, through their respective competent authorities in order to strengthen mutual technical confidence. Such cooperation may lead to, *inter alia*, negotiations of equivalence agreements on sanitary and phytosanitary measures in accordance with standards, guidelines and recommendations developed by the relevant international organisations, with due regard to the Signatory Parties' individual domestic legislation, the WTO SPS Agreement and their individual and collective SPS status.

[Additional Sanitary and Phytosanitary Measures shall be subjected to the conditions established in the Annex VI of this Agreement.]

Chapter X-XI Administration of the Agreement

Article 254

The Parties agree to create a Joint Administration Committee (hereinafter referred to as "the Committee") comprised of the Common Market Group, or its representatives on the side of MERCOSUR, and of the Common Negotiating Mechanism or its representatives on the side of SACU.

Article 265

The Committee shall hold its first meeting within sixty (60) days of the entry into force of this Agreement to establish its working procedures.

Article 276

The 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 287

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

- a) to ensure the proper functioning and implementation of this Agreement, its Annexes and Additional Protocols and the dialogue between the Parties;
- b) to consider and submit to the Parties any modifications and amendments to this Agreement;
- c) 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;
- d) to perform other functions that may arise from the provisions of this Agreement, its Annexes and any Additional Protocols;
- e) to establish mechanisms to encourage the active participation of the private sectors in trade between the Parties;
- f) to exchange opinions and make suggestions on any issue of mutual interest relating to trade, including future action;
- g) to address non-tariff measures that unnecessarily restrict trade between the Parties.

Chapter XI-XII

Settlement of Disputes

Article 298

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

Chapter XII-XIII Amendments and Modifications

Article 3029

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

Article 310

The amendments or modifications to this Agreement shall be adopted by means of Additional Protocols thereto.

Chapter XIII-XIV Incorporation of New Members

Article 321

If one of the Contracting Parties incorporates one or more new Member States, it shall notify the other Contracting Party and afford adequate opportunity for consultations on the terms referred to in Article 32.33

Article 332

The incorporation into this Agreement of new members to MERCOSUR or to SACU, as Signatory Parties, shall be formalised by means of an Additional Protocol.

Chapter XIV–XV

Entry into Force, Notification and Termination

Article 343

This Agreement shall be subject to signature of all the Signatory Parties and shall enter into force thirty (30) days after all Signatory Parties have formally notified, through diplomatic channels, the completion of the respective internal procedures to that effect. For MERCOSUR the notification will be done by the MERCOSUR Pro Tempore Presidency and for SACU the notification will be done by the SACU Secretariat.

Article 344

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 SACU unless terminated by either Party giving to the other Party twelve (12) months written notice of its intention to terminate this Agreement.

Chapter XV–XVI

Withdrawal

Article 365

Any Signatory Party which withdraws from the SACU Agreement or the MERCOSUR Agreement shall *ipso facto* on the same day as the withdrawal takes effect cease to be a Signatory Party to this Agreement. Should any SACU or MERCOSUR State wish to withdraw from this Agreement as a Signatory Party, it shall give formal notice of its intention to the other Signatory Parties at least sixty (60) days in advance.

Article 376

Once withdrawn, the rights and obligations assumed by the withdrawing party 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. The Committee shall evaluate the impact of the withdrawal on the balance of rights and obligations of this Agreement and, as appropriate, recommend adjustments to the Parties.

Chapter XVI-XVII Depository

Article 387

The Government of the Republic of Paraguay shall be the Depository of this Agreement for MERCOSUR. The SACU Secretariat shall be the Depository of this Agreement for SACU.

Article 398

In fulfilment of their depositary functions, the Government of the Republic of Paraguay and the SACU Secretariat shall notify the States Parties of MERCOSUR and Member States of SACU respectively, of the date on which this Agreement shall enter into force.

Done in the city of Belo HorizonteMontevideo, Federative Oriental Republic of BrazilUruguay, on the 16th 18th day of December 20042007, in two copies 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.

FOR THE ARGENTINE REPUBLIC

FOR THE REPUBLIC OF BOTSWANA

FOR THE FEDERATIVE REPUBLIC
OF BRAZIL

FOR THE KINGDOM OF LESOTHO

FOR THE REPUBLIC OF PARAGUAY

FOR THE REPUBLIC OF NAMIBIA

FOR THE ORIENTAL REPUBLIC
OF URUGUAY

FOR THE REPUBLIC OF SOUTH
AFRICA

FOR THE KINGDOM OF SWAZILAND