

ANNEX V

DISPUTE SETTLEMENT PROCEDURE

CHAPTER I

Article 1 Scope

1. For the purposes of this Dispute Settlement Procedure, the 'Contracting 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 ~~Republica 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.
2. For the purposes of this Dispute Settlement Procedure, the following parties may be a party to a dispute:
 - both Contracting Parties, i.e. MERCOSUR and SACU;
 - one or more Member States of MERCOSUR and one or more Member States of SACU;
 - one or more Member States of MERCOSUR or SACU and a Contracting party.

Article 2 Election of Forum

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 SACU, hereinafter referred to as "the Agreement", as well as its Additional Protocols and related instruments, shall be subject to this Dispute Settlement Procedure.
2. Any dispute regarding matters arising under the Agreement that are also regulated in the agreements concluded at the World Trade Organization (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. The parties to the dispute shall reach an agreement on a forum after the expiry of the period for consultations established in Chapter II of this Annex. If no agreement is reached on the forum, the complaining party shall select the forum for dispute settlement.

4. When selecting the forum, the complaining party or parties shall endeavour to resolve all disputes in the context of the Dispute Settlement Procedure provided in this Annex.

5. Once a dispute settlement procedure has been initiated under the Agreement or under the DSU, the selection of the forum shall be final and a party to the dispute may not refer the same subject matter of the dispute to the other forum.

6. For this purpose, a dispute settlement procedure shall be considered initiated under the WTO whenever the complaining party requests consultations under Article 4 of the DSU. Likewise, a dispute settlement procedure shall be considered initiated under the Agreement whenever a meeting of the Joint Administrative Committee has been requested under Article 6.1 of this Annex.

7. Notwithstanding the foregoing provisions, disputes that may arise in connection with Chapter VII of the Agreement shall exclusively be submitted to the DSU.

CHAPTER II

Article 3 Consultations

1. The parties shall make all reasonable efforts to settle the disputes referred to in Article 2 through consultations with a view to reaching a mutually satisfactory solution.

2. Consultations 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 SACU, by the Chair of the SACU Council of Ministers.

Article 4 Request for Consultations

The request for consultations shall be submitted to the other party in writing and shall state the reasons for such request. The request for consultations shall be notified to all other Signatory Parties, to the Pro Tempore Presidency of MERCOSUR and to the Chair of the SACU Council of Ministers.

Article 5 Procedures for Consultations

1. The party to which the request is made shall reply within 20 days after the date of its receipt.

2. The parties shall exchange information in order to facilitate the consultations. Such consultations shall be confidential.

3. Consultations shall last no more than 60 days after the date of receipt of the request, unless the parties involved consider it necessary, in order to settle the dispute, to extend the consultations for a further mutually agreed period.

CHAPTER III

Article 6 Intervention of the Joint Administration Committee

1. If consultations fail to settle the dispute within the period established in Article 5, both parties, by mutual consent, or the complaining party, may request in writing a meeting of the Joint Administration Committee, as defined in Chapter X of the Agreement (hereinafter referred to as “the Committee”), with the specific purpose of dealing with the dispute.

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 Committee shall notify immediately the request mentioned in paragraph 1 to all other Signatory or Contracting Parties not a party to the dispute.

Article 7 Committee Meeting

1. The Committee shall meet within thirty (30) days of the date of receipt by all Signatory or Contracting Parties of the request referred to in Article 6.

2. The Signatory and Contracting Parties shall be deemed to have received the request five (5) days after the date of issuance by the Committee.

Article 8 Joint Examination

The Committee may, by consensus, examine jointly two or more proceedings only when, by their nature or by any relevant cause, they are deemed to be related.

Article 9 Committee Procedures

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

2. The Committee shall issue its recommendations within thirty (30) days of the date of its first meeting.

3. When a dispute cannot be resolved by the Committee within the period mentioned in paragraph 2, the Committee shall submit the matter to the Group of Experts (hereinafter

referred to as “the Group”), as established in Article 11 and shall immediately notify this decision to the parties.

Article 10 **List of Experts**

1. For the purpose of establishing the Group, each Signatory Party, within 30 days as from the entry into force of the Agreement, shall provide the Committee with a list of four (4) experts, one (1) of them being a national of countries other than the Signatory Parties.
2. The list shall be composed of persons of recognized expertise in matters related to the Agreement.
3. The Committee shall establish a list of experts based on the names submitted by the Signatory Parties.

Article 11 **Establishment of the Group of Experts**

The Group of Experts shall consist of three (3) members and shall be constituted as follows:

- a) Within fifteen (15) days after the notification referred to in Article 9.3, each side to the dispute shall choose one expert from the list referred to in Article 10.3.
- b) Within the same timeframe the parties to the dispute shall indicate, by consensus, from among those in the list, a third expert, whom shall not be a national of any of the Signatory Parties. This third expert shall preside over the Group of Experts.
- c) If any nomination referred to in the paragraph a) or b) is not made within the specified timeframe, it shall be made by lot, by the Committee, within ten (10) days from the list of experts previously designated.
- d) Nominations referred to in paragraphs a) to c) shall be notified to all the Signatory Parties.

Article 12 **Impartiality of the Experts**

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 exercise of their functions, the experts shall act with independence and impartiality.

Article 13 Evidence

In order to further investigate the matter, the Group may request oral or written evidence.

Article 14 Expenses of the Group

1. The expenses resulting from the work of the Group shall be borne in equal parts by the parties to the dispute.
2. Such expenses shall include the fees of the experts, travel expenses and other costs incurred in connection with their work.
3. The Committee shall determine the remuneration, fees and allowances for the experts, as well as approve related expenses.

Article 15 Report and Recommendations

1. Within thirty (30) days of receipt of the notification of the designation of the third expert, the Group shall deliver to the Committee its joint report. The report shall consist of two parts. The first, of a descriptive nature, shall contain an outline of the case and the arguments presented by the parties, and may reflect the opinions of individual experts, which shall remain anonymous. The second shall contain the findings of the Group.
2. Should the Group conclude that the matter referred to it pursuant to the provisions of Article 9.3 is inconsistent with a provision of the Agreement, the Group shall recommend to the Committee that the party or parties concerned conform with that provision.
3. Unless there is consensus in the Committee not to accept the recommendations of the Group, the Committee shall, within thirty (30) days after the receipt of the report, recommend that the party or parties concerned bring the measure into conformity with this Agreement,

Article 16
Compliance

The concerned party shall comply with the recommendations of the Committee within 90 (ninety) days, unless otherwise decided by the Committee.

Article 17
Suspension of Concessions

1. If the concerned party fails to implement the recommendations according to Article 15, the Committee may authorize the complaining party to temporarily withdraw concessions having trade effects equivalent to the benefits diminished by the non-conformity.
2. The complaining party should first seek to suspend, whenever possible, concessions with respect to the same sector(s) affected by the act of non-conformity. If this is not practicable or effective, the complaining party may suspend concessions in other sector(s), indicating the reasons to do so.

CHAPTER IV

Article 187
Communications

1. All communications between MERCOSUR or its Member States and SACU or its Member States shall be transmitted, in the case of MERCOSUR, to the Pro Tempore Presidency, and in the case of SACU, to the Chair of the SACU Council of Ministers.
2. All communications referred to in this Dispute Settlement Procedure shall be transmitted to all the Signatory Parties.

Article 198
Determination of periods

The periods referred to in this Dispute Settlement Procedure are expressed in consecutive days, including non-working days, and shall be calculated from the day immediately following the relevant act or fact. If the period begins or ends on a non-working day (Saturday or Sunday), the period shall be deemed to be starting or expiring on the following working day of the party concerned.

Article 1920
Confidentiality

Documents and acts related to the proceedings established in this Dispute Settlement Procedure shall be confidential.

Article 2021
Withdrawal of Claim or Agreement

At any time during the proceedings the complaining party may withdraw its claim or the parties may reach an agreement. In both cases the dispute shall be terminated. The Committee shall be notified in order to take any necessary measures.