

Montevideo Protocol on Trade in Services of MERCOSUR.

The Republic of the Federative Republic of Argentina, Brazil, the Republic of Paraguay and the Eastern Republic of Uruguay, States parties of the Common Market of the South (MERCOSUR);

Reaffirming

According to the Treaty of Asunción the Common Market, among other commitments, circulaarte free services in the enlarged market;

Recognizing

The importance of liberalization of trade in services for the development of the economies of the member States of MERCOSUR, for the deepening of the Customs Union and the gradual establishment of the Common Market;

Whereas

The need for the less developed regions and countries of MERCOSUR have increased participation in the services market and to promote trade in services on the basis of reciprocity of rights and obligations;

Desiring

In an instrument establish common standards and principles for trade in services between the States parties of MERCOSUR, with a view to expanding trade in terms of transparency, balance and progressive liberalisation;

Taking

In view of the General Agreement on Trade in Services (GATS) of the World Trade Organization (WTO), in particular article V, and the commitments undertaken by the Parties under the GATS;

Hereby agree as follows:

Article I. Object

1. This protocol is to promote free trade in services MERCOSUR.

Article II. Scope

1. This Protocol applies to measures adopted by parties that affect trade in services in Mercosur, including those relating to:

- i. The provision of a service;
 - ii. The purchase or use of a service;
 - iii. The access to services offered to the public generally limitations of these States Parties, and the use of in connection with the provision of a service;
 - iv. the presence, including a commercial presence of persons of a party into the territory of another State Party to the provision of a service;
2. For the purposes of this Protocol, trade in services is defined as the supply of a service:
- a. From the territory of a State party to the territory of another State Party;
 - b. In the territory of a State party to the consumer of a service of any other State Party;
 - c. By a service provider of a Party through commercial presence in the territory of another State Party;

d. By a service provider of a party through the presence of natural persons of a party into the territory of another State Party.

3. For the purposes of this Protocol:

a. "measures taken by States parties" will be understood as measures taken by:

i. Governments and central authorities, state, provincial, departmental, municipal or local; and

ii. Non-governmental bodies in the exercise of powers delegated by governments or authorities referred to in subparagraph (i).

In fulfilling its obligations and commitments under this Protocol, each State Party shall take the necessary measures as may be available to it to ensure their observance by Governments and provincial, departmental, municipal or local authorities and by non-governmental bodies in its territory;

b. The term "services" includes any service in any sector except services supplied in the exercise of governmental authority;

c. A "services provided in the exercise of governmental authority" means any service that is not supplied on a commercial basis nor in competition with one or more service suppliers.

Article III. Most-favoured-nation Treatment

1. With respect to measures covered by this Protocol, each State Party shall accord immediately and unconditionally to services and service providers of any other party treatment no less favourable than that it accords to like services and service providers of any other State Party or third countries.

2. The provisions of this Protocol shall not be construed to prevent a State Party from conferring or advantages granted to neighbouring countries, whether or not States parties in order to facilitate exchanges limited to contiguous frontier zones of services that are locally produced and consumed.

Article IV. Market Access

1. With respect to market access through the modes of supply identified in article II, each State Party shall grant to services and service providers of the other party treatment no less favourable than that provided for under the terms specified in its Schedule of Specific Commitments. Parties undertake to allow the cross-border movement of capital is an essential part of market access commitment contained in its Schedule of Specific Commitments with respect to cross-border trade, as well as the transfer of capital in its territory where market-access commitments made with respect to the commercial presence.

2. State Parties shall not maintain or adopt either on the basis of a regional subdivision or on the entire territory measures in respect of:

a. The number of service suppliers whether in the form of numerical quotas or monopolies and exclusive service providers or the requirement of an economic needs test;

b. The total value of service transactions or assets in the form of numerical quotas or the requirement of an economic needs test;

c. The total number of service operations or the total quantity of service expressed in terms of designated numerical units in the form of quotas or the requirement of an economic needs test, excluding measures that limit inputs for the supply of services.

d. The total number of natural persons that may be employed in a particular service sector or that a service supplier may employ and who are necessary for the supply of a specific service and directly related to it, in the form of numerical quotas or the requirement of an economic needs test;

e. The specific types of legal entity or joint venture through which a service provider may provide a service; and

f. For the participation of foreign capital expressed as a maximum percentage limit on foreign shareholding or by a total value of individual or aggregate foreign investment.

Article V. National Treatment

1. Each State Party shall grant to services and service providers of any other State Party, with respect to all measures

affecting the supply of services, treatment no less favourable than that granted to its own like services and service providers.

2. The specific commitments assumed under this article shall not oblige States Parties to compensate for disadvantages inherent competitive which result from the foreign character of the relevant services or service providers.

3. Each State Party shall comply with the requirements of paragraph 1 providing to services and service providers of the other States Parties formally identical or formally different treatment to that granted to its own like services and service providers.

4. It shall be considered that formally identical or formally different treatment less favourable if it modifies the conditions of competition in favour of services or service suppliers of the party compared to like services or service providers of another party.

Article VI. Additional Commitments

States parties may negotiate commitments with respect to measures affecting trade in services not subject to scheduling under Articles IV and V, including measures relating to qualification standards, or issues licenses. Such commitments shall be set out in the schedules of specific commitments of States Parties.

Article VII. Schedules of Specific Commitments

1. Each State Party shall specify in a Schedule of Specific Commitments, sectors, sub-sectors and activities with respect to which it will take commitments and, for each mode of delivery, shall indicate the terms and conditions, limitations on market access and National Treatment. Each State Party shall also specify additional commitments pursuant to article VI. Where relevant, each State Party shall specify deadlines for implementation of such commitments and the date of Entry into Force of such commitments.

2. Articles IV and V shall not apply to:

a. Sectors, sub-sectores, activities or measures which are not specified in Schedule of Specific Commitments;

b. Measures specified in its schedule of specific commitments that are not in accordance with Article IV or Article V.

3. Measures that are dissenting concurrently with article IV and V should be listed in the column relating to article IV. In this case the inscription will be considered as a condition or restriction further to Article V.

4. Schedules of specific commitments shall be annexed to this Protocol and shall form an integral part thereof.

Article VIII. Transparency

1. Each State Party shall promptly publish before the date of its Entry into Force, except in cases of force majeure, all relevant measures of general application which pertain to or affect the operation of this Protocol. Each State Party shall also publish international agreements concluded with any country and which relate to or affect trade in services.

2. Where it is not practicable the publication of the information referred to in the preceding paragraph, it shall be made publicly available.

3. Each State Party shall notify promptly, and at least annually, to the Commission on the trade of MERCOSUR, the establishment of new laws, regulations or administrative guidelines or amendments to existing laws which considers that significantly affect trade in services.

4. Each State Party shall respond promptly to all requests for specific information to other States Parties on any of its measures of general application or international agreements referred to in paragraph 1. Each State Party shall provide specific information to States parties, upon request, through the service or services established under paragraph 4 of article III of the GATS, on all such matters or on the subject to notification under paragraph 3.

5. Each State Party may notify the Commission of trade of MERCOSUR, any action taken by another State party that affect the operation of this Protocol.

Article IX. Disclosure of Confidential Information

Nothing in this Protocol shall imply the imposition to any State party the obligation to provide confidential information; the disclosure of which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of public or private enterprises.

Article X. Domestic Regulation

1. Each State Party shall ensure that all measures of general application affecting trade in services are administered in a reasonable, objective and impartial manner.
2. Each State Party shall establish or maintain judicial, arbitral tribunals or administrative procedures or allow, at the request of an affected service provider, the prompt review of administrative decisions affecting trade in services and, where justified, the implementation of appropriate solutions. Where such procedures are not independent of the agency entrusted with the administrative decision, the State party shall ensure that for an objective and impartial review.

Provisions of this paragraph shall not be construed as imposing any State party to establish such tribunals or procedures where this would be inconsistent with its constitutional structure or the nature of its legal system.

3. When it is required a license, a certificate or other type of authorization for the provision of a service, the competent authorities of the State party concerned, within a reasonable period of time after the submission of an application:

- i. Where the application is complete, resolved on the same or inform the applicant;
- ii. Where the application is not complete, shall notify the applicant without undue delay of the status of the application and the additional information that is required under the law of the State party.

4. With the objective of ensuring that measures relating to technical standards and requirements and procedures for qualification and licensing requirements do not constitute unnecessary barriers to trade in services, States Parties shall ensure that such requirements and procedures, inter alia:

- i. Is based on objective and transparent criteria, such as the competence and ability to supply the service;
- ii. Are not more burdensome than necessary to ensure the quality of the service; and
- iii. In the case of licensing procedures, are not in themselves a restriction on the supply of the service.

5. Each State Party may provide for adequate procedures to verify the competence of professionals of the other States parties.

Article XI. Recognition

1. When a State Party recognizes unilaterally or through an agreement, the Education Experience, licences, fees or certifications obtained in the territory of another State Party or any country that is not a party of MERCOSUR:

- a. Nothing in this Protocol shall be interpreted as requiring a State Party to recognize the education or experience, licences, fees or certifications obtained in the territory of another State Party; and

- b. State party shall afford adequate opportunity to another Party:

1. To demonstrate that the education or experience, licences, fees and certificates obtained in its territory should also be recognized; or
- ii. To conclude an agreement or arrangement of comparable effect.

2. Each State Party undertakes to encourage the relevant bodies in their respective territories, inter alia, of governmental nature and professional associations and bodies, in cooperation with relevant entities of the other States parties to develop mutually acceptable standards and criteria for the exercise of the activities and relevant professions in the area of services, through licensing, registration and certificates to service providers and to provide recommendations to the Common Market Group on mutual recognition.

3. The standards and criteria referred to in paragraph 2 may be developed, inter alia, on the basis of the following elements: education, reviews, experience, conduct and ethics, professional development and recertification, scope, local knowledge, consumer protection and requirements of nationality, residence or domicile.

4. On receipt of a recommendation referred to in paragraph 2, the Common Market Group shall within a reasonable time to

determine its consistency with this Protocol. Based on this review, each State Party undertakes to instruct their respective competent authorities, when necessary to implement the provisions of the competent authorities of MERCOSUR within a mutually agreed period.

5. The Common Market shall periodically review, at least once every three years, the implementation of this article.

Article XII. Competition

With respect to acts performed on the provision of services by private or public service providers or other entities that produce or are intended to produce effects on competition within MERCOSUR and affecting trade in services between the parties shall apply the provisions of the protocol on competition of MERCOSUR.

Article XIII. General Exceptions

Subject to the measures listed below are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where like conditions prevail or a disguised restriction on trade in services, nothing in this Protocol shall be construed as preventing a Party may adopt measures or apply:

- a. Necessary to protect public morals or to maintain public order, which can only be invoked the public policy exception whenever a sufficiently serious and imminent threat to one of the fundamental interests of society;
- b. Necessary to protect the life and health of individuals and animal or plants;
- c. Necessary to secure compliance with laws and regulations that are not inconsistent with the provisions of this Protocol, including those relating to:
 - i. The prevention of fraudulent practices or misleading practices and to deal with the effects of a default on services contracts;
 - ii. The protection of the privacy of individuals in relation to the processing and dissemination of personal data and the protection of confidentiality of individual records and accounts;
 - iii. Security;
- d. Inconsistent with article V, as expressed in the present Protocol, provided that the difference in treatment is aimed at ensuring the equitable and effective or collection of direct taxes in respect of services or service providers of the other States parties, including the measures taken by a State Party pursuant to a tax regime, as stipulated in article XIV (d) of GATS.
- e. Inconsistent with article III, as is stated in this Protocol, provided that the difference in treatment is an agreement for the avoidance of double taxation or provisions on the avoidance of double taxation in any other international agreement or convention that is binding on the State party that the measure applies.

Article XIV. Security Exceptions

1. Nothing in this Protocol shall be interpreted as meaning that:

- a. Imposing an obligation of a State party to supply information which disclosure is considered contrary to its essential security interests; or
 - b. Prevents a State party measures that it considers necessary for the protection of its essential security interests:
 - i. For the provision of services directly or indirectly to ensure the supply of armed forces;
 - ii. Relating to fissionable and fusionable materials or the materials from which they are derived;
 - iii. Taken in time of war or serious international tension or;
 - c. Prevent a Party from taking action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.
2. It shall inform of the MERCOSUR Trade Commission of measures taken under subparagraphs (b) and 1 (c) and of their termination.

Article XV. Government Procurement

1. Articles III, IV and V, shall not apply to the laws, regulations or requirements governing the procurement of services purchased by governmental agencies for governmental purposes and not with a view to commercial resale or use in the supply of services for commercial sale.
2. Without prejudice to paragraph 1, and recognizing that such laws, regulations or requirements may have distortive effects on trade in services, States Parties agree to apply the common disciplines governmental purchases in general shall be established within MERCOSUR.

Article XVI. Subsidies

1. States Parties recognize that in certain circumstances subsidies may have distortive effects on trade in services. State parties agree that apply common disciplines on subsidies in general shall be established within MERCOSUR.
2. It shall apply the procedure provided for in paragraph 2 of article XV of the GATS.

Article XVII. Denial of Benefits

A Party may deny the benefits of this Protocol to a service provider of another State Party, subject to prior notification and consultation, where the former party establishes that the service is being provided by a person of a country that is not a State party of MERCOSUR.

Article XVIII. Definitions

1. For the purposes of this Protocol :
 - a. "measure" means any measure by a Party whether in the form of law, regulation, rule, procedure, decision or administrative provision, or any other form;
 - b. "supply of a Service" includes the production, distribution, sale and delivery of a service;
 - c. "commercial presence" means any type of business or professional through, inter alia, of the Constitution, acquisition or maintenance of a juridical person as well as branches and Representative Offices located in the territory of a State party in order to provide a service.
 - d. "sector" of a service means:
 - i. With reference to a specific commitment, one or several subsectors of that service, or all of them, as specified in the schedule of specific commitments of a State party.
 - ii. In another case, the whole of that service sector, including all of its subsectors;
 - e. "service of another party" means a service:
 - i. From or in the territory of that other State Party;
 - ii. In the case of the supply of a service through commercial presence or through the presence of natural persons, by a service provider of the other party;
 - f. "service provider" means any person that provides a service. Where the service is not provided by a juridical person directly but through other forms of commercial presence, including a branch office or a representative, shall however the service provider (i.e. a legal person), through the presence, service providers to treatment under the Protocol. This treatment shall be granted to the presence through which the service is provided, without the need to grant it to any other part of the provider located outside the territory where the service is provided.
 - g. "consumer of services" means any person that receives or uses a service;
 - h. "person" means a natural person or a juridical person;
 - i. "natural person of another party" means a natural person who resides in the territory of that other State Party or of any other State party and that, according to the law of that other State party is a national of that other State party or has the right of permanent residence in that other State Party;

j. "juridical person" means any legal entity duly constituted or organized under the applicable law, whether or not for profit, is owned public, private or mixed and is organized under any company or association.

k. "juridical person of another party" means a juridical person which is incorporated or organized under the law of that other State party, having its seat and develop schedule or develop substantive business operations in the territory of that State Party or of any other State Party.

Article XIX. Negotiation of Specific Commitments

1. In furtherance of the objectives of this Protocol, States Parties shall keep successive rounds of negotiations for the purpose of completing within a maximum period of ten years from the Entry into Force of this Protocol, the programme of liberalization of trade in services of MERCOSUR. The negotiations shall be carried out on an annual round and shall be aimed at the progressive incorporation of sectors and sub-sectors, activities and the provision of services to the programme of liberalisation of the Protocol, as well as the reduction or elimination of the adverse effects of measures on trade in services, so as to ensure effective access to markets. This process shall have the purpose to promote the interests of all participants, on the basis of mutual benefit, and securing an overall balance of rights and obligations.

2. The process of progressive liberalisation shall be aimed at each round through negotiations with a view to enhancing the level of specific commitments by States parties in their schedules of specific commitments.

3. In the development of the program shall liberalization differences in the level of commitments pursuant to the specificities of different sectors and subject to the objectives set out in the following paragraph.

4. The process of liberalization shall respect the right of each State party to regulate and to introduce new regulations within their territories in order to achieve the objectives of national policies relating to the services sector. Such regulations may include, inter alia, national treatment and market access, whenever not nullify or impair its obligations under this Protocol and specific commitments.

Article XX. Modification or Suspension of Obligations

1. Each State Party may, during the implementation of the liberalization Program referred to in part III of this Protocol, modify or suspend specific commitments in its Schedule of Specific Commitments.

Such modification or suspension shall only apply from the date on which it is established and respecting the principle of non-retroactivity to preserve the acquired rights.

2. Each State Party to this regime shall only in exceptional cases, provided that when he shall notify the Common Market Group and present to the same facts, the reasons and justifications for such modification or suspension of commitments. In such cases, the State party concerned shall hold consultations with the States Parties that consider themselves as affected, to reach a consensus on understanding the specific measure to be applied and the period of validity.

Article XXI. Common Market Council

The Common Market Council shall approve the results of the negotiations on specific commitments as well as any alteration or suspension of the same.

Article XXII. Common Market Group

1. Negotiate on services in Mercosur is under competence of the Common Market Group. With respect to this Protocol, the Common Market Group shall have the following functions:

a. Convene and oversee the negotiations referred to in Article XIX of this Protocol. To this end, the Common Market Group shall establish the scope, approaches and tools for the conclusion of negotiations on specific commitments;

b. Receive notifications and the results of the consultations regarding amendments and / or suspension of specific commitments pursuant to article XX;

c. Compliance with the functions assigned to it in article XI;

d. Periodically assess the evolution of trade in services in the common market; and

e. Carrying out other tasks conferred by the Common Market Council on Trade in Services.

2. For purposes of the functions referred to above, the Common Market Group shall constitute a subsidiary body and regulate its composition and methods of operation.

Article XXIII. Mercosur Trade Commission

1. Without prejudice to the functions referred to above the application of this Protocol shall be entrusted to the Commission on the trade of MERCOSUR, which shall have the following functions:

- a. Any information which, in accordance with article VIII of this Protocol shall be notified by the States Parties;
- b. Receive information from States parties subject to the exceptions provided for in article XIV.
- c. Receive information from States parties with regard to actions that may constitute abuse of dominant position or distorting competition practices and make it available to the national bodies for the implementation of the Protocol of competition;
- d. In the consultations and claims submitted by States parties concerning the interpretation or application of this Protocol and non-compliance with the commitments made in the schedules of specific commitments, applying the existing mechanisms and procedures within the common market; and
- e. Carrying out other tasks conferred by the Common Market Group on Services.

Article XXIV. Settlement of Disputes

Disputes that may arise between the parties concerning the interpretation or application, commitments laid down in this Protocol, shall be settled in accordance with the procedures and mechanisms in force in the MERCOSUR.

Article XXV. Annexes

The annexes to this Protocol shall form an integral part thereof.

Article XXVI. Review

- 1. With the aim of achieving the object and purpose of this Protocol may be revised, taking into account the development and regulation of trade in services in Mercosur and the progress of services in the World Trade Organization and other specialized forums.
- 2. In particular, the evolution of the operation of the institutional provisions of this Protocol and institutional structure of MERCOSUR, part IV hereof with a view to their further development.

Article XXVII. Duration

- 1. This Protocol shall form an integral part of the Treaty of Asunción, it has indefinite duration and shall enter into force thirty days after the date of deposit of the third instrument of ratification.
- 2. This Protocol and its instruments of ratification shall be deposited with the Government of the Republic of Paraguay, which shall transmit certified true copies of this Protocol to the Governments of the other States parties.
- 3. Schedules of specific commitments are incorporated into the national legal systems in accordance with the procedures laid down in each State Party.

Article XXVIII. Notifications

The Government of the Republic of Paraguay shall notify the governments of the other States parties the date of deposit of instruments of the Ratification and Entry into Force of this Protocol.

Article XXIX. Accession or Denunciation

In respect of accession or denunciation shall be applied, to this Protocol, the rules established by the Treaty of Asunción. The complaint or denunciation to the Treaty of Asunción or to this Protocol, mean ipso jure, accession or complaint to this Protocol and the Treaty of Asunción.

Article XXX. Title

This Protocol shall be named as Montevideo Protocol on Trade in Services of the Southern Common Market.

Done at the city of Montevideo, Uruguay, on the 15th day of December in the year one thousand nine hundred and ninety-seven in one original in the English and Portuguese languages, both texts being equally authentic.

The Government of the Argentine Republic

The Government of the Federative Republic of Brazil

Guido Di Tella

Ministry of Foreign Affairs and Worship

Luiz Felipe Lampreia

Minister of Foreign Affairs

The Government of the Republic of Paraguay

The Government of the Eastern Republic of Uruguay

Ruben Melgarejo

Minister of Foreign Affairs

Carlos Perez Castillo

Minister of Foreign Affairs