PREFERENTIAL TRADE AGREEMENT

BETWEEN

THE 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 Oriental Republic of Uruguay, State 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 makes provision for the establishment of a Common Negotiating Mechanism for Botswana, Lesotho, Namibia, South Africa and Swaziland in regard to trade relations with third Parties;

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

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 recall 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 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;

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

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 SACU States acting jointly as SACU. The 'Signatory Parties' are the Argentine Republic, the Federative Republic of Brazil, the Republic of Paraguay, the 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) 2007**.**

Article 5

Tariff preferences shall be applied to 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) safeguard duty or levy imposed in accordance with Article XIX of GATT 1994, the WTO Agreement on Safeguards and Article 1 of Annex IV (Safeguards) of this Agreement;

d) 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;

e) 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 Oriental Republic of Uruguay, aiming at a mutually satisfactory solution to the matter, which shall be notified to the Joint Administration Committee.

Article 7

1. Except as 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.

2. Non-tariff restrictions shall refer to any administrative, financial, exchange-related or other measure whereby a Signatory Party prevents or hinders mutual trade by virtue of a unilateral decision.

Article 8

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

Article 9

In order to facilitate the attainment of the objectives set out in Article 2, the Signatory 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
Exceptions

Article 13

Nothing in this Agreement shall be construed to prevent a Party or 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 14

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 15

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 16

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 IX
Technical Barriers to Trade

Article 17

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 18

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 19

The Parties or 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 20

The Parties or 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 Parties or Signatory Parties shall seek to identify initiatives that are appropriate for particular issues or sectors.

Article 21

1. The Parties or 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 Parties or 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 X
Sanitary and Phytosanitary Measures

Article 22

This Chapter applies to all sanitary and phytosanitary measures of a Party or 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 23

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

Article 24

Sanitary and Phytosanitary Measures shall be subject to the conditions established in Annex VI of this Agreement.

Chapter XI
Administration of the Agreement

Article 25

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 representatives of SACU or the Common Negotiating Mechanism on the side of SACU.

Article 26

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 27

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 28

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 XII
Further Market Access

Article 29

The Parties undertake to continue to explore the possibilities for enhancing market access among themselves.

Article 30

1. The Parties recognize the particular importance of enhancing market access for smaller economies in MERCOSUR and SACU.

2. In this regard, the Parties instruct the Committee to accord priority to this objective.

Chapter XIII
Settlement of Disputes

Article 31

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 XIV
Amendments and Modifications

Article 32

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 33

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

Chapter XV
Incorporation of New Members

Article 34

If one of the Parties incorporates one or more new Member States, it shall notify the other Party and afford adequate opportunity for negotiations.

Article 35

The incorporation into this Agreement of new members to MERCOSUR or to SACU, as Signatory Parties, shall be formalised through an Accession Protocol reflecting the results of the negotiations held pursuant to Article 34.

Chapter XVI
Entry into Force, Notification and Termination

Article 36

This Agreement shall be subject to the 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 their respective internal procedures to that effect**.** For MERCOSUR the notification shall be done by the MERCOSUR Pro Tempore Presidency and for SACU the notification shall be done by the SACU Secretariat.

Article 37

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 XVII
Withdrawal

Article 38

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. In that case, the notice of withdrawal from the SACU Agreement or the MERCOSUR Agreement shall be notified to all Signatory Parties within sixty (60) days and shall be deemed to be a notice of withdrawal from this Agreement.

Article 39

Once withdrawn, the rights and obligations assumed by the withdrawing Signatory Party shall cease to apply, but it shall be bound to comply with the obligations and continue to enjoy the rights 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 XVIII
Depositary

Article 40

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

Article 41

In fulfilment of their depositary functions, the Government of the Republic of Paraguay and the SACU Secretariat shall notify the State 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 ……., …….., on the …th day of ….. 200 ., 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

ANNEX III

CONCERNING THE DEFINITION OF THE CONCEPT OF "ORIGINATING PRODUCTS" AND METHODS OF ADMINISTRATIVE COOPERATION

Table of Contents

Title I
General Provisions

Article 1
Definitions

For the purposes of this Annex:

(a) "manufacture" means any kind of working or processing including assembly or specific operations;

(b) "material" means any ingredient, raw material, component or part, etc., used in the manufacture of the product;

(c) "product" means the product being manufactured, even if it is intended for later use in another manufacturing operation;

(d) "goods" means both materials and products;

(e) "customs value" means the value as determined in accordance with the 1994 Agreement on implementation of Article VII of the General Agreement on Tariffs and Trade (WTO Agreement on Customs Valuation);

(f) "ex-works price" means the price paid for the product ex works to the manufacturer in SACU in whose undertaking the last working or processing is carried out, provided the price includes the value of all the materials used, minus any internal taxes which are, or may be, repaid when the product obtained is exported;

(g) “CIF price” means the price paid to the exporter by an importer in MERCOSUR for the product when the goods pass the ships rail at the named port of shipment. The exporter must pay the costs and freight necessary to bring the goods to the named port of destination. For landlocked countries, the port of destination means the first sea port or inland waterway port located in any of the Signatory Parties, through which those products have been imported;

(h) “Free on Board price” means the price paid to the exporter for the product when the goods pass the ships rail at the named port of shipment, thereafter, the importer will assume all the costs including the necessary expenses for the shipment;

(i) "value of materials": for SACU means the customs value at the time of importation of the non-originating materials used, or, if this is not known and cannot be ascertained, the first ascertainable price paid for the materials in SACU; for MERCOSUR means the CIF price of non-originating materials used as defined in (g);

(j) "value of originating materials" means the value of such materials as defined in (i);

(k) “price of the product”: for SACU means ex-works price, as defined in (f); for MERCOSUR means the Free on Board price, as defined in (h);

(l) "chapters", "headings" and “subheadings” mean the chapters, the headings (four-digit codes) and subheading (six-digit codes) used in the nomenclature which makes up the Harmonized Commodity Description and Coding System, referred to in this Annex as "the Harmonized System" or "HS";

(m) "classified" refers to the classification of a product or material under a particular heading or subheading;

(n) "consignment" means products which are either sent simultaneously from one exporter to one consignee or covered by a single transport document covering their shipment from the exporter to the consignee or, in the absence of such a document, by a single invoice;

(o) “territory" includes the “territorial sea”, the “exclusive economic zone” and the “continental shelf” as defined in the United Nations Convention on the Law of the Sea;

(p) “high seas” have the same meaning as in the United Nations Convention on the Law of the Sea;

(q) “MERCOSUR” means Mercado Común del Sur;

(r) “a MERCOSUR state” means any of the following states: Argentina, Brazil, Paraguay or Uruguay, as the case may be;

(s) “SACU” means the Southern African Customs Union;

(t) “a SACU state” means any of the following states: Botswana, Lesotho, Namibia, South Africa or Swaziland, as the case may be;

(u) “customs or competent authority” refer to a customs authority in SACU and, in MERCOSUR[1], to the:

- “Ministerio de Economía y Producción - Secretaria de Industria, Comercio y de la Pequeña y Mediana Empresa” of Argentina;
- “Ministério do Desenvolvimento, Indústria e Comércio Exterior – Secretaria de Comércio Exterior, e Ministério da Fazenda – Secretaria da Receita Federal do Brasil” of Brazil;
- “Ministerio de Industria y Comercio” of Paraguay; and
- “Ministerio de Economía y Finanzas – Asesoría de Política Comercial” of Uruguay.

Title II
Definition of the Concept of “Originating Product”

Article 2

[1] The competence of issuing certificates of origin is delegated by the competent authorities of MERCOSUR to authorised public agencies or trade organisations in Argentina, Brazil, Paraguay and Uruguay.

General requirements

1. For the purpose of implementing this Agreement, the following products shall be considered as originating in MERCOSUR or SACU:

(a) products wholly obtained in MERCOSUR or SACU within the meaning of Article 4;

(b) products obtained in a Signatory Party incorporating non-originating materials, provided that such materials have undergone sufficient working or processing in the Signatory Party within the meaning of Article 5.

2. For the purpose of this Agreement, products originating in MERCOSUR shall be considered as originating in Argentina, Brazil, Paraguay or Uruguay, and products originating in SACU shall be considered as originating in Botswana, Lesotho, Namibia, South Africa or Swaziland.

Article 3
Bilateral cumulation of origin

1. Notwithstanding Article 2, materials and products originating in MERCOSUR within the meaning of this Annex shall be considered as originating in SACU, provided that they have undergone working or processing in SACU going beyond that referred to in Article 6.

2. Notwithstanding Article 2, materials and products originating in SACU within the meaning of this Annex shall be considered as originating in MERCOSUR, provided that they have undergone working or processing in MERCOSUR going beyond that referred to in Article 6.

3. Notwithstanding Article 2, products listed in Annexes I and II that are subject to a tariff rate quota or preferences offered to a particular Signatory Party only are excluded from the cumulation provisions.

Article 4
Wholly obtained products

1. The following shall be considered as wholly obtained in MERCOSUR or in SACU:

(a) mineral products extracted from the soil or subsoil and from the seabed and marine subsoil of the territory of the Signatory Parties;

(b) vegetable products harvested there;

(c) live animals born, captured and raised there;

(d) products from live animals raised there;

(e) products obtained by collecting, hunting, fishing or aquaculture conducted there;

(f) products of sea fishing and other products taken from the territorial sea and exclusive economic zone of MERCOSUR or of SACU;

(g) products of sea fishing and other products taken from the waters in the high seas only by flagged and registered vessels of the respective Signatory Party, as well as products of sea-fishing obtained under a specific quota allocated to a Signatory Party by an international management organisation or regime;

(h) products taken from the seabed or subsoil of their respective continental shelves;

(i) products extracted from the seabed or subsoil outside their respective continental shelves provided that the concerned Signatory Party has rights or is sponsoring an entity that has rights to exploit the resources of that seabed or subsoil, in accordance with international law;

(j) used articles collected there fit only for the recovery of raw materials;

(k) waste and scrap resulting from manufacturing operations conducted there;

(l) goods produced there exclusively from the products specified in sub-paragraphs (a) to (k).

Article 5
Sufficiently worked or processed products

1. For the purposes of Article 2, products covered by this Agreement as listed in Annexes I and II, which are not wholly obtained are considered to be sufficiently worked or processed when the conditions set out in the list in Appendix II are fulfilled.[2]

2. Goods which are not covered by this Agreement as listed in Annexes I and II, but which are incorporated into a good that is covered by this Agreement, are considered to be sufficiently worked or processed if:

(a) these goods are manufactured from materials or products of any heading, except that of the good, or

(b) the value of all non-originating materials or products used does not exceed 40% of the price of the good.

3. Notwithstanding paragraphs 1 and 2, non-originating materials which, according to the conditions set out in the list, should not be used in the manufacture of a product may nevertheless be used, provided that:

(a) their total value does not exceed 10 per cent of the price of the product; and

(b) any of the percentages given in paragraph 2 and in the list of Appendix II for the maximum value of non-originating materials are not exceeded through the application of this paragraph.

[2] The conditions referred to in paragraph 1 indicate, for all products covered by the Agreement, the working or processing which must be carried out on non-originating materials used in manufacturing and apply only in relation to such materials. It follows that if a product which has acquired originating status by fulfilling the conditions set out in the list is used in the manufacture of another product, the conditions applicable to the product in which it is incorporated do not apply to it, and no account shall be taken of the non-originating materials which may have been used in its manufacture.

This paragraph shall not apply to products falling within Chapters 50 to 63 of the Harmonized System.

4. Paragraphs 1 to 3 shall apply subject to the provisions of Article 6.

Article 6
Insufficient working or processing

1. Without prejudice to paragraph 2, the following operations shall be considered as insufficient working or processing to confer the status of originating products, whether or not the requirements of Article 5 are satisfied:

(a) preserving operations to ensure that the products remain in good condition during transport and storage;

(b) breaking-up and assembly of packages;

(c) washing, cleaning; removal of dust, oxide, oil, paint or other coverings;

(d) ironing or pressing of textiles;

(e) simple[3] painting and polishing operations;

(f) husking, partial or total bleaching, polishing, and glazing of cereals and rice;

(g) operations to colour sugar or form sugar lumps;

(h) peeling, stoning and shelling, of fruits, nuts and vegetables;

(i) sharpening, simple[4] grinding or simple[5] cutting;

(j) sifting, screening, sorting, classifying, grading, matching (including the making-up of sets of articles);

(k) simple[6] placing in bottles, cans, flasks, bags, cases, boxes, fixing on cards or boards and all other simple packaging operations;

(l) affixing or printing marks, labels, logos and other like distinguishing signs on products or their packaging;

(m) simple mixing[7] of products, whether or not of different kinds;

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[3] "Simple" generally describes activities which need neither special skills nor machines, apparatus or equipment especially produced or installed for carrying out the activity.
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[5] "Simple" generally describes activities which need neither special skills nor machines, apparatus or equipment especially produced or installed for carrying out the activity.
[6] "Simple" generally describes activities which need neither special skills nor machines, apparatus or equipment especially produced or installed for carrying out the activity.
[7] "Simple mixing" generally describes activities, including dilution in water or any other substance which does not substantially alter the product characteristics, which need neither special skills nor machines, apparatus or equipment specially produced or installed for carrying out the activity. However, simple mixing does not include

(n) simple [8] assembly of parts of articles to constitute a complete article or disassembly of products into parts;

(o) a combination of two or more operations specified in (a) to (n); and

(p) slaughter of animals.

2. All operations carried out either in MERCOSUR or in SACU on a given product shall be considered together when determining whether the working or processing undergone by that product is to be regarded as insufficient within the meaning of paragraph 1.

Article 7
Unit of qualification

1. The unit of qualification for the application of the provisions of this Annex shall be the particular product which is considered as the basic unit when determining classification using the nomenclature of the Harmonized System. It follows that:

(a) when a product composed of a group or assembly of articles is classified in accordance with the Harmonized System in a single heading, the whole constitutes the unit of qualification; and

(b) when a consignment consists of a number of identical products classified under the same heading of the Harmonized System, each product must be taken individually when applying the provisions of this Annex.

2. The packages and packing materials for retail sale, when classified together with the packaged product, in accordance with General Rule 5 b) of the Harmonized System shall not be taken into account for considering whether all non-originating materials used in the manufacture of a product fulfil the criterion corresponding to a change of tariff classification of the said product.

3. If the product is subject to an ad valorem percentage criterion, the value of the packages and packing material for retail sale shall be taken into account in its origin assessment.

Article 8
Accessories, spare parts and tools

Accessories, spare parts and tools dispatched with a piece of equipment, machine, apparatus or vehicle, which are part of the normal equipment and included in the price thereof or which are not separately invoiced, shall be regarded as one with the piece of equipment, machine, apparatus or vehicle in question.

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chemical reaction. Chemical reaction means a process (including a biochemical process) which results in a molecule with a new structure by breaking intramolecular bonds and by forming new intramolecular bonds, or by altering the spatial arrangement of atoms in a molecule.

[8] "Simple" generally describes activities which need neither special skills nor machines, apparatus or equipment especially produced or installed for carrying out the activity.

Article 9
Sets

Sets, as defined in General Rule 3 of the Harmonized System, shall be regarded as originating when all component products are originating. Nevertheless, when a set is composed of originating and non-originating products, the set as a whole shall be regarded as originating, provided that the value of the non-originating products does not exceed 15 per cent of the price of the set (price of the product).

Article 10
Containers and packing materials for transport

The containers and packing materials exclusively used for the transport of a product shall not be taken into account for determining the origin of any good or product, in accordance with General Rule 5 b) of the Harmonized System.

Article 11
Neutral elements

1. In order to determine whether a product originates, it shall not be necessary to determine the origin of the following which might be used in its manufacture:

(a) energy and fuel;

(b) plant and equipment;

(c) machines and tools; and

(d) goods which do not enter into the final composition of the product.

Title III
Territorial Requirements

Article 12
Principle of territoriality

1. The conditions for acquiring originating status set out in Title II must be fulfilled without interruption in MERCOSUR or in SACU.

2. Where originating goods exported from MERCOSUR or from SACU to another country are returned, they must be considered as non-originating when re-exported to MERCOSUR or SACU, unless it can be demonstrated to the satisfaction of the customs authorities that:

(a) the returning goods are the same as those exported; and

(b) they have not undergone any operation beyond that necessary to preserve them in good condition while in that country or while being exported.

Article 13
Direct transport

1. The preferential treatment provided for under the Agreement applies only to products satisfying the requirements of this Annex, which are transported directly between MERCOSUR and SACU.

However, products constituting one single consignment may be transported through other territories with, should the occasion arise, transhipment or temporary warehousing in such territories, provided that they remain under the surveillance of the customs authorities in the country of transit or warehousing and do not undergo operations other than unloading, reloading or any operation designed to preserve them in good condition.

Originating products may be transported by pipeline across territory other than that of the Signatory Parties.

2. Evidence that the conditions set out in paragraph 1 have been fulfilled shall be supplied to the customs authorities of the importing country by the production of:

(a) a single transport document covering the passage from the exporting country through the country of transit; or

(b) a certificate issued by the customs or competent authority of the country of transit:
   (i) giving an exact description of the products;
   (ii) stating the dates of unloading and reloading of the products and, where applicable, the names of the ships, or the other means of transport used; and
   (iii) certifying the conditions under which the products remained in the transit country; or

(c) failing these, any substantiating documents.

Article 14
Exhibitions

1. Originating products, sent for exhibition in a country outside the Signatory Parties and sold after the exhibition for importation into MERCOSUR or into SACU shall benefit on importation from the provisions of the Agreement provided it is shown to the satisfaction of the customs or competent authority that:

(a) an exporter has consigned these products from MERCOSUR or from SACU to the country in which the exhibition is held and has exhibited them there;

(b) the products have been sold or otherwise disposed of by that exporter to a person in MERCOSUR or in SACU;

(c) the products have been consigned during the exhibition or immediately thereafter in the state in which they were sent for exhibition; and

(d) the products have not, since they were consigned for exhibition, been used for any purpose other than demonstration at the exhibition.

2. A certificate of origin must be issued or made out in accordance with the provisions of Title IV and submitted to the customs authorities of the importing country in the normal

manner. The name and address of the exhibition must be indicated thereon. Where necessary, additional documentary evidence of the conditions under which they have been exhibited may be required.

3. Paragraph 1 shall apply to any trade, industrial, agricultural or crafts exhibition, fair or similar public show or display which is not organized for private purposes in shops or business premises with a view to the sale of foreign products, and during which the products remain under customs control.

Title IV
Certificate of Origin

Article 15
General requirements

1. Products originating in a Signatory Party shall, on importation into MERCOSUR or SACU, benefit from the Agreement upon submission of a certificate of origin, a specimen of which appears in Appendix III.

2. Notwithstanding paragraph 1, originating products within the meaning of this Annex shall, in the cases specified in Article 23, benefit from the Agreement without it being necessary to submit the certificate of origin.

Article 16[9]
Procedure for the issue of a certificate of origin

1. A certificate of origin shall be issued by the customs or competent authority of the exporting country on application having been made in writing by the exporter or, under the exporter's responsibility, by his authorised representative.

2. For this purpose, the exporter or his authorised representative shall complete both the certificate of origin and the application form, specimens of which appear in Appendix III. These forms shall be completed in English, in accordance with the provisions of the domestic law of the exporting country. If they are handwritten, they shall be completed in ink in block letters. The description of the products must be given in the box reserved for this purpose without leaving any blank lines. Where the box is not completely filled, a horizontal line must be drawn below the last line of the description, the empty space being crossed through.

3. The exporter applying for the issue of a certificate of origin shall be prepared to submit at any time, at the request of the customs authorities or competent authority of the exporting country where the certificate of origin is issued, all appropriate documents proving the originating status of the products concerned as well as the fulfilment of the other requirements of this Annex.

[9] The term “the other requirements”, mentioned in paragraphs 4 and 5 of this Article, does not include the requirements of direct transport and exhibition, since those requirements shall be checked by the customs authority of the importing country.

4. A certificate of origin shall be issued by the customs or competent authority of MERCOSUR or of SACU if the products concerned can be considered as products originating in MERCOSUR or in SACU and fulfil the other requirements of this Annex.

5. The customs or competent authority issuing certificates of origin shall take any step necessary to verify the originating status of the products and the fulfilment of the other requirements of this Annex. For this purpose, they shall have the right to call for any evidence and to carry out any inspection of the exporter's accounts or any other check considered appropriate. They shall also ensure that the forms referred to in paragraph 2 are duly completed. In particular, they shall check whether the space reserved for the description of the products has been completed in such a manner as to exclude all possibility of fraudulent additions.

6. The date of issue of the certificate of origin shall be indicated in Box 11 of the certificate.

7. A certificate of origin shall be issued by the customs or competent authority and made available to the exporter as soon as actual exportation has been effected or ensured.

Article 17
Certificate of origin issued retrospectively

1. Notwithstanding Article 16(7), a certificate of origin may exceptionally be issued after exportation of the products to which it relates if:

(a) it was not issued at the time of exportation because of errors or involuntary omissions or special circumstances; or

(b) it is demonstrated to the satisfaction of the customs or competent authority that a certificate of origin was issued but was not accepted at importation for technical reasons.

2. For the implementation of paragraph 1, the exporter must indicate in his application the place and date of exportation of the products to which the certificate of origin relates, and state the reasons for his request.

3. The customs or competent authority may issue a certificate of origin retrospectively, if requested by the exporter within six months from the date of the exportation, and only after verifying that the information supplied in the exporter's application corresponds with that in the records of the issuing office or the authenticity thereof have been verified.

4. Certificates of origin issued retrospectively must be endorsed with the words *"ISSUED RETROSPECTIVELY"*.

5. The endorsement referred to in paragraph 4 shall be inserted in the "Remarks" box of the certificate of origin.

Article 18
Issue of a duplicate certificate of origin

1. In the event of theft, loss or destruction of a certificate of origin, the exporter may apply to the customs or competent authority which issued it for a duplicate made out on the

basis of the export documents in their possession or of which the authenticity thereof have been verified.

2. The duplicate issued in this way must be endorsed with the word *"DUPLICATE"*.

3. The endorsement referred to in paragraph 2 shall be inserted in the "Remarks" box of the duplicate certificate of origin.

4. The duplicate, which shall indicate the date of issuance and the number of the original certificate in the "Remarks" box, shall take effect as from that date.

Article 19
Issuing of a certificate of origin on the basis of a proof of origin issued or made out previously

1. When originating goods are placed under the control of a customs office in a Member State of SACU or MERCOSUR, it shall be possible to replace the original proof of origin by one or more certificate/s of origin for the purpose of sending all or some of these goods elsewhere within the Member States of SACU or MERCOSUR. The replacement certificate of origin shall be issued by the competent governmental authority under whose control the products are placed.

2. In the case of MERCOSUR, this article shall apply only to the Signatory Parties that have decided on its implementation and that have duly notified the Joint Committee thereof.

Article 20
Validity of certificate of origin

1. The certificate of origin shall be valid for six months from the date of issue in the exporting country, and must be submitted within the said period to the customs authorities of the importing country.

2. Certificates of origin which are submitted to the customs authorities of the importing country after the final date for presentation specified in paragraph 1 may be accepted for the purpose of applying preferential treatment, where the failure to submit these documents by the final date set is due to exceptional circumstances.

3. In other cases of belated presentation, the customs authorities of the importing country may accept the certificates of origin where the products have been submitted before the said final date.

Article 21
Submission of certificates of origin

Certificates of origin shall be submitted to the customs authority of the importing country in accordance with the procedures applicable in that country. The said authorities may require a translation of a certificate of origin and may also require the import declaration to be accompanied by a statement from the importer to the effect that the products meet the conditions required for the implementation of the Agreement.

Article 22
Importation by instalments

Where, at the request of the importer and on the conditions laid down by the customs authority of the importing country, dismantled or non-assembled products within the meaning of General Rule 2(a) of the Harmonized System falling within Sections XVI and XVII, Chapter 90 or headings 7308 and 9406 of the Harmonized System are imported by instalments, a single certificate of origin for such products shall be submitted to the customs authority upon importation of the first instalment.

Article 23
Exemptions from certificate of origin

1. Products sent as small packages from private persons to private persons or forming part of travellers' personal luggage shall be admitted as originating products without requiring the submission of a certificate of origin, provided that such products are not imported by way of trade and have been declared as meeting the requirements of this Annex and where there is no doubt as to the veracity of such a declaration. In the case of products sent by post, this declaration can be made on the customs declaration CN22 / CN23 or on a sheet of paper annexed to that document.

2. For the purposes of paragraph 1:

(a) imports which are occasional and consist solely of products for the personal use of the recipients or travellers or their families shall not be considered as imports by way of trade if it is evident from the nature and quantity of the products that no commercial purpose is intended; and

(b) in case of small packages or products forming part of travellers' personal luggage, the total value of these products shall not exceed the value stipulated in the national legislation of the Signatory Party concerned.

Article 24[10]
Supporting documents

1. The documents referred to in Article 16(3) used for the purpose of proving that products covered by a certificate of origin can be considered as products originating in MERCOSUR or in SACU and fulfil the other requirements of this Annex may consist *inter alia* of the following:

(a) direct evidence of the processes carried out by the exporter or supplier to obtain the goods concerned, contained for example in his accounts or internal book-keeping;

(b) documents proving the originating status of materials used, issued or made out in MERCOSUR or in SACU where these documents are used in accordance with domestic law;

[10] The term "the other requirements", mentioned in this Article, does not include the requirements of direct transport and exhibition, since those requirements shall be checked by the customs authorities of the importing country.

(c) documents proving the working or processing of materials in MERCOSUR or in SACU, issued or made out in a MERCOSUR or in SACU, where these documents are used in accordance with domestic law; or

(d) certificates of origin proving the originating status of materials used, issued or made out in MERCOSUR or in SACU in accordance with this Annex.

Article 25
Preservation of certificate of origin and supporting documents

1. The exporter applying for the issue of a certificate of origin shall keep for at least three years the documents referred to in Article 16(3).

2. The competent authority of the exporting country responsible for issuing certificates of origin shall keep for at least three years the application form referred to in Article 16(2).

3. The customs authority of the importing country shall ensure the availability, for at least three years, of the certificates of origin submitted for preferential treatment.

Article 26
Discrepancies and formal errors

1. The discovery of slight discrepancies between the statements made in the certificate of origin and those made in the documents submitted to the customs office for the purpose of carrying out the formalities for importing the products shall not, ipso facto, render the certificate of origin null and void if it is duly established that this document does correspond to the products submitted.

2. Obvious formal errors on a certificate of origin should not cause this document to be rejected if these errors are not such as to create doubts concerning the correctness of the statements made in this document.[11]

Title V
Arrangements for Administrative Co-operation

Article 27
Notifications

The customs or competent authorities of SACU and MERCOSUR shall provide each other, through the SACU and the MERCOSUR Secretariats respectively, with specimen impressions of official stamps and signatures (used in their offices) for the issue of certificates of origin and with the addresses of the customs or competent authorities responsible for verifying the authenticity of the certificates of origin and the correctness of the information given therein.

[11] Obvious formal errors include, but are not limited to, typing errors, and exclude deliberate errors.

Article 28
Verification of certificate of origin[12]

1. In order to ensure the proper application of this Annex, MERCOSUR and SACU shall assist each other, through the customs or competent authorities, in checking the authenticity of the certificates of origin and the correctness of the information given in these documents.

2. Subsequent verifications of certificates of origin shall be carried out at random or whenever the customs or competent authority of the importing country have reasonable doubts as to the authenticity of such documents, the originating status of the products concerned or the fulfilment of the other requirements of this Annex.

3. For the purposes of implementing the provisions of paragraph 1, the customs or competent authority of the importing country shall return the certificate of origin, if it has been submitted, or a copy of these documents, to the customs or competent authority of the exporting country giving, where appropriate, the reasons for the enquiry. Any documents and information obtained suggesting that the information given on the certificate of origin is incorrect shall be forwarded in support of the request for verification.

4. The verification shall be carried out by the customs or competent authority of the exporting country. For this purpose, they shall have the right to call for any evidence and to carry out any inspection of the exporter's accounts or any other check considered appropriate.

5. If the customs authority of the importing country decide to suspend the granting of preferential treatment to the products concerned while awaiting the results of the verification, release of the products shall be offered to the importer subject to any precautionary measures judged necessary.

6. The customs or competent authority requesting the verification shall be informed of the results of this verification as soon as possible. These results must indicate clearly whether the documents are authentic and whether the products concerned can be considered as products originating in MERCOSUR or in SACU and fulfil the other requirements of this Annex.

7. If in cases of reasonable doubt there is no reply within ten months of the date of the verification request or if the reply does not contain sufficient information to determine the authenticity of the document in question or the real origin of the products, the requesting customs authority shall, except in exceptional circumstances, refuse entitlement to the preferences.

8. The requesting customs or competent authority shall inform the customs or competent authority of the exporting country of its decision on the basis of the verification in question.

Article 29
Dispute settlement

1. Where disputes arise in relation to the verification procedures of Article 27 which cannot be settled between the customs or competent authority requesting a verification and the

[12] The term “the other requirements”, mentioned in paragraphs 2 and 6 of this Article, does not include the requirements of direct transport and exhibition, since those requirements shall be checked by the customs authorities of the importing country.

customs or competent authority responsible for carrying out this verification or where they raise a question as to the interpretation of this Annex, they shall be submitted to the Joint Administration Committee, without prejudice to the Parties´ or the Signatory Parties' rights to have recourse to the Dispute Settlement mechanism of this Agreement.

2. In all cases the settlement of disputes between the importer and the customs or competent authority of the importing country shall be under the legislation of the said country.

Article 30
Penalties

Penalties shall be imposed on any person who draws up, or causes to be drawn up, a document which contains incorrect information for the purpose of obtaining a preferential treatment for products.

Article 31
Free Zones

1. The treatment to be afforded to goods from Free Zones will be subject to a decision to be reached as foreseen in the Understanding on Free Zones attached to this Annex as Appendix IV.

2. In the interim, MERCOSUR and SACU shall take all necessary steps to ensure that products traded under cover of a proof of origin, which in the course of transport use a free zone situated in their territory, are not substituted by other goods and do not undergo handling other than normal operations designed to prevent their deterioration.

Title VI
Final Provisions

Article 32
Review

The Joint Administration Committee shall review this Annex no later than three years after the entry into force of the Agreement, or in the event of a new round of negotiations intended to deepen or broaden the scope of the Preferential Trade Agreement and, as appropriate, propose to the Parties amendments to the criteria for the determination, application and administration of origin.

Article 33
Transitional provisions for goods in transit or storage

The provisions of the Agreement may be applied to goods which comply with the provisions of this Annex and which on the date of entry into force of the Agreement are either in transit or are in MERCOSUR or in SACU in temporary storage in customs warehouses or in free zones, subject to the submission to the customs or competent authority of the importing country, within six months of the said date, of a certificate of origin issued retrospectively by the customs or competent authority of the exporting country together with the documents

showing that the goods have been transported directly in accordance with the provisions of Article 11.

Appendix

Appendix I, II, III and IV are part of this Annex.

ANNEX III

APPENDIX I

Introductory notes to the list in Appendix II

Note 1:

The list sets out the conditions required for all products to be considered as sufficiently worked or processed within the meaning of Article 5 of Annex III.

Note 2:

2.1 The first two columns in the list describe the product obtained. The first column gives the chapter number, heading number or sub-heading used in the Harmonized System and the second column gives the description of goods used in that system for that heading or chapter. For each entry in the first two columns, a rule is specified in column 3 or 4. Where, in some cases, the entry in the first column is preceded by an 'ex', this signifies that the rules in column 3 or 4 apply only to the part of that heading as described in column 2.

2.2 Where several heading numbers are grouped together in column 1 or a chapter number is given and the description of products in column 2 is therefore given in general terms, the adjacent rules in column 3 or 4 apply to all products which, under the Harmonized System, are classified in headings of the chapter or in any of the headings grouped together in column 1.

2.3 Where there are different rules in the list applying to different products within a heading, each indent contains the description of that part of the heading covered by the adjacent rules in column 3 or 4.

2.4 Where, for an entry in the first two columns, a rule is specified in both columns 3 and 4, the exporter may opt, as an alternative, to apply either the rule set out in column 3 or that set out in column 4. If no origin rule is given in column 4, the rule set out in column 3 is to be applied.

Note 3:

3.1 The provisions of Article 5 of Annex III, concerning products having acquired originating status which are used in the manufacture of other products, shall apply, regardless of whether this status has been acquired inside the factory where these products are used or in another factory in the territory of a Signatory Party.

3.2 The rule in the list represents the minimum amount of working or processing required, and the carrying-out of more working or processing also confers originating status; conversely, the carrying-out of less working or processing cannot confer originating status. Thus, if a rule provides that non-originating material, at a certain level of

manufacture, may be used, the use of such material at an earlier stage of manufacture is allowed, and the use of such material at a later stage is not.

3.3 Without prejudice to Note 3.2, where a rule uses the expression "Manufacture from materials of any heading", then materials of any heading(s) (even materials of the same description and heading as the product) may be used, subject, however, to any specific limitations which may also be contained in the rule.

3.4 Where, in a rule in the list, two percentages are given for the maximum value of non-originating materials that can be used, then these percentages may not be added together. In other words, the maximum value of all the non-originating materials used may never exceed the higher of the percentages given. Furthermore, the individual percentages must not be exceeded, in relation to the particular materials to which they apply.

Note 4:

4.1 For the purposes of headings ex 2707, 2713 to 2715, ex 2901, ex 2902 and ex 3403, the "specific processes" are the following:

(a) vacuum-distillation;

(b) redistillation by a very thorough fractionation-process;

(c) cracking;

(d) reforming;

(e) extraction by means of selective solvents;

(f) the process comprising all of the following operations: processing with concentrated sulphuric acid, oleum or sulphuric anhydride; neutralisation with alkaline agents; decolourisation and purification with naturally active earth, activated earth, activated charcoal or bauxite;

(g) polymerisation;

(h) alkylation; and / or

(i) isomerisation.

4.2 For the purposes of headings 2710, 2711 and 2712, the "specific processes" are the following:

(a) vacuum-distillation;

(b) redistillation by a very thorough fractionation-process;

(c) cracking;

(d) reforming;

(e) extraction by means of selective solvents;

(f) the process comprising all of the following operations: processing with concentrated sulphuric acid, oleum or sulphuric anhydride; neutralisation with alkaline agents; decolourisation and purification with naturally-active earth, activated earth, activated charcoal or bauxite;

(g) polymerisation;

(h) alkylation;

(i) isomerisation;

(j) in respect of heavy oils of heading ex 2710 only, desulphurisation with hydrogen, resulting in a reduction of at least 85 per cent of the sulphur-content of the products processed (ASTM D 1266-59 T method);

(k) in respect of products of heading 2710 only, deparaffining by a process other than filtering;

(l) in respect of heavy oils of heading ex 2710 only, treatment with hydrogen, at a pressure of more than 20 bar and a temperature of more than 250 degrees C, with the use of a catalyst, other than to effect desulphurisation, when the hydrogen constitutes an active element in a chemical reaction. The further treatment, with hydrogen, of lubricating oils of heading ex 2710 (e.g. hydrofinishing or decolourisation), in order, more especially, to improve colour or stability shall not, however, be deemed to be a specific process;

(m) in respect of fuel oils of heading ex 2710 only, atmospheric distillation, on condition that less than 30 per cent of these products distils, by volume, including losses, at 300 degrees C by the ASTM D 86 method;

(n) in respect of heavy oils other than gas oils and fuel oils of heading ex 2710 only, treatment by means of a high-frequency electrical brush-discharge; and / or

(o) in respect of crude products (other than petroleum jelly, ozokerite, lignite wax or peat wax, paraffin wax containing by weight less than 0.75 per cent of oil) of heading ex 2712 only, de-oiling by fractional crystallisation.

4.3 For the purposes of headings ex 2707, 2713 to 2715, ex 2901, ex 2902 and ex 3403, simple operations, such as cleaning, decanting, desalting, water-separation, filtering, colouring, marking, obtaining a sulphur-content as a result of mixing products with different sulphur contents, any combination of these operations or like operations, do not confer origin.

4.4 Chemical processing rules to confer originating status

Section VI of the HS tariff classification: Products of the Chemical or Allied Industries (Chapter 28-38)

Rule 1: Chemical Reaction Origin

A good of Chapters 28 through 38, which is subject to a chemical reaction, shall be treated as an originating good if the chemical reaction occurred in the territory of one or more of the Signatory Parties.

Note: For purposes of this section, a "chemical reaction" is a process (including a biochemical process) that results in a molecule with a new structure by breaking intramolecular bonds and by forming new intramolecular bonds, or by altering the spatial arrangement of atoms in a molecule.

The following are not considered to be chemical reactions for the purposes of determining whether a product is an originating good:

(a) dissolution in water or in other solvents;

(b) the elimination of solvents including solvent water; or

(c) the addition or elimination of water of crystallization.

Rule 2: Purification Origin

A good of chapters 28 through 38, that is subject to purification, shall be treated as originating provided that one of the following occurs in the territory of one or more of the Signatory Parties:

(a) purification of a good resulting in the elimination of 80 percent of the content of existing impurities; or

(b) the reduction or elimination of impurities resulting in a good suitable for one or more of the following applications:

    (i) pharmaceutical, medicinal, cosmetic, veterinary, or food grade substances;

    (ii) chemical products and reagents for analytical, diagnostic or laboratory uses;

    (iii) elements and components for use in micro-elements;

    (iv) specialized optical uses;

    (v) non toxic uses for health and safety;

    (vi) biotechnical use;

    (vii) carriers used in a separation process; or

    (viii) nuclear grade uses.

ANNEX III

APPENDIX III

Specimens of SACU - MERCOSUR certificate of origin and application for a SACU - MERCOSUR certificate of origin

Printing instructions

1. Each form shall measure 210 x 297 mm; a tolerance of up to minus 5 mm or plus 8 mm in the length may be allowed. The paper used must be white, sized for writing, not containing mechanical pulp and weighing not less than 25 g/m^2. It shall have a printed green guilloche pattern background making any falsification by mechanical or chemical means apparent to the eye.

2. The competent authorities of Mercosur and the Customs authorities of SACU may reserve the right to print the forms themselves or may have them printed by approved printers. In the latter case, each form must include a reference to such approval. Each form must bear the name and address of the printer or a mark by which the printer can be identified. It shall also bear a serial number, either printed or not, by which it can be identified.

SACU - MERCOSUR CERTIFICATE OF ORIGIN

1. Exporter *(Name, full physical address and country)*

……
……
……
……
……
……

N° A 000.000

2. CERTIFICATE OF ORIGIN USED IN PREFERENTIAL TRADE BETWEEN

……..

and

……..

(Insert the appropriate countries between which the products are traded)

3. Consignee *(Name, full physical address and country)*

……
……
……
……
……
……

4. Includes products subject to tariff rate quota [(1)]

Yes ☐

No ☐

5. Do the under-mentioned products originate in a free zone? [(1)]

Yes ☐

No ☐

6. Transport details

……
……
……
……

7. Remarks

……
……
……
……

8. Item number; marks and numbers; number and kind of packages[(2)]**; description of goods**[(3)]	**9. Gross weight (kg) or other measure (no., litres, m^3, etc.)**	**10. Invoice number(s) and date(s)**
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11. DECLARATION BY THE EXPORTER

I, the undersigned, declare that the goods described above meet the conditions required for the issue of this certificate.

Place: ……..

Date: ……

……..

(Signature)

12. CERTIFICATION BY THE CUSTOMS OR COMPETENT AUTHORITY

The declaration by the exporter has been verified and found to be in compliance with requirements of Annex III.

Export document number and date:

……....

Customs or competent authority office and country of issue:

……

……

……

(Signature)

(Insert date and stamp)

(1) Insert X in the appropriate box.
(2) If goods are not packed, indicate number of articles or state "in bulk" as appropriate.
(3) Includes the tariff classification of the goods.

13. REQUEST FOR VERIFICATION	**14. RESULT OF VERIFICATION**
(Insert name and address of the requested authority) …… …… …… …… …… …… Verification of the authenticity and accuracy of this certificate is requested *(Insert name and address of the requesting authority*) (1)…… …… …… …… …… …… *(Insert date and stamp)* …… *(Signature)* (1) Any documents and information obtained suggesting that the information given on the proof or origin is incorrect shall be forwarded in support of the request for verification.	Verification carried out shows this certificate (2) ☐ was issued by the Customs Office or competent authority indicated and that the information contained therein is accurate. ☐ does not meet the requirements as to authenticity and accuracy (see remarks appended). Requested Customs or competent authority: *(Insert name and address of the requested authority)* …… …… …… …… …… …… *(Insert date and stamp)* …… *(Signature)* (2) Insert X in the appropriate box.

Notes

1. Certificates must not contain erasures or words written over one another. Any alterations must be made by deleting the incorrect particulars and adding any necessary corrections. Any such alteration must be initialled by the person who completed the certificate and endorsed by the Customs authorities or competent authority of the issuing country.

2. No spaces must be left between the items entered on the certificate and each item must be preceded by an item number. A horizontal line must be drawn immediately below the last item. Any unused space must be struck through in such a manner as to make any later additions impossible.

3. Goods must be described in accordance with commercial practice and with sufficient detail to enable them to be identified.

4. In the cases of traded goods invoiced by a third operator, the following (reproduced from the commercial invoice) shall be inserted in Box 7: the name, address and country of the supplier of the goods and the number and date of the invoice therefor. If this number is not known at the time the certificate is issued, the importer shall present to the corresponding customs authorities or a competent authority a sworn declaration giving the reasons for that.

APPLICATION FOR A SACU - MERCOSUR CERTIFICATE OF ORIGIN

1. Exporter *(Name, full physical address and country)*

……………………………………………………………
……………………………………………………………
……………………………………………………………
……………………………………………………………
……………………………………………………………
……………………………………………………………

N° A 000.000

2. CERTIFICATE OF ORIGIN USED IN PREFERENTIAL TRADE BETWEEN

……………………………………………………………………………

and

……………………………………………………………………………

(Insert the appropriate countries between which the products are traded)

3. Consignee *(Name, full physical address and country)*

……………………………………………………………
……………………………………………………………
……………………………………………………………
……………………………………………………………
……………………………………………………………
……………………………………………………………

4. Products are considered as originating in[1]

SACU ☐

MERCOSUR ☐

5. Do the under-mentioned products originate in a free zone? [1]

Yes ☐

No ☐

6. Transport details

……………………………………………………………
……………………………………………………………
……………………………………………………………
……………………………………………………………

7. Remarks

………………………………………………………………………………
………………………………………………………………………………
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8. Item number; marks and numbers; number and kind of packages[2]; description of goods[3]	**9. Gross weight (kg) or other measure (no., litres, m³, etc.)**	**10. Invoice number(s) and date(s)**
……………………………………………………………………………………	……………………	
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(1) Insert X in the appropriate box.
(2) If goods are not packed, indicate number of articles or state "in bulk" as appropriate.
(3) Includes the tariff classification of the goods.

DECLARATION BY THE EXPORTER

I, the undersigned, exporter of the goods described overleaf,

DECLARE that the goods meet the conditions required for the issue of the attached certificate and that the goods do not originate in a free zone;

SPECIFY as follows the circumstances which have enabled these goods to meet the above conditions:

……
……
……
……
……
……

SUBMIT the following supporting documents [1] :

……
……
……
……
……
……

UNDERTAKE to submit, at the request of the appropriate authorities, any supporting evidence which these authorities may require for the purpose of issuing the attached certificate, and undertake, if required, to agree to any inspection of my accounts and to any check on the processes of manufacture of the above goods, carried out by the said authorities ; and

REQUEST the issue of the attached certificate for these goods.

(Place and date)…….

(Signature)……..

[1] For example: import documents, certificates of origin, invoices, manufacturer's declarations, etc., referring to the products used in manufacture.

ANNEX III

APPENDIX IV

Understanding on Free Zones

SACU and MERCOSUR agree to continue their work to develop a common approach to the treatment of products manufactured or produced in Free Zones. In doing so, they will ensure balance in the PTA and consider the specific role and impact of Free Zones in the economic development of the Signatory Parties. For that purpose:

1. Within ninety (90) days after the signing of the Preferential Trade Agreement (PTA) between MERCOSUR and SACU, the Signatory Parties will designate focal points (names, titles, positions, contacts) for carrying out the commitments established in this Understanding.

2. Within thirty (30) days after the designation of the focal points, MERCOSUR and SACU will create a Joint Working Group to:

(a) analyze the rules, operations and overall procedures of Free Zones in MERCOSUR and SACU,
(b) facilitate missions, that may include Embassy officials, to visit Free Zones in the respective territories of the Parties in order to verify *in loco* the conditions under which they operate (including customs controls), and
(c) make recommendations on the treatment of goods from Free Zones under the PTA, taking into account the importance of effective customs controls and compliance with rules of origin of the PTA.

3. Within the Joint Working Group, MERCOSUR and SACU will exchange requests for documents and information they may consider necessary for the assessments on their Free Zones. Both sides will respond to questions and requests within a reasonable period of time after receiving them.

4. The Joint Working Group shall submit its findings and proposals to the Joint Administration Committee for a decision.

ANNEX IV

SAFEGUARD MEASURES

Part I
Global Safeguards

Article 1

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

Part II
Preferential Safeguards

Article 2
Definitions

For the purposes of Part II of this Annex:

1. "domestic industry" shall be understood to mean the producers as a whole of the like or directly competitive products, operating in the territory of the Party or the Signatory Party, as the case may be, or when it is not possible, those whose collective output of the like or directly competitive products constitutes a major proportion of the total production of such products;

2. “preferential imports” shall be understood to mean products for which tariff preferences had been negotiated under this Agreement;

3. "serious injury" shall be understood to mean the significant overall impairment in the position of a domestic industry;

4. "threat of serious injury" shall be understood to mean the serious injury that is clearly imminent, based on facts and not merely on allegation, conjecture or remote possibility.

Article 3
Conditions for Application of Preferential Safeguard Measures

1. Without prejudice to the rights and obligations referred to in Article 1, the Parties or the Signatory Parties may apply preferential safeguard measures under the conditions established in this Annex, when preferential imports have increased in such quantities, absolute or relative to domestic production of the importing party under such conditions as to cause or threaten to cause serious injury to the domestic industry of the importing Party or importing Signatory Party, as the case may be.

2. Preferential safeguard measures shall only be applied following an investigation by the competent authorities of the importing party under the procedures established in this Annex.

3. The preferential safeguard measure shall be applied only to the extent necessary to prevent or remedy serious injury.

Article 4

Preferential safeguard measures shall not be applied in the first year after the tariff preferences negotiated under the Agreement come into force.

Article 5

1. SACU may apply preferential safeguard measures on a customs union-wide basis, in which case the requirements for the determination of the existence of serious injury or threat thereof shall be based on the conditions prevailing in the SACU as a whole, or a SACU Signatory Party may apply preferential safeguard measures individually, if provided for in terms of the SACU Agreement, in which case the requirements for the determination of the existence of serious injury or threat thereof shall be based on the conditions prevailing in that Signatory Party and the measure shall be limited to that Signatory Party.

2. MERCOSUR may apply preferential safeguard measures on a customs union-wide basis, in which case the requirements for the determination of the existence of serious injury or threat thereof shall be based on the conditions prevailing in MERCOSUR as a whole, or a MERCOSUR Signatory Party may apply preferential safeguard measures individually, in which case the requirements for the determination of the existence of serious injury or threat thereof shall be based on the conditions prevailing in that Signatory Party and the measure shall be limited to that Signatory Party.

3. A Party or Signatory Party may apply preferential safeguard measures only to the imports from one or more Signatory Parties when serious injury or threat thereof is being caused by such imports.

Article 6

The preferential safeguard measures adopted under this Annex shall consist of either a quota, or a suspension or a reduction of the tariff preferences established in this Agreement for the product subjected to the measure.

a) When a party applies a preferential safeguard measure as a quota, such a measure shall not reduce the annual quantity of preferential imports below the level of the average annualized imports of the product concerned in the thirty-six (36) month period previous to the period for which serious injury was determined. In this case, out of quota imports would receive either reduced preferences or the applied Most Favoured Nation rate. A different level of quota may be applied if it is duly justified.

b) When a party applies a preferential safeguard measure as a suspension or a reduction of the tariff preferences, such measure shall maintain the preferential conditions for a part of the imports of the product concerned in the form of a quota. In this case, the annual fixed quota cannot be less than the average annualized imports of the product concerned in the thirty-six (36) month period previous to the period for which serious injury was determined. A different level of quota may be applied if it is duly justified.

Article 7

The total period of application of a preferential safeguard measure, including the period of application of any provisional measure, shall not exceed two (2) years.

Article 8

No preferential safeguard shall be applied again to preferential imports which have been subject to such a measure, unless the period of non-application is at least of one (1) year from the end of the application period of the previous measure.

Article 9

1. The investigation to determine serious injury or threat thereof as a result of increased preferential imports of a certain product shall take into consideration all relevant factors of an objective and quantifiable nature having a bearing on the situation of the domestic industry affected, particularly the amount and rate of the increase in preferential imports of the product concerned, in absolute and relative terms; the relationship between the preferential and non-preferential imports, as well as between the increase of one and the other; the share of the domestic market taken by these imports; changes in the level of sales; prices; production; productivity; capacity utilization; profits and losses; employment; and other factors that, although not related to the evolution of preferential imports, have a causal relationship with the injury or the threat of injury to the domestic industry in question.

2. When factors other than increased preferential imports are causing injury to the domestic industry at the same time, such injury shall not be attributed to the increased preferential imports.

Article 10
Investigation and Transparency Procedures

A Party or Signatory Party may initiate a safeguard investigation at the request of the domestic producers in the importing Party or Signatory Party of the like or directly competitive product.

Article 11

The purpose of investigation shall be:

a) to assess the quantities and conditions under which the product is being imported;

b) to determine the existence of serious injury or threat of serious injury to the domestic industry; and

c) to determine the causal link between the increased preferential imports of the product concerned and the serious injury or threat thereof to the domestic industry, pursuant to the terms of Article 9 of this Annex.

Article 12

The period between the date of publication of the decision to initiate the investigation and the publication of the final decision shall not exceed one (1) year.

Article 13

Each Party or Signatory Party shall establish or maintain transparent, effective and equitable procedures for the impartial and reasonable application of safeguard measures, in compliance with the provisions established in this Annex.

Article 14
Provisional Safeguards

In critical circumstances where delay may cause damage which would be difficult to repair, a Party or Signatory Party, after due notification, may take a provisional safeguard measure pursuant to a preliminary determination that there is clear evidence that increased preferential imports have caused or are threatening to cause serious injury. The duration of the provisional measure shall not exceed two hundred (200) days, during which period the requirements of this Annex shall be met. If final determination concludes that there was no serious injury or threat thereof to domestic industry caused by imports under preferential terms, the increased tariff, if collected under provisional measures, shall be promptly refunded.

Article 15
Public Notice

1. The importing Party or Signatory Party shall notify the exporting Signatory Party of:

a) the decision to initiate the investigation under this Annex;

b) the decision to apply a provisional safeguard measure;

c) the decision to apply or not a definitive safeguard measure.

2. The decision shall be notified by the Party or Signatory Party within a period of seven (7) days from the publication and shall be accompanied by the appropriate public notice.

Article 16

The public notice of the initiation of a safeguard investigation shall include the following information:

a) the name of the petitioner;

b) the description of the product subject to the measure, including its tariff classification under the Harmonised System;

c) the deadline for the request for hearings and the venue where hearings shall be held;

d) the deadline for the submission of information, statements and other documents;

e) the address where the request or other documents related to the investigation can be examined;

f) the name, address and telephone number of the institution which can provide further information; and

g) a summary of the facts upon which the initiation of the investigation was based, including data on imports that have supposedly increased in absolute or relative terms

to total production or internal consumption and analysis of the domestic industry situation based on all the elements conveyed in the request.

Article 17

1. The public notice or report of the decision to apply a provisional or definitive safeguard measure shall include the following information:

a) description of the product subject to the measure, including its tariff classification under the Harmonised System;

b) information and evidence leading to the decision, such as:

i) the increasing or increased preferential imports;

ii) the situation of the domestic industry;

iii) the fact that the increasing preferential imports are causing or threatening to cause serious injury to the domestic industry; and

iv) in the case of preliminary determination, the existence of critical circumstances;

c) other reasoned findings and conclusions on all relevant issues of fact and law;

d) description of the measure to be adopted;

e) the date of entry into force of the measure and its duration.

2. The public notice shall include at least (a), (d) and (e), which shall be conveyed along with the report to all Signatory Parties.

Article 18

1. A Party or Signatory Party proposing to apply a definitive safeguard measure shall provide adequate opportunity for prior consultations to the exporting Signatory Party. With this objective, the Party or Signatory Party shall notify the exporting Signatory Party its decision to apply a definitive safeguard measure. The notification shall be provided no less than thirty (30) days before the measure comes into force.

2. The notifications shall include:

i) evidence of the existence of serious injury or threat of serious injury to the domestic industry caused by the increased imports;

ii) description of the product subject to the measure, including its tariff classification under the Harmonised System;

iii) description of the measure proposed;

iv) the date of entry into force of the measure and its duration;

v) the period for consultations; and

vi) the criteria employed or any objective information proving that the conditions established in this Annex for the application of a measure have been met.

Article 19

At any stage of the investigation, the notified Signatory Party may request consultations to the importing Party or Signatory Party any additional information that it considers necessary.

Article 20

Not later than five (5) years after the entry into force of this Agreement, the Joint Administration Committee shall review the operation of this Annex and, as appropriate, propose to the Parties amendments to its text. In the course of this review, the Joint Administration Committee shall consider, in particular, the experience with the application of the preferential safeguard mechanism.

ANNEX V

DISPUTE SETTLEMENT PROCEDURE

Chapter I

Article 1
Scope

1. For the purpose of this Dispute Settlement Procedure the Parties or one or more Signatory Parties of MERCOSUR or SACU may be a party to a dispute.

2. For the purpose of this Dispute Settlement Procedure, the following parties may be a party to a dispute:
- both Parties;
- one or more State Parties of MERCOSUR and one or more Member States of SACU;
- one or more State Parties of MERCOSUR or SACU and a 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 this Agreement between the Parties, as well as its Additional Protocols and related instruments, shall be subject to this Dispute Settlement Procedure.

2. Any dispute regarding matters arising under this 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 this 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 VIII of this Agreement as well as Article 1 of Annex IV of this 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 a Signatory Party or the Chair of the SACU Council of Ministers, as the case may be.

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 XI 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 this Agreement, Additional Protocols and related instruments.

3. The Committee shall notify immediately the request mentioned in paragraph 1 to all other Parties or Signatory 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 Parties or Signatory Parties of the request referred to in Article 6.

2. The Parties or Signatory 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 thirty (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 this 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 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.

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 this 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 party concerned 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 party concerned 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 18
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 19
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 20

Confidentiality

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

Article 21
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.

ANNEX VI

SANITARY AND PHYTOSANITARY MEASURES

Article 1
Objective

The objective of the present Annex is to facilitate trade, between the Signatory Parties in animals and animal products, plants, and plant products, and any other regulated articles or any other product, deemed to require sanitary and phytosanitary measures, included in the Preferential Trade Agreement between MERCOSUR and SACU, whilst safeguarding human, animal and plant health.

Article 2
Multilateral Obligations

The Signatory Parties confirm their rights and obligations established in the Agreement on the Application of Sanitary and Phytosanitary Measures of the World Trade Organization, by virtue of article 23 of the Preferential Trade Agreement between MERCOSUR and SACU.

Article 3
Transparency

The Signatory Parties agree to exchange the following information:

a) Any changes in the sanitary and phytosanitary status, including important epidemiological findings which may affect the Signatory Parties trade;

b) Result of inspections and verifications within a 60-day term, which may be extended for a similar period in case of appropriate justification;

c) Result of import controls in case the goods were rejected or considered non-compliant with official requirements, no further than a 48 hour term.

Article 4
Consultations on Specific Trade Concerns

1. The Signatory Parties agree to create a consultation mechanism to facilitate the settlement of problems arising from the adoption and application of sanitary or phytosanitary measures, in order to prevent these measures from becoming unjustifiable barriers to trade.

2. The competent official authorities, as defined in Article 5 of this Annex, shall implement the mechanism established in paragraph 1, as follows:

a) The exporting Signatory Party affected by a sanitary or phytosanitary measure shall inform the importing Signatory Party of this concern through the form established in Annex 1 and communicate this to the Joint Administration Committee.

b) The importing Signatory Party shall respond to the request, in writing, before a thirty-day term specifying whether the measure:

- Conforms to an international standard, guideline or recommendation, in which case, it should be identified by the importing Party; or
- Is based on an international standard, guideline or recommendation. In this case, the importing Party shall supply the scientific justification and other information to support the aspects differing from the international standard, guideline or recommendation; or
- Results in a higher level of protection for the importing Party otherwise than through an international standard, guideline or recommendation. In this case, the importing Party shall supply the scientific justification for such measure, including the description of the risk/risks to be avoided and, if pertinent, the risk assessment; or
- In the absence of an international standard, guideline or recommendation, the importing Party shall supply a scientific justification for such measure, including the description of the risk/risks to be avoided and, if pertinent, the risk assessment.

c) Additional technical consultations may be made, whenever necessary, to analyze and suggest any procedures to overcome difficulties, within a 60-day term.

d) In case the exporting Signatory Party finds the mentioned consultations to be satisfactory, a joint report shall be submitted to the Joint Administration Committee. If a satisfactory solution is not reached, each Signatory Party shall pass its report to the Joint Administration Committee.

Article 5
Competent Official Authorities

For the purpose of implementing the preceding provisions, the competent official authorities are the following:

For MERCOSUR:

Argentina

Secretaría de Agricultura, Ganadería, Pesca y Alimentos – SAGPyA (Agriculture, Livestock, Fisheries and Food Secretariat)
Servicio Nacional de Sanidad y Calidad Agroalimentaria – SENASA (Animals, Plants and Food Safety and Quality National Service)
Administración Nacional de Alimentos, Medicamentos y Tecnología Médica – ANMAT (National Administration of Food, Medicines and Medical Technology)
Instituto Nacional de Alimentos – INAL (National Food Institute)

Brazil

Ministério da Agricultura, Pecuária e Abastecimento – MAPA (Ministry of Agriculture, Livestock and Supply)
Agência Nacional de Vigilância Sanitária - ANVISA (National Health Surveillance Agency)

Paraguay

Servicio Nacional de Calidad y Sanidad Vegetal y de Semillas – SENAVE (National Service for Health and Quality Plants and Seeds)
Ministerio de Agricultura y Ganadería – MAG (Ministry of Agriculture and Livestock)
Subsecretaría de Estado de Ganadería - SSEG - (Under Secretariat of Livestock)

Servicio Nacional de Calidad y Salud Animal – SENACSA - (National Service for Quality and Animal Health)

Uruguay

Dirección General de Servicios Agrícolas/MGAP DSSA (General Directorate of Plants Inspection Services/ Ministry of Livestock, Agriculture and Fisheries)
Dirección General de Recursos Acuáticos/MGAP – DINARA (General Directorate of Aquatic Resources/ General Directorate of Livestock/Ministry of Livestock, Agriculture and Fisheries)
Dirección General de Servicios Ganaderos/MGAP - DSSG (General Directorate of Livestock/Ministry of Livestock, Agriculture and Fisheries)
Dirección Nacional de Salud/MSP (National Health Office/Ministry of Health)

For SACU:

Botswana

Measure:	Animal Health
Contact	Director Department of Veterinary Services Ministry of Agriculture Private Bag 0032 Gaborone
Country:	Botswana
Languages:	English
Telephone:	+267 395 0500
Facsimile:	+267 390 3744
E-mail:	

Measure:	Plant Health
Contact	Director Department of Plant Protection Ministry of Agriculture Private Bag 0091 Gaborone
Country:	Botswana
Languages:	English
Telephone:	+267 392 8745/6
Facsimile:	+267 392 8762
E-mail:	

Lesotho

Measure:	Phytosanitary / plant health
Contact:	Dr.Matla Ranthamane
Title/position:	Director of Agricultural Research
Address:	Department of Agricultural Research P.O Box 829 MASERU, 100 Lesotho
Language:	English
Telephone:	(+266) 22320786 / Mobile: (+266) 58883572
Fax:	(+266) 22310362
E-Mail:	mmranthamane@yahoo.co.uk

Measure: Sanitary (animal health and animal products)
Contact: Dr. Marosi Molomo
Title/position: Director of Livestock Services
Address: Department of Livestock Services
Private Bag A 82
MASERU, 100
Lesotho
Language: English
Telephone: (+266) 22317282 / (+266) 324843 (Direct) / Mobile: (+266) 62000922
Fax: (+266) 22311500
E-Mail: marosimolomo@yahoo.com

Namibia

Measure: Phytosanitary / Plant health
Contact: Director of Law Enforcement
Address: Ministry of Agriculture, Water and Forestry
Private Bag 13184
WINDHOEK
Namibia
Language: English
Telephone: (264 61) 208 7461
Fax: (264 61) 208 7786
E-Mail: burgerr@mawrd.gov.na

Measure: Animal health
Contact: Director Veterinary Services
Address: Ministry of Agriculture, Water and Forestry
Private Bag 13184
WINDHOEK
Namibia
Language: English
Telephone: (264 61) 208 7513
Fax: (264 61) 208 7779
E-Mail: huebschleo@mawrd.gov.na

South Africa

Measure: Phytosanitary / plant health
Title/Position: Director: Plant Health
Address: Department of Agriculture
Private Bag 14
PRETORIA 0031
South Africa
Language: English
Telephone: (+27 12) 319 6114
Fax: (+27 12) 319 6580;
Email: DPH@nda.agric.za

Measure: Sanitary / Animal health
Title/Position: Director: Veterinary Services
Address: Department of Agriculture
Private Bag X138

PRETORIA 0001
South Africa
Language: English
Telephone: (+27 12) 379 7456
Fax: (+27 12) 329 7218
E-mail: DVS@nda.agric.za

Measure: Food safety
Title/Position: Director: Food Safety and Quality Assurance
Address: Department of Agriculture
Private Bag X343
PRETORIA 000
South Africa
Language: English
Telephone: (+27 12) 319 7304
Fax: (+27 12) 319 6764
E-mail: DFSQA@nda.agric.za

Measure: Competent National Authority under the Cartagena Protocol on Biosafety, & Registrar of the Genetically Modified Organisms Act
Title/Position: Director: Genetic Resources Management
Address: Department of Agriculture
Private Bag X973
PRETORIA 0001
Language: English
Telephone: (+27 12) 319 6024
Fax: (+27 12) 319 6385
E-mail: DGRM@nda.agric.za

Measure: Plant Breeders' Rights Act
Title/Position: Registrar: Plant Breeders' Rights Act
Address: Department of Agriculture
Private Bag X973
PRETORIA 0001
South Africa
Language: English
Telephone: (+27 12) 3196024
Fax: (+27 12) 319 6385
Email: DGRM@nda.agric.za

Swaziland

Measure: Phytosanitary / plant health
Contact: Mr. George Similo Mavimbela
Title/Position: Research Officer
Address: Agricultural Research Division (ARD)
Ministry of Agriculture and Co-operatives
Malkerns Research Station
P.O. Box 4
MALKERNS
Country: Swaziland
Language: English

Telephone: (+268) 527 4071
Fax: (+268) 527 4070
E-mail: mrs@realnet.co.sz or Seemelo@yahoo.com

Measure: Sanitary / Animal health
Contact: Dr Roland Xolani Dlamini
Title/Position: Acting Director
Address: Director of Veterinary Services
Ministry of Agriculture and Cooperatives
P.O. Box 162
MBABANE
Country: Swaziland
Language: English
Telephone: (+268) 404 2731/9
Fax: (+268) 404 9802
Email: roland@africaonline.co.sz

Measure: Sanitary / Animal health
Contact: Dr Benard Dlamini
Title/Position: Senior Public Health
Address: Director of Veterinary Services
Swaziland Meat Industry
P.O. Box 446
MANZINI
Country: Swaziland
Language: English
Telephone: (+268) 518 4033
Fax: (+268) 519 0069
Email: simunyemeats@smi.co.sz

Measure: Sanitary / Animal health
Contact: Dr R.S. Nxumalo
Title/Position: Senior Field Services
Address: Director of Veterinary Services
Ministry of Agriculture and Cooperatives
P.O. Box 162
MBABANE
Country: Swaziland
Language: English
Telephone: (+268) 404 2731/9
Fax: (+268) 404 9802
Email: nxumaloro@gov.sz

ANNEX 1
FORM FOR CONSULTATIONS ON SPECIFIC TRADE CONCERNS REGARDING SANITARY AND PHYTOSANITARY MEASURES

Measure under consultation causing concerns: _____
Country, which applies the measure: _____
Responsible institution for application of the measure: _____
WTO Notification Number, whenever if applicable: _____
Consulting country: _____
Consultation date: _____
Responsible Institution for consultation: _____
Division name: _____
Name of Responsible Official: _____
Title of Responsible Official: _____
Telephone, fax, e-mail and mailing address: _____
Product(s) affected by the measure: _____
Sub-tariff item(s): _____
Product(s) description (specify): _____
Is there any relevant international standard? Yes _____No_____
In case this does exist, give the number and title of the specific international standard(s), guideline(s) or recommendation(s): _____
Objective or reason for consultation: _____

ANNEX VII

MUTUAL ADMINISTRATIVE ASSISTANCE BETWEEN THE CUSTOMS ADMINISTRATIONS OF THE COMMON MARKET OF THE SOUTH (MERCOSUR) AND THE SOUTHERN AFRICAN CUSTOMS UNION (SACU) REGARDING CUSTOMS CO-OPERATION MATTERS

Article 1
Definitions

For the purposes of this Annex, unless the context otherwise requires:

(a) "Customs administration" means, for:

(i) the Government of the Republic of Argentina, the Federal Administration of Public Income;
(ii) the Government of the Federative Republic of Brazil, the Federal Revenue Secretariat of Brazil, Ministry of Finance (Ministério da Fazenda - Receita Federal do Brasil);
(iii) the Government of the Republic of Paraguay, the Customs Administration;
(iv) the Government of the Oriental Republic of Uruguay, the Customs Administration;
(v) the Government of the Republic of Botswana, the Botswana Unified Revenue Service;
(vi) the Government of the Kingdom of Lesotho, the Lesotho Revenue Authority;
(vii) the Government of the Republic of Namibia, the Directorate of Customs and Excise in the Ministry of Finance;
(viii) the Government of the Republic of South Africa, the South African Revenue Service; and
(ix) the Government of the Kingdom of Swaziland, the Department of Customs and Excise;

(b) "Customs law" means all the legal and administrative provisions applicable or enforceable by the Customs administrations in connection with the importation, exportation, transhipment, transit, storage, and movement of goods, including:

(i) the collection, guaranteeing or repayment of duties, taxes and other charges; and
(ii) action in relation to measures of prohibition, restriction or control;

(c) "Customs offence" means any violation or attempted violation of Customs law;

(d) "official" means any Customs officer; or other government agent designated by the Customs administration of the Parties;

(e) "person" means both natural and legal persons;

(f) "information" means any data, whether or not processed or analysed, any documents, reports, and other communications in any format, including electronic, or certified or authenticated copies thereof;

(g) "narcotic drugs and psychotropic substances" means the products in the list of the Single Convention of the United Nations relating to Narcotic Drugs of 30 March 1961,

the Convention of the United Nations on Psychotropic Substances of 21 February 1971, as well as chemical substances in the list of Annexes I and II of the Convention of the United Nations against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 20 December 1988;

(h) "requested administration" means the Customs administration from which assistance is requested;

(i) "requested Signatory Party" means the Signatory Party whose Customs administration is requested to provide assistance;

(j) "requesting administration" means the Customs administration which requests assistance;

(k) "requesting Signatory Party" means the Signatory Party whose Customs administration requests assistance.

Article 2
Objective

The main objective of this Annex is to promote co-operation between the Customs administrations of the Signatory Parties in all matters pertaining to Customs.

Article 3
Scope

1. The assistance provided under this Annex shall apply to the Customs territories of the Argentine Republic, the Federative Republic of Brazil, the Republic of Paraguay, the 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, hereinafter referred to as the Signatory Parties.

2. The Signatory Parties shall assist each other, in the areas within their competence, in the manner and under the conditions laid down in this Annex, to ensure the correct application of Customs law, in particular by preventing, investigating and combating Customs offences.

3. The assistance given under this Annex shall satisfy the legal and administrative provisions in force in the territory of the requested Signatory Party and shall be performed within the competence and available resources of its Customs administration.

4. This Annex is limited to mutual administrative assistance among the Signatory Parties and does not modify the contents of the mutual legal assistance agreements already concluded. In case other authorities of the requested Signatory Party should render assistance, the requested administration shall determine the names of said authorities and, where known, the applicable instrument or pertinent agreement.

5. The assistance provided for in this Annex does not include collection proceedings by the requested administration regarding Customs rights, taxes or any other amount owed to the requesting administration.

Article 4
Communication of Information

1. The Customs administrations shall supply, either on request or on their own initiative, any information that may contribute to ensure the proper application of Customs law and in order to prevent, investigate and combat Customs offences.

2. Each Customs administration shall, either on request or on its own initiative, supply all available information, records of evidence or certified copies of documents as well as any other available information related to concluded, planned or ongoing activities, which constitute or appear to constitute a Customs offence in the territories of the other Signatory Parties, together with the necessary information for its interpretation or utilisation.

3. The aforementioned documents may be substituted with electronic information for the same objective.

Article 5
Spontaneous Assistance

1. The Customs administrations shall, on its own initiative, supply information related to concluded, planned or ongoing transactions, which constitute or appear to constitute a Customs offence.

2. In cases that could involve substantial damage to the economy, public health, public security or other vital interests of the other Signatory Parties, the Customs administrations shall, wherever possible, supply information on its own initiative without delay.

Article 6
Information for the Application of Customs Law Enforcement

1. The Customs administrations shall communicate to each other, either on request or on their own initiative, all the available information which may contribute to proper application of Customs law or in the prevention of Customs fraud. This information may include:

(a) new law enforcement techniques;

(b) new trends, means and methods used to commit Customs offences;

(c) goods known to be the subject of Customs offences, as well as means of transport and storage methods used in respect of those goods; and

(d) all relevant information, which may be used by the Customs administrations to evaluate risks for the purpose of control and to facilitate trade.

2. The Customs administrations may share information on their work procedures aimed at improving their knowledge on procedures and techniques used by the other Customs administrations.

3. The Customs administrations shall provide each other, within the limits of their competence and available resources, with technical assistance, consulting services, training, secondments and exchanges of officials.

4. Upon request, the requested administration shall supply to the requesting administration information concerning the following matters:

(a) whether goods which are imported into the territory of the requesting Signatory Party have been lawfully exported from the territory of the requested Signatory Party;

(b) whether goods which are exported from the territory of the requesting Signatory Party have been lawfully imported into the territory of the requested Signatory Party and the nature of the Customs procedure or regime, if any, under which the goods have been placed.

5. If appropriate, the information shall have to determine the Customs procedures applied to the goods and, in particular, the Customs clearance.

Article 7
Assistance for the Assessment of Import or Export Duties and Taxes

1. On request, the requested administration shall provide information to assist the requesting administration in the proper application of Customs law, including in the areas of Customs value, tariff classification and origin of goods, when the requesting administration has reason to doubt the truth or accuracy of a declaration.

2. The information provided shall include:

(a) in respect of the value of goods for Customs purposes, information necessary for verifying the declared value;

(b) in respect of the tariff classification of goods, information necessary to determine the accuracy of the declared tariff classification; and

(c) in respect of the origin of goods, information necessary to determine the accuracy of the declared origin of goods.

Article 8
Surveillance of Persons, Goods, Places and Means of Transport

Each Customs administration shall, on its own initiative or upon written request, under the terms of its domestic laws and in accordance with its administrative practices, maintain special surveillance over and provide the requesting administration with information on:

(a) persons known to have committed or suspected of being about to commit a Customs offence in the territory of the requesting Signatory Party, particularly those moving into and out of the territory of the requested Signatory Party;

(b) suspect movement of goods notified by the requesting administration as giving rise to a Customs offence in the territory of that Signatory Party;

(c) places used for storing goods which may be used in connection with substantial Customs offences in the territory of the requesting Signatory Party; and

(d) means of transport known to have been used or suspected of being used to commit Customs offences in the territory of the requesting Signatory Party.

Article 9
Visits by Officials

1. On written request, officials designated by the requesting administration may, with the authorisation of the requested administration and subject to conditions the latter may impose, for the purpose of investigating a Customs offence:

(a) examine in the offices of the requested administration the documents, registers and other relevant information in respect of that Customs offence;

(b) take copies of the documents, registers and other information relevant in respect of that Customs offence; and

(c) be present during an enquiry conducted by the requested administration relevant to the requesting administration.

2. Where the requested administration considers it appropriate for an official of the requesting administration to be present when measures of assistance are carried out pursuant to a request, the requested administration may invite the participation of that official, subject to any terms and conditions it may specify.

3. When, in the circumstances provided for in this Annex, officials of the Customs administration of a Signatory Party are present in the territory of another Signatory Party, they must at all times be able to furnish proof of their official capacity.

4. They shall, while there, enjoy the same protection accorded to Customs officials of that other Signatory Party in accordance with the domestic law of that Signatory Party and be responsible for any offence they might commit. They shall not be in uniform nor carry arms.

Article 10
Communication of Requests

1. Requests for assistance under this Annex shall be exchanged directly between the Customs administrations of the Signatory Parties. Each Customs administration shall designate a contact point for this purpose and communicate the details of the contact point to the other Customs administrations.

2. Requests for assistance shall be made in writing or electronically, and shall be accompanied by any information deemed useful to comply with the request. The requested administration may require written confirmation of electronic requests. Where the circumstances so require, requests may be made orally. Such requests shall be confirmed as soon as possible either in writing or, if acceptable to both Customs administrations, by electronic means. Requests shall be made in the Portuguese or Spanish languages to MERCOSUR and in the English language to SACU.

3. Requests made pursuant to paragraph 2, shall include the following details:

(a) the name of the requesting administration and the name of the national point of contact;

(b) the subject matter, the type of assistance requested and reasons for the request;

(c) a brief description of the subject matter and applicable legal and administrative provisions that apply;

(d) the names and addresses of the persons involved in the request if known; and

(e) other available information to enable the requested administration to effectively comply with the request.

Article 11
Use of Information

1. Any information received under this Annex shall be used only by the Customs administrations and solely for the purposes of this Annex.

2. On request, the Signatory Party that supplied the information may, notwithstanding paragraph 1, authorise its use by other authorities or for other purposes, subject to any terms and conditions it may specify. Such use shall be in accordance with the legal and administrative provisions of the Signatory Party which seeks to use the information. The use of information for other purposes includes its use in criminal investigations, prosecutions or proceedings.

Article 12
Confidentiality and Protection of Information

1. Any information received under this Annex shall be treated as confidential and shall, at least, be subject to the same confidentiality and protection as the same kind of information is subject to under the legal and administrative provisions of the requesting Signatory Party. Where a higher degree of protection is required by the requested administration for the supplied information, such requirement shall be mandatory once specified by the requested administration.

2. The requesting administration shall be responsible, in accordance with its own legal and administrative provisions, for any damage suffered by a person as a consequence of the information provided by the requested administration, in accordance with the provisions of this Annex.

Article 13
Exception from the Obligation to Render Assistance

1. If the requested administration considers that the assistance requested might be prejudicial to the public policy, sovereignty, security or other essential interests of that Signatory Party, or might involve violation of industrial, commercial or professional secrecy, it may decline to provide assistance or it may provide the assistance only if certain conditions are met, or it may provide a reduced level of assistance.

2. Where the requesting administration would be unable to comply if a similar request were made by the requested administration, it shall draw attention to that fact in its request. Compliance with such a request shall be at the discretion of the requested administration.

3. If assistance is refused or a reduced level only can be provided, the decision and the reasons therefore shall be notified in writing to the requesting administration without delay.

Article 14
Costs

1. The Customs administrations shall waive all claims for reimbursement of costs incurred in the execution of this Annex, except for expenses and allowances paid to experts and to witnesses as well as costs of translators or interpreters other than officials, which shall be borne by the requesting administration.

2. If the expenses that will be required to execute a request are of a substantial or extraordinary nature, the Signatory Parties concerned shall consult to determine the terms and conditions under which the request will be executed as well as the manner in which the costs shall be borne.

Article 15
Implementation

The Customs administrations of the Signatory Parties shall jointly determine the detailed arrangements for the implementation of this Annex.

Article 16
Final Provisions

1. This Annex shall complement and not impede application of any agreements on mutual administrative assistance which have been or may be concluded between the Signatory Parties. Neither shall it preclude more extensive mutual assistance granted under such agreements.

2. The provisions of this Annex shall not affect the obligations of the Signatory Parties under any other international agreement or convention.

3. Notwithstanding the provisions of paragraph 1, the provisions of this Annex shall take precedence over the provisions of any bilateral agreement on mutual assistance which has been or may be concluded between individual State Parties to MERCOSUR and any Member States of SACU in so far as the provisions of the latter are incompatible with those of this Annex.