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COMMUNICATION FROM MERCOSUR

Distribution Services

The following communication has been received from the delegations of Argentina, Brazil, Paraguay and Uruguay with the request that it be circulated to the Members of the Council for Trade in Services.

1. The States parties to MERCOSUR (Argentina, Brazil, Paraguay and Uruguay) submit this proposal for consideration by Members.¹ Its purpose is to promote the liberalization of this important sector and contribute to increasing participation by developing countries in trade in services. Article IV of the General Agreement on Trade in Services ("Increasing Participation of Developing Countries") states clearly in paragraph 1:

"1. The increasing participation of developing country Members in world trade shall be facilitated through negotiated specific commitments, by different Members pursuant to Parts III and IV of this Agreement, relating to:

...

(c) the liberalization of market access in sectors and modes of supply of export interest to them."

I. INTRODUCTION

2. In modern market economies, the distribution sector is an essential link between producers and consumers. The realization that greater competition in this sector can make it more efficient and contribute to improving the functioning of markets has led to greater deregulation and liberalization of the sector over the last decade. Furthermore, international trade in these services has grown considerably thanks to the expansion of foreign direct investment and the development of new technologies and distribution channels.

3. In the Services Sectoral Classification List (MTN.GNS/W/120) drawn up during the Uruguay Round and based largely on the United Nations Provisional Central Product Classification (CPC), the definition of the distribution sector includes four main services:

Commission agents' services

CPC 621

¹ This proposal is not a legal text. It is submitted solely for the purpose of negotiation and does not prejudice the position of MERCOSUR or its member States regarding the issues raised in it.

Wholesale trade services	CPC 622
Retailing services	CPC 631, 632, 6111, 6113, 6121
Franchising	CPC 8929

4. Commission agents or intermediaries can be distinguished as a category by the fact that they carry out commercial activities on behalf of others. In other words, they sell products supplied and, as a rule, owned by others to retailers, wholesalers or other persons. Wholesale trade services consist of the sale of goods to retailers, to industrial, commercial, institutional or professional consumers or to other wholesalers. Retailers sell products for personal or household consumption. Providers of franchising services sell specific rights and privileges, for example the right to use a given design in retail sales or a trade mark.

5. The Uruguay Round negotiations on distribution services having been no more than a first attempt to consolidate the opening of markets worldwide, trade barriers still exist in this sector. Some, such as obstacles to the distribution of agricultural products, affect developing countries in particular. Prohibitions on the establishment of a commercial presence by intermediaries or distributors of agricultural products prevent developing countries from implementing comprehensive export strategies for products and services of interest to them, from promoting their exports adequately, establishing alliances and networks to gain access to external markets, and from applying the capacity and know-how they have acquired in producing and exporting agricultural products to the export of related services.

6. Developing countries are denied free access to distribution services for some products of vital export interest to them either because items are expressly excluded from commitment schedules or because there is a total absence of commitments in certain sectors. There are no economic reasons why a product which meets all import requirements (tariffs, quotas, import licences, sanitary or phytosanitary standards and technical standards) should not be distributed as efficiently as possible.

II. ANALYSIS OF EXISTING COMMITMENTS

7. Forty-four Members of the WTO have made commitments on at least one of the four subsectors of distribution services subject to negotiations.²

8. Many Members have excluded the distribution of certain products from the scope of their commitments. The most commonly excluded products belong to the categories of arms, ammunition and explosives; pharmaceutical, medical and orthopaedic goods; agricultural raw materials and live animals; food, beverages and tobacco; precious metals; and motor vehicles. Furthermore, some Members have excluded certain products subject to import permits or licences from the scope of their commitments. It is a well-known fact that agricultural products are usually subject to import licensing, particularly in high-income countries which have highly protectionist agricultural policies.

9. In fact, 16 schedules exclude distribution for at least one agricultural product and two national schedules exclude from their distribution commitments products which are subject to import permits or licences. With one exception, none of these 18 countries are developing countries.

III. BARRIERS TO TRADE IN DISTRIBUTION SERVICES

10. Sectoral exclusions are the main barrier to trade in distribution services. The situation regarding current commitments has been explained in paragraph 8.

² The schedules of Austria, Finland and Sweden are counted separately, since they have not yet been integrated in the schedule of the European Communities and their member States.

11. The general foreign investment regime or the regime governing this sector crucially affects conditions of market access in many countries. The main obstacles encountered include:

- Restrictions on the level or percentage of foreign equity ownership;
- limitations on the type of legal entity required;
- limitations on ownership of specific assets (such as land);
- limitations on the scope of operations (restrictions on the number and location of outlets).

12. Similarly, the requirement to form a joint venture with local suppliers curtails the freedom of foreign suppliers to decide on the optimal business arrangement. Sometimes, even the possibility of setting up joint ventures is either restricted or prohibited outright, which is particularly damaging to developing exporting countries as it obstructs their access to distribution networks.

13. More generally, economic needs tests to determine whether a new entrant will be admitted to the market reduces regulatory transparency and gives administrative authorities a large measure of discretion.

14. Tax discrimination also affects foreign distribution service providers adversely.

IV. PROPOSAL

15. The States parties to MERCOSUR propose:

- (i) That all Members of the WTO make specific commitments in the distribution sector, particularly in wholesale trade services, retailing services and franchising services;
- (ii) that restrictions to market access and national treatment be eliminated and commitments "without limitations" be taken (i.e. by entering "none" in the market access and national treatment columns);
- (iii) in particular, that the exclusions affecting distribution services for certain products of special interest to MERCOSUR be eliminated. It is proposed that Members take commitments "without limitations" in the following sectors/subsectors:
 - Wholesale trade services of agricultural raw materials and live animals CPC 6221;
 - Wholesale trade services of food, beverages and tobacco CPC 6222
 - Wholesale trade services of textiles, clothing and footwear CPC 6223
 - Wholesale trade services of household appliances, articles and equipment CPC 6224
 - Wholesale trade services of pharmaceutical and medical goods and cosmetics CPC 6225
 - Wholesale trade services of miscellaneous consumer goods CPC 6226
 - Food retailing services CPC 631