

[TRANSLATION — TRADUCTION]

THE OLIVOS PROTOCOL FOR THE SETTLEMENT OF DISPUTES IN MERCOSUR

The Argentine Republic, the Federative Republic of Brazil, the Republic of Paraguay and the Oriental Republic of Uruguay, hereinafter the “State Parties”,

Bearing in mind the Treaty of Asuncion, the Protocol of Brasilia and the Protocol of Ouro Preto;

Aware that the progress made in the process of integration within Mercosur makes it necessary to improve the system for the settlement of disputes;

Considering the need to guarantee the correct interpretation, application and enforcement of the fundamental instruments of the process of integration and the regulations of Mercosur, in a consistent and systematic way;

Convinced that it is convenient to make specific modifications to the system for the settlement of disputes in order to strengthen juridical security within Mercosur;

Have agreed as follows:

CHAPTER I. DISPUTES BETWEEN STATE PARTIES

Article 1. Scope of application

1. Any disputes between the State Parties regarding the interpretation, application or breach of the Treaty of Asuncion, the Protocol of Ouro Preto, the protocols and agreements executed within the framework of the Treaty of Asuncion, the Decisions of the Common Market Council, the Resolutions of the Common Market Group and the Instructions of the Mercosur Trade Commission will be subject to the procedures established in this Protocol.

2. Disputes falling within the scope of application of this Protocol that may also be referred to the dispute settlement system of the World Trade Organisation or other preferential trade systems that the Mercosur State Parties may have entered into, may be referred to one forum or the other, as decided by the requesting party. Provided, however, that the parties to the dispute may jointly agree on a forum.

Once a dispute settlement procedure pursuant to the preceding paragraph has begun, none of the parties may request the use of the mechanisms established in the other fora, as defined by article 14 of this Protocol.

Notwithstanding, in connection with the same subject matter, the following in the framework of what has been established in this section, the Common Market Council shall regulate on all aspects related to the choice of forum.

CHAPTER II. MECHANISMS RELATED TO TECHNICAL ISSUES

Article 2. Creating the mechanisms

1. When deemed necessary, accelerated mechanisms may be established to settle disputes between State Parties on technical aspects regulated in common trade policy instruments.

2. The rules of operation, scope of such mechanisms and the nature of the decisions issuing from them shall be defined and approved by a Decision of the Common Market Council.

CHAPTER III. CONSULTATIVE OPINIONS

Article 3. Request system

The Common Market Council may establish mechanisms related to the requests for consultative opinions made to the Permanent Review Court and define their scope and procedures.

CHAPTER IV. DIRECT NEGOTIATIONS

Article 4. Negotiations

The States involved in a dispute shall first endeavour to settle it through direct negotiations.

Article 5. Procedure and applicable term

1. Direct negotiations may not exceed, unless otherwise agreed by the parties in the dispute, a fifteen (15) day period as from the date in which one of them communicated to the other the decision to start the dispute settlement proceedings.

2. The States participating in the dispute shall inform the Common Market Group, through the Administrative Secretariat of Mercosur, the steps taken during the negotiations and the results obtained.

CHAPTER V. INVOLVEMENT OF THE COMMON MARKET GROUP

Article 6. Optional procedure before the GMC

1. If no agreement is reached through direct negotiations or if the dispute is settled only in part, any of the States involved in the dispute may directly initiate the arbitration proceedings established in Chapter VI.

2. In addition to the provision contained in the preceding paragraph, the States involved in a dispute may, agree to submit it to the Common Market Group for consideration.

i) In that case, the Common Market Group will assess the situation, giving the parties to the dispute an opportunity to present their respective positions, requesting, when considered necessary, the advice of experts selected from the list mentioned in article 43 of this Protocol.

ii) Any costs incurred in connection with this advice shall be borne equally by the States involved in the dispute or in the proportion determined by the Common Market Group.

3. The dispute may also be referred to the Common Market Group (GMC) if another State that is not involved in the dispute justifiably requests such procedure at the end of direct negotiations. In that case, the arbitration process initiated by the requesting State Party will not be stopped, unless the States involved in the dispute so agree.

Article 7. Role of the GMC

1. If the dispute is referred to the Common Market Group by the States involved in it, the Group will make recommendations that, whenever possible, will be specific and detailed with a view to solving the dispute.

2. If the dispute is referred to the Common Market Group at the request of a State that is not a party to it, the Common Market Group may make comments or recommendations.

Article 8. Time frame for the participation and decision of the GMC

The procedure described in this Chapter may not last more than thirty (30) days as from the date of the meeting during which the dispute was submitted to the Common Market Group.

CHAPTER VI. AD HOC ARBITRATION PROCEEDINGS

Article 9. Beginning of the arbitration period

1. When it has not been possible to solve a dispute according to the procedure detailed in Chapters IV and V, any of the States involved in the dispute may communicate to the Administrative Secretariat of Mercosur its decision to submit to the arbitration proceedings provided for in this Chapter.

2. The Administrative Secretariat of Mercosur will immediately notify such communication to the other/s State/s involved in the dispute and to the Common Market Group.

3. The Administrative Secretariat of Mercosur will undertake the administrative steps required for the proceedings.

Article 10. Composition of the Ad Hoc Arbitration Court

1. The arbitration procedure will be held before an Ad Hoc Court formed by three (3) arbitrators.

2. The arbitrators will be appointed as follows:

i) Each State involved in the dispute shall appoint one (1) arbitrator from the list provided in Article 11.1 within fifteen (15) days as from the date on which the Administrative Secretariat of Mercosur has communicated to the States involved in the dispute the decision taken by one of them to submit the case to arbitration.

From the same list, one (1) alternate arbitrator will be appointed to replace the head arbitrator in the event of his inability to act or of excusing himself during any of the stages of the arbitration procedure.

ii) If a State involved in the dispute fails to appoint the arbitrators within the term specified in section 2 i) the arbitrators will be appointed by the Administrative Secretariat of Mercosur within two (2) days as from expiration of such term, among the arbitrators from that State included in the list of Article 11.1.

3. The Presiding Arbitrator will be chosen as follows:

i) The States involved in the dispute will agree on a third arbitrator from the list included in Article 11.2 iii) within fifteen days as from the date on which the Administrative Secretariat of Mercosur has communicated to the States involved in the dispute the decision taken by one of them to submit to arbitration. The third arbitrator will preside over the Ad Hoc Arbitration Court.

The States will simultaneously appoint, from the same list, an alternate arbitrator to replace the head arbitrator in case of his inability to act or of his excluding himself during any stage of the arbitration proceedings.

The Presiding Arbitrator and his alternate shall not be nationals of the States involved in the dispute.

ii) If the States involved in the dispute are unable to reach an agreement on the nomination of a third arbitrator within the specified term, the Administrative Secretariat of Mercosur, at the request of any of them, will appoint such arbitrator by a draw from the list included in Article 11.2 iii), excluding all nationals of the States involved in the dispute.

iii) The individuals appointed to act as third arbitrators shall answer within three (3) days as from the date of notification of their appointment whether they accept to act in connection with the dispute.

4. The Administrative Secretariat of Mercosur shall notify the appointment to the arbitrators.

Article 11. Lists of arbitrators

1. Each State Party shall nominate twelve (12) arbitrators to be included in a list filed with the Administrative Secretariat of the Mercosur. The appointment of the arbitrators, together with a detailed curriculum vitae of each one, shall be notified simultaneously to the other State Parties and to the Administrative Secretariat of Mercosur.

i) Within thirty (30) days as from notice, each of the State Parties may request additional information on the persons appointed by the other State Parties to be included in the list mentioned in the previous paragraph.

ii) The Administrative Secretariat of Mercosur shall notify the State Parties the consolidated list of arbitrators for Mercosur, as well as any subsequent modification thereof.

2. Each State Party shall propose four (4) candidates for the list of third arbitrators. At least one of the arbitrators designated by each State Party for inclusion in the list shall not be a national of any of the State Parties of the Mercosur.

i) The list shall be notified to the other State parties through the Rotating Presidency, with the curriculum vitae of each of the candidates proposed attached to it.

ii) Within thirty (30) days as from notification, each of the State Parties may ask for additional information on the persons proposed by the other State Parties or make well-grounded objections on the designated candidates in accordance with the criteria established in article 35.

The objections shall be communicated through the Rotating Presidency to the State Party making the proposal. If no solution is found within thirty (30) days as from notification the objection shall prevail.

iii) The consolidated list of third arbitrators and any subsequent modifications, together with the curriculum vitae of the arbitrators, shall be communicated by the Rotating Presidency to the Administrative Secretariat of Mercosur. The Secretariat shall record it and shall notify the State Parties.

Article 12. Representatives and advisors

The States involved in the dispute shall appoint their representatives before the Ad Hoc Arbitration Court and may nominate advisors for the defence of their rights.

Article 13. Joint representation

If two or more of the State Parties hold the same position in a dispute, they may make a joint presentation before the Ad Hoc Arbitration Court and appoint an arbitration judge jointly, within the time period established in article 10.2.i).

Article 14. Subject matter of the dispute

1. The subject matter of the dispute shall be defined in the written presentations and the answers thereto made before the Ad Hoc Arbitration Court. No additional filings will be allowed thereafter.

2. The matters raised by the parties in the written presentations mentioned in the previous paragraph shall be based on the matters that were considered during the prior stages, considered in this Protocol and in the Annex to the Ouro Preto Protocol.

3. The States involved in the dispute shall inform the Ad Hoc Arbitration Court in the written presentations mentioned in paragraph 1 of this article of the steps taken before the arbitration procedure and shall make a presentations on the facts and the law on which their respective positions are based.

Article 15. Provisional measures

1. The Ad Hoc Arbitration Court may, at the request of the interested party and wherever well grounded suppositions exist that the continuation of a given situation may cause severe and irreparable damage to one of the parties to the dispute, determine that appropriate provisional measures be taken to prevent that damage.

2. The Court may, at any time, discontinue the application of such measures.

3. In the case of a motion for review being filed against the arbitration award, the provisional measures that have not been discontinued prior to the award shall be applicable until they are discussed during the first meeting of the Permanent Review Court that is to decide on their continuation or lifting.

Article 16. Arbitration award

The Ad Hoc Arbitration Court shall issue an award within a period of sixty (60) days, which may be extended by decision of the Court by a maximum thirty (30) additional days as from the date of the communication made by the Administrative Secretariat of Mercosur to the parties and the other arbitrators with the information that the Presiding Arbitrator has accepted his nomination.

CHAPTER VII. REVIEW PROCEDURE

Article 17. Motion from Review

1. Any of the parties to the dispute may file a motion for review with the Permanent Review Court against the award of the Ad Hoc Arbitration Court within fifteen (15) days as from notification thereof.

2. The remedy shall be limited to legal issues dealt with in the dispute and to the legal interpretations set out in the award of the Ad Hoc Arbitration Court.

3. The awards of the Ad Hoc Courts made on the basis of *ex aequo et bono* principles shall not be the subject to review.

4. The Administrative Secretariat of Mercosur shall take the administrative steps required for the procedures and shall keep the States involved in the dispute and the Common Market Group informed.

Article 18. Composition of the Permanent Review Court

1. The Permanent Review Court shall include five (5) arbitrators.

2. Each of the Mercosur State Parties shall appoint one (1) arbitrator and his alternate for a period of two (2) years, renewable for a maximum of two consecutive periods.

3. The fifth arbitrator, to be appointed for a three (3) year non-renewable period unless otherwise agreed by the State Parties, shall be chosen unanimously by the State Parties from the list mentioned in this paragraph, at least three (3) months before the end of the fifth

arbitrator's term. Such arbitrator shall be a national of one of the State Parties of Mercosur. All of this in addition to the provisions of item 4 of this article.

If no unanimous decision is made, the appointment will be made by the Administrative Secretariat of Mercosur by means of a draw among the names on that list, two (2) days after the expiration of such term.

The list from which the fifth arbitrator will be chosen will include eight (8) members. Each of the State Parties shall propose two (2) members that have to be nationals of one of the Mercosur countries.

4. The State Parties, may agree to define other criteria to choose the fifth arbitrator.

5. At least three (3) months before the end of the arbitrators' term, the State Parties shall decide on whether to renew their term or propose new candidates.

6. If the term of office of an arbitrator finishes while he is deciding on a dispute, the judge shall remain in office until the end of the dispute.

7. As to the procedures described in this article, the provisions of article 11.2 shall apply.

Article 19. Permanent availability

Once they have accepted their appointment, the members of the Permanent Review Court shall be permanently available to act whenever they are called upon to do so.

Article 20. Operation of the Court

1. Where the dispute involves two State Parties, the Court shall be formed by three (3) arbitrators. Two (2) of them shall be nationals of each of the States participating in the dispute and the third one, to be the Presiding Arbitrator, shall be chosen by the Director of the Administrative Secretariat of Mercosur by means of a draw among the remaining arbitrators that are not nationals of the States involved in the dispute. The Presiding Arbitrator shall be appointed on the day after the filing of the motion for review, after which date the Court will be considered duly constituted to all intents and purposes.

2. Where the dispute involves more than two of the State Parties the Permanent Review Court will be formed by five (5) arbitrators.

3. The State Parties may agree to define other criteria for the operation of the Court established by to this article.

Article 21. Reply to the motion for review and time limit for the award

1. The other party to the dispute shall have the right to reply to the motion for review filed within fifteen (15) days as from notification of the filing of the motion.

2. The Permanent Review Court shall decide on the motion within thirty (30) days as from the date of the filing of the reply mentioned in the previous paragraph or as from the expiration of the term for such filing, as the case may be. The Court may decide to extend the thirty (30) day term by fifteen (15) days.

Article 22. Scope of the decision

1. The Permanent Review Court may confirm, modify or revoke the juridical basis and the decisions of the Ad Hoc Arbitration Court.

2. The decision of the Permanent Review Court shall be final and shall prevail over the decision of the Ad Hoc Arbitration Court.

Article 23. Direct access to the Permanent Review Court

1. The parties to a dispute, at the end of the procedure described in articles 4 and 5 of this Protocol may agree expressly to submit directly and in a single instance to the Permanent Review Court. In that case, the Court shall have the same jurisdiction as the Ad Hoc Arbitration Court and the provisions of articles 9, 12, 13, 14, 15 and 16 of this Protocol shall apply.

2. In this case the decisions of the Permanent Review Court shall be binding on the States involved in the dispute as from the date of receipt of the relevant notification, shall not be subject to review appeals and shall have for the parties the effect of *res judicata*.

Article 24. Exceptional and urgent measures

The Common Market Council may create exceptional procedures to deal with exceptional urgent cases, that may cause irreparable damage to the Parties.

CHAPTER VIII. ARBITRATION AWARDS

Article 25. Application of awards

The awards of the Ad Hoc Arbitration Court and of the Permanent Review Court will be approved by a majority vote, they shall be grounded and shall be signed by the President and the other arbitrators. The arbitrators shall not be allowed to specify the grounds for their dissenting votes and shall maintain the confidentiality of the voting procedure. All discussions shall also be confidential and shall remain confidential at all times.

Article 26. Awards binding

1. All awards of the Ad Hoc Arbitration Courts shall be binding on the States involved in the dispute as from the time of their notification and they shall be in the nature of *res judicata* if, upon expiration of the term specified in Article 17-1 for the filing of a motion for review, no such motion has been filed.

2. The awards of the Permanent Review Court are not subject to appeal, are binding on the States involved in the dispute as from the time of notice and shall be in the nature of *res judicata*.

Article 27. The awards have to be enforced

The awards shall be enforced in the way and with the scope determined therein. The adoption of compensatory measures pursuant to the terms of this Protocol shall not release a State Party from its obligations to enforce the award.

Article 28. Request for clarification

1. Any of the State Parties involved in the dispute may request a clarification of the award of the Ad Hoc Arbitration Court of the Permanent Review Court and also as regards the way in which the award has to be enforced, within fifteen (15) as from notification.

2. The competent Court shall decide on the request within fifteen (15) days as from the presentation of such request and may extend the term fixed for enforcement of the award.

Article 29. Term for enforcement and enforcement features

1. The awards of the Ad Hoc Arbitration Courts or of the Permanent Review Court, as the case may be, shall be enforced within the term established by the respective courts. if no term has been determined, the awards shall be enforced within thirty (30) days as from the date of notification.

2. If a State Party files a motion for revision, the enforcement of the award of the Ad Hoc Arbitration Court shall be suspended for the time it takes to process the request.

3. The State Party that has to enforce the award shall inform the other party to the dispute as well as the Common Market Group, through the Administrative Secretariat of Mercosur, the measures it shall take to enforce the award, within fifteen (15) days as from notification.

Article 30. Differences as to the enforcement of the award

1. When the State benefitting from the award understands that the measures taken do not comply with the award it will have thirty (30) days as from the adoption of such measures to take the situation to the consideration of the Ad Hoc Court or the Permanent Review Court.

2. The competent Court shall have thirty days (30) as from the date on which it was informed of the situation to decide on the issues mentioned in the previous paragraph.

3. If the intervening Ad Hoc Arbitration Court can not be called, another Court will be formed with the or those replacements necessary as mentioned in articles 10.2 and 10.3.

CHAPTER IX. COMPENSATORY MEASURES

Article 31. Authorisation to apply compensatory measures

1. If a State involved in a dispute does not comply, totally or partially, with the award of the Arbitration Court, the other party to the dispute shall be authorised, for a one (1) year

period starting on the day after the expiration of the term referred to in article 29.1 and without prejudice of the application of the procedures established in article 30, to start the application of temporary compensatory measures, such as the interruption of concessions or other similar obligations, with the aim of complying with the award.

2. The State Party benefited by the award shall, first, try to interrupt the concessions or similar obligations in the same sector or sectors affected. Suspensions within the same sector are considered impracticable or ineffective it may interrupt concessions or obligations in another sector. The reasons for this decision shall be explained.

3. The compensatory measures to be taken shall be reported formally, by the State Party that will apply them to the State Party that has to comply with the award, at least fifteen (15) days prior to application thereof.

Article 32. Challenging compensatory measures

1. Should the State Party benefitting from the award apply compensatory measures as a result of considering enforcement thereof insufficient and should the State Party bound to comply with the award consider that the measures it has adopted are satisfactory, the latter shall have fifteen (15) days as from the notification provided for in article 31.3 to submit the matter to the Ad Hoc Arbitration Court or to the Permanent Review Court for consideration, as the case may be, which shall have thirty (30) days as from being formed to issue a decision on the matter.

2. Should the State Party bound to enforce the award consider that the applied compensatory measures are excessive, it may request, within fifteen (15) days as from the application of such measures, that the Ad Hoc Court or the Permanent Review Court, as the case may be, issue a decision on the matter, within thirty (30) days as from being formed.

i) The Court shall decide on the adopted compensatory measures. Depending on the case, it will assess the arguments submitted for application to a sector different from that affected, as well as their proportionality with regard to the consequences arising from failure to comply with the award.

ii) In analysing proportionality, the Court shall take into account, among other things, the volume and/or value of trade in the sector concerned, as well as any other damage or factor that may have had an influence on the determination of the level or amount of compensatory measures.

3. The State Party that has adopted the compensatory measures shall adapt them to the decision made by the Court within ten (10) days, unless the Court provides for a different term.

CHAPTER X. COMMON PROVISIONS FOR CHAPTERS VI AND VII

Article 33. Jurisdiction of the courts

The State Parties recognise as binding, ipso facto and with no need for a special agreement, the jurisdiction of the Ad Hoc Arbitration Courts formed in each case to hear and deal with the disputes referred to in this Protocol, as well as the jurisdiction of the Permanent

Review Court to hear and deal with the disputes in accordance with the powers granted to it under this Protocol

Article 34. Applicable Law

1. The Ad Hoc Arbitration Courts and the Permanent Review Court shall settle the dispute on the basis of the Treaty of Asuncion, the Protocol of Ouro Preto, the protocols and agreements executed within the framework of the Treaty of Asuncion, the Decisions of the Common Market Council, the Resolutions of the Common Market Group and the Instructions of the Mercosur Trade Committee, as well as the applicable principles and provisions of International Law.

2. This provision shall not restrict the power of the Ad Hoc Arbitration Courts or of the Permanent Review Court when acting as a direct single instance, as set forth in Article 23, to decide on the dispute *ex aequo et bono*, when so agreed by the parties.

Article 35. Qualifications of arbitrators

1. The arbitrators of the Ad Hoc Arbitration Courts and of the Permanent Review Court shall be lawyers having recognized expertise in the fields that may be the subject matter of disputes, and shall be acquainted with the body of Mercosur regulations.

2. The arbitrators shall be necessarily impartial and functionally independent of the Central Public Administration or direct Administration of the State Parties and shall not have any interests at stake in the dispute. They shall be appointed on the basis of their objectiveness, reliability and good judgment.

Article 36. Costs

1. Any expenses and fees incurred in connection with the activity of the arbitrators shall be borne by the country appointing them and the expenses of the President of the Ad Hoc Arbitration Court shall be borne equally by the State Parties involved in the dispute, unless the Court decides that they are to be distributed in a different proportion.

2. Any expenses and fees incurred in connection with the activity of the arbitrators of the Permanent Review Court shall be borne equally by the State Parties involved in the dispute, unless the Court decides that they are to be distributed in a different proportion.

3. The expenses referred to in the preceding paragraphs may be paid through the Administrative Secretariat of Mercosur. Payments may be made through a Special Fund that the State Parties may create by depositing the contributions linked to the budget of the Administrative Secretariat, pursuant to Article 45 of the Protocol of Ouro Preto, or when the procedures provided for in Chapters VI or VII of this Protocol are started. The Fund shall be managed by the Administrative Secretariat of Mercosur, which shall render accounts to the State Parties of the use made.

Article 37. Fees and other expenses

Fees, travel, accommodation per diems and other expenses of arbitrators shall be determined by the Common Market Group.

Article 38. Venue

The venue of the Permanent Review Court shall be the city of Asuncion. However, when where well-grounded reasons exist, the court may exceptionally meet in other cities of Mercosur. The Ad Hoc Arbitration Courts may meet in any city of the Mercosur State Parties.

CHAPTER XI. CLAIMS BY PRIVATE PERSONS

Article 39. Scope of application

The procedure established in this Chapter shall apply to claims filed by private persons (individuals or corporations) in connection with the adoption or application, by any of the State Parties, of legal or administrative measures having a restrictive, discriminatory or unfair competition effect in violation of the Treaty of Asunción, the Protocol of Ouro Preto, the protocols and agreements executed within the framework of the Treaty of Asunción, the Decisions of the Common Market Council, the Resolutions of the Common Market Group and the Instructions of the Mercosur Trade Committee.

Article 40. Initiation of actions

1. The private persons concerned shall file their claims with the National Chapter of the Common Market Group of the State Party where they have their usual residence or place of business.
2. Such persons shall furnish evidence for the purpose of determining the existence of a violation and the current or imminent damage, in order for the claim to be admitted by the National Chapter and for it to be assessed by the Common Market Group and by the group of experts, if called upon to act.

Article 41. Procedure

1. Unless the claim refers to a matter that has led to a Dispute Settlement procedure in accordance with Chapters IV to VII of this Protocol, the National Chapter of the Common Market Group that has admitted the claim pursuant to Article 40 of this Chapter shall engage in consultations with the National Chapter of the Common Market Group of the State Party charged with the violation, with the aim of finding an immediate solution to the matter raised. Such consultations will be considered automatically concluded and with no further formal steps if the matter is not settled within fifteen (15) days as from notice of the claim to the State Party charged with the violation, unless the parties agree on a different term.

2. If consultations end without reaching a solution, the National Chapter of the Common Market Group shall forward the claim directly to the Common Market Group.

Article 42. Intervention of the Common Market Group

1. Upon receiving the claim, the Common Market Group shall assess the requirements set forth in Article 40.2 which provided the basis for admission by the National Chapter during the next meeting following receipt thereof. Should it find that the requirements for processing have not been met, it shall reject the claim directly. The decision shall be taken by consensus.

2. Should the Common Market Group not reject the claim, the claim will be deemed accepted. In this case, the Common Market Group shall immediately call upon a group of experts to issue its opinion on admissibility, within thirty (30) days as from their appointment, such term not being subject to extension.

3. Within the said term, the group of experts will give the claiming private person and the States involved in the claim the opportunity to be heard and to submit their arguments at a joint hearing.

Article 43. Group of experts

1. The group of experts referred to in Article 42.2 shall be formed by three (3) members designated by the Common Market Group or, upon failure to reach agreement on one or more experts they shall be appointed by vote by the State Parties, choosing from a list of twenty-four (24) experts. The Administrative Secretariat of Mercosur shall notify the Common Market Group the name of the expert or experts receiving the largest number of votes. In the latter case, and unless otherwise decided by the Common Market Group, one (1) of the designated experts shall not be a national of the State against which the claim has been filed or a national of the State in which the private person filed his claim, as provided for in Article 40.

2. In order to draw up the list of experts, each of the State Parties shall appoint six (6) persons having recognised expertise in the issues that may be the subject matter of the claim. The list will be filed with the Administrative Secretariat of Mercosur.

3. Any expenses arising from the involvement of the group of experts shall be borne as determined by the Common Market Group or, if no agreement is reached, shall be borne equally by the parties directly involved in the claim.

Article 44. Opinion of the group of experts

1. The group of experts shall submit its opinion to the Common Market Group.

i) If a unanimous opinion were to declare the admissibility of the claim filed against a State Party, any other State Party may request the adoption of corrective measures or annulment by reverse the challenged measures. If this request is not complied with within fifteen (15) days, the claiming State Party may resort directly to the arbitration procedure, as provided for in Chapter VI of this Protocol.

ii) Upon receiving the opinion unanimously declaring the inadmissibility of the claim, the Common Market Group shall declare the proceedings ended pursuant to this Chapter.

iii) Should the group of experts fail to reach unanimity in order to issue its opinion, it shall submit its different conclusions to the Common Market Group, which shall immediately declare the claim proceedings closed pursuant to this Chapter.

2. The closure of the proceedings by the Common Market Group in accordance with paragraphs ii) and iii) of the preceding section shall not prevent the claiming State Party from starting the proceedings provided for in Chapters IV to VI of this Protocol.

CHAPTER XII. GENERAL PROVISIONS

Article 45. Settlement or abandonment of claim

At any stage during the proceedings, the party that has raised the matter in dispute or filed the claim may abandon it, or the parties involved may reach a settlement, which shall end the dispute or claim in either case. Any such abandonment or settlement shall be notified through the Administrative Secretariat of Mercosur to the Common Market Group or to the competent Court, as the case may be.

Article 46. Confidentiality

1. All the documents submitted in connection with the proceedings provided for in this Protocol are confidential documents of the parties to the dispute, except for arbitration awards.

2. At the discretion of the National Chapter of the Common Market Group of each State Party and where necessary for preparation of the position papers to be submitted to the Court, such documents may be disclosed only to the sectors having an interest in the matter.

3. Notwithstanding the provision contained in paragraph 1, the Common Market Council shall determine the manner in which written documents and presentations in connection with disputes that have ended will be disclosed.

Article 47. Regulation

The Common Market Group shall approve the regulation of this protocol within sixty (60) days as from its entry into force.

Article 48. Terms

1. The time periods set in this Protocol are binding and shall be calculated on a consecutive day basis as from the day following the fact or event to which they refer. Provided, however, that where the term for filing a document or complying with a formal step falls on a day that is not a business day at the Administrative Secretariat of Mercosur, the docu-

ment shall be filed or the formal step shall be complied with on the first business day immediately following such date.

2. Notwithstanding the provision contained in the preceding paragraph, the time periods set in this Protocol may be modified by mutual agreement of the parties to the dispute. The terms set for proceedings before the Ad Hoc Arbitration Courts and the Permanent Review Court may be modified where the parties to the dispute make such a request to the competent Court and is granted.

CHAPTER XIII. TEMPORARY PROVISIONS

Article 49. Initial notifications

The State Parties shall make the initial appointments and notifications provided for in Articles 11 18 and 43.2 within thirty (30) days as from the entry into force of this Protocol.

Article 50. Pending disputes

Pending disputes initiated pursuant to the system of the Protocol of Brasilia shall be governed solely by such Protocol until definitively ended.

Article 51. Rules of procedure

1. The Permanent Review Court shall adopt its own Rules of Procedure within thirty (30) days as from its formation, which shall be approved by the Common Market Council

2. The Ad Hoc Arbitration Courts shall adopt their own rules of procedure, based on the Model Rules to be approved by the Common Market Group.

3. The rules referred to in the preceding sections of this article shall ensure that each of the parties to the dispute has a full opportunity to be heard and to submit its arguments, and shall ensure that the proceedings are conducted expeditiously.

CHAPTER XIV. FINAL PROVISIONS

Article 52. Effective date and filing

1. This Protocol, which is a part of the Treaty of Asuncion, shall become effective on the thirtieth day as from the date on which the fourth ratification instrument has been filed.

2. The Republic of Paraguay shall be the depository of this Protocol and of the ratification instruments and shall notify the other State Parties of the date of filing of such instruments and send a duly authenticated copy of this Protocol to the other State Parties.

Article 53. System review

Before the end of the common external tariff convergence process, the State Parties shall review the current dispute settlement system, in order to adopt the Permanent Dispute

Settlement System for the Common Market referred to in Annex III of the Treaty of Asuncion.

Article 54. Ipso jure adhesion or denunciation

1. Adhesion to the Treaty of Asuncion shall ipso jure constitute adhesion to this Protocol.
2. Denunciation of this Protocol shall ipso jure constitute denunciation of the Treaty of Asuncion.

Article 55. Substitution

1. As from its effective date, this Protocol shall substitute the Protocol of Brasilia on Dispute Settlement, signed on December 17, 1991, and shall substitute the Regulation of the Protocol of Brasilia, CMC Decision 17/98.

2. However, the relevant provisions of the Protocol of Brasilia and of its Regulation shall continue to apply until the dispute proceedings initiated under the Protocol of Brasilia have ended and until the proceedings provided for in Article 49 have concluded.

3. Any references to the Protocol of Brasilia in the Protocol of Ouro Preto and its Annex shall be deemed to be references to this Protocol where applicable.

Article 56. Languages

In all the proceedings provided for in this Protocol, Spanish and Portuguese shall be the official languages.

Done in the city of Olivos, Province of Buenos Aires, Republic of Argentina, on this eighteenth day of the month of February of the year 2002, in an original in the Spanish and Portuguese languages, both texts being equally authentic

For the Republic of Argentina:

EDUARDO DUHALDE

CARLOS RUCKAUF

For the Federative Republic of Brazil:

FERNANDO HENRIQUE CARDOSO

CELSO LAFER

For the Republic of Paraguay:

LUIS GONZALES MACCHI

JOSE ANTONIO MORENO RUFFINELLI

For the Oriental Republic of Uruguay:

JORGE BATTLE IBANEZ

DIDIER OPERTTI