

WORLD TRADE ORGANIZATION

RESTRICTED

G/L/68

26 March 1996

(96-1084)

COUNCIL FOR TRADE IN GOODS
22 May 1996

Original: English

BRAZIL

Request for a Waiver under Article IX of the Marrakesh Agreement Establishing the World Trade Organization

The following communication, dated 15 March 1996, has been received from the delegation of Brazil with the request that it be circulated to WTO Members.

Introduction

1. The Treaty of Montevideo of 12 August 1980 created the Latin American Integration Association in replacement of the Latin American Free Trade Association formed in 1960. The Treaty allowed its members to grant preferences among themselves and not to extend those to third countries. It was an express derogation of the Most Favoured Nation clause, in accordance with Article XXIV of the General Agreement on Tariffs and Trade, as notified under the Enabling Clause. Since the conclusion of the 1980 Treaty of Montevideo, numerous treaties and protocols were signed under its aegis.

2. Thus, the Treaty for Integration, Cooperation and Development, signed between Brazil and Argentina on 29 November 1988, set the conditions for the establishment of a common economic space between the two countries. The Agreement for Economic Complementation N.14, signed on 20 December 1990, set the necessary conditions for the enlargement of that integration process to include Paraguay and Uruguay.

3. Under the integration process, Brazil and Argentina have been operating a special regime for the automotive sector since 1991, as consubstantiated in Protocol 21 of the Program for Economic Integration and Cooperation. Such regime favours the industrial complementation in that sector and regulates the trade of vehicles.

4. On 26 March 1991, the Treaty of Asuncion created the Southern Common Market - MERCOSUL, an agreement aiming at full economic integration among Argentina, Brazil, Paraguay and Uruguay. The common market is to operate under its principles and objectives which include:

"the coordination of macro-economics and sectoral policies among the States - trade, agricultural, industrial, fiscal, monetary, foreign exchange and capital, services, customs, transportation and communication policies and other that may be agreed upon - to ensure adequate conditions of competition between States."

5. The Treaty of Asuncion also sets forth

"the commitment by the States to harmonize their legislation, in the pertinent areas, to foster the strengthening of the integration process."

6. On December 16 and 17, 1994, the Mercosul Council adopted Decision 29 on the establishment of a common automotive regime by the year 2000. According to such decision, the full text of a document establishing the common regime should be finalized before December 31, 1997. Until then, bilateral agreements (Brazil/Argentina, Argentina/Uruguay and Brazil/Uruguay) would continue to regulate the automotive sector, all under the existing mechanisms.¹ Paraguay does not manufacture vehicles or auto parts.

7. One of the most significant achievements of MERCOSUL was the establishment of a Customs Union less than four years after the Treaty of Asuncion, that is, on 1 January 1995, the very same day the World Trade Organization entered into force.

8. By then, Argentina and Uruguay maintained special regimes for their automotive sector which included investment measures. Having duly notified such measures to WTO (G/TRIMS/N/ARG/1 and G/TRIMS/N/URY/1), Argentina and Uruguay benefit from the transition period and their regimes shall remain in force until December 31, 1999.

Specific Policy Objectives

9. Compliance with the WTO Agreements and the fulfilment of MERCOSUL's mandate toward the establishment of a common market for the sub-region figure very prominently in Brazil's trade policy agenda. Recent efforts to streamline and revamp Brazil's regulatory trade and investment regimes have in large measure reflected these priorities as Brazil attempts to reconcile the harmonization of laws and regulations at the sub-regional level with the aims and objectives of the WTO.

10. In order to coordinate policies regarding investments, to harmonize legislation regarding the automotive sector and to avoid distorting the conditions of competition between new investments and established enterprises of the automotive sector within the scope of the common market, Brazil held, in 1995, negotiations with its Mercosul partners, aiming at the adoption of a similar and compatible domestic investment regime, in harmony with those existent in the sub-region. Such negotiations were held in compliance with MERCOSUL's Decision 29/94 referred to in paragraph 6 above which established a transition period until the entry into force of a common automotive regime.

11. Provisional Measure 1,235 of December 14, 1995 (later re-issued under number 1,272), the provisions of which were regulated by Decree 1,761 of December 27, 1995, is to a significant extent the result of those negotiations. The products covered by the measures are like products to those of the enterprises established in Argentina and Uruguay under their respective automotive regimes now under harmonization with Brazil.

Reasons which prevent Brazil from otherwise achieving its policy objectives

12. In order to avoid distortions in the conditions of competition prevailing in MERCOSUL during the transition period accorded to two of its Party States (Argentina and Uruguay) under the terms of the TRIMs Agreement, Brazil had to adopt comparable legislation. In doing so it complied with the

¹The Latin American Integration Association's bi-annual report on the period 1992-1994, about to be sent to the WTO, contains the aforementioned documents.

decision made by MERCOSUL to have a common automotive regime. It should be noted that the transition period agreed among MERCOSUL partners for their automotive sector coincides with the transition period set out under WTO rules for trade-related investment measures in developing countries - i.e., 31 December 1999.

13. In the absence of a similar and harmonized legislation and regulatory approach applying to the automotive sector in Brazil, it would be difficult for the sub-region to correct existing, and avoid future, distortions in both trade and investment flows. Investment decisions would necessarily be highly influenced by differences in regulatory frameworks among the four Party States - a situation which would go against the overall MERCOSUL aim of moving increasingly and consistently toward a common market for the automotive and other sectors.

THE REQUEST FOR A WAIVER

14. The Government of the Federative Republic of Brazil, based on Article IX of the Marrakesh Agreement establishing the WTO, hereby requests a waiver of its obligations under Article 5.1 of the TRIMs Agreement for the period of time and products specified in its Provisional Measure 1,235 and Decree 1,761 notified to the Council for Trade in Goods of the WTO on 31 January 1996 (WT/L/132).

The limits of the waiver requested

15. Provisional Measure 1,235 and its regulatory provisions clearly state the new regime for the automotive sector will expire on December 31, 1999, which is also the time limit for both the Argentinean and Uruguayan transition periods.

16. Provisional Measure 1,235 and its regulatory provisions specify the products subject to the regime, i.e.

- (a) passenger and mixed use vehicles and jeeps;
- (b) station wagons, vans, pick-up trucks and vehicles for transportation of goods;
- (c) truck-tractors;
- (d) agricultural tractors and harvesting machines;
- (e) tractors, road-building and excavation machines and fork lifts;
- (f) bodies for automotive vehicles in general;
- (g) trailers and semi-trailers for the transportation of goods;
- (h) parts, pieces and components, sets and subsets, finished and unfinished, pneumatic tires, for utilization in the manufacturing of the products listed above.