PROTOCOL OF BRASILIA FOR THE SOLUTION OF CONTROVERSIES

The Argentine Republic, the Federal Republic of Brazil, the Republic of Paraguay, and the Eastern Republic of Uruguay, hereinafter referred to as the "State Parties":

In compliance with the dispositions found in Article 3 and in Annex III of the Treaty of Asuncion signed on the 26th day of March of 1991, by virtue of which the State Parties have obligated themselves to adopt a System for the Solution of Controversies which shall be in effect during the period of transition;

IN RECOGNITION of the importance of having an efficient instrument to ensure compliance of the aforesaid Treaty and of the dispositions which are derived therefrom;

CONVINCED that the System for the Solution of Controversies contained in the present Protocol will contribute to the strengthening of relations between the State Parties on a foundation of justice and equity;

THEY HAVE AGREED on the following:

CHAPTER I

SCOPE OF APPLICATION

Article 1

The controversies which arise between the State Parties regarding the interpretation, application or non-compliance of the dispositions contained in the Treaty of Asuncion, of the agreements celebrated within its framework, as well as any decisions of the Common Market Council and the resolutions of the Common Market Group, will be submitted to the procedure for resolution established in the present Protocol.

CHAPTER II

DIRECT NEGOTIATIONS

Article 2
The State Parties to any controversy will first attempt to resolve it through direct negotiations.

Article 3

1. In any controversy, the State Parties will inform the Common Market Group, through the Administrative Secretariat, regarding the actions that are undertaken during the negotiations and their results.

2. The direct negotiations cannot, except pursuant to an agreement between the parties, exceed a time limit of fifteen (15) days from the date one of the State Parties originally raised the controversy.

CHAPTER III

PARTICIPATION OF THE COMMON MARKET GROUP

Article 4

1. If during the direct negotiations an agreement cannot be reached or if the controversy can only be resolved in part, any of the State Parties to the controversy can submit it for consideration by the Common Market Group.

2. The Common Market Group will evaluate the situation, giving an opportunity to the parties to the controversy to state their respective positions and requiring, whenever it considers it necessary, the advice of experts selected from a list which is referred to in Article 30 of the present Protocol.

3. The costs which arise as a result of this advice will be borne in equal parts by the State Parties to the controversy or in a proportion as determined by the Common Market Group.

Article 5

At the conclusion of this procedure the Common Market Group will formulate its recommendations to the State Parties involved in the controversy suggesting a solution to the dispute.

Article 6

The procedure described in the present chapter cannot be extended for a period greater than thirty (30) days, beginning with the date on which the controversy was submitted for consideration to the Common Market Group.

CHAPTER IV
ARBITRAL PROCEDURE

Article 7

1. When a controversy cannot be resolved through the application of the procedures referred to in Chapters II and III, any of the State Parties to the controversy can communicate to the Administrative Secretariat its intention to resort to the arbitral procedure which is established in the present Protocol.

2. The Administrative Secretariat will immediately notify the other State Party or Parties involved in the controversy and the Common Market Group of this communication and will be entrusted with the means required for the development of the procedures.

Article 8

The State Parties declare that they recognize as obligatory, ipso facto and without need of a special agreement, the jurisdiction of the Arbitral Tribunal which in each case is established in order to hear and resolve all controversies which are referred to in the present Protocol.

Article 9

1. The arbitral procedure will be tried before an ad hoc Tribunal composed of three (3) arbitrators contained in a list which is referred to in Article 10.

2. The arbitrators will be chosen in the following manner:

i. Each State Party to the controversy will designate one (1) arbitrator. The third arbitrator, who cannot be a national of the State Parties to the controversy, will be designated upon common agreement and he or she will preside over the Arbitral Tribunal. The arbitrators should be named at the end of fifteen (15) days from the date on which the Administrative Secretariat communicated to the other State Parties to the controversy the intention of one of them to resort to arbitration;

ii. Each State Party to the controversy will also nominate an alternate arbitrator, who should meet the same requirements, in order to replace the nominal arbitrator in the event of his or her incapacity or withdrawal from the Arbitral Tribunal, whether it be at the moment of its formation or during the course of the proceedings.

Article 10

Each State Party will designate ten (10) arbitrators, which will be included in a list which will be registered with the Administrative Secretariat. The List, as well as any successive modifications, will be made known to the State Parties.

Article 11

If one of the State Parties to the controversy should not nominate its arbitrator within the time limit indicated in Article 9, than [sic] he or she shall be chosen by the Administrative
Secretariat from among the arbitrators of this State, pursuant to the order established in its respective list.

**Article 12**

1. If no agreement can be reached between the State Parties to the controversy concerning the selection of a third arbitrator within the time limit established in Article 9, the Administrative Secretariat, at the request of either, will proceed to designate the arbitrator by lottery from among a list of sixteen (16) arbitrators put together by the Common Market Group.

2. The aforesaid list, which should also be registered with the Administrative Secretariat, will be made up in equal parts of nationals from the State Parties and of nationals from third countries.

**Article 13**

The arbitrators that make up the lists which are referred to in Articles 10 and 12 should consist of jurists of recognized competence in those matters which can be the subject matter of a controversy.

**Article 14**

If two or more State Parties maintain the same position in a controversy, they will unify their representation before the Arbitral Tribunal and will designate one arbitrator upon common agreement within the time limit established in Article 9(2)(i).

**Article 15**

In each case, the Arbitral Tribunal shall establish its seat in one of the State Parties and will adopt its own rules of procedure. These rules should guarantee that each party to the controversy shall have the fullest opportunity to be heard and to present its proof and arguments and it shall also be guaranteed that the proceedings occur in an expeditious manner.

**Article 16**

The State Parties to a controversy shall inform the Arbitral Tribunal of any requests that have been satisfied prior to the arbitral proceeding and will make a brief presentation of the principles of fact or law as per their respective positions.

**Article 17**

The State Parties to the controversy will chose who will represent them before the Arbitral Tribunal and they can designate advisors to defend their rights.

**Article 18**
1. The Arbitral Tribunal can, at the request of an interested party and to the extent that there exist well-founded presumptions that a continuation of the current situation will cause severe and irreparable damage to one of the State Parties, issue provisional measures which it considers appropriate, according to the circumstances and pursuant to the conditions that the Tribunal itself establishes, in order to prevent such damages.

2. The parties to the controversy shall immediately or within the time limit determined by the Arbitral Tribunal, comply with whatever provisional measure, until such time as the decision that is referred to in Article 20 is issued.

Article 19

1. The Arbitral Tribunal will decide the controversy based on the dispositions of the Treaty of Asuncion, of the agreements celebrated within its framework, on the decisions of the Common Market Council, the resolutions of the Common Market Group, as well as on the principles and dispositions of international law which are applicable to the matter.

2. The present disposition does not restrict the ability of the Tribunal to decide any controversy ex aequo et bono [on equity], if the parties so agree.

Article 20

1. The Arbitral Tribunal shall issue its decision in writing within sixty (60) days, extendible for an additional time limit of thirty (30) days, from the time its President is designated.

2. The decision of the Arbitral Tribunal shall be adopted by majority vote, and it should be supported and signed by the President and the other arbitrators. The members of the Arbitral Tribunal will not be allowed to explain their dissenting votes and they must maintain the confidentiality of the vote.

Article 21

1. The decisions of the Arbitral Tribunal cannot be appealed, and are binding on the State Parties to the controversies from the moment the respective notification is received and will be deemed by them to have the effect of res judicata.

2. The decisions should be complied with within a time limit of fifteen (15) days, unless the Arbitral Tribunal fixes a different time limit.

Article 22

1. Any of the State Parties to the controversy can, within fifteen (15) days following notification of the decision, request a clarification of the same or an interpretation as to how it should be complied with.

2. The Arbitral Tribunal will issue a pronouncement within the next fifteen (15) days.

3. If the Arbitral Tribunal considers that the circumstances require it, it can suspend compliance with the decision until such time as it decides the proffered request.
Article 23

If a State Party does not comply with a decision of the Arbitral Tribunal within a time limit of thirty (30) days, the other State Parties to the controversy can adopt temporary compensatory measures, such as the suspension of concessions or their equivalent, which should tend to lead to compliance.

Article 24

1. Each State Party to a controversy shall defray the costs arising from the performance of duties by its designated arbitrator.

2. The President of the Arbitral Tribunal shall receive pecuniary compensation, which, along with the other costs of the Arbitral Tribunal, should be defrayed in equal amounts by the State Parties to the controversy, unless the Tribunal decides to distribute them in different proportions.

CHAPTER V

PRIVATE PARTY COMPLAINTS

Article 25

The procedure established in the present chapter shall apply to all complaints made by private parties (whether physical persons or juridical entities) as a result of the sanction or application, by any of the State Parties, of legal or administrative measures which have a restrictive, discriminatory or unfairly competitive effect, in violation of the Treaty of Asuncion, of the agreements celebrated within its framework, the decisions of the Common Market Council or the resolutions of the Common Market Group.

Article 26

1. The private parties that are affected will file their complaints with the National Section of the Common Market Group of the State Party wherein they maintain their usual residency or which is the headquarters of their business.

2. Private parties should provide all the elements which will allow the aforesaid National Section to determine the truth of the violation and the existence or threat of prejudice.

Article 27

Unless a complaint refers to a question which has already led to the initiation of proceedings for the Solution of Controversies pursuant to Chapters II, III or IV of this Protocol, the National Section of the Common Market Group which accepted the complaint in conformity with Article 26 of this chapter can, in consultation with the affected private party:
a. Initiate direct contacts with the National Section of the Common Market Group of the State Party to which is attributed the violation with the goal of finding, as a result of these consultations, an immediate solution to the question that has been put forth; or

b. Can refer the complaint without further ado to the Common Market Group.

**Article 28**

If the question cannot be resolved within a time limit of fifteen (15) days from the date the communication of the complaint was made pursuant to Article 27(a), the National Section which made the communication can, upon the request of the affected private party, refer the matter without further ado to the Common Market Group.

**Article 29**

1. Upon receipt of the complaint, the Common Market Group, in its first meeting following receipt, will evaluate the reasons upon which the National Section accepted it. If it concludes that the necessary requirements are not present to sustain it, it will reject the complaint without further ado.

2. If the Common Market Group does not reject the complaint, it will immediately convene a group of experts who should then issue a report with their conclusions within a non?extendible time period of thirty (30) days following their designation.

3. Within this time limit, the group of experts will give the affected private party and the State against which a complaint has been filed the opportunity to be heard and to present their arguments.

**Article 30**

1. The group of experts which is referred to by Article 29 will be composed of three (3) members chosen by the Common Market Group or, in the absence of an agreement with respect to one or more of the experts, these shall be selected by a vote the State Parties shall carry out from among a list of twenty four (24) experts. The Administrative Secretariat shall communicate to the Common Market Group the name of the expert or experts which received the largest number of votes. In this last case, and unless the Common Market Group decides otherwise, one of the designated experts cannot be a national of a State against which a complaint has been made nor of the State in which the private party filed its complaint, pursuant to the provisions of Article 26.

2. With the goal of establishing a list of experts, each of the State Parties shall designate six (6) persons of recognized competence in matters which can be the subject matter of a controversy. This list shall remain recorded with the Administrative Secretariat.

**Article 31**

The costs arising from the experts’ performance of their duties will be defrayed in a proportion to be determined by the Common Market Group or, in the event of a lack of agreement, in equal parts by the parties directly involved.
Article 32

The experts will forward their conclusions to the Common Market Group. If this report verifies the legal basis of the complaint made against a State Party, any other State Party can then demand that corrective measures be adopted or that the disputed measure be annulled. If this demand is not met within a time limit of fifteen (15) days, the State Party that made it can then proceed directly to the arbitral procedure pursuant to the conditions established in Chapter IV of the Present Protocol.

CHAPTER VI

FINAL DISPOSITIONS

Article 33

The present Protocol, an integral part of the Treaty of Asuncion, will enter into force once all four State Parties deposit the respective instruments of ratification. These instruments should be deposited with the Government of the Republic of Paraguay which will then inform the Governments of the other State Parties of the date of deposit.

Article 34

The present Protocol shall remain in effect until a Permanent System for the Solution of Controversies for the Common Market, as referred to in Number 3 of Annex III to the Treaty of Asuncion, shall enter into force.

Article 35

The accession on the part of any State to the Treaty of Asuncion shall, ipso jure, mean its accession to the present Protocol.

Article 36

Spanish and Portuguese shall, whenever applicable, be the official languages for any of the proceedings contemplated in the present Protocol.

Done in the city of Brasilia on the seventeenth day of the month of December of the year nineteen hundred and ninety one in one original in the Spanish and Portuguese languages, both texts being equally authentic. The Government of the Republic of Paraguay shall be the depository of the present Protocol and will forward a duly authenticated copy of the same to the Governments of the other State Parties.