The MERCOSUR dispute settlement system is now governed by the Olivos Protocol, which entered into force on 1 January 2004. Prior to that date, the applicable instruments were annex III of the Treaty of Asunción and the Brasilia Protocol. There are also parallel stages: the consultations and claims procedures, provided for under MTC guidelines No. 17/99, and in the annex to the Ouro Preto Protocol and in CMC decision Nº 18/02, respectively. These mechanisms are managed by the MERCOSUR Trade Commission and by the Common Market Group.

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Forum (at the discretion of the complainant)

Disputes which fall within the scope of the MERCOSUR dispute settlement system and which can also be submitted to the dispute settlement mechanisms of the World Trade Organization (WTO) or to other preferential trade schemes of which MERCOSUR member States are members on an individual basis may be submitted to either forum at the discretion of the complainant. Notwithstanding the above, the parties to the dispute may choose the forum by mutual agreement. Once a dispute settlement procedure has begun, neither party may, in relation to the same case, have recourse to the mechanisms established under other forums (OP, article 1).

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Organs

The dispute settlement system provided for under the Olivos Protocol comprises the following organs:

I- The Common Market Group (CMG) (OP, chapter V)
   - An executive organ responsible, among other functions, for ensuring compliance with the Treaty of Asunción, its protocols and the agreements signed in the framework of the Treaty. Its decisions are binding on member States (article 15 of the Ouro Preto Protocol). When it is requested to take part in the settlement of a dispute, however, CMG issues recommendations, the binding nature of which is not expressly stated in the Olivos Protocol (article 7).

II- Ad Hoc Arbitration Tribunals (OP – chapter VI)
   - These consist of three arbitrators: one designated by each of the parties, and the third designated by mutual agreement. The arbitrators are selected from lists deposited by each State with the MERCOSUR Administrative Secretariat.
   - Member States may appeal to the Permanent Review Tribunal (PRT) against the decision of the Ad Hoc Arbitration Tribunal. The Tribunal reviews the decision solely in terms of points of law (cassation).
   - The decisions of the Tribunals are binding on the parties and have the force of res judicata once the deadline for appealing to the Permanent Review Tribunal has passed.

III- Permanent Review Tribunal- PRT (OP, article 18)
   - This Tribunal is made up of five arbitrators: each State party of MERCOSUR designates an arbitrator and his or her substitute for a period of two years. The fifth arbitrator is elected unanimously for a period of three years.
   - The Tribunal is supported by a Technical Secretariat.

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1 Official website of MERCOSUR: [http://www.mercosur.int/msweb/](http://www.mercosur.int/msweb/)
- Despite its name, this Tribunal does not sit permanently but may be convened at any time. Once its members have accepted their appointment, they must be readily available to discharge their duties whenever they are called upon.

- Decisions of the Permanent Review Tribunal (PRT) are final and take precedence over those of the Ad Hoc Arbitration Tribunals. Its decisions are binding on the parties and have the force of res judicata.

- If the dispute involves two States parties, the Tribunal is made up of three arbitrators. Two of the arbitrators are nationals of the two parties to the dispute and the third, who presides over the Tribunal, is designated by lot drawn by the Director of the MERCOSUR Administrative Secretariat from among the remaining arbitrators who are not nationals of the States parties to the dispute. If the dispute involves more than two States parties, the Permanent Review Tribunal is made up of all five arbitrators (OP, article 20)

The complete dispute settlement procedure

MERCOSUR has set up a system whereby consultations are addressed to the MERCOSUR Trade Commission while claims are addressed to the Common Market Group, and an arbitral dispute settlement system (Brasilia and Olivos Protocols).

Phase 1 (direct negotiations): A dispute may be initiated by any State party, on its own initiative or following a claim submitted by a citizen. States attempt to settle the dispute firstly through direct negotiations which, unless otherwise agreed by the parties, must be conducted within 15 days of the date on which one of the parties communicates to the other the decision to initiate a dispute. The States parties must inform the Common Market Group of the proceedings which take place during the negotiations and of the outcome (OP, article 5).

Phase 2 (optional intervention by the Common Market Group-CMG): If no agreement is reached during the direct negotiations or if the dispute is settled only in part, any of the States parties to the dispute may directly initiate arbitration proceedings before the Ad Hoc Arbitration Tribunal. Notwithstanding this, the States parties to the dispute may, by mutual agreement, submit it for consideration by the Common Market Group (CMG). The dispute may also be submitted to CMG if another State which is not a party to the dispute makes a well-founded request for such proceedings following the direct negotiations (OP, article 6). CMG makes its recommendations no more than 30 days following the date on which the dispute was submitted to it. The Olivos Protocol contains no provisions as to the nature of such recommendations, that is, whether or not they are binding (OP, article 7);

Phase 3 (Ad Hoc Arbitral Tribunal or Permanent Review Tribunal): Should the parties not wish to engage in either of the above optional phases, there are two possibilities:
1- The States parties to the dispute may submit it directly to the Ad Hoc Arbitration Tribunal, or
2- The States parties to the dispute may, by mutual agreement, initiate the proceedings directly before the Permanent Review Tribunal (per saltum).

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2 The parallel stages of the system are the consultations and claims procedures, provided for under MTC guidelines No. 17/99, and in the annex to the Ouro Preto Protocol and in CMC decision No. 18/02, respectively. These mechanisms are managed by the MERCOSUR Trade Commission and by the Common Market Group.
The Ad Hoc Arbitration Tribunal announces its decision within a period of 60 days, which may be extended by decision of the Tribunal for a maximum of 30 days, counted from the date of the communication from the MERCOSUR Administrative Secretariat to the parties and the other arbitrators (OP, article 16). The decision is binding on the States parties to the dispute once notification has been given; in relation to the parties, it has the force of res judicata once the deadline for appeal (15 days) has passed and no appeal has been made (OP, article 26).

**Phase 4 (Permanent Review Tribunal (PRT)):** Either of the parties to a dispute may submit notice of appeal to the Permanent Review Tribunal against the decision of the Ad Hoc Arbitration Tribunal, within a period of no more than 15 days from the date of its notification. The appeal is restricted to issues of law dealt with in the dispute and the judicial interpretations contained in the Tribunal’s decision.\(^4\)

Reply: The other party to the dispute may reply to the notice of appeal within 15 days of the date of notification that the appeal was lodged (OP, article 21).

Final decision: The Permanent Review Tribunal (PRT) announces its decision within 30 days of the date on which the appeal was lodged. The decision of the PRT may confirm, modify or vacate the legal basis of a decision of the Ad Hoc Arbitration Tribunal and takes precedence over such decisions (OP, articles 21 and 22). Decisions of the Permanent Review Tribunal are final, binding on the States parties to the dispute from the date of their notification, and have the force of res judicata in respect of those parties (OP, article 26).\(^5\)

**Note: Direct recourse to the Permanent Review Tribunal (PRT)**

Following the direct negotiations, the parties to a dispute may agree to submit the dispute directly to the Permanent Review Tribunal, giving it sole jurisdiction and the same competency as an Ad Hoc Arbitration Tribunal. In such cases, the decisions of the PRT are not subject to appeal (OP, article 23).

**Phase 5 (compliance with the decision):** The parties to the dispute must comply with the decision of the PRT within the period determined by this Tribunal. If no period is specified, they must comply within 30 days following the date of the notification of the decision. Decisions of the Ad Hoc Arbitration Tribunal against which no appeal has been made are subject to the same rules of compliance (OP, article 29).

Disagreements on compliance with the decision: Should the State which benefits from the decision consider that the measures adopted fail to comply with that decision, it has a period of 30 days from the date of adoption of those measures to bring the situation to the attention of the PRT which pronounced the final decision. The PRT then has a period of 30 days, from the date on which it was made aware of the situation, to announce a decision (OP, article 30).

Countervailing measures: If a State party to the dispute fails wholly or in part to comply with the decision, the other party may, within a period of one year from the end of the 30-day period during which the former should have complied, initiate the implementation of temporary countervailing measures such as the

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\(^4\) Temporary measures: The Ad Hoc Arbitration Tribunal may, at the request of the interested party and to the extent that there are grounds for believing that the continuance of the situation may cause serious and irreparable harm to one of the parties to the dispute, rule for such temporary measures as it considers appropriate to prevent that harm (OP, article 15).

\(^5\) Decisions of the Ad Hoc Tribunals on the basis of the principle of ex aequo et bono (“in justice and fairness”) are not subject to appeal (OP, article 17.3). A decision on the basis of ex aequo et bono is determined by what is considered to be just and equitable, implying that it goes beyond strict legal provisions.

\(^6\) Only a petition for clarification can be brought in this case, seeking details as to how the decision is to be implemented (OP, article 28).

\(^7\) When a State party brings an appeal, implementation of the decision of the Ad Hoc Arbitration Tribunal is suspended (OP, article 29).
suspension of concessions or other equivalent obligations, in such a way as to bring about compliance with the decision. The State which benefits from the decision initially seeks to suspend concessions or equivalent obligations within the affected sector. Should it consider suspensions within the same sector to be ineffective or impracticable, it may suspend concessions or obligations in another sector, but it must state the reasons underlying that decision. The State affected by the countervailing measures may challenge those reasons (OP, article 31).

**Parallel stages to the dispute settlement system**

There are also stages parallel to the dispute settlement system governed by the Olivos Protocol: the consultations and claims procedures provided for by MTC directive Nº 17/99, in the annex to the Ouro Preto Protocol and in decision CMC Nº 18/02, respectively. These mechanisms are administered by the MERCOSUR Trade Commission (MTC) and the Common Market Group (CMG).

**Consultation of the MERCOSUR Trade Commission (MTC)**

Pursuant to MTC directive Nº 17/99, consultations may be submitted during ordinary or extraordinary meetings of the MERCOSUR Trade Commission when it has been agreed that they should be included on the agenda. Responses to the consultations must then be given in writing on the appropriate form no later than the second ordinary meeting following the meeting during which the consultation was submitted. The consulting State party considers that the consultation is “concluded” if it accepts that the response is satisfactory or if the issue which gave rise to the consultation has been dealt with. It may consider that the consultation has been concluded in an unsatisfactory manner if the issue has not been resolved and the remedies available within the Commission have been exhausted (article 7 of MTC directive Nº 17/99). The use of this consultation mechanism does not prevent a State party from having recourse at any time to the general dispute settlement procedure provided for in the Olivos Protocol.

CMC decision 18/02 provides for the general procedure for claims before the MERCOSUR Trade Commission.

**Characteristics of the system**

In addition to the official dispute settlement procedure, other procedures can be set up for resolving disputes in specific cases. Such procedures are more limited and have a narrower scope:

**Claims by private persons:** Any private individual (a natural person or a legal entity) affected by the application by a State of legal or administrative measures the effect of which is restrictive or discriminatory or which results in unfair competition may submit claims to the national section of the Common Market Group for the State party where that person has his, her or its usual residence or main business office. That national section must then undertake consultations with the national section of the Common Market Group in the State party to which the offence is attributed, in order to seek an immediate settlement. Should the consultations end within the 15-day period without a solution being achieved, the national section of the Common Market Group submits the claim to the...
Common Market Group, which convenes an expert group, which gives a ruling on the dispute within 30 days, within which period the parties appear at a joint hearing (OP, article 39).

**Exceptional and emergency measures:** The Common Market Council may establish special procedures to deal with exceptional emergency cases which could cause irreparable harm to the parties (OP, article 24).

**Advisory opinions of the Permanent Review Tribunal:** Countries may request advisory opinions from the PRT in relation to any legal issue covered by MERCOSUR law. Such advisory opinions have no binding or obligatory force, since they are only legal opinions; consequently, they do not constitute a prejudgement of any possible dispute. Requests for advisory opinions may be addressed to the PRT by:
- States parties acting jointly, or the decision-making organs of MERCOSUR (the Common Market Council, the Common Market Group and the MERCOSUR Trade Commission), if they relate to any legal issue covered by MERCOSUR law;
- The higher courts in the States parties, those having national jurisdiction, if it is a matter of interpreting MERCOSUR law.

**Mechanisms relating to technical matters:** If it is considered necessary, simplified mechanisms can be set up to settle differences between States parties on technical aspects governed by common trade policy instruments. The rules for the work of such bodies, their scope and the nature of the rulings to be handed down are defined and approved by decision of the Common Market Council.

**Comments:**

1. Except for arbitration decisions, documents submitted in the context of procedures provided for in the Olivos Protocol are restricted to the parties to the dispute;
2. **Accession of the Bolivarian Republic of Venezuela:** The dispute settlement mechanism established by the Olivos Protocol is applicable to the Bolivarian Republic of Venezuela in disputes relating to MERCOSUR rules existing prior to that Protocol, to the extent that the Bolivarian Republic of Venezuela gradually adopts those rules (article 2 of the Protocol of Accession of the Bolivarian Republic of Venezuela to MERCOSUR).

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9 The expert group is composed of three members designated by the Common Market Group or, if there is no agreement on one or more experts, are selected by vote among the States parties from a list of 24 experts (OP, article 43).

10 Any State wishing to request an advisory opinion submits a draft request to the other States, with the objective of reaching a consensus on its purpose and content. Once the consensus has been achieved, the document is submitted to the Permanent Review Tribunal.