



**Committee on Trade and Development  
Dedicated Session on Regional Trade Agreements**

Original: English

**PREFERENTIAL TRADE AGREEMENT BETWEEN MERCOSUR AND INDIA  
(GOODS)**

**QUESTIONS AND REPLIES**

*Revision*

The following communication, dated 6 April 2016, is being circulated at the request of the Parties to the Preferential Trade Agreement (PTA) between MERCOSUR (Argentina, Brazil, Paraguay and Uruguay) and India.

The document reproduces the questions addressed to the Parties and the responses submitted.

---

**Questions from the delegation of Ecuador**

**Question 1**

**Paragraph 4.3 (Accession and Withdrawal) states that there is no provision for accession by third parties to the Agreement.**

**Has consideration been given to the possibility of Venezuela, as a MERCOSUR member, acceding to the Agreement? What would be the procedure to follow?**

The signatory Parties to India-MERCOSUR PTA are Brazil, Argentina, Paraguay and Uruguay, and India as per Article 1 of Chapter 1 of the Agreement. Venezuela is a member of MERCOSUR but is not a signatory Party of this Agreement. So far it has not expressed any interest to join the PTA. In case, Venezuela evinces any interest in joining the PTA, the conditions of accession shall be subject to the understanding between India and MERCOSUR members who are Parties to the Agreement.

The procedure would be, first of all discussing the issue in the Joint Administrative Committee of the Agreement which is responsible for the administration of this Agreement (as contained in Chapter XII: Administration of the Agreement). This Committee is composed of the MERCOSUR Common Market Group or their representatives and the Secretary of Commerce of the Republic of India or his representatives.

As mentioned in paragraph 4.3 of the Factual Presentation, the Agreement MERCOSUR-India does not include accession clauses of third Party. Therefore, the conditions of accession should be subject to the Agreement of India as counterparty. As this is a fixed preference Agreement with limited coverage in terms of products, it is expected that a new member of MERCOSUR who wish to join the Agreement of this block with India, respects the terms of the Agreement entirely.

**Question 2**

**Paragraph 3.13 (MERCOSUR's liberalization schedule) states that "[c]hart 3.2 illustrates the average tariff reduction, and the equivalent MOP, by HS Section and by MERCOSUR**

member country (...). Overall, the highest MOP is provided by Brazil, followed by Argentina, Uruguay and Paraguay, with the average effective MOP varying from 0.64% to 0.48%."

**Could you please explain to us how the different MOPs between the MERCOSUR member countries were determined if the Agreement was negotiated as a bloc?**

The Agreement was negotiated effectively in block and preferential margins that MERCOSUR granted to India in the PTA make up a single list (preferential margins of 10%, 20% or 100% of the MFN rate applied to 452 tariff lines).

The indicator "margin of preference equivalent" is the difference between the preferential tariff and the MFN tariff applied by each country and is built based on preference margins established in the Agreement (single list), the MFN applied by each country and national tariff lines of each MERCOSUR member corresponding to 452 tariff codes MERCOSUR Common Nomenclature (MCN).

The variation in these preferential margins by country is associated with the MFN tariffs applied by different countries members of MERCOSUR in 2009 and to the difference in the number of tariff lines in the national nomenclatures associated with the 452 MCN codes (8 digits of SA).

Paragraph 3.6 of the report provides information on this point.

It should be considered that the Common External Tariff (CET) is not the same for all positions to the tariff applied by countries members of MERCOSUR since there are exceptions to the CET on some products.

### **Question 3**

**According to paragraph 4.11, (Relationship with other agreements concluded by the Parties), "Article 8 provides that, in case of the conclusion of preferential agreements by the Parties with third parties, the other Party shall upon request afford adequate opportunity for consultation on any additional benefits granted therein; as of August 2015, no consultations were requested."**

**What is the purpose of the consultations on additional benefits granted in agreements with third parties? Has there been any thought of harmonizing the additional benefits from other agreements for the benefit of the Preferential Agreement MERCOSUR – India?**

Both paragraph 3.4 and paragraph 4.11 mentions about Article 8 of the PTA which provides that if a Contracting Party concludes a preferential Agreement with a non-Party, it shall upon request from the other Contracting Party, afford adequate opportunity for consultations on any additional benefits as granted therein. The PTA does not provide an MFN clause regarding the preferential treatment granted in other agreements signed by the members of PTA MERCOSUR-India due to which there is no real obligation of any of these Parties to extend to each other the preferences granted to third countries.

### **Question 4**

**Regarding Table 4.1 – India and MERCOSUR: Participation in other RTAs (notified and non-notified in force), as of 18 August 2015:**

**Why is the Economic Complementarity Agreement between the Andean Community and MERCOSUR not included in the mentioned table?**

In Table 4.1 is included the Economic Complementarity Agreement CAN-MERCOSUR appearing as Economic Complementarity Agreement No. 59. In addition, also in the table is the Economic Complementarity Agreement No. 58 MERCOSUR-Peru.

---

**Questions from the delegation of the United States****Question 1**

**Paragraph 2.2 on page 5 of the Factual Presentation notes that Venezuela, which later acceded to MERCOSUR, is not party to the Agreement. Does Venezuela plan to become a party to the Agreement? Are there plans in the future to expand the Agreement to other MERCOSUR to the associate member countries including Bolivia, Chile, Peru, Colombia, Ecuador and Suriname?**

According to Article 1 of Chapter 1 of the Agreement, the Signatory Parties to the Agreement are Argentina, Brazil, Paraguay, Uruguay and India. Although Venezuela is a member of MERCOSUR, till date it has not communicated its interest to join the Preferential Trade Agreement MERCOSUR-India.

As mentioned in paragraph 4.3 of the Factual Presentation, the MERCOSUR-India Agreement does not include accession clauses for third parties. Therefore, the conditions of accession must result from previous understanding with the Indian counterpart. As this is a fixed preference Agreement with limited coverage in terms of products, it is expected that a new member of MERCOSUR willing to adhere to this Agreement with India should respect the terms of the Agreement as a whole.

The accession process consists, first of all, of discussing the issue in the Joint Administration Committee of the Agreement which is responsible for the administration of this Agreement (according to Chapter XII: Administration of the Agreement). This Committee is composed of the MERCOSUR Common Market Group or its representatives and of the Secretary of Commerce of the Republic of India or its representatives.

With regard to the Associated member countries of MERCOSUR - Bolivia, Chile, Peru, Colombia and Ecuador, have Economic Complementation Agreements with MERCOSUR within the framework of the Latin-American Integration Association (LAIA) (as specified in Table 4.1 of the Factual Presentation), which has not provided any mechanism for associated member countries to join the agreements that MERCOSUR has with third countries or groups of countries. It is worth mentioning that Chile has a separate PTA with India.

On 11 July 2013, Surinam signed a Framework Partnership Agreement with MERCOSUR. In turn, Decision No. 13/13 of the Common Market Council assigns to Surinam the status of Associate State of MERCOSUR. The aforementioned Framework Agreement aims at promoting closer ties between Surinam and MERCOSUR, but there is no free trade agreement in sight between the Parties.

**Question 2**

**Paragraph 3.1 on page 6 of the Factual Presentation states that "Preferential treatment under the Agreement is granted through margins of preference (MOP) on applied customs duties". How do the Parties approach the variety of taxes and custom fees imposed on imports by India such as landing charge, countervailing duty, CEX, and CESS that are excluded from the Agreement but can be manipulated to marginalize any preferential/liberalization gains from the Agreement?**

The preferential treatment in various trade agreements is granted with reference to the Basic Customs Duty i.e. customs duty leviable on imported goods under the First Schedule to India's Customs Tariff Act, 1975.

In addition to Basic Customs Duty, an additional duty of customs is leviable on imported goods under section 3(1) of the Customs Tariff Act, 1975 (commonly known as CVD). This duty is equivalent to excise duty which is leviable on like goods manufactured or produced in India.

Further, additional duty of customs is leviable on imported goods under section 3(5) of the Customs Tariff Act, 1975 (commonly known as special additional duty or SAD) @ 4%. This duty is levied so as to counter balance internal taxes such as sales tax, value added tax, local tax or any other charges leviable on a like article on its sale, purchase or transportation in India.

Cesses levied as excise duty on domestically manufactured goods are also levied on imported goods.

Hence, duties other than the Basic Customs Duty, are levied on domestic goods also and therefore, provide a level playing field to the domestic manufacturers *vis-à-vis* imported goods.

Therefore, these duties are excluded from the trade agreements.

### **Question 3**

**Paragraph 3.1 on page 6 of the Factual Presentation notes only very limited concessions on market access, 452 lines (at HS-8 digits) in the case of MERCOSUR and 450 lines in the case of India, and limited number agricultural products are included in this Agreement. What is the volume and value of two way trade in agricultural products between the Parties? What's the percentage of agricultural products in the bilateral trade between the two Parties? How do the Parties anticipate that the agricultural trade will be liberalized in the future?**

As per statistics of Directorate General of Commercial Intelligence and Statistics (DGCI&S), India, the total agriculture & allied trade between India and MERCOSUR was US\$1862.92 million in 2013-14 and US\$2809.43 million in 2014-15. Percentage share of agri & allied trade in total mercantile trade between India and MERCOSUR during 2013-14 and 2014-15 was 16.20% and 19.73% respectively. In terms volume, India's bilateral trade in agriculture & allied trade was 2280.19 million units during 2013-14 and 3898.60 million units during 2014-15.

Unlike Free Trade Agreement (FTA), under Preferential Trade Agreement (PTA), signatory trading partners allow to reduce import tariffs partially on mutually agreed selected tariff lines.

The value of agriculture exports from MERCOSUR to India are as follows (The definition of agricultural products is according to Article 2 of the Agreement on Agriculture of the WTO; source: Penta Transaction, for Paraguay: Central Bank of Paraguay (BCP) and UN Comtrade):

#### **Exports to India are in Million USD, 2015**

<b>Signatory Party of the MERCOSUR-India PTA</b>	<b>Export Total</b>	<b>Agriculture Export Total</b>	<b>% of Agricultural Exports</b>
Argentina	2,257	2,080	92.16%
Brazil	3,617	1,109	30.66%
Paraguay	193	188	97.04%
Uruguay	14	10*	71.43%

\* The majority corresponds to Chapter 51, especially Wool.

### **Question 4**

**Section 3.4 on page 14 of the Factual Presentation states that the Parties agreed to cooperate in the areas of animal health and plant protection, food safety, mutual precognition of SPS measures. It also notes cooperation in the area of standards, technical regulations and conformity assessment procedures and that the Parties endeavor to conclude mutual equivalence agreements. When do the Parties anticipate completing agreements in each of these areas?**

As indicated in Section 3.4 of the Factual Presentation, both Parties have not exchanged any proposal so far in this regard.

### **Question 5**

**Paragraph 3.5, page 6 of the Factual Presentation states that 3,111 HS 8-digit lines for India and 1,287 HS 8-digit lines for MERCOSUR are under review for further liberalization. Which HS lines or product categories are under review? When do the Parties anticipate completing the next round of liberalization?**

At the moment there is no formal proposal under discussion between India and MERCOSUR with regard to the expansion of the Agreement.

**Question 6**

**Table 4.1 on pages 19 and 20 list over 30 RTAs that have not been notified to the WTO, as required under WTO rules. When do the Parties plan to notify each of these agreements so that the required transparency process on them can begin?**

In the case of Regional Trade Agreements (RTAs) mentioned in table 4.1, MERCOSUR considers that these are concluded by MERCOSUR or MERCOSUR Member States within the framework of ALADI agreements which are not new agreements or autonomous, but legal instruments that apply the 1980 Treaty of Montevideo that established ALADI.

In that sense, the Treaty of Montevideo has been notified to the WTO as a Regional Trade Agreement ("RTA") signed under the "Enabling Clause" (Decision of 28 November 1979 on "differential and more favourable treatment, reciprocity and fuller participation of developing countries").

In turn, the Latin American Integration Association (LAIA) Secretariat presents a list of the agreements to the WTO Secretariat biannually.

Regarding non-notified RTAs mentioned against India in the table 4.1, India- ASEAN Agreement on Services has already been notified [S/C/N/822 dated 24 August, 2015]. Other two RTAs are in the process of Notification.

**Question 7**

**Paragraph 28 of the Nairobi Ministerial Declarations states that:**

*We reaffirm the need to ensure that Regional Trade Agreements (RTAs) remain complementary to, not a substitute for, the multilateral trading system. In this regard, we instruct the Committee on Regional Trade Agreements (CRTA) to discuss the systemic implications of RTAs for the multilateral trading system and their relationship with WTO rules. With a view to enhancing transparency in, and understanding of, RTAs and their effects, we agree to work towards the transformation of the current provisional Transparency Mechanism into a permanent mechanism in accordance with the General Council Decision of 14 December 2006, without prejudice to questions related to notification requirements.*

**Given that this language was proposed in Nairobi by Brazil, could Brazil please explain how WTO Members will be in a position to "discuss the systemic implications of RTAs for the multilateral trading system and their relationship with WTO rules" when such a large number of Mercosur's RTAs have not been notified to the WTO, and thus WTO Members are unable to evaluate the contribution of these non-notified RTAs to the system?**

The Doha Round negotiations resulted in the progress on transparency in preferential trade agreements under the GATT, GATS and the Enabling Clause (L/4903). In that context, the following Decisions were adopted: Decisions WT/L/671, of 14 December 2006 -applicable to regional trade agreements - and Decision WT/L/806 of 14 December 2010- applicable to preferential trade agreements. The spirit that guided these two decisions was to increase the transparency of all preferential trade mechanisms that deviate from the core principle of the multilateral trade system: the Most Favored Nation principle.

Brazil remains fully committed to the goal of transparency as a means to ensure compatibility of regional and preferential trade agreements with the multilateral trade system. Brazil observes its notification commitments directly together with other members of the agreements in which it participates or through the Secretariat of LAIA for agreements to which the provisions of the Treaty of Montevideo 1980 apply, as indicated in the previous response. Finally, Brazil reiterates its expectation that the commitments made by all Members are fully met, particularly when those Members that have increased participation in global trade flows and whose agreements have consequently greater potential systemic impact are concerned.

**Question 8**

According to Table A1.4 on page 26, under the Agreement MERCOSUR received no preferential treatment for their 25 top exports and India only gained preferential treatment on a few lines. What is the overarching goal, in terms of economic benefit, if the products with the greatest competitive advantage from either party is excluded from the Agreement and, thus, liberalization?

This Agreement is a first step between MERCOSUR and India. Both sides recognize that there is a need for expanding the preferences granted by the Agreement with the aim of achieving greater trade liberalization, to be negotiated between the Parties.

**Question from the delegation of Canada**

With respect to Section 3.4.1.1 of the Secretariat's report:

Canada notes with interest that India and MERCOSUR have agreed to cooperate in the area of mutual recognition of sanitary and phytosanitary (SPS) measures by way of the PTA. Canada would be interested in learning about any cooperation related to mutual recognition of SPS measures that may have taken place since entry into force of the PTA, including through recent discussions to expand the agreement.

As indicated in Section 3.4 of the Factual Presentation, both Parties have not exchanged any proposal so far in this regard.

**Questions from the delegation of Colombia****3.1 PROVISIONS ON TRADE IN GOODS****3.2 Import duties and charges, and quantitative restrictions****3.2.1 General provisions**

Paragraph 3.1. Preferential treatment under the Agreement is granted through margins of preference (MOP) on applied "customs duties" (Article 5). Annexes I and II list the products and the MOP granted respectively from MERCOSUR to India and from India to MERCOSUR (Article 3). These MOP – at 10%, 20% or 100% of the applied MFN rate – are granted for (originally) 452 lines (at HS-8 digits) in the case of MERCOSUR and 450 lines in the case of India; they are listed on the basis of the Harmonized System (HS).

Paragraph 3.5. In the context of the second meeting of the Joint Administration Committee, held in India in June 2010, discussions on further liberalization under the Agreement were held on the basis of "wish lists" of India and MERCOSUR (of respectively 3,111 and 1,287 HS 8-digit lines). As of August 2015, these lists are under review with a view to further discussion on the subject.

**Question 1**

Could the Governments of India and MERCOSUR please indicate whether in the discussions regarding "wish lists" for the deepening of the Agreement in respect of 3,111 and 1,287 lines, for India and MERCOSUR, respectively, consideration is being given to margins of partial preference (10%, 20%, etc.) or total elimination with a timetable for annual reduction.

At the moment there is no formal proposal under discussion between India and MERCOSUR with regard to the expansion of the Agreement.

**Question 2**

**Could the MERCOSUR Governments please indicate whether the 1,287 lines of the "wish list" will have "equal" preferential treatment for the four countries if the respective negotiations with India are concluded.**

As stated in Chapter II, Article 3 of the Agreement, the list of products in relation to which the MERCOSUR grants tariff preferences to India was en bloc. It is expected that there will be a common list for the four countries if the current agreement is expanded.

**4.7 GENERAL PROVISIONS OF THE AGREEMENT**

**4.8 Other**

**Paragraph 4.13. The Agreement does not cover issues such as trade-related intellectual property rights nor government procurement.**

**Question 3**

**Could the Governments of MERCOSUR and India please indicate whether they plan to negotiate trade-related intellectual property and government procurement in the future.**

No negotiations on trade-related intellectual property and government procurement have taken place.

**Question 4**

**If not, does MERCOSUR have any legal limitation on negotiating the issues of intellectual property and/or government procurement in the Agreement with India?**

MERCOSUR has no legal limitations on negotiating these issues.

---