

# **ELEVENTH MEETING OF THE MERCOSUR - EUROPEAN UNION BI-REGIONAL NEGOTIATIONS COMMITTEE**

**2-5 December 2003  
Brussels - Belgium**

## **FINAL CONCLUSIONS**

The eleventh meeting of the EU-Mercosur Bi-regional Negotiations Committee took place in Brussels from 2 to 5 December 2003. Negotiators proceeded with their on-going discussions on the political, cooperation and trade aspects of the Interregional Association Agreement between the European Union and the Mercosur.

Deputy Director General of the External Relations Directorate-General of the European Commission, M. Hervé Jouanjean, and Uruguayan Vice-Minister of Foreign Affairs, M. Guillermo Valles, on behalf of the pro tempore Presidency of Mercosur, jointly opened the meeting. In their introductory words, both chairmen underlined the importance of complying with the ambitious work programme adopted jointly at the Ministerial meeting of 12 November. They also stressed the need to make progress in these negotiations with a constructive and creative spirit.

M. Karl Falkenberg, Director for Free-trade Agreements of the Trade Directorate of the European Commission and leading the negotiations on the Trade chapter from the EU side, underlined the importance of accelerating the pace of the negotiations in all trade issues, to overcome the remaining technical difficulties. He restated the objective to creating a deep bi-regional integration leading to the creation of a new market place where goods and services will be able to circulate freely.

Following the opening, the Parties met at the level of Technical Groups to work intensively on the agenda set out in the Brussels work-programme. This agenda included the following subjects:

- Political dialogue
- Co-operation for Development
- Trade:
  - Goods: tariffs including agricultural modalities, customs, technical barriers to trade, rules of origin, trade defense, wines and spirits and sanitary and phytosanitary measures;
  - Intellectual Property Rights
  - Dispute Settlement
  - E-commerce
  - Competition
  - Enlargement
  - Sustainable development
- Business Facilitation:
  - Customs
  - E-commerce
  - TBT
- Others:
  - Enlargement
  - Sustainable development

The next meeting of the Bi-regional Negotiations Committee shall take place from 8 to 12 March 2003 in Buenos-Aires, in conformity with the Brussels Work Programme.

The offers will be exchanged by 15<sup>th</sup> of April.

The XIIIth BNC shall take place from 3 to 8 May 2004 in Brussels.

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## **ANNEXES**

- I. Reports of the XI Round
- II. List of working documents of the XI round of negotiations
- III. List of participants

## **ANNEX I**

### **REPORTS OF THE XI ROUND**

Eleventh Round of Negotiations EU-Mercosur  
Brussels, 2-5 December 2003

#### **POLITICAL DIALOGUE AND COOPERATION PARTS**

Both Parties reviewed in detail all the articles of the political dialogue and cooperation parts as well as the institutional architecture of the Agreement and its final provisions. They had a fruitful exchange of views that allowed to clarify their respective positions on several pending issues, as well as to discuss for the first time new EU proposals for political dialogue and cooperation. They agreed that the EU side will present an updated version of these parts of the Agreement in advance of the next meeting of the EU-Mercosur Bi-regional Negotiations Committee in Buenos-Aires, to allow for substantial progress in the negotiations.

#### **TRADE**

##### **I.1 Market access in goods (tariffs and texts)**

This was essentially a working session clarifying a number of basic issues and preparing the ground for substantial discussion prior to the tabling of agreed offers in April.

A detailed discussion took place on the automotive sector where both parties reviewed issues such as tariffs, transitory period for tariff dismantling, annual quotas, rules of origin, draw-back regime and harmonization of technical rules.

A discussion also took place on special and differential treatment and how to include this principle into the negotiations on market access.

Both sides agreed to exchange a list of questions on how to improve the consolidated text, one month before the next round.

Following the work-programme set out by Ministers on 12<sup>th</sup> November, Mercosur and EU began their exchange of views on Agricultural modalities. They decided to continue this discussions at the XIIth BNC meeting in Buenos Aires.

## I.2 Wines and spirits

The meeting on the chapter concerning the negotiations for a wine agreement has examined the agenda handed over by Mercosur during last Round and in particular the differences with respect to the agenda presented by EU in previous Rounds.

The discussion, in a very constructive atmosphere, has also addressed the question on how to articulate a general framework on wines with some issues that could be addressed in a bilateral way, so as to effectively facilitate trade of wine between the parties.

Both parties explained their position on different items of the agenda (scope, definitions and product characteristics, reciprocal protection of wine names, geographical indications, traditional expressions, trademarks, etc).

The Parties have examined the approaches of some sensitive issues. From the discussion, some margin of manoeuvre for those issues has been identified.

The EU handed over a new draft proposal on wine and another one for spirits. Mercosur committed to present comments to these proposals for the next round.

## I.3 Sanitary and phytosanitary measures

- Both parties agreed on the need to accelerate progress in view of the ambitious timetable agreed at the Ministerial meeting in November 2003. Discussions focused in particular on the following issues:

- Equivalence: Mercosur took note of the EU concern regarding their current level of integration on SPS-issues. This risks in the view of the EU creating an unbalanced agreement. Mercosur is taking note of the EU proposal:

- i) to address at Mercosur level the product(s) to be considered for the determination of equivalence

- ii) to evaluate how recognition of equivalence of EU product(s) could be guaranteed at the Mercosur rather than bilateral level

Mercosur presented a revised version of its proposal on Equivalence.

- Regionalisation: both parties recognise the sensitivity of this issue. Taking account of the different levels of integration in Mercosur and the EU, the EU is of the view that there is a risk that decisions on regionalisation will not be balanced or respected by all Mercosur countries. Mercosur took note of the EU concerns. Both parties agreed to pursue negotiations on the following basis :

- (a) maximise bi-regional provisions (1 + 1 format)

(b) identify components that would need to be addressed on a 1 + 4 format

The parties agreed to assess the real trade and SPS effects of this approach.

- Definitions: Mercosur maintains the proposal discussed in Asuncion. The EU will react. Both parties agree to adhere as closely as possible to agreed international definitions.

- Mercosur presented a text on Trade conditions which incorporates some aspects from articles on equivalence and transparency. The EU will consider this proposal for the next negotiation round.
- The EU reiterated its interest in having provisions on Animal welfare in the biregional Association Agreement. Mercosur delegation will submit the issue to higher decision.
- Mercosur submitted a text on Certification, audits, import check and inspection fees which will be analysed by the EU for the next round of negotiations.
- Mercosur submitted a Questionnaire on SPS issues before the tenth round of negotiations. The EU informed that a reply will be provided before the next round.
- Business Facilitation will be included in the agenda of the next meeting. Mercosur will submit a counterproposal on the issue before the next round.

Documents distributed by Mercosur during the XIth Round:

- revised text on equivalence;
- a proposal on certification, verification, import checks and inspection fees;
- trade conditions.

#### **I.4 Standards, technical regulations and conformity assessment procedures**

The text as agreed at the Xth round of negotiations was taken as the basis for the negotiation. The discussion concentrated on the part of the text into brackets. No issues were re-opened and some brackets were eliminated.

Agreement was not reached on the way the rights and obligations of the Parties under the TBT Agreement are to be applied to the Interregional Association Agreement. The issue should also be discussed under the Dispute Settlement section.

The Parties agreed on the need of a follow up mechanism for the implementation of this section of the agreement. The discussion on this issue will take place under the discussion on the institutional framework of the agreement.

## **I.5 Trade defense instruments**

### **I.5.1 Safeguards**

#### Agenda

Follow-up exchange of information regarding Safeguards.  
Discussion on draft texts exchanged between the two parties.

#### Summary of the discussion

The Commission welcomed the revised text proposal for a preferential safeguard provision, which was submitted by Mercosur during the Xth Round and underlined the difficulties it has in understanding the need for a preferential safeguard mechanism. Some of the elements of this revised proposal were discussed and clarified.

In addition views were exchanged as regards internal legislations on safeguards.

### **I.5.2 Antidumping and Countervailing Duties**

#### Agenda

Follow-up exchange of information regarding AD and CVD.

#### Summary of the discussion

The Commission explained that it viewed all three TDIs as a package where all three points had to be agreed before final agreement could take place in TDI.

Mercosur confirmed that it will submit its AD and AS proposal soon with the objective of having discussions in the next round.

The Commission reaffirmed the difficulties it has to treat any WTO plus aspects, something that was put forward by Mercosur. Nonetheless, it expressed willingness to engage in an exchange of views on the matter without prejudging any eventual outcome. Further, it requested that Mercosur indicate possible areas of discussion they might envisage.

Mercosur pointed to certain general areas included in its proposal.

## **I.6 Rules of origin**

The two Parties continued with the discussion on the integrated negotiating text of Rules of Origin (EU-MERCOSUR/TRADE/1082 rev.4 26.06.03). Particular attention has been given to those issues where the Parties maintain substantially

different positions, such as the determination of values, the origin of fishery products and the prohibition of draw-back.

Progress has been achieved on two definitions contained in Article 1 of the integrated text.

The Community has tabled a proposal for additional provisions with the view to clarify the notion of “sufficient working and processing”, which should allow to achieve progress in Articles 2, 3 and 5 of the integrated text.

The parties had a fruitful exchange on Article 6 (“minimal operations”), where limited differences remain. The Community has submitted a proposal for a Joint Declaration for Mercosur consideration.

Only limited exchanges were possible on certain aspects related to origin certification, verification, as well as acquisition of originating status in Free Zones. In this respect, the Community highlighted the need to allow authorities to carry out checks on accounts and premises on all enterprises established in the two regions, whether they are situated in a Free Zone or not.

As regards specific origin rules, the Community expressed its concerns on Mercosur proposal for Chapters 1 to 24, as it contains very strict criteria for numerous products. Mercosur explained that the proposal is based on the materials/products available in the two regions and that, from its point of view, it contains the necessary elements for these products to receive the preferential treatment. The Community suggested to Mercosur to review its position, taking into account that most goods originating in the Community would not benefit from preferential treatment. Mercosur reaffirms its proposal taking into account the principle of bilateral cumulation. At coordinators level, both parties agreed to pursue a pragmatic approach focussing on issues of economic significance.

Mercosur stated that a proposal on specific rules of origin for industrial products would be submitted before next round.

## **I.7 Customs**

Delegations representing respectively MERCOSUR and the EUROPEAN UNION met in Brussels on 2 December 2003. The discussions were carried out in a positive, constructive and friendly atmosphere.

The following topics were discussed:

- Text on Customs
- Protocol on Mutual Administrative Assistance in Customs Matters,
- Special Provisions on Administrative Co-operation,
- Customs Technical Cooperation Programme -II Phase,

### **I.7.1.Text on Customs**

Discussions took place on working document X BNC/MS-EU/TG-1/17/26.06.03 with the following results:

Art. 3 (1) (f) EU handed over information. MS to consider further.  
(g) EU to give final position.  
(i) EU to give final position.

Art. 2 (b) EU to provide alternative text.

Art.4 (c) EU handed over information. MS to consider further.

Art. 5.2 EU to consider further.

Art. 6 & 7 Remain in brackets pending discussions on overall institutional arrangements.

Both sides agreed to reflect on all outstanding issues with a view to concluding discussions on the text at the next round.

### **I.7.2 Protocol on Mutual Administrative Assistance in Customs Matters.**

The respective sides recalled previous discussions with regard to the inclusion into the agreement of a Protocol on Mutual Administrative Assistance in Customs Matters.

There was agreement on the need for this Protocol. The MERCOSUR representative recalled the wording of certain of the Protocol articles which refer to Member States of the European Union and where similar references to MERCOSUR should be replaced by references to its States Parties.

It was agreed that this aspect would be clarified with a view to completing its consideration at the next meeting.

### **I.7.3 Special Provisions on Mutual Administrative Co-operation**

A revised text was presented to the MERCOSUR side. The MERCOSUR representative indicated that they would study the new text. MERCOSUR meanwhile indicated certain reservations with regard to the impact of the provisions and said that MERCOSUR would present its views in writing on the text in due course.

### **I.7.4 Customs Technical Cooperation Programme - II Phase**

MERCOSUR reported on a recent meeting with the Commission Delegation in Montevideo. It was agreed that two consultants (MS – EC) would be tasked with preparing an updated proposal.

It was agreed to pursue the recruitment of the consultants with the Commission Delegation in Montevideo.

It was also agreed that the Programme should reflect inter alia, the Business Facilitation Action Plan. The consultants should prioritize the necessary actions required to support the development of the MERCOSUR Customs Union, taking into account available funding.

## **I.8 Intellectual Property Rights**

The parties started discussions on the basis of the text resulting from the 10th Round.

It was possible to agree on several issues and to clarify wording. However, it is clear that the views of the Parties remain divergent on some important aspects of their respective proposals. For Mercosur it was not possible to agree on the inclusion of a reference to the highest international standards for the protection of IPR, as well as to any commitment to adhere, automatically through this Agreement, to further IPR conventions to which Mercosur members are not parties. The Commission maintained its reservations to the proposals of Mercosur on transfer of technology.

On the first day of negotiations, the Commission submitted to Mercosur a non-paper containing reflections on a possible change of approach to the text being negotiated. This paper was briefly presented orally at the end of the second session.

Mercosur received the idea and reserved its position until after it has the chance to study it in more detail in their capitals.

Overall, although there was no substantial approximation in the points that still divide the parties, the discussion took place in a very constructive atmosphere and the parties are discussing new venues allowing an approximation of their positions.

## **I.9 Competition**

The parties reached agreement on Article 3 (notification), 5 (consultation) and 7 (confidentiality). They agreed on a text for Article 6 (exchange of information) based on elements from the original Mercosur proposal and on a new proposal (with the exception of a word in brackets).

They further agreed to integrate the text of the competition Chapter into the full text of the agreement. Only two issues remain open: on Article 8 Mercosur will work on a new proposal. The same goes for Article 2, with regard to the definition of competition laws. Mercosur will transmit both new drafts ahead of the next round.

## **I.10 Dispute Settlement**

Discussions focused on both parties' respective proposals<sup>1</sup> for Code of Conduct for arbitrators and the Rules of Procedure they would follow in respect of panel proceedings.

Both parties agreed that both elements were essential to the effective functioning of the Dispute Settlement mechanism and welcomed the opportunity to exchange views.

It was agreed that for the next Round a side-by-side text would be prepared in order to agree on a common text whilst at the same time focussing on Article XI of the Dispute Settlement mechanism.

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<sup>1</sup> The EC formally tabled today its proposal handed over informally at the IX Round.

## BUSINESS FACILITATION

### **Standards, Technical Regulations and Conformity Assessment:**

The Parties have started exchanging information on their respective priority sectors as previously identified. However, they agreed that for the dialogue to be more efficient it would be necessary to reduce the scope of the sectors/products to be discussed at the next meetings. Priorities already identified by the Parties will indeed be covered, some of them at the next meeting and the remaining at a later stage subject to the providing of further detailed information.

The Parties agreed to exchange additional precisions (regarding products regulatory information or specific problems faced in the other Party's market) by the end of the year on the list of sectors which had been previously exchanged. On this basis, they will provide specific information and requests to be discussed at the meeting in February 2004. Discussions will continue in April and in July 2004, after evaluation by the experts of the information provided, the Parties will explore mechanisms for solving technical problems.

The EC provided information on the sectors of electrical products and radio-telecommunication equipments. The Parties agreed that in forthcoming meetings it would be desirable the participation of regulatory experts on the priority sectors from both sides. The Seminar to be organised next year by CENELEC in cooperation with AMN was mentioned as another useful channel for exchanging specific information of interests for both Parties.

Mercosur explained the functioning of the "Sub-grupo de trabajo 3 (SGT3)" and confirmed that members of the SGT3 are closely involved in the EC-Mercosur negotiations related to TBT aspects and Business facilitation, as well as the technical assistance programme.

The Parties confirmed that the recommendations issued by MEBF are important and welcome any information in the regulatory field provided by the business community.

They also confirmed their common understanding that the Business Facilitation Action Plan needs to be supported through the technical assistance programme to be launched next year and agreed on the need to follow-up on its implementation in this field.

The EC proposed to include in the agenda of subsequent meetings an exchange of views on the implementation of the work programme set up in the "Third Triennial Review of the TBT Agreement" adopted on 7 November 2003 by the TBT Committee. Mercosur took note.

## **Electronic Commerce:**

On business facilitation, the EC provided detailed answers to the questionnaire of the Mercosur on electronic signatures. It also provided a report on legal and market issues of e-signatures in Europe, available now on the EC website at: [http://europa.eu.int/information\\_society/eeurope/2005/all\\_about/security/electronic\\_sig\\_report.pdf](http://europa.eu.int/information_society/eeurope/2005/all_about/security/electronic_sig_report.pdf).

Mercosur proposed to hold in the course of 2004 a seminar on legal and technical aspects of e-signatures to learn more about the EU experience in this field and will submit a proposal for agenda for this meeting. The EC noted with great interest this proposal in so far as it could build in more details on the exchanges so far. Mercosur also announced that it will submit a written proposal on statistical methods for e-commerce and on the promotion of the use of e-commerce by SMEs. Mercosur is also considering making a proposal on consumer protection. EC also announced that it will make a proposal for cooperation on the treatment of unsolicited commercial communications (“spam”). It was agreed to revert to all these proposals during the next round after they have been made in writing.

On the EC proposal for a text on e-commerce, the EC found that the written reaction provided by Mercosur at the previous round showed that there is much common ground: both parties consider e-commerce as a means to provide services that they wish to support. The EC argued that the only remaining questions are whether to address the issue of customs duties in the text and where to put such a text. Mercosur considered that there is no need to have a text referring to e-commerce and found that e-commerce should be discussed only in the business facilitation initiative.

## **Customs:**

The meeting took note of the document handed over by the EC side and discussed at the last round in Asunción. MERCOSUR agreed to provide a similar document before the next round.

Both sides took note of the MEBF Brasilia Declaration.

It was agreed to await the outcome of the consultants report (see above comments), before deciding on further concrete actions. Both sides agreed on the need to support the consultants work, to the extent possible.

## OTHER ISSUES

### **Enlargement**

Information meeting on enlargement organised on the margins of the 11th round of negotiations with Mercosur, with the participation of DGs TRADE, RELEX and AGRI. Positive meeting which allowed a good exchange of views and clarifications on trade-related issues of relevance to Mercosur in the context of EU enlargement and the ongoing FTA negotiations.

Mercosur requested clarifications on the following points :

- (i) application of the EC's trade policy in the new member states on 1 May 2004;
- (ii) accession of new member states to EC agreements with Mercosur and participation in the ongoing negotiations, and;
- (iii) effect of enlargement on CAP.

### **Sustainable development**

MERCOSUR and EC recalled the agreement between European and MERCOSUR negotiators at the ministerial meeting of November to exchange views on sustainable development issues in the work programme of trade negotiations. This gives an impetus to these exchanges between EC and MERCOSUR which should be reflected in the approach adopted by both parties.

MERCOSUR and EC representatives confirmed that the future Agreement should effectively foster sustainable development on both sides.

The EC tabled a discussion paper presenting preliminary ideas and principles as a basis for future discussions on trade and sustainable development.

MERCOSUR took note of the proposal indicating its willingness to further discuss the issue of trade and sustainable development. To that effect it indicated that there is a need for EC to further clarify the substance and the way it may be considered in the Interregional Association Agreement.

Concrete examples of trade actions which could be proposed as promoting SD would be useful to achieve a common understanding on sustainable development issues.

MERCOSUR will make all possible efforts to issue a written reaction to the EC paper.

MERCOSUR and the EC have agreed to discuss further sustainable development during the XIIIth Round, as stated in the Brussels work programme.

## ANNEX II

### LIST OF WORKING DOCUMENTS EXCHANGED DURING THE XI ROUND

Registration #	Negotiating Text
179. XI BNC/MS/TG-1/75/03.12.03	SPS-MS proposal on cert., verif., imp.and inspection
180. XI BNC/MS/TG-1/76/03.12.03	SPS-MS proposal on equivalence
181. XI BNC/MS/TG-1/77/03.12.03	SPS-MS proposal on Trade Conditions
182. XI BNC/MS-EU/TG-1/17/03.12.03	ROO-Consolidated text
183. XI BNC/EU/TG-2/82/04.12.03	IPR : EU non paper
184. XI BNC/MS-EU/TG-1/18/04.12.03	TBT-Consolidated text
185. XI BNC/MS-EU/TG-2/19/05.12.03	IPR-Consolidated text
186. XI BNC/EU/TG-1/83/04.12.03	W&S-EU proposal on Wines
187. XI BNC/EU/TG-1/84/04.12.03	W&S-EU proposal on Spirits
188. XI BNC/EU/TG-3/85/02.12.03	DSM-EU proposal on Code of Conduct

### ANNEX III

### LIST OF PARTICIPANTS

#### DELEGATION OF THE MERCOSUR

#### URUGUAY

Guillermo Valles	Viceministro de Relaciones Exteriores
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Galdos Ugarte	Director Unidad de Asuntos Internacionales Min. Gan. Agr. Y Pesca
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#### ARGENTINA

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### **BRASIL**

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### PARAGUAY

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## DELEGATION OF THE EUROPEAN COMMISSION

NAME	ORGANISM
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Edward Brown	European Commission – DG Trade
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