

XIX MERCOSUR - EUROPEAN UNION BI-REGIONAL NEGOTIATIONS COMMITTEE

November / December, 2010
Brasília, Brazil

FINAL CONCLUSIONS

In the context of the XIX MERCOSUR – European Union Bi-regional Negotiations Committee, delegates from MERCOSUR and the EU met in Brasília in November/December 2010 for a round of negotiations on the future Association Agreement between the MERCOSUR and the European Union.

Between 22nd November and 1st December, 2010, the following MERCOSUR-EU Working Groups held meetings:

- Market Access in Goods
- Rules of Origin
- Technical Barriers to Trade
- Sanitary and Phytosanitary Measures
- Intellectual Property Rights/Geographical Indications/Wines
- Dispute Settlement
- Trade Defense
- Competition Policy
- Customs [Trade facilitation and related matters]
- Services / Investment
- Public Procurement

The respective conclusions of the Working Groups are compiled in the Annex. Focal points for Institutions also met on November 24th. In addition, a meeting of the MERCOSUR – European Union Working Group on Cooperation took place in 23-24 November, 2010.

On December 6 and 7, the MERCOSUR-EU Chief Negotiators held a meeting to assess the Working Group's progress and consider the next steps for the negotiations. Delegations were welcomed by Ambassador Evandro Didonet, Director of the International Negotiations Department of the Ministry of External Relations of Brazil,

on behalf of the Pro Tempore Presidency of MERCOSUR. The European Union Delegation was headed by Mr. João Aguiar Machado, Deputy Director-General for Trade of the European Commission.

The MERCOSUR and the EU Chief Negotiators reiterated their commitment to reach a comprehensive, ambitious and balanced agreement.

Both delegations assessed the work carried out by the abovementioned Working Groups and noted the overall progress reached at this stage of the negotiations, including in important areas such as the draft texts on the Chapters on Market Access, Rules of Origin, Technical Barriers to Trade, Services and Investment, and Dispute Settlement, among others. They also recognized that further work needs to be done in several key areas.

In addition, the MERCOSUR and the European Union delegations also proceeded to an exchange of impressions and clarifications regarding their respective expectations in the negotiations, covering areas such as trade in goods, services and investment and government procurement. This exchange allowed more clarity on both sides on the level of ambition in order to prepare for the exchange of improved offers.

Concerning the next steps in the negotiations, both parties agreed to work to exchange improved offers in March.

Finally, MERCOSUR and the EU agreed that the next round of negotiations would be held in 14-18 March, 2011 in Brussels. Another round of negotiations will take place in May, 2011, in Asunción with the exact dates to be determined.

ANNEX

REPORTS OF THE XIX BI-REGIONAL NEGOTIATIONS COMMITTEE

1. Market Access in Goods

On the basis of the draft consolidated text from the XVIII Bi-regional Negotiations Committee (XVIII BNC/MC-EU/13.10.2010), further progress was achieved in convergence on a number of technical issues and a constructive debate allowed for clarification of the position of both parties on outstanding issues.

The EU presented a new proposal on import licensing, to which MERCOSUR will react at the next meeting.

A substantial debate was held on the different components that make up the customs duty and on how they could be addressed in the respective offers, and it was agreed that offers should be fully transparent in this respect. The EU raised the possibility of achieving convergence on the liberalization categories and timetables. MERCOSUR informed that it was considering the rationalization of its liberalization categories and timetables within the context of asymmetry.

Both Parties acknowledged that a further comprehensive revision of the text will be necessary in order to ensure coherence with institutional issues as well as with other matters included in other sections of this title.

Both sides committed to further reflect on the issues of automatic adjustment of the base rates in case of reduction of MFN applied duties, the proposed exclusion of non-new products and the scope of non-tariff measures.

Both Parties recognized that a few core topics will require deliberation at a higher level, among which are: export duties; export subsidies; neutralization of domestic support measures; a proposal for setting a maximum tariff value; an infant industry clause; and the use of GSP applied rates as the starting point for liberalization.

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2. Rules of Origin

MERCOSUR and EU held a review of the original text of the Protocol to the Agreement. In this work, some issues remained under review of the delegations of MERCOSUR and the EU, including: vessels conditions and requirements for wholly obtained fish, accounting segregation, prohibition of drawback of, or exemption from, customs duties and special conditions applicable to Ceuta and Melilla as well the Joint Declarations on Andorra and San Marino. For the text of articles on fishery products

and accounting segregation, MERCOSUR submitted counter-proposals to the EU assessment and pledged to send a proposal for the theme drawback. For TITLE V – PROOF OF ORIGIN, the EU presented a new proposal based on self-certification of origin.

Regarding the specific requirements of origin, MERCOSUR and the EU reviewed the proposals for Chapters 1 to 23 of Harmonized System proposed by both Parties. Some requirements agreed in 2004 were confirmed, some new proposal were also agreed and for others both parties agreed to submit new proposals such as for products of Chapters 17, 18, 20 and 23. This work resulted in the document TECHNICAL TALKS_MS-EU_TG-1_SROO_301110. Concerning the specific requirements of origin for Chapters 25 to 97 of Harmonized System, MERCOSUR is evaluating the EU proposal. MERCOSUR committed itself to present counter-proposal for these Chapters by March 1st 2011.

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3. Technical Barriers to Trade

The BNC Negotiating Group for the Section on Standards, Technical Regulations and Conformity Assessment of the Chapter on Goods of the Interregional Agreement met in Rio de Janeiro, Brazil, on November 29 and 30, 2010.

The Delegation of MERCOSUR presented its proposal for the Section, which is based on the text of the XII CNB/MS-UE/TG-1/25/12-03-04 document (final version) and was developed taking into consideration the EU proposal for the above mentioned Section. MERCOSUR proposal covers matters related to Standards, Technical Regulations, Conformity Assessment and Transparency. Furthermore, it recalls the need to agree on provisions related to Special and Differential Treatment (S&D) and Technical Cooperation.

The delegations discussed both EU and MERCOSUR proposals, trying to identify converging positions and areas of common interest to agree on.

For the next BNC, the Parties agreed to exchange comments and text suggestions that would be incorporated into the MERCOSUR proposal in brackets, in order to have a single negotiating text for the Section. The EU will send a review of the MERCOSUR proposal, with its comments and suggestions in brackets, by January 31, 2011. In reply, MERCOSUR will send its comments and suggestions in brackets on the EU review by February 28, 2011.

The Parties agreed to indicate, by January 31, 2011, issues of interest to be presented by the other Party at the next BNC.

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4. Sanitary and Phytosanitary Measures

A new round of negotiations on SPS issues between MERCOSUR and the EU took place on 23th and 24th November 2010.

MERCOSUR made a slide presentation of the paper on regional harmonization criteria sent previously to the EU. The EU addressed some questions, which were answered by MERCOSUR. The MERCOSUR will provide (i) a copy of legislation on animal health and food safety submitted after the presentation and (ii) the PowerPoint slides.

The EU presented the content of its paper on SPS issues to be addressed through bi-regional trade conditions, sent in advance of the meeting. MERCOSUR asked for clarifications on some aspects of the document, in order to answer the EU document properly. MERCOSUR stated that it will provide a paper containing its main issues to be addressed. A preliminary presentation of such issues was made and the EU passed its initial comments on them. The MERCOSUR will provide the above mentioned paper by the end of 2010.

The EU presented its document on trade facilitation measures to be addressed in the EU-MERCOSUR SPS Chapter. MERCOSUR pointed out that some of these measures have already been referred to in the MERCOSUR proposal of June 2010 and that other measures could be incorporated to it. The EU considered that those measures should be addressed in a more ambitious way than only referring to the international recommendations.

The Delegations agreed on exchanging answers on the issues requested by parts included in the papers mentioned in the third paragraph.

The Delegations agreed that the exchange of answers should be done simultaneously on a date to be fixed by the Chief negotiators.

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5. Intellectual Property Rights/Geographical Indications/Wines

MERCOSUR and the EU met in the context of the IPR/GI/Wines Group. Discussions evolved starting from a concept paper on MERCOSUR's Vision on IPRs submitted by MERCOSUR on 29 November 2010 as well as the position paper on IPR and GIs submitted by the EU on 10 September 2010.

MERCOSUR made a presentation on its concept paper, pointing out key elements of its approach on intellectual property rights, stressing the importance of not restricting the discussion on IP issues to trade concerns also by taking into account development, public health, food security, among others.

The European Union raised a number of issues mentioned in the MERCOSUR paper. Through concrete examples, the EU highlighted a number of topics related to trademarks, patents and enforcement in the MERCOSUR countries that would deserve further consideration. Moreover, the EU made a short presentation of its customs system of enforcement of IPRs and answered questions from MERCOSUR.

The European Union submitted on 25 november 2010 an indicative list of 250 names of geographical indications protected at EU level. Based on this list, MERCOSUR presented its general views on its approach to geographic indication in the context of its historical, cultural and legal traditions. MERCOSUR will come back with preliminary observations on the EU indicative list by the next meeting. In addition, MERCOSUR raised several points of clarification in connection with different aspects of GI protection in light of the EU applicable legislation.

In response to questions by the European Union delegation, MERCOSUR also clarified a number of questions related to the protection of geographic indications in their respective national legislation. The EU expressed willingness to get more information on co-existence between pre-existing trademarks and GIs in the MERCOSUR countries as well as level of protection of GIs and ways to consider and treat generic names.

Finally, MERCOSUR informed that, while it is currently carrying out an internal discussion on the topic of Wines, it expressed its understanding that the issue remains on the table in the MERCOSUR-EU negotiations. As soon as MERCOSUR develops proposals on this topic, the group will transmit them to the European Commission, if possible before the next meeting of the Bi-regional Negotiations Committee.

MERCOSUR expressed its intention to continue discussions on its conceptual paper in the future meetings. MERCOSUR called attention to the fact that important conceptual differences exist between the respective approaches on the intellectual property rights, taking into account the document recently tabled by both parties.

The EU observed that discussions would need to be structured in order to make progress and indicated that it will explore the possibility of submitting for the next round a draft legal text with a view to enabling both sides to have more focused discussions.

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6. Dispute Settlement

The Delegations examined the comments presented by MERCOSUR on the EU proposals on Rules of Procedure and Code of Conduct and worked on the outstanding issues in the text of the Title resulting from the XVIII BNC, including new proposals presented by both sides. The Delegations achieved consensus on some articles and explored alternatives in others. The texts resulting from this meeting are annexed hereto.

Pending issues in these documents will be discussed during the next BNC.

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7. Trade Defense

Following the discussions held in previous rounds (Buenos Aires and Brussels), the Parties had fruitful discussions on the three texts under negotiation regarding Trade Defense Instruments.

GLOBAL SAFEGUARDS

The whole text of the Section on Global Safeguards (proposed by the EU) was discussed. It was the first time that the text was discussed, due to lack of time to debate the matter in the last round, in Brussels.

MERCOSUR will further analyze the proposal of the European Union in light of the explanations provided during the discussions.

PREFERENTIAL/BILATERAL SAFEGUARDS

The discussions held on this occasion were based on a counterproposal sent by the EU after the last round of negotiations. Due to lack of time, only Articles 1 to 12 were discussed. Both Parties agreed on certain procedural issues (Articles 2.6, 7.1, 10). MERCOSUR indicated its intention to reflect on the language proposed on Articles 2.5, 4 and the EU on the Article regarding the outmost regions. However, further discussions will be necessary on substantial issues, such as the conditions to take measures, the form of the measures, whether the instrument of preferential safeguards should be available indefinitely or just during a transition period as well as the extent of any asymmetrical treatment to be granted in favour of MERCOSUR.

Both Parties agreed that the discussions on these issues should be seen in the context of the development of different chapters under negotiation, specifically the Chapters on Market Access and Rules of Origin.

ANTIDUMPING AND ANTISUBSIDIES

Regarding the instrument of AD/AS, the discussions were also based on a counterproposal sent by the EU, following the discussions held in the previous round in Brussels. Due to lack of time, discussions covered only Articles 1 to 2.9. Regarding the discussion of the proposal that a public interest analysis should be carried out before the imposition of AD/AS measures, the EU indicated that it will circulate a new proposal in light of the discussions held. On the issue of the lesser duty rule, MERCOSUR indicated that it will make a new proposal to further clarify the text, without changing the nature of the agreement reached on the issue at the meeting in Brussels.

On Article 2.4.2, regarding the mandatory provision, on a non confidential basis, of key elements of the investigation, MERCOSUR indicated it will redraft and clarify its proposal.

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8. Competition Policy

Initially, MERCOSUR explained the latest developments in relation to the technical discussions on the Fortaleza Protocol held on the week of 22-26 November, 2010 in Brasilia during the meeting of the Technical Committee on Competition Defense (CT-5). The Protocol has been revised so that, instead of a supranational body as originally foreseen in the Protocol, CT-5 will be the body responsible for exchange of public technical information and coordination. CT-5 does not have decision making authority, which remains in the realm of the national competition authorities of each MERCOSUR member state. The resulting revised text is now expected to be considered in the next meeting of the MERCOSUR Trade Committee to be held in Brazil in the week of December 13, 2010 where it might be adopted if it is unanimously accepted by the MERCOSUR Member States. After adoption within the MERCOSUR Trade Committee, the new Protocol will enter into force after it is adopted by the legislative powers of at least two of the MERCOSUR Member States.

In light of these developments, the EU requested to retain the brackets in Article 3, Para 2 and Article 7 “For the Cooperation Chapter of the Association Agreement”. The EU reserves its position and will re-consider these Articles internally in light of the latest developments regarding the Fortaleza Protocol with a view to discussing it again in the next round of negotiations.

The negotiating group on competition then proceeded to the revision of the text under negotiation. The whole text was revised and considerable progress was achieved. Only a few paragraphs now remain with language between brackets.

On Article 4, regarding the EU proposal on Public Enterprises, the Parties agreed upon the language of Articles 4.1 and 4.2. Regarding Paragraphs 3 and 4, the EU agreed to delete them from the Competition Chapter. The EU will make a proposal outside the Competition Chapter for a new text where these Articles might be integrated.

The following issues, however, remain open, pending upon further reflection to be carried out by the EU.

ARTICLE 3

As regards the EU proposal of a deadline for the adoption of competition laws and a competition authority at both regional level and at the level of the MERCOSUR states (Article 3, paragraphs 2 and 3), MERCOSUR reiterated that it cannot legally commit to a specific deadline due to the fact that these are matters pending before certain MERCOSUR Parliaments. MERCOSUR indicated that it remains ready to explore the

possibility of including a ‘best effort’ commitment and urged the EU to consider this alternative.

The EU reserved its position.

ARTICLE 6

The EU takes note of the new proposal by MERCOSUR regarding Article 6 (consultations with the EU member states) but reiterates its concerns that such a proposal will be difficult for the EU to accept for various, in particular legal reasons. The EU reserves its position and will reflect on the MERCOSUR proposal.

ARTICLE 7

As regards technical assistance under Article 7, the EU indicated that it will reflect on the language proposed by the EU that remains in brackets.

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9. Customs [Trade facilitation and related matters]¹

As part of the XIX meeting of the Bi-Regional Negotiations Committee (BNC) between MERCOSUR and the EU, a new round of negotiations of the Working Group on Customs took place from 22 to 23 November, in Brasilia.

The parties focused on the text on Mutual Administrative Assistance. Both sides made comments and moved closer to a consolidated text, based on the version of the document received with comments from the European Union on 18 October.

The meeting began with a general discussion on OLAF’s functions regarding the exchange of information on Customs Matters. MERCOSUR’s delegates demonstrated concern regarding the sharing of information with a supra-national entity and promised to continue with internal consultations on this subject. The question of the availability of information to all EU Member States was also discussed. Doubt remains over whether MERCOSUR Member States’ legislation would allow for this.

Concern was also raised on the question of the scope of information that can be shared by the EU with third parties. EU delegates pointed out that this agreement would only cover Customs matters under Union Competence, and would not cover other areas under Member State competence. MERCOSUR delegates, nevertheless, consulted the EU on the possibility of receiving a clear list on this division of subjects.

The Document on Temporary Withdrawal of Preferences was also discussed. MERCOSUR raised the issue of the competent negotiating group. MERCOSUR delegates were interested in obtaining further information on how the aforementioned

¹ To be considered by the coordinators in the plenary.

clause would be implemented and vowed to continue internal coordination on the text, so as to be able to formally react in the future.

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10. Services/ Investment

The three days meeting on services and establishment was held in a constructive atmosphere which allowed the negotiations to progress on a number of issues.

The Parties discussed the general provisions relating to trade in services and establishment and reached agreement on some of them. The Parties also discussed language regarding Sectoral provisions on telecommunications and financial services and an exchange of views took place as regards the other regulatory and sectoral provisions, including on postal and courier services and international maritime transport services. This allowed both Parties to increase their understanding of the respective proposals and positions.

As for the next steps, the Parties agreed to continue discussions on the text at the occasion of the next round. Parties also agreed to continue exchanging views on specific commitments.

The draft text under negotiation is annexed to these conclusions.

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11. Public Procurement

The MERCOSUR – European Union Working Group on Government Procurement met in the context of the XIX Bi-regional Negotiations Committee. The parties had a constructive discussion to follow up on the objective of establishing a common ground for drafting a joint text.

In this sense, MERCOSUR presented a document based on procedural aspects of the Government Procurement chapter which identifies (i) subjects on which both parties appear to have a common ground; and (ii) subjects on which MERCOSUR needs further clarification from the EU.

Regarding item (i) of the abovementioned document, MERCOSUR and the EU have identified the following initial areas of common ground:

- Use of electronic means
- Publication of procurement information
- Conditions for Participation
- Treatment of Tenders and Award of Contracts
- Transparency of Procurement Information

- Government Procurement Working Group; and
- Domestic Review Procedures

Without prejudice to the presentation of possible alternative drafting proposals, MERCOSUR considers that the EU text provides a useful reference for a common text.

Regarding item (ii) of the MERCOSUR document, both delegations engaged in a useful dialogue with a view to clarify the following topics:

- Publication of Notices
- Qualification or Registration of Suppliers
- Technical Specifications
- Tender Documentation
- Negotiation
- Electronic Auctions
- Disclosure of Information

While MERCOSUR considers that some level of convergence may also exist in a number of the topics above, further discussions and alternative drafting proposals will be necessary.

For the next meeting, MERCOSUR expressed its intention to present a text with proposals on draft provisions for a Government Procurement Chapter.

The EU expressed its satisfaction concerning the work carried out by MERCOSUR to identify the areas of common ground and areas for which more clarification and discussion are required. According to the EU, this exercise should pave the way to a joint text, taking into account proposals to be submitted by MERCOSUR.

MERCOSUR and the EU agree that the preparation of the next meeting imply intersessional work by both parties and will consider, to this purpose, the possibility of holding a video-conference, if possible by February 2011. MERCOSUR and EU will exchange a list of relevant topics for draft text at the next round. MERCOSUR will communicate to the EU the outcome of the revision of the MERCOSUR Protocol on Government Procurement. On its side, the EU will provide MERCOSUR with relevant piece of information relating to the issues discussed during the round.

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12. Focal Points - Institutions

The EU tabled draft texts on Initial Provisions, General Exceptions and Specific Tasks in Trade Matters of the Bodies Established under the Agreement. MERCOSUR will analyze these texts. The EU committed to send a draft text on Transparency