

<p style="text-align: center;"><b>EIGHTEENTH MEETING OF THE MERCOSUR - EUROPEAN UNION BI-REGIONAL NEGOTIATIONS COMMITTEE</b></p>
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**11-15 October 2010**

**Brussels**

## **FINAL CONCLUSIONS**

Delegates from the EU and MERCOSUR met in Brussels, from October 11 to October 15, 2010 to hold a round of negotiations for the trade pillar of the future Association Agreement between the European Union and MERCOSUR.

The EU Delegation was headed by Mr. João Aguiar Machado, Deputy Director-General for Trade of the European Commission.

The MERCOSUR Delegation was headed by Ambassador Evandro Didonet, Director of the Department for International Negotiations, on behalf of the Pro Tempore Presidency of MERCOSUR.

All Working Groups set up in Buenos Aires during the previous round of negotiations (29 June-2 July) met and discussed the normative part of the agreement for their respective chapters.

With regard to market access, both sides initiated discussions to lay the ground for the exchange of improved offers, and agreed to continue their internal work to that end.

Both sides expressed their satisfaction with the progress achieved during this round and agreed on the need to continue working at a sustained pace with the objective of achieving a balanced and ambitious agreement under the trade pillar of the Association Agreement between the EU and MERCOSUR.

It was also agreed that the next round of negotiations would be held in end November-early December in Brazil and that three other rounds would take place in the first half of 2011 with the exact dates to be determined through regular diplomatic channels.

Joint reports agreed in each Working Group will be included in a separate annex to this document.

<b>ANNEX- Working Groups Joint Reports</b>
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**Trade pillar**

The following working groups met during this round of negotiations:

1. Market Access on Goods
2. Rules of origin
3. Technical Barriers to Trade
4. Sanitary and phytosanitary measures.
5. Intellectual Property Rights/Geographical Indications/Wines
6. Dispute Settlement
7. Trade Defense
8. Competition Policy
9. Customs [Trade facilitation and related matters]
10. Services / Investment
11. Public Procurement

## **ANNEX I**

### **REPORTS**

#### **1. Market Access on Goods**

##### **1) Market Access in Goods**

The parties revised and updated the draft consolidated text emanated from the round of 29 June – 2 July (XVII BNC/MC-EU/02.07.2010), focusing in particular on reducing divergences in the respective proposals and on the clarification and rationalisation of the text. Progress was made on the definition of customs duties and on the simplification of the alternative proposals for tariff liberalisation schedules.

Suggestions for revised wording and additional proposals were made in several areas (fees and charges, prohibition of quantitative restrictions, national treatment, state trading enterprises, sectoral non-tariff barriers, and general exceptions clause), which will be further discussed at the next round. The EU indicated that new proposals would be made on import licensing.

The group considered that the resulting text (number ...) contains references to a number of issues which, subject to confirmation, should be discussed in, or in co-ordination with, other groups (antidumping; customs matters and customs valuation; standards, technical regulations and conformity assessment; SPS; safeguards; balance of payments; custom unions and free trade areas).

Substantial issues to be further discussed include export duties, export subsidies, domestic support and compensating measures, a proposal for setting a maximum tariff value, a clause to protect the development of emerging domestic industries, an automatic adjustment of the base rates in case of reduction of MFN applied duties and a proposed exclusion of non-new products.

The group also discussed and agreed on the technical specifications and format for the future exchange of tariff offers, including the reference period for the determination of coverage (2007-2009) and the specification of the treatment for all products.

#### **2. Rules of origin**

MERCOSUR and the EU concluded first-review discussions on the modified text of the normative part of the Protocol on Rules of Origin exchanged by the Parties in mid-August 2010. In result of the discussions relatively few issues were left pending, including the EU proposals for vessels condition and requirements for

wholly obtained fish, prohibition of drawback of, or exemption from, customs duties and special conditions applicable to Ceuta and Melilla together with Joint Declarations on Andorra and San Marino. Except from these, upon presentation and exchange of arguments some provisions concerning administrative procedure of verification of origin, accounting segregation and free zones are still pending the outcome of internal consultation on the side of both Parties. Annexes to the Protocol on Rules of Origin will be discussed during the next round of negotiations. The EU also presented its modified proposal for the product specific requirements for acquisition of originating status (list rules) for products of HS chapters 1-24. MERCOSUR will do its utmost in order to present its comments concerning the EU proposal by the next round of negotiations, indicating at the same time the magnitude of proposed modifications that in many cases concern also the substance agreed in 2004. The EU pointed out that it would consider possibility of giving up new proposals for the products agreed in 2004, whenever preferred by MERCOSUR. Additionally the EU indicated that it will submit its modified proposal for list rules for the products of HS chapters 25-97 (industrial products) soon after the conclusion of this round. MERCOSUR pointed out that it will send its proposals and comments before the next round of negotiations.

### **3. Technical Barriers to Trade**

The EU delegation made presentations firstly on the situation in the EU regarding the free movement of goods and technical product regulations and on the use of the CE marking.

The two delegations then proceeded with a reading of the text of the EU submission (as transmitted to Mercosur on 22 September 2010). A detailed exchange of views and information took place on the text's provisions.

Mercosur expressed the general observation that they are satisfied with the previous negotiated text from 2004, namely XII CNB/MS-UE/TG-1/25/12.03.04. The EU, on the other hand, expressed a wish to update and expand the ambition of this text, as reflected in the EU submission of 22 September 2010.

Following the exchange of views which took place within the Working Group, it was agreed that Mercosur would submit a revised proposal comprising the 2004 text and such elements of the EU submission acceptable to them. This should be sent to the EU no later than two weeks before the start of the next negotiating round.

### **4. Sanitary and phytosanitary Measures.**

- During this round the Parties explained and exchanged opinions on their objectives and expectations for the SPS chapter of the future EU-MERCOSUR Agreement.

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- The EU made preliminary comments on MERCOSUR proposal of June 2010.
- Both Parties agreed that this chapter should include provisions on: Transparency, Consultation, Alternative Measures, Creation of a Joint Committee and Trade Facilitation Measures.
- MERCOSUR expressed its interest in: the acknowledgment of differences between each regional integration process, the need to provide scientific evidence in case of deviation from international standards, the adoption of measures to ensure that private standards do not become trade barriers and the improvement of information systems and procedures regarding non conformity.
- The EU is interested in including provisions on: bi-regional trade conditions, recognition of the EU as a single entity, trade facilitation measures which include at least prelisting, regionalization, procedures, fees and payments of inspections/verifications by the importing party, avoiding administrative burdens and collaboration on animal welfare.

### Tasks:

- MERCOSUR will provide:
  - In two weeks, an explanatory note on the regional harmonization criteria including the main regional legislation.
  - One week before the next BNC, a draft agenda for the SPS group to be considered by the EU side.
- The EU will provide in two weeks:
  - A list of trade facilitation measures proposed to be included in the agreement.
  - A list of issues identified by the EU to be addressed through bi-regional trade conditions.

### Next Steps:

- The agenda for the next BNC will be agreed by the Parties before the meeting.

## **5. Intellectual Property Rights/Geographical Indications/Wines**

The EU and MERCOSUR met in the context of the IPR/GI/Wines Group. The parties had a constructive discussion.

MERCOSUR presented its views concerning intellectual property rights, taking into account the Objectives and Principles of the TRIPS Agreement, the WIPO Development Agenda and the need for intellectual property rights to respect public policies related to public health and development, among others.

The EU presented in details the content of its position paper submitted in advance of the meeting, explaining the reasons and justification of its proposal. MERCOSUR asked for clarifications on different aspects of this position paper, to which the EU offered additional explanations and information.

As regards to geographical indications, based on the EU position paper, the Parties discussed among others coexistence between trademarks and GI, and between homonymous GI in the EU. The EU offered to provide examples of coexistence between homonymous GI in the EU. Continuing the exchange of information, the EU will provide a list of names or any other relevant issues. The Parties will further discuss the subject.

Before the next round EU will also communicate to MERCOSUR information on objective criteria used by customs authorities in detecting goods suspected of infringing IPRs as well as information on training costs of customs officials.

MERCOSUR expressed its intension to submit a document containing its views on intellectual property rights, if possible before the next meeting.

## **6. Dispute Settlement**

The Delegations worked on the text resulting from the XVII CNB, with the comments presented by the EU on September 10<sup>th</sup>, 2010 and by MERCOSUR at this meeting. The Delegations analyzed this document, achieving consensus on different articles and exploring alternatives in pending aspects.

Regarding the EU's new proposal on the Rules of Procedure and Code of Conduct, also submitted on September 10<sup>th</sup> 2010, MERCOSUR will send comments and proposals one week before the meeting of this working group during the next CNB.

The Rules of Procedures and the Code of Conduct, as well as the pending issues in the text of the Title on Dispute Settlement will be discussed during the next CNB.

## **7. Trade Defence**

Given the interest expressed by MERCOSUR in the previous round, it was decided to have an in-depth discussion on the bilateral safeguard clause.

The whole text was discussed and, although some redrafting will be necessary at a later stage, many areas of convergence were identified. However, further reflection is necessary regarding the following issues: transitory nature of the safeguard clause and the extent of asymmetrical treatment of MERCOSUR. The EU will make a counterproposal in order to prepare for the next round.

Regarding AD/AS a first discussion took place in the previous round. Subsequently MERCOSUR proposed a text which was discussed today. The discussion was fruitful and we could agree on the proposed article referring to the lesser duty rule. However, some important points remain subject to further reflection, e.g. public interest test, asymmetric treatment in favour of MERCOSUR, double disclosure, carve out of AD/AS and global safeguards from the bilateral dispute settlement, level of details on several issues such as confidentiality or public notices. On the basis of the discussion the EU will send a counterproposal in order to prepare for the next round.

Even though an additional session was held, time was not sufficient to cover global safeguards and we agreed to start with this topic in the next round, on the basis of the text previously circulated by the EU.

## **8. Competition Policy**

The Parties made considerable progress on the text, while noting the following open issues:

As regards the EU proposal concerning the introduction of a deadline for the adoption of a competition law and authority at both regional level and at the level of the Mercosur states (Article 3, paragraphs 2 and 3):

- Mercosur notes that they cannot legally commit to a specific deadline due to the fact that these are matters pending before certain Mercosur Parliaments. Mercosur is ready to explore the possibility of including a ‘best effort’ commitment but submits that legally they cannot go beyond that.
- The EU reserves its position.

As regards the EU proposal on Public enterprises (Article 4):

- Mercosur submits that this article would have as an effect the regulation of public procurement and market access to such procurements.
- The EU agreed to split the discussions between the first two paragraphs which concern competition law and the last two which rather relate to non-discrimination by state owned enterprises. As regards the latter, the EU will consider putting forward an alternative proposal.
- As regards the first two paragraphs on competition provisions, the EU provided explanations in order to clarify that the principle is that competition law applies to state owned enterprises and that exceptions are very strictly and narrowly applied in the EU.

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- Mercosur submits that since this article is formulated in general terms, it would therefore introduce an exception in their laws which might not necessarily exist.
- The EU will propose a new text taking into account these concerns.

As regards the EU proposal on exchange of information (Article 5):

- The EU will clarify the drafting of the second sentence of paragraph 2.

As regards consultations (Article 6):

- Mercosur would like to include a commitment from the EU with regard to investigations carried out by the competition authorities of the Member States. The EU will reflect on this proposal internally and remains open to consider a drafting proposal from Mercosur.

As regards technical assistance under Article 7:

- Mercosur proposes to eliminate all references to “subsidies”. EU agreed to bracket these.
- Mercosur further proposes to direct the technical assistance towards the establishment of their respective competition regimes due to potential changes to the Protocolo de Fortaleza.
- The EU requested further information on the situation and reserves its position on this article until such information is submitted in writing.

### **9. Customs [Trade facilitation and related matters]**

A new round of negotiations on the customs and trade facilitation topics (including the management of administrative errors and mutual administrative assistance) between the EU and Mercosur took place from 13 till 15 October.

On 12 August the EU had sent to Mercosur a text based on the 2004 agreed chapter. Some further amendments had been made following contributions from EU Member States. This text together with an article on free circulation of goods and regional integration was the basis for discussion on 13 and 14 October.

The main objective of the meeting on 13 and 14 October was to discuss the text and to identify the areas with common views as well as those where further improvements are needed.

The parties reviewed the whole chapter on customs and trade facilitation and presented their flexibilities and sensitivities.

The parties presented their respective norms and procedures in the relevant areas (decision CMC 10/10 on the end of double taxation of goods, decision CMC 17/10 on Mercosur's single customs document, decision CMC 27/10 on the Mercosur Customs code with a focus on transit articles and resolution GMC 17/04 on transit related issues). It was agreed that further details on some topics would be provided at the next round. The EU will provide information on transit and Mercosur will provide further information on the common data set (in relation to the single administrative document) and on transit. The EU expressed its interest in the regional integration process and timelines in Mercosur.

It was agreed that even parts without brackets should be subject to internal review of the parties and could be modified later if necessary.

Discussions particularly advanced on the article defining the objectives and the article on risk management, where brackets were removed.

The parties decided that the discussion should continue and both sides would consider modifications that could accommodate presented concerns.

Agreement needs to be reached at higher level on where to place article 2 related to customs cooperation.

The EU informed of its views on free circulation and Mercosur expressed the opinion that the issue should be addressed at higher level.

In the morning of the 14 October, the clause on administrative errors was presented. Questions were raised by Mercosur such as ones covering in which group it should be discussed and the horizontal nature of the clause (there seem to be issues that are not only treated by customs administrations; other agencies and ministries may also be involved). Mercosur agreed to discuss the clause internally so that a reaction can be given in a future round in Brussels

In the morning of 15 October, an exchange of views took place on the article "Special Provisions on Administrative Cooperation", on which Mercosur raised the same issues as with respect to the clause on administrative errors, and on Mercosur's proposal, presented at the 17<sup>th</sup> BNC, to replace the Protocol on Mutual Administrative Assistance in Customs Matters, as it stood in 2004. The EU side undertook to send a counterproposal on the Protocol and a revised version of the article by **19 October** for internal discussion in Mercosur on both documents.

## **10. Services / Investment**

The two 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 and services and establishment and reached agreement on some of them. An exchange of views took place as regards the regulatory and sectoral provisions. 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.

## **11. Public Procurement**

- The EU made an initial presentation of its text proposal transmitted ahead of the current round.

## XVIII BNC – FINAL CONCLUSIONS

- MERCOSUR shared with the EU a useful position paper clarifying further its negotiation position towards provisions on government procurement.
- On the basis of these two papers, the Parties had a constructive exchange of views on their respective conceptual approaches to the Government Procurement Chapter. This included discussions and clarification on their proposals. The parties recognize that there is still a gap in their respective position in national treatment and preferential access. As regards the scope of the chapter, the Parties agreed to limit it to classical procurement contracts.
- The EU and MERCOSUR agreed to build upon the results of this round, focusing on procedural aspects of the Government Procurement chapter and leaving discussions on market access components for later stages.
- For the next round, MERCOSUR will transmit written comments and proposals, taking into account the contribution of both Parties, in particular on those elements on which common ground indicate prospects for drafting a joint text.
- The Parties also agreed to exchange before the next round information on their respective regulatory framework and statistics on government procurement.
- The next round will be devoted to the negotiations towards the drafting of a joint text.