

XXII MERCOSUR - EUROPEAN UNION

BI-REGIONAL NEGOTIATIONS COMMITTEE

July 4 -8, Brussels

FINAL CONCLUSIONS

In the framework of the XXII Bi-regional Negotiations Committee, delegates from MERCOSUR and the European Union met in Brussels from 4 to 8 July 2011 for a round of negotiations on the future Association Agreement between MERCOSUR and the European Union (UE).

Negotiations were held in the Political, Cooperation and Trade Pillars of the future Agreement. Both sides reaffirmed their commitment to move negotiations forward to reach a comprehensive, balanced and ambitious Association Agreement.

Meetings of the Political and Cooperation Pillars of the negotiations took place on 5 and 6 July with MERCOSUR Delegation being led by Ambassador Ricardo Varela of the Uruguayan Ministry of Foreign Affairs, and the EU Delegation led by Tomás Duplá del Moral, Director for the Americas in the European External Action Service (EEAS), for the political pillar, and Angel Carro Castrillo, Head of the EEAS Mercosur Division, for the cooperation pillar.

For the Trade pillar, the EU delegation was led by Mr. João Aguiar Machado, Deputy Director-General for Trade of the European Commission. The MERCOSUR delegation was led by Ambassador Álvaro Ons, General Director for Integration and Mercosur at the Ministry for Foreign Affairs of Uruguay, on behalf of the Pro-Tempore Presidency of MERCOSUR.

The following MERCOSUR – EU Working Groups of the Trade pillar held meetings:

- ~ Market Access in Goods
- ~ Rules of Origin
- ~ Standards, Technical Regulations and Conformity Assessment Procedures
- ~ Sanitary and Phytosanitary Measures
- ~ Intellectual Property Rights/Geographical Indications/Wines
- ~ Dispute Settlement
- ~ Trade Defense
- ~ Competition Policy
- ~ Customs [Trade facilitation] and related matters

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Services and Establishment

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Public Procurement

Both sides agreed to postpone the meeting of Focal Points for Institutions for a future occasion.

The eleven Working Groups of the Trade pillar achieved progress in the regulatory texts of the Bi-Regional Agreement. Some important progress was made in several groups notably Services-Investment, and Dispute Settlement. The state of advancement of each Working Group was reviewed and discussed at the level of Chief Negotiators with directions being given on relevant pending issues.

A discussion on the issue of Sustainable Development also took place at Chief Negotiators' level with MERCOSUR presenting the framework within which it will develop and present a more detailed proposal before or during the next CNB.

The respective conclusions of the Working Groups are compiled in the Annex.

The EU and MERCOSUR agreed that the next rounds of negotiations of the BNC will be held in Montevideo, Uruguay, from 7 to 11 November 2011 and in Brussels, Belgium, in the first quarter of 2012.

ANNEX

REPORTS OF THE XXII BI-REGIONAL NEGOTIATIONS COMMITTEE

Political and Cooperation Pillars

Both sides continued the constructive exchange of views on the basis of proposals presented by MERCOSUR and the European Union, in the framework of the XXI Bi-regional Negotiating Committee (Asunción, May 2011), as well as on other proposals that both sides have exchanged during the XXII CNB.

Following discussions during the round, both parties indicated their intention to submit proposals for new texts for some articles before the next round.

In the Political Pillar, progress was achieved in the Preamble, Parts I and II and in Title IV of Part III of the Draft Text. Substantial discussion took place on sensitive articles and both Parties agreed that more work needs to be done on these. The Parties confirmed that discussions on the Final Provisions are postponed to a later stage of the negotiations, as previously agreed.

In the Cooperation Pillar, extensive discussions took place on a number of articles which allowed better understanding of each party's position. Substantial progress was achieved in a number of articles. An EU trade negotiator presented the EU's view on the state of play of discussions on the trade-related articles in the cooperation chapter. Launching of discussions on the trade-related articles in the cooperation chapter will be determined by progress in the Trade Pillar.

Trade Pillar

Market Access in Goods

Working Group on Trade in Goods

Meeting Report – 5 July 2011

Both sides reviewed the text that resulted from the previous round of negotiations (XXI BNC/MC-EU/04.05.2011) in accordance with the indications provided by the Chief Negotiators. Agreement was reached in a number of outstanding drafting points.

Following the discussions on some topics held by Chief Negotiators, the group concentrated on some areas contained in the document summarizing the positions of both sides (“Outstanding market access issues to be considered by Chief Negotiators”).

On export subsidies, discussions included a presentation on approaches followed by the EU in some recent FTAs. Mercosur underlined that an effective solution to this issue requires a horizontal approach, whilst the EU considers that a product-by-product approach could be an alternative. On base tariffs, it was understood that preferential tariffs applied at the entry into force of the agreement should not be less favourable than the preferential tariffs effectively applied at a certain date to be determined, and explored possible ways in which this could be achieved. On the proposal for an infant industry clause, the EU side indicated that the conditions and modalities for its use would need to be more specific to enable its consideration. Mercosur recalled its revised proposal on this issue, which in its view already addresses some EU concerns.

On domestic support the EU indicated that it could not consider any bilateral commitment that would modify its obligations in the WTO. Mercosur reiterated its concerns that these measures could distort preferential trade. On the proposal for a maximum tariff value the EU suggested that the parties could request the frontloading of liberalization for specific products, whilst Mercosur recalled that solutions should be adopted on a horizontal basis. The issue of export duties should remain for consideration at Chief Negotiators’ level.

Other issues should be the subject of further discussions, in particular: a proposal to maintain a preference in case of unilateral or multilateral tariff reductions, provisions on import and export licensing. The EU agreed to provide comments on a revised Mercosur proposal on balance of payments. Mercosur noted it was working on a proposal on second hand and used products to be tabled before the next round. Discussions took place and will continue on fees and other charges on imports and exports, and the exceptions clause.

It was understood that for the products to be fully liberalised all the tariff components should be covered by the liberalisation. In addition, in Mercosur’s view any form of liberalisation should cover all tariff components; in the EU’s view, the liberalisation of all tariff components of products partially liberalised is a question of negotiation.

Rules of Origin

EU-Mercosur Joint Conclusions of the 22nd Round of Technical Negotiations on Rules of Origin, Brussels 5-7 July 2011

Parties discussed the outstanding issues of the protocol of origin including definitions, fisheries, accounting segregation, the prohibition of duty drawback, self-certification and the clause regarding Ceuta & Melilla as well as Declarations on Andorra and San Marino and Introductory Notes to annex on product specific rules. Parties also discussed the product specific rules for agricultural products and PAPs. Additionally Parties consolidated their positions for the product-specific rules for industrial products.

Mercosur indicated that its position regarding accounting segregation, self-certification and the clause regarding Ceuta & Melilla as well as Declarations on Andorra and San Marino was still under scrutiny. With regard to self-certification, on which the EU provided further clarifications, and the clause regarding Ceuta & Melilla, as well as Declarations on Andorra and San Marino, Mercosur committed to provide its feedback at the next meeting in November.

As regards duty drawback Mercosur provided the rest of the information requested on estimation of total exports to the EU covered by duty drawback. Mercosur also presented further data on the origin of goods using duty drawback and on the main sectors concerned. EU presented general information on their exports under DDB schemes to India, Canada and Mercosur and committed to provide more specific information on the use of duty drawback in its exports to Mercosur and on the sectoral structure of imports to the EU from other GSP beneficiaries, as soon as possible after the round.

Parties exchanged further information as regards their respective positions on the wholly obtained fisheries products.

The Parties discussed "temporary suspension of preferences" in a joint session with the group dealing with customs matters. The discussion focussed on the Mercosur text (Article XY) provided on 5 July 2011 as a counter-proposal to the EU proposal (Article X) of 18 October 2010. Both sides exchanged information on their respective procedures and concerns and agreed that the EU side would prepare a new text seeking to address the issues raised.

Standards, Technical Regulations and Conformity Assessment Procedures

XXII BNC

NEGOTIATING GROUP ON STANDARDS, TECHNICAL REGULATIONS AND CONFORMITY ASSESSMENT PROCEDURES

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 Brussels on 6 and 7 July 2011.

The Parties discussed the text, which had been updated with the EU's reaction to the drafting suggestions tabled by Mercosur at the round in Asunción. The Parties agreed on a few drafting points and exchanged views on a number of issues where positions diverge significantly.

In the light of the discussions held, Mercosur agreed to review certain provisions and to provide its views before the next round. These provisions are the following ones: references to Special and Differential treatment which are found in several articles, article 4.1b) iv, article 5.8, article 6c, e, f and g, article 7, article 8.1c and 8.2, article 12 and 13. The EU agreed to consult the group dealing with the Cooperation Pillar on Articles 12 and 13.

The Parties also agreed to reflect upon the substantive outstanding issues in order to see how positions can be brought together, notably on issues where the regulatory approaches of the Parties diverge. The EU invited Mercosur to reflect on the level of ambition of the text, notably regarding inclusion of TBT+ elements. From the Mercosur's point of view both Parties still have to agree on the objectives that a TBT section must seek in the framework of this Agreement.

The resulting negotiating text is annexed to this report and will be reviewed at the next BNC.

SPS

SPS Joint Report

A new round of negotiations on SPS issues between the EU and MERCOSUR took place in Brussels on 5 and 6 July 2011.

Both Parties presented the main changes made to the texts discussed in the previous round.

Both Parties undertook a drafting exercise which led to a side by side EU- MERCOSUR working document highlighting the parts of the text tentatively agreed and those where further discussions and consultations are needed.

Both Parties agreed to organize information exchange sessions to improve the respective knowledge of each other's SPS rule making procedures and legislation. These sessions will take place during the next two rounds. The date for the first exchange of the information about the issues to be addressed in these sessions is 9 September 2011.

The next text exchange of revised proposals is fixed for 10 October 2011.

IPR/GIs/Wines

Joint Report

IPR/Gis/Wines

MERCOSUR and EU met in Brussels on 5 and 6 July 2011 in the WG of IP/GI/Wines in the context of the XXII BNC.

MERCOSUR made some oral observations on the table submitted by the EU. Mercosur indicated that the negotiation text proposed by the EU was in their view unbalanced and contained elements that went beyond TRIPS. They do not consider this text as a basis for negotiation. MERCOSUR noted that for wines it continues its internal work in order to present, at the appropriate time, a comprehensive list of issues relevant to trade in wines.

It was agreed by MERCOSUR and EU to take a new approach in the development of an agreement on IPR. The Parties agreed upon the following methodology with the aim of reaching a common text if possible.

Each side will start by choosing a set of 3 topics for the next meeting which it considers important to be discussed. Each topic will contain the necessary descriptive elements that the proposing side feels should be an integral part of the topic. Both sides will send to the other their suggested topics by 1 August and the necessary descriptive elements related to those topics by 31 August 2011.

Both sides will reflect on all topics so as to be prepared for constructive discussion at the next round of negotiations.

MERCOSUR thanks the EU presentation on MFN and GIs.

DSM

Dispute Settlement

The Delegations examined again the texts of the Title on Dispute Settlement of the Agreement, as well as the Annexes containing the Rules of Procedure and Code of Conduct resulting from the XXI BNC. Both delegations reacted to proposals made in the previous BNC. As a result, agreement was reached on some issues, while further clarification of their respective positions was provided by both parties for the most sensitive pending issues. The texts resulting from this meeting are annexed hereto.

Delegations agreed to hold a videoconference on 15 September to make further progress. If necessary, another videoconference would be held on 20 October. Delegations agreed to send first written reactions to proposals discussed during this BNC by 2 September.

The Parties agreed to make their best efforts to conclude these negotiations at technical level as soon as possible.

List of participants:

Karla Beszkidnyak (Mercosur Presidency-Uruguay)

Fernando Mehler (Brazil)

Ricardo Arredondo (Argentina)

Leopoldo Sahores (Argentina)

Ana Mariela Ayala (Paraguay)

Lorella de la Cruz Iglesias (UE)

TDIs

Joint report TDI group– Brussels 5-6 July 2011

Bilateral Safeguards

Both delegations acknowledged the progress made so far regarding the provisions of this Chapter.

Both delegations agreed to identify the remaining pending issues.

For MERCOSUR, those issues should be treated as a single final package.

For the EU, the remaining pending issues are: (a) duration of the mechanism; (b) duration of the safeguard measure; (c) compensation; (d) the form and level of safeguard measures; (e) period for the reapplication of a measure; (f) outermost regions; (g) *ex officio* initiations. MERCOSUR agreed with the list and added the issue of special and differential treatment for Paraguay.

The parties exchanged their positions but further discussion is necessary.

After discussing those issues, the EU raised the issue of the different injury standard for agricultural products. MERCOSUR stressed its interpretation that the subject is out of the mandate of the working group and that it would not be in a position to proceed without clear instruction by coordinators on the matter.

AD/CVD & Global SFG

MERCOSUR has presented a new text identifying the main principles for trade defence on the basis that they should be excluded from the bilateral dispute settlement mechanism. It was agreed that the new text replaces the previous ones. The EU considered this a very good starting point, made some preliminary comments, and committed to send drafting suggestions before the next round.

Transparency in subsidies

The parties continued to exchange information and views on the EU text proposal. Mercosur stressed that the added value of the proposal with respect to goods is still unclear. Mercosur requested to exclude services from the text. The EU reiterated that it attaches great importance to transparency regarding subsidies to services. The EU took note of the comments made by Mercosur and will make a modified text proposal ahead of the next round.

JOINT REPORT MERCOSUR-EU – ROUND VI

COMPETITION – Brussels 7 July 2011

Attendees:

- EU: Tiina Pitkanen (DG Trade), Francesco Massignani (DG COMP)
- MERCOSUR: Luciana Macedo (Uruguay), Ricardo Herreros Usher (Paraguay), Eduardo Chikusa (Brazil), Vanina Rinaudo (Argentina)

The following issues are outstanding:

Art 6, 1 (d) (consultations with Member States): Ahead of the round, the EU provided an explanatory note regarding the system of distribution of competences between the EU and its Member States. The parties exchanged views and information on the basis of this note. MERCOSUR continues to express concerns regarding the asymmetry between the EU and MERCOSUR and its Parties States. MERCOSUR maintains its position and requests the EU to make a counter-proposal on a mechanism that would facilitate MERCOSUR access to non-confidential information on individual cases dealt with by the EU Member States. The EU reiterates its position as reflected in the explanatory note and will reflect upon MERCOSUR proposal.

Art 8 (exclusion of Competition Chapter from dispute settlement): MERCOSUR requests this paragraph to remain bracketed as EU proposal pending further consultations with the technical experts of MERCOSUR. The EU explained the reasons why it requests the Competition Chapter to be excluded from dispute settlement.

On these open issues, the parties agreed to continue discussions during the next round.

As regards the provision concerning technical assistance to be included in the Cooperation Chapter of the agreement, both parties confirm that they agree with the provision discussed in the Competition Working Group. Both parties will ensure at the technical level that the Cooperation Chapter Working Group receives this agreed provision.

Both parties expressed their best intentions to reach an agreement on the Competition Chapter.

Brussels 7 July 2011

Brussels, 5 July 2011

**AIDE-MEMOIRE OF THE WORKING GROUP OF CUSTOMS [TRADE
FACILITATION/RELATED MATTERS]¹**

A new round of negotiations between the EU and Mercosur took place on 5 July 2011 on the Customs [and Trade Facilitation] Chapter, and on 6 July 2011 on the management of administrative errors clause and mutual administrative assistance in customs matters.

CTF chapter

On 20 June the EU had sent to Mercosur their comments on some articles in the Customs [and Trade Facilitation] Chapter and Mercosur sent theirs on 21 June (both based on the text from 4-5 May 2011). This text was the basis for discussion on 5 July. The main objective of this meeting was to try to progress further on the text and clarify topics of different interpretation.

Currently two articles are without brackets (the article on risk management and the article on customs valuation).

The parties decided that both sides would consider further modifications that could accommodate presented concerns. The parties agreed to check the drafting of the Article on Authorised Economic Operators, and to consider possible compromise texts on other articles. The parties will also consider drafting a "glossary" where the definitions of unclear terms could be included.

It was agreed that some issues would be further looked into and that the parties would prepare alternative texts in advance of the next round (by 20 October).

The EU will propose alternative drafting for:

- Article XX on Advance Rulings
- Article 4.b/a (Transparency) on consultation of traders

Mercosur will look into the possibility of proposing alternative drafting for:

- Article 4.b on Transparency

The EU expressed interest in discussing the issue of regional integration/free circulation of goods. Mercosur is of the view that the topic should be discussed at the level of chief negotiators.

¹ To be considered by the coordinators in the plenary.

Clause on the management of administrative errors

MERCOSUR asked questions as regards the experience with the application of the clause, which authorities are meant by “competent authorities”, in which chapter the clause should be included, the procedural aspects of the clause and the possible economic consequences of the clause being invoked.

EU explained that the “appropriate measures” are measures which are agreed upon by both parties under the rules of the highest institutional body of the agreement and that the clause would only be invoked in serious cases of mismanagement of the preferential system. The EU further pointed out that it considers the Trade in Goods chapter to be the appropriate place for the clause.

Finally, MERCOSUR asked whether a clarification could be inserted stating that the appropriate measures would have to be mutually agreed upon. EU stated that a clarification could be considered if the function of the clause will not be altered.

The text proposed by MERCOSUR is the following: “Such measures would be mutually agreed upon by the parties.” MERCOSUR explained that for the next round it would inform the EU whether this clause can be finalized or whether it should continue to be discussed in another group.

Mutual Administrative Assistance in Customs Matters

The text on MAA was discussed and it was agreed that the EU side would send a new version addressing the issues raised. Mercosur’s answers on the issues raised at the XIX BNC are pending.

Services and Establishment

XXIInd Round of Negotiations Mercosur-European Union

Brussels, 04-08 July 2011

Services and establishment

Joint conclusions

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 continued the discussion on the general provisions relating to trade in services and establishment and reached agreement on some of them. The Parties agreed on the provisions related to mutual recognition. They further discussed provisions on domestic regulation, financial services, postal services, maritime transport services, telecommunications and the movement of natural persons.

As for the next steps, the Parties agreed to continue discussions on the text at the occasion of the next round.

The draft text under negotiation is annexed to these conclusions.

Public Procurement

MERCOSUR/EU Working Group on Government Procurement

Brussels, 6/7 July 2011

JOINT CONCLUSIONS

1. The MERCOSUR/EU Working Group on Government Procurement met in the context of the XXII Biregional Negotiations Committee.
2. MERCOSUR provided further elements of its proposal for the text of the chapter, namely on “Rules of Origin”, “Denial of Benefits”, and “Modification and Rectification of Coverage”. Still outstanding are MERCOSUR’s proposals for the “General Principles” of the chapter, and a clarification of the procedural rules that, according to the MERCOSUR proposal (Art 14), should be listed in separate annexes.
3. The Parties prepared, for the first time during these negotiations, a joint working document that represents the drafting proposals of both sides partly in a consolidated and partly in a synoptical form. This document will serve as a basis for future discussions.

4. The EU prepared for the benefit of the MERCOSUR negotiators the following presentations:
 - a. on the EU legislation on public procurement in general;
 - b. a case study on the implementation of that legislation by one Member State;
 - c. a presentation of TED, the EU tendering website;
 - d. statistical information on the EU public procurement market.

5. MERCOSUR will prepare for the next round of negotiations (Montevideo, 7 November 2011) presentations on the following topics:
 - a. the regulation of public procurement at MERCOSUR level;
 - b. the application of price preference systems in public procurement as they currently exist in each MERCOSUR country.

6. MERCOSUR will undertake best efforts to complete its drafting proposals prior to the next round.