

New EU-Mercosur trade agreement

The agreement in principle

Brussels, 1 July 2019

This document summarises the negotiating results of the trade part of the EU-Mercosur Association Agreement at the time of the agreement in principle on 28 June 2019. The agreement in principle is subject to the final transcription into the texts and the respective market access offers.

This is not a legal text.

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1. *Trade in goods*

Overall market access

The agreement will extensively liberalise trade in goods. Mercosur will fully liberalise 91% of its imports from the EU over a transition period of up to 10 years for most products. Longer linear liberalisation of up to 15 years is reserved for some of Mercosur most sensitive products. The EU will liberalise 92% of its imports from Mercosur over a transition period of up to 10 years. In terms of tariff lines, Mercosur will fully liberalise 91% and the EU 95% of lines in their respective schedules.

Market access for industrial goods

The EU will eliminate duties on 100% of industrial goods over a transitional period of up to 10 years. Mercosur will fully remove duties in key offensive sectors such as cars, car parts, machinery, chemicals and pharma. For each of these sectors, liberalisation takes place for over 90% of EU exports. All cuts by Mercosur are linear, except for passenger vehicles: they will be fully liberalised by Mercosur over 15 years, with a seven-year grace period that will be accompanied by a transitional quota of 50 000 units. This transitional quota will have an in-quota rate of half the MFN duty. After the grace period, duties will come down at an accelerated pace to reach zero at the end of the dismantling period. Tariff lines on car parts will be liberalised mostly within 10 years (82% of lines covering 60% of EU exports to Mercosur with a further 30% of additional exports liberalised over 15 years). For EU machinery, 93% of exports will be fully liberalised, mostly within 10 years (67% of exports to Mercosur).

Market access for agricultural goods

Duties will be gradually eliminated on 93% of tariff lines concerning EU agri-food exports. These lines correspond to 95% of the export value of EU agricultural products. The EU will liberalise 82% of agricultural imports, with the remaining imports subject to partial liberalisation commitments including tariff-rate quotas for more sensitive products with a very small number of products excluded altogether:

- Beef: 99 000 tonnes carcass weight equivalent (CWE), subdivided into 55% fresh and 45% frozen with an in-quota rate of 7.5% and elimination of at entry into force of the in-quota rate in the Mercosur-specific WTO “Hilton” quotas. The volume will be phased in in six equal annual stages.
- Poultry: 180 000 tonnes CWE duty free, subdivided into 50% bone-in and 50% boneless. The volume will be phased in in six equal annual stages.
- Pigmeat: 25 000 t with an in-quota duty of €83 per tonne. The volume will be phased in in six equal annual stages.
- Sugar: elimination at entry into force of the in-quota rate on 180 000 tonnes of the Brazil-specific WTO quota for sugar for refining. No additional volume other than a new quota of 10 000 tonnes duty free at entry into force for Paraguay. Specialty sugars are excluded.

- Ethanol: 450 000 tonnes of ethanol for chemical uses, duty-free. 200 000 t of ethanol for all uses (including fuel), with an in-quota rate 1/3 of MFN duty. The volume will be phased in in six equal annual stages.
- Rice: 60 000 tonnes duty free. The volume will be phased in in six equal annual stages.
- Honey: 45 000 tonnes duty free. The volume will be phased in in six equal annual stages.
- Sweetcorn: 1 000 tonnes duty free at entry into force.

Reciprocal tariff-rate quotas will be opened by both sides phased in 10 years:

- Cheese: 30 000 tonnes duty free. The volume will be phased in in ten equal annual stages. The in-quota duty will be reduced from the base rate to zero in ten equal annual cuts starting at entry into force.
- Milk powders: 10 000 tonnes duty free. The volume will be phased in in ten equal annual stages. The in-quota duty will be reduced from the base rate to zero in ten equal annual cuts starting at entry into force.
- Infant formula: 5 000 tonnes duty free. The volume will be is phased in in ten equal annual stages. The in-quota duty will be reduced from the base rate to zero in ten equal annual cuts starting at entry into force.

A series of other key products of EU export interest will be liberalised by Mercosur: wine (with a minimum price on sparkling wine the first 12 years and reciprocal exclusion of wine in bulk), spirits, olive oil, fresh fruit (apples, pears, nectarines, plums and kiwis at entry into force), canned peaches, canned tomatoes, malt, frozen potatoes, pigmeat, chocolates, biscuits, soft drinks.

Access to raw materials, export duties and import and export restrictions

The agreement will offer EU industries cheaper high-quality raw materials by reducing or eliminating duties that Mercosur currently imposes on exports to the EU of products such as soybean products (feed for EU livestock). The agreement also prohibits import and export price requirements, and import and export monopolies.

Import and export licensing procedures

The provisions on national treatment and market access for goods incorporate core WTO principles regarding import licences and extend those principles to export licensing. Import/export licensing procedures are not prohibited per se, as they fulfil legitimate objectives in some cases (e.g. exports of weapons, certain chemicals, or animal skins). Provisions in this agreement bring transparency and prevent opaque import and export licensing procedures that lead to costs and significant barriers for exporters. Non-automatic import or export licenses are prohibited, except for those needed to implement measures of this agreement (e.g. tariff rate quotas for products not fully liberalised). The agreement obliges the Parties to notify in detail each other of their import and export licensing procedures and update these notifications as necessary.

National treatment

The chapter incorporates GATT provisions treating goods from the trading partner and domestically manufactured goods equally (so-called 'national treatment').

Level playing field on export competition

The agreement contains strong provisions prohibiting export subsidies and measures with equivalent effect to ensure fair competition in trade between the EU and Mercosur.

Standstill

The agreement contains a commitment not to raise duties above a base rate for all products, including those not subject to preferential treatment. Any future unilateral reductions in duties will automatically be reflected in the preferential relationship.

Annex on wine and spirits

The agreement includes provisions to facilitate trade in wine and spirits, covering recognition of winemaking practices, certification and labelling.

Annex on motor vehicles

The annex on motor vehicles recognises the importance of UN Regulations as a point of reference for regulators. It will provide transparency and legal certainty regarding the acceptance of UN/ECE test results and of UN certificates (in certain cases).

2. Rules of Origin

The agreement provides a set of modern rules of origin that will facilitate trade flows between the EU and Mercosur. They will allow exporters and importers on both sides to benefit from the tariff reductions under the agreement and are in line with EU practice in other recent FTAs.

The Chapter on Rules of Origin and Origin Procedures consists of General Provisions in three sections (Section A: Rules of Origin, Section B: Origin Procedures, and Section C: Miscellaneous) as well as Annexes: including Introductory Notes, Product Specific Rules, Text of the Statement on Origin, and Provisions on Andorra and San Marino.

Rules of Origin Section A: this section defines requirements for originating products including wholly obtained products, the absorption rule, and the principle of territoriality. The definition of 'wholly obtained' for fish products is coherent with EU vessel criteria: flag, 'registration' and ownership or crew requirements, which apply equally to the Exclusive Economic Zone and Continental Shelf as well to the high seas. Bilateral cumulation between the Parties is allowed. The agreement preserves the traditional EU list of insufficient operations, which do not confer origin. Accounting segregation may apply to fungible materials. The so-called 'non-alteration' rule stipulates activities that may be undertaken for originating products in third countries, such as operations to preserve products, storage, splitting of consignments, exhibitions, etc.

As regards *Section B on Origin Procedures*, this section specifies that claims for preferential tariff treatment must be based on a statement on origin by the exporter (with a transitional period of maximum 5 years for Mercosur). In the EU, exporters must register in the REX system. Regarding verification, customs authorities of the importing party may request administrative cooperation to obtain information from the exporting party. Direct verification visits by the customs authorities of the importing party to an exporter in the exporting party are not allowed. In the event of suspected irregularities or fraud, the customs authorities of the parties must provide each other with mutual administrative assistance.

Section C on Miscellaneous issues contains standard provisions on Andorra and San Marino and specific provisions on Ceuta and Melilla. It also contains transitory provisions.

Product Specific Rules of Origin (PSR) are an important part of any agreement. These rules reflect the rules of origin applicable in recent EU FTAs, in particular for key EU export sectors. These include rules of origin for cars and car parts as well as most machinery; a modern set of rules for chemicals based on the main chemical processes; double transformation for textiles and clothing (with a few exceptions), which also takes into account relevant input to the final good from EU and Mercosur industry. There are only limited exceptions or deviations to the normal rules, which take into account the nature of Mercosur's agricultural exports to the EU (e.g. coffee, soya) and some specific requests (e.g. iron and steel sector and some plastics), which also draw on examples in earlier EU FTAs.

3. Customs and Trade Facilitation

The agreement is positive for traders from both sides as it goes further than the WTO Trade Facilitation Agreement of 2017. It provides enhanced rules of good governance for custom procedures and high levels of transparency. Business will be properly consulted prior to the adoption of new rules. The rules in force will be reviewed regularly to meet the needs of business and reduce red tape. Moreover, the EU and Mercosur will undertake to apply modern, and whenever possible, automated procedures for the efficient and expedited release of goods.

The agreement recognises the importance of customs and trade facilitation in trade relations and in the evolving global trading environment. The chapter aims to boost EU-Mercosur trade by providing enhanced rules of good governance for customs procedures. The agreed text includes provisions resulting in maximum transparency, consultation of business prior to the adoption of new rules, streamlining of procedures, regular reviews of the rules in force with a view to meeting the needs of business, reducing red tape, and speeding up clearance – all the while ensuring enforcement.

The EU and Mercosur will apply modern, and whenever possible, automated procedures for the efficient and expedited release of goods, resorting to risk management and pre-arrival sending of documentation in order to speed up clearance. Parties will have the possibility to develop joint initiatives including technical assistance, capacity building and measures to provide effective services to the business community.

The agreement allows for cooperation in establishing mutual recognition of Authorised Economic Operator programmes, if they are compatible and based on equivalent criteria and benefits. In this area, the agreement goes beyond the WTO TFA. This is the case for consultation of business, transparency or measures applying to goods re-entering after repair. The detailed provisions ensure maximum transparency and give traders and the public access to relevant information on customs legislation and procedures. Stakeholders will have an opportunity to comment on new customs-related initiatives before their adoption.

4. *Trade Remedies*

This chapter aims to address problems caused either by unfair practices such as dumping and subsidisation, or by a sudden increase in imports. It is a very good result, in particular due to carefully crafted bilateral safeguard clauses, which will apply to both industrial and agricultural goods subject to preferential treatment.

It will give the Parties the possibility to provide relief if certain conditions are met, but the rules cannot be abused to remove preferences without due justification.

In concrete terms, the trade remedies chapter consists of two parts. The first one covers the WTO trade defence instruments: anti-dumping, anti-subsidy and global safeguards; and the second one covers bilateral safeguard measures.

The agreement confirms that WTO trade defence instruments should remain at the disposal of the Parties in order to address problems caused either by unfair practices such as dumping and subsidisation, or by a sudden increase in imports. In addition to the confirmation of the Parties' rights and obligations under the WTO agreements, some additional elements are included, such as increased transparency and extra consultations. The text also provides for imposing a lower duty than the dumping/subsidy margin if this is sufficient to remove the injury caused by the dumped or subsidised imports (the so-called 'lesser duty rule') and to take into consideration the interests of users and consumers of the imported product.

The bilateral safeguard clause provides an opportunity to remedy economic damage caused by unexpected or significant increases in preferential imports resulting from the agreement. This clause is limited in time (up to 18 years from the entry into force of the agreement) and allows for the suspension of preferences during a period of up to two years, with a possible extension of another two years. A provision is also included to cater for the specific circumstances of the outermost regions of the EU and it ensures that there is no risk of disrupting the markets in these regions through imports from Mercosur.

5. *Sanitary and Phytosanitary Measures*

The Sanitary and Phytosanitary Measures (SPS) chapter will create mechanisms to enhance and facilitate trade while preserving the safety of EU consumers at any moment. The provisions will ensure predictability and transparency and offer simplified administrative procedures to European exporters and relevant authorities of Member States.

The agreement shall uphold the stringent SPS disciplines protecting EU consumers (food safety, animal health and plant health) and any standards applied by the EU when it

imports agriculture or fishery products. The EU standards will not be relaxed in any way by the agreement with Mercosur. The EU's SPS standards are and shall remain non-negotiable.

The agreement reaffirms the WTO obligations of the contracting parties. It goes, however, beyond the achievements of most recent agreements as it includes very strong cooperation features. The chapter will:

- Reinforce transparency and exchanges of information to import and export safe products only;
- Reinforce the opportunity to take immediate action to manage significant risks to human, animal or plant life or health, in the event of food or feed control emergencies, and food or fraud crises;
- Increase and expedite EU exports with faster, detailed and predictable procedures;
- Allow safe trade to take place from disease-free zones with the implementation of the 'regionalisation' principle;
- Require Mercosur countries to apply the same requirements to the entire territory of the EU, i.e. pragmatically applying the 'EU as a single entity' concept.

6. Dialogues

The agreement includes bilateral and international cooperation in the key areas of animal welfare, biotechnology, food safety and the fight against antimicrobial resistance (AMR). These dialogues and exchanges of information between the EU and Mercosur aim at strengthening mutual confidence and improving common understanding on these important subjects.

On *Animal welfare matters*, the agreement will promote the EU's global animal welfare agenda. The Parties will be able to discuss specific topics on animal welfare relevant to trade. The agreement will result in increased exchange of information, expertise and experiences and will strengthen cooperation in research.

The Parties will cooperate in international fora with the aim of promoting further development of international standards on animal welfare by the World Organization for Animal Health (OIE), and best animal welfare practices and their implementation. This is in line with EU policies of supporting the development and improved implementation of OIE animal welfare standards.

This will allow the Parties to establish an appropriate level of protection, while fully preserving the right of each Party to regulate.

On issues related to the *application of agricultural biotechnology*, the Parties have agreed to exchange information on policies, legislation, guidelines, good practices and projects of agricultural biotechnology products, as well as specific topics on biotechnology that may affect trade, including cooperation on GMO testing.

As regards *antimicrobial resistance*, the Parties recognise the importance of tackling this global threat that knows no borders. They commit to work bilaterally and internationally

to fight against antimicrobial resistance and in particular to promote the prudent and responsible use of antibiotics in animal production and veterinary practices.

For *scientific matters related to food safety, animal and plant health*, the Parties will foster cooperation between their respective official scientific bodies responsible for food safety (e.g. on maximum residue levels), and animal and plant health. This cooperation will aim to increase the scientific information available to the Parties to support their respective approaches on regulatory standards that may affect mutual trade. It will also address gathering scientific data and improve cooperation in building a common understanding regarding the World Organisation for Animal Health, International Plant Protection Convention and Codex Alimentarius standards.

7. *Technical Barriers to Trade*

The EU and Mercosur negotiated a progressive and forward-looking chapter on Technical Barriers to Trade (TBT), building on the obligations in the WTO TBT Agreement. The aim of the chapter is to facilitate trade by eliminating unnecessary barriers and to create the framework conditions for more convergence on technical regulations and standards in future, leading to decreased adaption costs.

In the area of technical regulations, the Parties agreed to go beyond WTO rules on the use of international standards as a basis for domestic technical regulations. They agreed on periodic reviews with a view to increased alignment with such international standards. The Parties also agreed on ambitious commitments on good regulatory practices such as carrying out impact analyses, taking into account the needs of small and medium-sized enterprises.

To facilitate regulatory convergence, the Parties agreed on a closed definition of international standards-setting organisations, with specific mentions of International organization on Standards (ISO), International Electrotechnical Organisation (IEC), International Telecommunications Union (ITU) and Codex Alimentarius. The definition is consistent with the EU's understanding of international standards, whereby the TBT Committee Decision on Principles for the Development of International Standards is a necessary but insufficient condition to decide whether an international standard exists.

On conformity assessment, the chapter establishes general principles in a number of ways. This includes fostering the use of international schemes for conformity assessment, basing the choice of conformity assessment procedures on risk assessment. It promotes the use of first-party conformity assessment and increased transparency of such procedures (including publication of procedures and approved conformity assessment bodies). For areas of conformity assessment performed by public authorities, the Parties agreed to establish fees in proportion to the service rendered and to make them publicly available.

The Parties take different approaches to conformity assessment in certain areas (notably electrical safety, electromagnetic compatibility, energy efficiency and the restriction of hazardous substances), where the EU uses suppliers' declarations of conformity. Mercosur parties committed, however, to accept test results by EU conformity assessment bodies, facilitating exports notably in the electric and electronics sectors.

On transparency, the Parties signed up to WTO+ disciplines on public consultations, as well as notifications to the WTO TBT Committee. This allows a 60-day comment period,

discussing written comments, replying in writing, and enhanced information obligations. These commitments facilitate the identification of possible trade barriers by the Parties and stakeholders at a stage where the Parties can still consider comments.

The Parties also agreed on general principles regarding the application of the TBT disciplines to marking and labelling to ease market access for economic operators while respecting the health and safety requirements of the Parties. Notably, the Parties agreed to only require relevant information on labelling, allowing supplementary labelling in the country of importation, accepting non-permanent labels and when prior approval of labels is required to ensure that requests are decided without undue delay and on a non-discriminatory basis.

The agreement also sets up ambitious mechanisms on Joint Cooperation for future Trade Facilitating Initiatives.

8. Services and establishment

The agreement will provide significant new opportunities for firms to provide services and to establish footholds on both sides of the Atlantic, even in sectors closed until now, such as maritime services. It will give a better deal to consumers and EU firms can access rapidly expanding and dynamic markets in services in Mercosur countries, building upon the existing €20 billion of EU exports in services to the bloc. The agreement will remove unnecessary discriminatory obstacles and provide new opportunities to invest through establishment in both services and manufacturing sectors. It will ensure a level-playing field between EU service providers and their competitors in Mercosur.

At the same time, the agreement strongly protects the Parties' 'right to regulate'. In no way does it limit the opportunity for EU Member States or for Mercosur to provide public services.

The agreement extends to all modes of supply. It also covers *investment liberalisation* ('establishment'), both in the services and non-services sectors. It does not include investment protection standards or dispute settlement on investment protection.

In line with recent FTAs, the agreement contains provisions on the *movement of professionals* for business purposes, something that for example will allow EU companies to post managers or specialists in their subsidiaries in Mercosur countries.

Horizontal rules applying to all trade in services include provisions to reaffirm the Parties' *right to regulate*. In particular, as in all EU agreements, public authorities in the EU retain full freedom to continue to regulate on matters concerning public services, at all levels of government. Each side will continue to decide for themselves, for example, how they want to deliver healthcare, education and water to their citizens.

Provisions on *domestic regulation* include a set of rules on conditions and procedures with regard to licensing and qualification, which are ambitious, and go beyond GATS, especially since the rules apply to investors in non-services sectors.

The agreement also includes disciplines relating to the regulation of a number of important services sectors.

On *postal and courier services*, there are provisions on universal service obligations, licenses and the independence of the regulators, and on preventing anti-competitive practices. The agreement will ensure a level playing field between EU suppliers of postal and courier services and their Mercosur competitors.

On *telecommunications*, the provisions focus on establishing a level playing field for telecommunications service providers, namely through dispositions dealing with the regulation of the sector (such as licensing, management of scarce resources or universal service obligations) as well as dispositions precluding anti-competitive practices. There is also a set of consumer-oriented provisions, such as those pertaining to mobile roaming or confidentiality of communications.

On *financial services*, the agreement contains specific definitions, exceptions and disciplines on new financial services, recognition, self-regulatory organisations, payment and clearing systems, and transparency.

On *E-commerce*, the rules aim to remove unjustified barriers to e-commerce, offer companies legal certainty, and ensure a secure online environment for consumers. The chapter applies to all sectors and includes binding rules prohibiting the imposition of customs duties on electronic transmissions. Parties agreed on provisions aiming to ban excessive authorisation procedures, to guarantee the legal validity and effect of electronic contracts and to preclude spreading ‘spam’.

On *maritime services*, the agreement covers *international maritime services* (transport and related services) for the first time in Mercosur. The relevant definitions and principles are all included in the Parties’ schedule of commitments – providing significant market access for EU providers in a hitherto closed market.

9. Public Procurement

Here the results are very satisfactory as the agreement gives EU companies access to a market that Mercosur is yet to open to any other partner and only recently began to liberalise internally. The agreement will make it easier for European firms to bid for and win government contracts. It will prevent discrimination against EU suppliers and will make tendering processes more transparent and fair. Over time, it is possible that EU firms will also get access to contracts from sub-central entities.

The agreement will open markets on both sides and will provide, in the area of goods and services (including construction services), secure reciprocal legal access to government procurement markets where public procurement contracts are above specified thresholds.

Companies from EU countries will compete with companies from Mercosur countries on an equal footing for the procurement covered by the agreement: the first non-Mercosur countries that are able to do so. Procurement covered by the agreement covers goods, services and works purchased by public entities at federal/central level. Brazil and Argentina committed also work concessions contracts by the same entities (for example contracts for building a highway where the builder is remunerated through tolls).

Entities covered at federal and central level are central government ministries and other governmental and federal agencies. In Brazil, this covers for example ministries, the judiciary branch and the legislative branch. In Argentina, it will cover procurement of

central-level entities such as ministries, agencies and national universities.

Mercosur countries also committed to work with their sub-central entities (entities at state, province or municipal level) to allow EU firms to tender for contracts at those levels. The aim is to conclude this process at the latest two years after the agreement enters into force.

The EU and Mercosur agreed to apply modern disciplines based on the principles of non-discrimination, transparency and fairness (and the detailed rules as set out in the revised version of the WTO's Government Procurement Agreement).

The agreement will make it easier for EU companies to tender for contracts in three ways:

- It will *prevent discrimination* by Mercosur governments against EU suppliers, goods and services (principle of non-discrimination);
- It will make the tendering process *more transparent*. Each Mercosur country has agreed, for the procurement covered by the agreement, to publish notices online at a national single point of access and to publish information on procurement legislation. This will make information about opportunities in Mercosur countries more easily accessible to European companies, creating new opportunities for European business including SMEs;
- The agreement also sets *standards of fairness* throughout the whole procurement process. These include for example high standards for the remedies available to bidding companies that feel they have been treated unfairly.

For its part, the EU has offered Mercosur suppliers attractive and reciprocal access to the EU procurement market at central level. This covers procurement by EU institutions and by central government contracting authorities in EU Member States. The EU will also open its procurement market at sub-central level to match the level of access granted by Mercosur.

Transitional measures give Mercosur countries some time to comply with the rules of this chapter and to adapt to EU thresholds.

10. Competition

The agreement is another step forward in the creation of a stringent set of international rules on investment in the absence of WTO/multilateral rules on competition. State-of-the-art provisions in this area will help ensure a level playing field for companies on both sides when they carry out activities in the territory of the other Party.

Regarding antitrust and mergers, regulated anticompetitive practices include agreements between undertakings, concerted practices and abuse of dominant position.

Both sides commit to maintaining comprehensive competition laws that follow similar principles. These include notably the existence of Competition Authorities. The agreement stipulates that Competition Authorities must treat companies from both sides equally, especially in terms of procedural fairness and rights of defence.

In case of anticompetitive practices that may harm the interests of the other Party, the

competition authorities may call for bilateral consultations under the agreement to resolve the situation.

The Parties have agreed to strengthen the exchange of non-confidential information between competition authorities on both sides.

11. Subsidies

Subsidies are a growing problem at international level and the agreement furthers this objective. The agreement's provisions on this are valuable and stipulate that subsidies may be necessary to achieve public policy objectives, but that they may also distort markets. Furthermore, it establishes a cooperation mechanism that provides for further development and joint work and exchange of information on transparency and subsidy control systems. It will thereby allow the EU and Mercosur to continue addressing this issue of mutual interest jointly as well as in the WTO.

12. State-owned enterprises, enterprises granted exclusive or special privileges

Recent EU trade agreements have addressed the role of state-owned enterprises in increased detail, and this agreement is no exception.

To address the issue, the agreement sets out binding rules on the behaviour of state-owned enterprises and enterprises granted exclusive or special privileges ('SOEs'). The rules ensure a level playing field by requiring SOEs to act according to commercial considerations in their commercial activities. This means that SOEs' buying and selling decisions must be commercially motivated, according to market economy principles in a way that a privately owned enterprise would act. In other words, SOEs must conduct their commercial activities free from considerations and preferences that are not commercially motivated.

The rules only concern SOEs' commercial activities and only apply to the largest SOEs. This chapter does not seek to curtail opportunities for countries to provide public services. Public service obligations are therefore an exception and they are not required to follow commercial considerations. Certain specific sectors and enterprises are also exempt in order to take into account specific circumstances in either party.

In case of potential problems, rules on transparency allow both sides to seek further information on particular enterprises and their activities on a case-by-case basis.

In Mercosur countries that have a federal structure (Argentina and Brazil), the disciplines initially apply only to central-level SOEs, with a review scheduled after five years.

13. Intellectual Property Rights, including Geographical Indications

The negotiations produced a substantive result. For the first time the EU and Mercosur will have a structured bilateral framework with clear legal commitments and opportunities to discuss issues relating to IPR in detail. The chapter includes comprehensive provisions addressing the full spectrum of IPR, including copyright, trademarks, industrial designs and plant varieties. It also establishes comprehensive rules on the protection of trade secrets, provisions on civil and administrative enforcement of IPR, and provisions on border enforcement. The provisions on cooperation demonstrate a mutual interest to

improve the protection and enforcement of IPR.

On *copyright and related rights*, the provisions cover the main rights protected by the EU acquis including the ‘making available’ right as set out in the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty. The chapter also grants the making available right to broadcasting organisations, mirroring the high EU standard of protection granted to these organisations. Provisions are included on the rights of performers and producers of phonograms as regards the broadcasting and communication to the public of phonograms published for commercial purposes. It agrees terms of protection in a manner that guarantees the levels required by international treaties while providing an opportunity to introduce longer terms of protection. Provisions referring to cooperation on collective management of rights will be useful in spreading good governance and transparency standards consistent with the EU model and could help to improve the collection and distribution of royalties right holders on both sides. Provisions regarding technological protection measures and the protection of rights management information will also contribute to creating a less risky environment for rights holders.

On *trademarks*, provisions include an important reference to both the Madrid Protocol for the international registration of trademarks and the Nice Agreement concerning the international classification of goods and services for the purposes of registering marks. The articles relating to registration procedure, the rights conferred to the trademark holder and the invalidation of applications in bad faith ensure a good level of protection for trademarks.

As regards *designs*, the Parties have agreed to make the utmost effort to comply with the Geneva Act of the Hague Agreement on the international registration of industrial designs. Designs should be protected for at least 15 years.

As regards *patents*, the text agreed is fully consistent with WTO/TRIPS rules. It also takes into account the concerns of stakeholders on both sides. The agreement strikes a good balance between the interests of the EU and Mercosur and provides for progress as compared to the status-quo. Those Mercosur countries that are not yet party to the Patent Cooperation Treaty are for example encouraged to do so to speed up international patent applications and to provide more legal certainty to the process.

On *Plant varieties*, the Parties agreed to cooperate on promoting the protection of plant varieties as set out under the aegis of the two versions of the multilateral Treaty regarding the Protection of New Varieties of Plants (UPOV ACT).

A comprehensive section sets out the protection of *trade secrets* consistent with the new EU legislation in this field. Businesses everywhere increasingly use trade secrets. Appropriate levels of protection and enforcement have become a prerequisite for economic success.

Enforcement is an important aspect for IPR protection and increasingly a subject of bilateral FTAs. The agreement between the EU and Mercosur is no exception and there are detailed provisions on civil and administrative enforcement. It also addresses provisions dealing with the availability of provisional and precautionary measures to intermediaries involved in the infringements. The enforcement section also includes rules on evidence, right of information, injunctions, damages and remedies.

The agreement grants access to relevant banking, financial or commercial documents as evidence. The dedicated text on border enforcement provides for the active involvement of customs authorities in targeting and identifying IPR infringements with respect to goods under customs control. Customs authorities are encouraged to use modern methods of risk assessment and electronic means.

Geographical Indications

In line with other FTAs, the ambitious outcome on *geographical indications (GIs)* will significantly improve the situation in Mercosur for EU producers of distinctive food and drink GI products.

355 EU GI names of food, wine and spirit products will be protected in Mercosur at a level comparable to that of the EU. This means that the use of a GI term for non-genuine GI products will be prohibited and expressions such as ‘kind’, ‘type’, ‘style’, ‘imitation’ or the like will not be allowed. Furthermore, the agreement grants protection from misleading use of symbols, flags or images suggesting a "false" geographical origin. In addition, GI protection has been strengthened by the possibility to uphold GI rights via administrative enforcement, including measures by customs officials at the border, on top of judicial action. On its side, the EU will protect 220 GIs from Mercosur.

The bulk of EU GIs will enjoy the highest level of protection upon entry into force. In some cases, transitional periods have been granted to local producers to cease the use of the name within an agreed number of years, while prior trademarks will coexist with protected GIs. There is a very limited number of exceptions, under the so-called grandfathering principle, which were granted to pre-identified producers that had already been selling products with these names on the market concerned for a certain number of years. Such companies are allowed to continue using the name subject to labelling requirements. This solution protects the market position of EU producers by clearly distinguishing such products from the genuine EU GI products.

Based on the principle of "open lists", the agreement will allow for new GI names, from both the EU and Mercosur, to be added to the lists after entry into force.

14. Trade and Sustainable Development

The Trade and Sustainable Development (TSD) chapter lives up to the highest standards for chapters in other modern agreements such as those with Mexico or Japan. The basis is the premise that increased trade should not come at the expense of the environment or labour conditions. On the contrary, it should promote sustainable development.

The Parties agree that they should not lower *labour or environmental standards* in order to attract trade and investment. They also agree that the trade agreement should not constrain their right to regulate on environmental or labour matters, including in situations where scientific information is not conclusive.

The Parties commit to respecting International Labour Organization Conventions on:

- Forced and child labour
- Non-discrimination at work
- Child labour
- Freedom of association and the right to collective bargaining

In addition, there are commitments on health and safety at work and labour inspection.

Both sides also agree to respect *multilateral environmental agreements* that they have signed such as the CITES Convention on wildlife trade and to work together on their implementation. In a specific article on climate change, they agreed to strong language committing to *effectively implement the Paris Agreement* and to cooperate on the trade-climate change interface.

Commitments are included on fighting against deforestation. Private sector initiatives strengthen these commitments, for example not to source meat from farms in recently deforested areas. The Trade and Sustainable Development chapter includes commitments regarding the sustainable management of forests as well as on responsible business conduct. It safeguards relevant initiatives on sustainable agriculture, including EU private sector actions on zero deforestation supply chains and producer-led initiatives, such as the soy moratorium in Brazil to limit the expansion of soy plantations in forestland.

The Parties also commit to promoting *corporate social responsibility/responsible business conduct*, in line with international guidance such as that of the OECD or the UN (UN Guiding Principles of Business and Human Rights).

The chapter also includes thematic articles on trade-related aspects of natural resources such as *biodiversity, forests and fisheries*, including combatting illegal logging and illegal, unregulated and unrecorded (IUU) fishing.

The agreement lists a number of areas of potential cooperation with a view to ensuring that trade supports the sustainability agenda, including zero-deforestation supply chains.

The chapter is *subject to a specific dispute settlement procedure* under which a complaint concerning non-compliance is first considered in formal government consultations. If the situation is not resolved then an independent panel of experts can be requested to examine the matter and make recommendations. The report and recommendations must be made public so that they can be followed up by stakeholders as well as by officials of the Parties.

In this chapter, the two sides have expressed their commitment to pursue their trade relationship in a way that contributes to sustainable development and builds on their multilateral commitments in the fields of labour and environment. The civil society consultation mechanisms built into the agreement will complement these provisions, providing an opportunity to shape the implementation of the chapter and the agreement.

15. Transparency

Good regulatory practices and transparency on matters that can affect trade and investment are essential elements of up-to-date and inclusive policymaking. The agreement therefore recognises the impact that their respective regulatory environment may have. The Parties also confirm their objective to promote a transparent and

predictable regulatory environment and efficient procedures for economic operators, especially small and medium-sized enterprises.

There are provisions on the publication, administration, and review and appeal of measures of general application related to trade matters. Measures of general application with respect to any matter covered by the agreement will be published via an officially designated medium and will include an explanation of the objective of, and rationale for, the measure. Adequate non-discriminatory procedures of review and appeal shall exist to challenge those measures.

In the framework of the Sustainability Impact Assessment (SIA) that has been commissioned by the EU, a number of consultations, roundtables and technical workshops with civil society and other stakeholders have taken place. The outcome of these consultations has informed the work on the report and the negotiation process.

16. Small and Medium-sized Enterprises

The agreement recognises that compared to large companies, SMEs have fewer resources to overcome the challenges of participating in international trade and investment. Therefore, the agreement reflects the determination of the Parties to support the growth and development of SMEs and their capacity to benefit from the opportunities created by the agreement.

Missing market access information is one of the main trade barriers for SMEs. There are therefore provisions on '*Information sharing*' addressing transparency regarding market access. Each Party must provide a specific website with information relevant to SMEs seeking to access the market. The Parties must also provide an electronically searchable database by tariff code that contains product-specific market access information such as customs duties and other fees, rules of origin and other relevant product-specific import requirements.

The agreement will also ensure bilateral government-to-government work processes for SMEs to fully benefit from the agreement.

17. Dispute Settlement

To ensure the effective implementation of the agreement, it is important to put in place appropriate procedures to solve differences of views, including via dispute settlement where appropriate. In the applicable areas, dispute settlement provisions are an effective, transparent and efficient way to secure enforcement and compliance with the obligations of the agreement.

The Dispute Settlement chapter establishes a mechanism for the purposes of resolving any dispute between the Parties concerning the interpretation or application of the trade part of the agreement. To that end, the EU will also be able to challenge measures of individual Mercosur countries.

Either of the Parties may resort to the Dispute Settlement mechanism if it considers that the other Party has failed to comply with one or more obligations under the trade part of the agreement. As a first step in the process, consultations allow for an amicable resolution of the dispute. If consultations fail, the complaining Party may request the

establishment of an arbitration panel composed of three arbitrators with expertise and experience in law and international trade. Arbitrators must observe high ethical standards guaranteeing their independence and impartiality. These standards are enshrined in a code of conduct annexed to the Dispute Settlement chapter, while a provision to select arbitrators through pre-agreed rosters guarantees that the defendant party in a dispute cannot block the establishment of a panel.

Transparency is an important part of dispute settlement. Hearings are open to the public and interested persons are entitled to make their own submissions to the panel in the form of *amicus curiae* briefs. The panel's report is final – subject to no appeal – and binding on the Parties. Any such Party found to be in breach of its obligations must bring itself into compliance with the agreement. The complainant can put in place counter-measures if the infringing Party fails to comply with the panel's report.

Apart from panel procedures, the Parties have agreed to establish a detailed mediation procedure, which will help them to find an amicable solution to their dispute with the help of a mediator. Recourse to mediation requires mutual consent and the Parties can resort to it at any time, i.e. before a party initiates a dispute or even in parallel to panel proceedings.
