

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

**3 – 7 May 2004  
Brussels - Belgium**

## **FINAL CONCLUSIONS**

The thirteenth meeting of the EU-MERCOSUR Bi-regional Negotiations Committee took place in Brussels from 3 to 7 May 2004. Negotiators proceeded with their ongoing discussions on the political, cooperation and trade aspects of the Interregional Association Agreement between the European Union and the MERCOSUR.

Delegations were welcome by the European Commission Deputy Director for External Affairs, Mr Jouanjean, on behalf of the European Union. MERCOSUR delegation was headed by the Secretary of International Trade of Argentina, Ambassador Martin Redrado, on behalf of the Pro Tempore Presidency of MERCOSUR.

Mr Jouanjean expressed its satisfaction to open this XIIIth round of EU-Mercosur negotiations and recalled that these negotiations are of utmost importance for the EU and a top political priority for 2004. He also recalled that according to the Brussels programme, this round was a key to discuss the exchange of improved offers on services, investment, government procurement and goods including agriculture. The objective was therefore to achieve good progress during this round in order to establish the right spirit and ensure critical mass prior to the Guadalajara Summit in order to launch the final phase of these important negotiations leading to an ambitious and balanced agreement by October 2004.

Secretary of Industry, Trade and Small and Medium Sized Enterprises of Argentina, Ambassador Alberto Dumont agreed that these negotiations must be ambitious and balanced. To reach this objective and to achieve good progress in this round, MERCOSUR stressed the need to know in detail the EU offer on agriculture and processed agriculture products. He also recalled that special and differential treatment must be taken into account.

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

- Political dialogue
- Co-operation
- Trade:

- Goods: tariffs, customs, rules of origin, trade defense, wines and spirits and sanitary and phytosanitary measures;
- Intellectual Property Rights
- Dispute Settlement
- Services
- Investment
- Government Procurement
- Business Facilitation:
  - Customs
  - E-commerce
  - TBT
  - SPS
- Sustainable development

The parties agreed to work towards exchanging improved offers within the very next days.

The next Trade Negotiators meeting at Ministerial level will take place on 27<sup>th</sup> May, 2004 in the margins of the next EU-LAC Summit in Guadalajara-Mexico.

The next BNC meeting will take place from June 7 to 11<sup>th</sup>, 2004 in Buenos Aires.

The fifteenth meeting will take place from July 19 to 23<sup>rd</sup>, 2004 in Brussels.

Parties confirmed their commitment, as expressed in the Brussels workprogramme, to conclude negotiations by October 2004.

## **ANNEXES**

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

## **ANNEX I**

### **REPORTS OF THE XIII ROUND**

Thirteenth Round of Negotiations EU-Mercosur  
Brussels, 3 – 7 May 2004

#### **POLITICAL DIALOGUE**

The Parties reviewed in detail the paragraphs and articles of the Preamble, Part I, General and Institutional Provisions (including the Institutional Framework), Part II, Political Dialogue and Part V, Final Provisions as well as four articles included in Part III, Other Areas of Co-operation.

After a fruitful exchange of views that allowed them to clarify their respective positions on several pending issues and achieve an agreement on various matters notably the Institutional structure of the Agreement as well as the provisions on illicit drugs and fight against organized crime, money laundering, corruption and terrorism. They decided to continue the discussion and exchange of proposals mainly in the fields of Migrations, Non-Proliferation and the Final Clauses.

Mercosur will provide new proposals by 20 May 2004.

#### **COOPERATION**

This 13th BNC has taken a major step towards the conclusion of negotiations between both Parties in this part of the Agreement.

Considering the areas of competence of the Group on Cooperation, some issues are still pending, namely : environmental cooperation and some trade related issues.

Regarding title IV “Other Areas of Cooperation” the Cooperation group continued its debate on the final position of the articles in the future agreement. The content of those articles was discussed by the Political Group.

Compromise solutions were identified for most pending issues that will now need to be confirmed.

## **Standards, Technical regulations and Conformity assessment**

A part of the meeting “Business facilitation - Standards, Technical regulations and Conformity assessment” was devoted to “Cooperation”. Both delegations agreed on the following text of the corresponding article (20.2.b) to be inserted in the cooperation chapter of the Agreement:

*“Support activities that may lead to the convergence, whenever possible, towards international standards, the equivalence of technical regulations and conformity assessment procedures, in the sectors identified under ”a”.” (in art. 20)*

## TRADE

### **1 Market access in goods**

Arguments were exchanged from both sides as regards the necessary level of ambition that both parties should reach in order to proceed towards a fruitful and constructive exchange of offers in the coming days and conclude the negotiations according to the agreed ministerial workplan. Discussions notably focused on the value of each side potential offer.

The EU also provided Mercosur with additional indications concerning how it would improve its potential offer on agricultural and processed agricultural products, fish and fisheries products.

Both parties also agreed to exchange further lists of requests in the coming days.

### **2 Rules of origin**

The two Parties continued with the discussion on the integrated negotiating text of Rules of Origin (XII BNC/MS-EU/TG-1/18/11.03.04).

Particular attention was given to provisions included in the side-by-side text on origin certification and verification. In this context, Mercosur agreed to provide before next round of negotiations a written explanation on how the proposed system of certification based on authorized Associations/Federations could work in practice. The Community agreed to comment on such document soon after.

Good progress was achieved in a number of general provisions on acquisition of origin. In particular, both parties agreed on provisions on 'minimal operations' (Article 6) and Mercosur agreed to the EC proposals on 'accounting segregation' (Article 8bis), the 'principle of territoriality' (Article 11) and two Articles of the final provisions (Articles 37 and 39).

The two sides discussed issues where substantial different position remained, such as the origin of fishery products, and the issue of draw-back. Mercosur committed to forward a revised proposal on Article 4 ('wholly obtained') before next round. The Community proposed to extend one year the period of time during which Mercosur could apply partial drawback.

The question of free circulation of goods originating in the Community within Mercosur, was also considered and discussed. The Community introduced ideas as regards certified copies of proofs of origin and how to obtain such documents. Mercosur affirmed that work is under way internally to find a solution for goods originating in Mercosur when crossing internal borders: a legal text should be ready by next June. The Community stated that such an internal decision should be applicable in the future also to goods originating in the Community. In addition,

the Community expressed the need to evaluate whether the solution agreed for intra-Mercosur trade of goods originating in Mercosur would also be viable from a practical point of view also for goods originating in the Community.

The two sides also discussed the need to adopt internal legislation that would create administrative co-operation obligations between certifying authorities of each Member State, with the view to ensure an effective certification of the Mercosur originating status of the goods intended for export to the other party (in the cases where such goods were manufactured in two or more Member States, or where non-originating materials had been sold internally between operators of different Member States before being incorporated in the final product to be exported). The Community stated that it already had the appropriate legislation in place and provided a copy to Mercosur. The necessity of implementing such internal system in Mercosur by the entry into force of the Agreement was also underlined by the Community side.

As regards free zones and special customs areas, Parties confirmed that only those special customs areas will benefit from the Agreement that are part of the customs territory and where established operators are subject to any control necessary with the view to certify and/or verifying the originating status of the goods.

The Community provided an updated list of existing Free Zones in the Community.

On specific rules of origin for products, the Community outlined a number of products of Chapters 1 to 24 for which the application of the origin criteria proposed by Mercosur would affect preferential exports from the EC.

Additionally, the Community side provided initial replies to Mercosur enquiries on specific rules tabled during the previous round.

As regards the specific rules for industrial products, the two sides agreed to proceed with the necessary internal economic analysis as it has been done so far for agricultural and processed agricultural products.

The Community expressed its concern about the proposal not yet tabled by Mercosur for products classified in Chapters 50 to 63 and 84 to 90, in particular considering the limited amount of time available before the end of negotiations.

### **3 Wines and spirits**

The EU presented a revised proposal for agreement, integrating the EC texts for both wines and spirit drinks into one body.

Mercosur made comments in relation to the observations made by the Commission in relation to the Mercosur proposal for a framework agreement on wine.

The concept of ex-officio protection of geographical indications was discussed. Both parties gave explanations of their respective systems of protection. The EC expressed its concerns regarding an efficient protection of Community geographical indications within Mercosur.

The respective Mercosur members agreed to provide the Commission with a note in which they outline their system of protection of geographical indications with references to the relevant internal legislation.

The EC gave explanations on the concept of complementary quality mentions for wines. The parties exchanged views in this respect.

In the margins of the negotiations, an expert meeting on oenological practices was held. The meeting was constructive, and the parties agreed on the concept of positive lists. The parties agreed on several of the points discussed, and identified some differences such as the alcoholisation, acidification and chaptalisation of wines. Possible solutions could be explored in the light of the International Code of Oenological Practices of the OIV.

Both sides agreed to continue discussions at expert level to further advance on the issue of oenological practices.

Mercosur presented its comments and concerns regarding the revised EC proposal for an agreement on spirit drinks submitted at the XII BNC. Mercosur presented some elements of a counter agenda on this matter.

Both parties agreed on the necessity to advance further in the discussions on certain key issues in order to reach an agreement within the deadlines foreseen.

#### **4 Sanitary and phytosanitary measures**

The parties agreed to strengthen the works on a birregional basis and finish the procedures and disciplines of the future agreement, in accordance with the results of the XII BNC, by October.

MERCOSUR presented a list of priority products requesting simplified access to the EU market. The list of priority products for which MERCOSUR will assume the commitment to establish common import requirements, will be submitted by the EU in two weeks. Both lists will be analyzed during the XIV BNC.

Finally, both Parties reiterated that the common disciplines and rules to be agreed, will be applied to the whole universe of products under SPS measures.



## **5 Trade defense instruments**

### **5.1 Safeguards**

#### Agenda

The two parties held discussions on the draft text.

The EU recalled the differences of the two positions on the table. The Parties identified the main areas of concern, which will require further clarification and those which should be modified. The parties exchanges views on these points and agreed to revise the texts to resolve some of these issues.

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

#### Agreement/next steps

It was agreed that MERCOSUR will re-analyse the EU proposal taking into account the clarifications provided and submit comments, by the end of May.

EU will provide MERCOSUR with an up-dated version of its comments on MERCOSUR's proposal by the same date.

### **5.2 Anti-dumping and countervailing**

#### Agenda

Discussion on MERCOSUR's AD/CVD proposal.

#### Summary of the discussion

The very useful clarification exercise regarding MERCOSUR's proposal continued, with a similar focus as in the previous session.

MERCOSUR reiterated that its proposal aimed at reinforcing transparency and predictability on the application of trade defense mechanisms.

Furthermore, MERCOSUR presented the EU with certain queries regarding its list of questions and its practice, and the EU clarified these issues orally and at the request of MERCOSUR, provided a document which supported in written form such clarifications.

The preliminary view of the EU after this clarification is that the proposal showed the importance attached by MERCOSUR to the issues of (i) transparency and (ii) advance in some WTO plus aspects. The proposal is a very ambitious mix of elements, i.a., items to enhance transparency, many WTO plus areas, other modifications of rules which could be argued to be WTO minus, and areas emanating from MERCOSUR legislation. As stated in previous rounds, the acceptance of many of the proposed changes by MERCOSUR would have severe legal problems and face considerable political obstacles. This notwithstanding, the EU was ready to be constructive, and announced it would present a proposal

based on common ground between EU and MERCOSUR members in the WTO implementation and rules contexts, which could be acceptable legally and politically. In the meantime, the EU stressed that the clarification exercise (i.e., written exchanges of questions and answers) should continue, as it was open to take on board any other points based on this common ground principle.

If necessary, both sides remain open to exchange further views on the MERCOSUR proposal and EU questions and to identify further areas of common ground.

#### Agreement/next steps

EU will expeditiously send to MERCOSUR an additional list of the questions regarding the proposal by 14/05/04.

The EU requests that MERCOSUR Members inform of their individual law, if any, regarding non-market or transition economies, identifying, wherever possible, how EU Members are classified. MERCOSUR agrees to send such available information by 21/05/04.

MERCOSUR will provide expeditiously a written reply to the questions raised by the EU in round XII by 21/05/04 and in round XIII by end of May 2004. EU will also send to MERCOSUR its new proposal based on the common ground principle by the end of May 2004.

## **6 Customs**

The following topics were discussed:

- Customs Technical Co-operation Programme – 2<sup>nd</sup> phase
- Text on free circulation of goods (new EU proposal)
- Protocol on Mutual Administrative Assistance in Customs Matters
- Special Provisions on Administrative Co-operation

### **Customs Technical Cooperation Programme**

Mercosur explained the steps that had been taken to implement the second phase of the Customs Technical Co-operation Programme. Consequently, Mercosur is now going to prepare the list of activities that would make up the annual operative programme. In this sense, both delegations reiterated the view that the programme should also develop some of the activities set out in the Madrid Business Facilitation Action Plan, as well as support the implementation of the future EU-Mercosur Agreement. It was agreed that the EU side would collaborate with Mercosur in developing the list of these activities to be implemented in the framework of the Programme.

Both delegations agreed that the overall objective of the programme was the completion of the Mercosur Customs Union - essentially to harmonize Mercosur import and export legislation and procedures, which will be a fundamental contribution to achieve the free circulation of goods within Mercosur.

#### **Text on free circulation of goods (XIII BNC/EU/TG-1/105/30.04.04)**

The EU side tabled a new proposal aimed at ensuring the free circulation of EU goods within Mercosur following the entry into force of the Agreement. [The proposed text is annexed]. In addition to the proposed article in the Agreement, the EU representative explained that internal Mercosur legislation would also be required and that the EU side was prepared to collaborate in developing such legislation.

The Mercosur side took note of the proposal.

At the request of the Mercosur side, the EU representative undertook to provide information on how the concept of free circulation between Member States had been treated in the EU.

#### **Protocol on Mutual Administrative Assistance in Customs Matters**

Previous agreement as to the content and substance of the draft protocol text was confirmed. However, Mercosur proposed that additional consultation take place within the framework of the following negotiation round with regard to the specific modifications of legal and presentational aspects to be introduced in the text.

#### **Special provisions on Administrative Cooperation**

Both sides affirmed the necessity to reinforce provisions in the Agreement on administrative cooperation. However, disagreement remained as to the most appropriate means for this objective to be articulated in the Agreement text.

This point will again be addressed during the next negotiating round.

## **7 Services**

The parties discussed the pending elements of the general provisions of the Services Chapter some of which were finalized. Still there is no agreement regarding the articles on the scope, market access (economic needs test), modification of schedules, exceptions and increasing participation of MERCOSUR countries.

With regard to maritime transport, financial services and telecommunications, discussions have taken place on the specific provisions related to the sectors.

The EU indicated its expectations and areas of interests with regard to Mercosur's improved offer. Mercosur posed some questions in order to clarify some elements on the current EU offer.

The EU agreed to present by mid May 2004 written answers to the questions submitted by MERCOSUR in October 2003 and to questions on financial services submitted during this round.

A consolidated side-by-side text has been agreed.

## **8 Investment; capital movement**

### **Investment chapter**

On the text of the investment chapter some articles have been agreed while the following main issues remain outstanding:

- the coverage and exclusions;
- the national regulation article;

As to the safeguard, Mercosur indicated that its position depends on the outcome of the discussion on national regulation.

Regarding dispute settlement, Mercosur considered the possibility of addressing the issue within the DS chapter.

The Parties agreed that the transparency provisions as well as the general exceptions should be in common with the services chapter.

A consolidated side by side text is attached.

### **Current Payments and Capital Movements**

The Parties continued their discussions on current payments and capital account.

### **Offers**

The EU indicated its expectations and areas of interests with regard to Mercosur's improved offer. Mercosur posed some questions in order to clarify some elements on the current EU offer.

## **9 Intellectual Property Rights**

The Parties started the session by exchanging information on the respective legislative frameworks regarding IPR enforcement. MERCOSUR will complete the information it provided within the next week.

Subsequently, the Parties developed upon the issues identified in the previous round as priorities in terms of IPR.

In a Co-ordination meeting, the Parties expressed once more their respective concerns, and proposed the following subsequent steps:

The Parties will analyse the implementation of the provisions regarding enforcement and the practices of the other with the aim to identify subjects of interest to overcome possible differences.

The EU will analyze the existing MERCOSUR legislation which has been provided in this session and if necessary will make a proposal to improve the enforcement of IPR in the Agreement.

The Commission is ready to develop technical co-operation programs, in particular in relation to IPR enforcement.

Alternatively, MERCOSUR proposed that the Parties identify particular concerns that can be solved in the frame of the consultation and co-operation mechanism for the purpose of implement of the TRIPS Agreement.

The Commission will propose substantive rules to be included in the IPR chapter of the Agreement with the aim to improve and extend the protections of G.Is.

MERCOSUR stated that, it would only consider the discussion of G.Is in the frame of wines and spirits negotiations.

Both parties agreed to return to this issue at the next round of negotiations.

## **10 Government procurement**

The Parts have examined for the first time since the 9<sup>th</sup> Round (March 2003) the side-by-side text. Mercosur tabled a text on transparency in government procurement that replaces in its integrity its text proposal of October 2001. The EC confirmed that its July 2001 proposal as amended during subsequent rounds remains valid. The EC prepared an updated side-by-side text incorporating the new Mercosur proposal.

A working session was dedicated to find commonalities between the new Mercosur text and the existing EC proposal.

The EC transmitted an improved offer in April that already takes account of the EU enlargement and incorporates the procurement markets of the ten new EU Member States. The EC reported that the value of this offer is 250 billion EURO per year, which is the result of adding the value of all tender notices published in the Official Journal of the EC.

The EC indicated which sectors are considered of key interest in an eventual future Mercosur offer. These are procurement by entities operating in the water, transport and energy sectors, indistinctively of their position at central or sub-central level. In general terms, contracts (including public works concessions) related to infrastructure are a priority for the EC.

The EC explained its proposals on asymmetric coverage and differential treatment. The EC confirmed its openness to discuss some mechanisms allowing

a Mercosur preference, these preferences should decrease over the time although not necessarily disappear at the end of a period. The EC was not in a position to provide more details on these mechanism in the absence of a Mercosur offer.

At the XIV<sup>th</sup> round, the Parties will continue working on other areas of the regulatory part of the Chapter taking into account the respective proposals. The EC expects to receive a market offer in advance to this meeting and engage into a substantial discussion on its content. The Mercosur indicated that it does not intend to present a market access offer, since it has proposed an agreement on transparency in government procurement.

## **11 Dispute Settlement**

### **11. 1. Progress has been achieved in the following areas:**

- One text (as opposed to side-by-side) for the Article relating to compliance (now Article 13 but previously referred to as Article 11), which has broad agreement, although further clarifications/amendments may be required and thus the entire Article is in square brackets;
- “Cleaning”, as far as possible, the entire Chapter on Dispute Settlement by removing square brackets;
- A useful exchange of views on Chapter III (General Provisions).

### **11. 2. For the next Round, outstanding issues on the DS mechanism that will need to be resolved are:**

- Definition of the Parties;
- The method to be followed for the selection of panelists;
- Panel hearings, and Amicus Curiae submissions;
- Article 13 (compliance);
- Chapter III (General provisions).

### **11. 3. Further work will also be required on the Code of Conduct and the Rules of Procedure.**

**11. 4.** In order to maximize progress during future negotiating rounds, both sides recognize the need for exchanging views in between rounds, as well as submitting proposals sufficiently in advance in order to have a more fruitful and efficient discussion.

## **BUSINESS FACILITATION**

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

The meeting was mainly devoted to an exchange of information on the priority subjects previously identified by each party. The following sectors were covered: wood, furniture, electrical products and machinery, radio and telecommunication equipments. Mercosur tabled: a) a questionnaire on its sectors of interests and b) answers to EU questionnaire on its sectors of interests.

Regarding wood products covered by the EC Directive on construction products, the EU will further clarify the information provided during the meeting. On its side, Mercosur will send more detailed questions.

The parties agreed that the discussion regarding "Radio and Telecommunication Equipment" area must be followed up. In order to improve the functioning of the "Business facilitation/Regulatory Dialogue" they agreed that their respective contact points would discuss in order to explore the feasibility of establishing in a near future a specific platform. The coordinators for the BF/Regulatory dialogue should be kept informed about any direct contacts between sectoral contact points.

The participants to the meeting agreed that it is now time to further reflect about the role and tasks of the BF/Regulatory dialogue. This could be for the agenda of the next meeting.

As agreed during the previous meeting, the EU provided further details regarding its proposal for the creation of a working group dealing with regulatory issues in the automotive sector. In order to clarify the kind of topics the working group would be dealing with, an indicative list of issues that the EU considers to be technical barriers to trade was handed over to Mercosur.

Further information was given by the EU regarding the Seminar which will take place in June in Montevideo, organized by CENELEC and AMN: "Best practice sharing and experience with low and medium voltage technical regulations".

## **Electronic Commerce:**

The EU and Mercosur discussed the Business facilitation initiative on E-commerce.

On electronic signatures, both sides discussed the purpose and agenda of the seminar on legal and technical aspects of e-signatures that Mercosur proposes to hold in the last trimester of 2004 in Brazil. Mercosur will send a version in English and the EU will endeavour to mobilize EU experts to present the EU experience in this field.

The EU indicated that it is still completing internal consultations on the Mercosur proposal on statistical methods for e-commerce.

Mercosur highlighted possible practical implementations of its proposal on the promotion of the use of e-commerce by SMEs. Mercosur will provide concrete elements in writing.

Finally, Mercosur indicated that it is continuing internal consultations on the EC proposal for cooperation on the treatment of unsolicited commercial communications (“spam”).



## **SUSTAINABLE DEVELOPMENT**

EC and MERCOSUR discussed the integration of sustainable development into the Association agreement during two half day working sessions. Discussions were constructive and positive.

EC and MERCOSUR confirmed their common objectives in this domain: the agreement should effectively foster sustainable development, and promote regional integration taking into account common but differentiated responsibilities.

On substance, EC and MERCOSUR started to identify the elements of a common ground including a set of objectives and principles, on which they should further elaborate. In particular they acknowledged the importance of dialogue and partnership, of involving civil society, and of the importance of implementing sustainable development objectives. Both parties acknowledged that issues related to sustainable development should in no case create trade conditionality.

The EC presented its proposal for a joint body for improving the contribution of the agreement to sustainable development.

EC and MERCOSUR will continue discussions on how the Agreement should reflect SD objectives.

Both parties agreed to draft concrete proposals to continue working on this issue in the run-up to the next BNC. The proposals should build on ideas put forward so far in the discussions, inter alia taking into account Agenda 21, the Rio Declaration on Environment and Development, WSSD and other relevant international documents commonly accepted by both EC and Mercosur member countries.

EC and MERCOSUR agreed to exchange concrete proposals on June 1<sup>st</sup>, 2004.

EC and MERCOSUR agreed to propose to their coordinators at least two working sessions on sustainable development in the June round in Buenos Aires.

## ANNEX II

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

Registration #	Negotiating Text
XIII BNC/EU/BF/106/05.05.04	Indicative list of tech. barriers to trade within Mercosur
XIII BNC/MS-EU/TG-2/31/06.05.04	Dispute Settlement : common text
XIII BNC/MS-EU/TG-2/32/06.05.04	Services : side-by-side text
XIII BNC/MS-EU/TG-2/33/06.05.04	Investment : side-by-side text

## ANNEX III

### LIST OF PARTICIPANTS

#### DELEGATION OF THE MERCOSUR

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Antonio Trombetta	Misión de Argentina ante la UE
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## DELEGATION OF THE EUROPEAN UNION

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Francesco Meggiolaro	European Commission – DG Trade
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Jaime Silva	European Commission – DG Enterprise
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