

## UE - MERCOSUR

### Negociaciones entre Unión Europea y MERCOSUR

#### Mercosur's Completed Offer on Investment September 24, 2004

##### **General Conditions**

This completed offer covers the sectors and sub-sectors that appeared in the initial offer and in the previous improved offers of Mercosur. This offer may be extended, modified, reduced or withdrawn according to the development of the Mercosur-EU negotiations in order to ensure a final overall balance of rights and obligations among the Parties.

This offer is presented as an attempt to meet the October 31<sup>st</sup> deadline for the conclusion of the negotiations. Therefore, it will be withdrawn for reexamination on that date. If negotiations resume after that date, this offer shall not be the basis for the renewal of the process.

The offer remains conditional on the final text of the Investment Chapter of the Mercosur-EU agreement, as well as on the other Chapters affecting investment where definition is still pending.

This offer was elaborated taking into account the relevant disciplines and principles of the World Trade Organization.

This offer is based on the assumption that the flexibilities determined by national laws and regulations are recognized. Thus it shall not be interpreted as limitation to domestic regulation or to the introduction of new regulation with a view to achieving national policy objectives, in accordance with the main objectives of this agreement.

This offer is also based on the assumption that the Mercosur-EU agreement shall not interfere with existing bilateral agreements relating to taxes and tax measures or with the capacity of Mercosur countries to pursue the objectives of their fiscal policies.

This offer is elaborated on the basis of a positive list approach and utilizes the International Standard Industrial Classification (ISIC – Rev.3).

Where no reference is made to one or more Mercosur countries for a specific sector or subsector, it should be interpreted that that country or countries are not taking any commitments for that specific sector or sub-sector.

Sector or subsector	Limitations on market access	Limitations on national treatment
<b>I.HORIZONTAL COMMITMENTS</b>		
ALL SECTORS INCLUDED IN THIS SCHEDULE		
	<p>B: Foreign capital in Brazil must be registered with the Central Bank of Brazil. The registration of the investment must be kept current. The National Intellectual Property Institute (INPI) shall register contracts that imply the transfer of technology, franchising contracts, and similar contracts so that they will be binding on third parties.</p>	<p>U: Reserve the right to maintain or adopt any measure or disposition with the purpose of statistical controls of foreign investment registration and its transferences, after the entrance into force of this agreement.</p>
	<p>B: Juridical persons must be organized as a legal entity foreseen by the Brazilian law, subject to the dispositions of the Brazilian Civil Code.</p> <p>B: Brazil reserves the right to maintain or adopt any measure pertaining to subsidies, incentives, grants, or differentiated financial terms, including</p>	<p>P: The head office located abroad must pay tax for fiscal benefits approved by branches, agencies or establishments located in the country applying a rate of 15% (fifteen per cent).</p> <p>B: Brazil reserves the right to maintain or adopt any measure pertaining to subsidies, incentives, grants, or differentiated financial</p>

Sector or subsector	Limitations on market access	Limitations on national treatment
	<p>subsidized loans, guarantees and insurance by government institutions.</p> <p>P: Unbound for measures related to incentives in regulations and/or programmes for producers of any goods.</p>	<p>terms, including subsidized loans, guarantees and insurance by government institutions.</p>
	<p>B: Brazil reserves the right to adopt or maintain any measure aimed at developing less privileged regions or at reducing regional inequalities.</p>	
		<p>U: Reserve the right to maintain or adopt any measure or disposition that establishes rights or preferences to less privileged due to socioeconomic reasons after the entrance into force of this agreement</p>
	<p>A: Unbound in frontier areas (150 km. in land frontier areas and 50 km. in coastal areas)</p> <p>B: Border strips (areas within 150 km from national boundaries) and some special areas (the Amazon Basin, the <i>Mata Atlantica</i>, the <i>Serra do Mar</i>, and the <i>Pantanal</i> of Mato Grosso, as defined in Brazil legislation), are subject to restrictions pertaining to foreign ownership for reasons of environmental protection, free access to the seaside and national security.</p> <p>The following activities, in order to be performed within 150 km from national boundaries, are subject to approval by the National Security Council (CSN):</p> <ul style="list-style-type: none"> <li>i) Acquisition or concession of public estate;</li> <li>ii) Opening of transportation ways;</li> <li>iii) Installation of communication means destined to broadcasting/</li> </ul>	<p>A: Acquisition in border areas("Security Areas") limited to native Argentines. Foreign individuals and companies carrying on investment projects with a majority of argentine personnel can acquire buidings and/or exploit of authorisation and concessions in Security Aereas, only with prior authorization.</p>

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	<p>iv) Building of bridges, international roads and landing fields;  v) Installation of industrial plants of particular interest for national security;  vi) Establishment of companies dedicated to the prospection, extraction and exploitation of mineral resources;  vii) Establishment of companies dedicated to rural settlement.</p> <p>To secure authorization to engage in the activities referred to in items v, vi and vii above, companies must meet the following requirements: 51% of their capital must be in the hands of Brazilians; two thirds of the labor force must be Brazilian; management must be by Brazilians, who should be in the majority. In case such activities are carried out by only one individual, only Brazilians may be granted special authorization by the CSN.</p> <p>With respect to rural property, foreign physical persons and legal entities must be, respectively, Brazilian residents and authorized to operate in Brazil if they wish to buy or lease rural property. A property should not be larger than a fourth of the total area of the municipality to which it belongs. Individuals of the same nationality cannot own, in any given municipality, more than 40 percent (40%) of this limit. Specific authorization is needed depending on the size of the property to be purchased or leased by foreigners.</p> <p>P: Acquisition of land, or residence requirements, applicable to foreign investors, unbound in border areas (100 km in land frontiers)</p>	
	<p>B: In enterprises with more than three employees, two thirds of the work force</p>	<p>A: The absolute majority of the directors must have real domicile in the Republic  All the Directors must constitute a special domicile in Argentina where notifications that they receive, related to the exercise of their functions, will be valid. These notifications include those related to the action of responsibility..</p>

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	<p>must consist of Brazilian nationals who shall account for two thirds of the payroll. Foreign specialists not available locally are not included in these figures. Foreign specialized technicians and highly qualified professionals may work under a temporary contract with legal entities, whether of national or foreign capital, established in Brazil. The pertinent contract must be approved by the Ministry of Labour. Approval of contracts of specialized technicians and highly qualified professionals takes into account the compatibility of their qualifications with the area of business in which the company is engaged. The company must justify the need to contract such professionals and technicians in relation to similar professionals and technicians available in Brazil.</p> <p>Members of the Fiscal Council and of the board of directors of open capital companies and their managers must reside in Brazil. Foreign managers must have Brazilian residence for reasons of legal liability in case of suits or fraudulent bankruptcies. The administrative council may consist of nonresident foreigners. Managers and directors appointed to affiliates of foreign companies established in Brazil will be granted access under the following conditions: designation to a position with full decision-making power; vacancy of such position; existence of associate link between the company in the Brazilian territory and and its headquarters abroad; proof by the service provider in Brazil that the Manager or Director is performing his/her duties after receiving the visa. Appointment of such Managers or Directors must be related to the provision of new technology, increase in the productivity or the foreign company must have invested a minimum amount of US\$ 200.000 (which may be reduced in the future).</p>	
		<p>A and P reserve the right to establish special share arrangements (such as the retention of "golden shares") and</p>

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	<p>U:Reserves the right to maintain or adopt any measure or disposition related to ownership,share ,stock,etc in the process of transformation of an state company or an existing governement entity, imposing limitations on the tenancy and property of those assests or rights as well as its continuations or renovations after the entrance into force of this agreement.</p>	<p>to grant preferences in the purchase of shares to the employees of state company subject to privatisation.</p> <p>U:Reserves the right to maintain or adopt any measure or disposition related to ownership,share ,stock,etc in the process of transformation of an state company or an existing governement entity, imposing limitations on the tenancy and property of those assests or rights as well as its continuations or renovations after the entrance into force of this agreement.</p>
	<p>B: Brazil reserves the right to adopt or maintain any measure aimed at fostering technological development, scientific research and the development of standards and norms in Brazil, whether or not denied to alien investors and their investments or addressing them.</p> <p>U: Reserves the right to adopt or maintain any measure or disposition that establishes limitations in thecnological transfers or technical assistance and training if they are part of a national program to support the economic and thecnological development of the country, after the entrance into force of this agreement.</p>	<p>B: Brazil reserves the right to adopt or maintain any measure aimed at fostering technological development, scientific research and the development of standards and norms in Brazil, whether or not denied to alien investors and their investments or addressing them.</p> <p>U: Reserves the right to adopt or maintain any measure or disposition that establishes limitations in thecnological transfers or technical assistance and training if they are part of a national program to support the economic and thecnological development of the country, after the entrance into force of this agreement.</p>
	<p>U :Reserve the right to maintain or adopt any measure or disposition related to application of new or modification of existent legislation regarding consumer's defence, competence and environment after the entrance into force of this agreement.</p>	<p>U: Reserve the right to maintain or adopt any measure or disposition related to application of new or modification of existent legislation regarding consumer's defence, competence and environment after the entrance into force of this agreement.</p>

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	B and P reserve the right to adopt measures consistent with current or future WTO disciplines affecting investment.	B and P reserve the right to adopt measures consistent with current or future WTO disciplines affecting investment.
<b>II.SECTOR-SPECIFIC COMMITMENTS</b>		
<b>A. AGRICULTURE, HUNTING AND FORESTRY</b>		
01 Agriculture, hunting	A: None P: None, related service activities refer to Paraguay Services List U: None	A: None P: None, related service activities refer to Paraguay Services List U: None
Agriculture	B: None, except for measures necessary to the implementation of the agrarian reform, policies for development of family agriculture ("agricultura familiar") and measures relating to border areas.	B: None.
02 Forestry, logging*	A: None P: None, related service activities refer to Paraguay Services List U: None	A: None P: None, related service activities refer to Paraguay Services List U: None
<b>B FISHING</b>		
05. Fishing, operation of fish hatcheries and fish farms	A: Exploitation of live maritime resources will only be granted to natural persons with address in the country or to juridical persons established according to domestic law.  Foreign flag vessels activity will have to comply with the terms of the law 24.922/97 .They will only be admitted jointly with one or more companies locally registered, as determined by the Corporate Law 19550	A: Vessels employed in the fishing industry must be enrolled in the corresponding Argentine registry and raise the Argentine flag  Crew members of all fishing vessels will comply with the following requirements:  Captains and officers will only be of Argentine nationality, either by birth, option or naturalisation.  75% of the rest of crew members aboard fishing vessels must be either argentine or foreigners with more than 10 years of permanent residence in the country, effectively accredited.  In the case that foreign personnel is needed, due to lack of the personnel referred to in the preceding clause, the boarding will

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	<p>B: Foreign flag vessel commercial fishing and other living resource operations in the jurisdictional waters of Brazil (including the exclusive economic zone) will only be possible as duly authorized by the Executive branch.</p> <p>The chartering of a foreign vessel for commercial fishing and other living resource activities by a Brazilian juridical person must be duly authorized by the Executive branch.</p> <p>U: Commercial fishing and marine hunting activities performed in internal waters and in the territorial sea within a twelve mile area, measured from the base lines, are reserved exclusively to duly licensed Uruguayan-flagged vessels.</p> <p>Commercial foreign-flagged vessels shall only be allowed to exploit living resources between the twelve mile area referred to in the preceding paragraph and two hundred marine miles, subject to authorization of the Executive branch, granted in accordance with Law No. 13833, and as recorded in the register maintained by the Dirección Nacional de Recursos Acuáticos. The processing and marketing of fish is authorized by the Executive branch, and may be subject to a requirement that the fish be totally or partially processed in Uruguay.</p>	<p>be realized provisionally, subject to compliance with all current legal requirements. If Argentine crew members are available, the crew must be completed with them</p> <p>In case of infraction to laws or regulations, in addition to the corresponding penalty, vessels may be retained at an Argentine port until either payment of fines is complied with or satisfactory guarantees are constituted thereof.</p> <p>U: Commercial fishing and marine hunting activities performed in internal waters and in the territorial sea within a twelve mile area, measured from the base lines, are reserved exclusively to duly licensed Uruguayan-flagged vessels.</p> <p>Commercial foreign-flagged vessels shall only be allowed to exploit living resources between the twelve mile area referred to in the preceding paragraph and two hundred marine miles, subject to authorization of the Executive branch, granted in accordance with Law No. 13833, and as recorded in the register maintained by the Dirección Nacional de Recursos Acuáticos. The processing and marketing of fish is authorized by the Executive branch, and may be subject to a requirement that the fish be totally or partially processed in Uruguay.</p>



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OPERATION OF FISH HATCHERIES AND FISH FARMS	<p>B: If the continuous area in which the investment is located is public and over 2,500 ha. , it is necessary a Congress approval, in accordance with the Brazilian Constitution.</p> <p>All activities in this area must comply with environmental legislation and approvals by the Executive branch may be needed.</p>	B: None.
FISHING, FISH FEED FACTORIES, FISH PROCESSING FACILITIES AND FISH MARKETING COMPANIES	<p>B: If the continuous area in which the investment is located is public and over 2,500 ha. , it is necessary a Congress approval, in accordance with the Brazilian Constitution.</p>	B: None
FISHING	<p>B: Exploitation of live maritime resources will only be granted to natural persons with a permanent residence in Brazil or to Brazilian companies (even if they are established with joint-venture financial resources), in accordance with the Brazilian law.</p>	B: None
FISHING LANDING FACILITIES AND FISH SHIPYARDS	<p>B: If the continuous area in which the investment is located is public and over 2,500 ha. , it is necessary a Congress approval, in accordance with the Brazilian Constitution.</p>	B: None
<b>C MINING AND QUARRYING</b>		
	<p>B: For operations in a border strip of 150 km, a commercial mining enterprise must expressly state in its bylaws or articles of incorporation that at least 51percent (51%) of its capital shall belong to Brazilians and that administration or management shall always be in the hands of the Brazilian majority, who shall have overriding powers.</p>	B: None

Sector or subsector	Limitations on market access	Limitations on national treatment
	<p>In the case of an individual commercial establishment, only a Brazilian shall be allowed to establish himself or to exploit mining activities on the border strip. For operations in a border strip of 150 km, administration or management shall always be in the hands of Brazilians and the delegation of powers, management, or administration to foreigners shall be forbidden, even through a power of attorney issued by the individual trade concern or firm.</p> <p>The prospecting and exploitation of mineral resources and the exploitation of hydroelectric potential shall be allowed strictly through authorization or concession by the Federal Government, according to the national interest and to Brazilians or an enterprise incorporated under Brazilian law with headquarters and administration in Brazil <i>independently from the origin of the capital</i>.</p> <p>The prospecting and exploitation of deposits of oil, natural gas, and other fluid hydrocarbons; the refining of Brazilian or foreign oil; the importation and exportation of products and basic byproducts; the sea transportation of crude oil of Brazilian origin or of basic oil byproducts produced in Brazil as well as the transportation by pipeline, the wholesale distribution and retail sale of crude oil, its byproducts and natural gas—are State monopolies that may be operated, under concession or authorization, by enterprises incorporated under Brazilian law, with Brazilian headquarters and administration.</p> <p>Contracts set minimum percentages for the participation of local capital in exploitation and development activities, for the procurement of goods on the national market, and for the hiring of</p>	<p>U:Minings licences or titles are given by the Mining Authority depending from the National Government</p> <p>Requirments for individual explotations are also regulated for the Mining Authority.</p>

Sector or subsector	Limitations on market access	Limitations on national treatment
	<p>Brazilian labor; they further ensure fair competition conditions for Brazilian suppliers. Oil companies must invest one percent (1%) of their gross revenues on R&amp;D in Brazil.</p> <p>U:Minings licences or titles are given by the Minning Authority depending from the National Government</p> <p>Requirments for individual explotations are also regulated for the Minning Authority.</p>	
<p>10 Mining of coal and lignite; extraction of peat.</p>	<p>A: None</p> <p>B: None except as indicated above</p> <p>U: None, except as indicated above</p>	<p>A: None</p> <p>B: None except as indicated above</p> <p>U: None, except as indicated above</p>
<p>11 Extraction of crude petroleum and natural gas, oil and gas extraction *</p>	<p>A: Argentina reserves the right to maintain or adopt any measure relating Natural Gas .</p> <p>B: None, except as indicated above</p>	<p>A: Argentina reserves the right to maintain or adopt any measure relating Natural Gas .</p> <p>B: None except as indicated above</p>
<p>12 Mining of uranium and thorium ores</p>	<p>A: Unbound</p> <p>B: Unbound</p> <p>U: None, except as indicated above</p>	<p>A: Unbound</p> <p>B: Unbound</p> <p>U: None, except as indicated above</p>
<p>13 Mining of metal ores</p>	<p>A: None</p> <p>B: None, except as indicated above</p> <p>U: None, except as indicated above</p>	<p>A: None</p> <p>B: None except as indicated above</p> <p>U: None, except as indicated above</p>
<p>14 Other mining and quarrying</p>	<p>A: None</p> <p>B: None, except as indicated above</p> <p>U: None, except as indicated above</p>	<p>A: None</p> <p>B: None except as indicated above</p> <p>U: None, except as indicated above</p>
<p><b>D. MANUFACTURING</b></p>		
	<p>A: reserves the right to maintain or adopt any measure related to performance requirements in</p>	<p>A: reserves the right to maintain or adopt any measure related to incentives in regulations and/or</p>

Sector or subsector	Limitations on market access	Limitations on national treatment
	<p>regulations and/or programmes for domestic producers of capital and information technology goods. These measures will be consistent with the TRIMS Agreement.</p> <p>B: The refining of Brazilian or foreign oil is a State monopoly that may be operated, under concession or authorization, by enterprises incorporated under Brazilian law, with Brazilian headquarters and administration.</p> <p>P: reserves the right to maintain or adopt any measure related to performance requirements in regulations and/or programmes for producers of goods.</p>	<p>programmes for domestic producers of capital and information technology goods</p>
15 Manufacture of food products and beverages	<p>A: None</p> <p>B: None</p> <p>P: None</p> <p>U: None</p>	<p>A: None</p> <p>B: None</p> <p>P: None</p> <p>U: None</p>
16. Manufacture of tobacco products.	<p>A: None</p> <p>B: None</p> <p>P: None</p> <p>U: None</p>	<p>A: None</p> <p>B: None</p> <p>P: None</p> <p>U: None</p>
17 Manufacture of textiles	<p>A: None</p> <p>B: None</p> <p>P: None</p> <p>U: None</p>	<p>A: None</p> <p>B: None</p> <p>P: None</p> <p>U: None</p>
18 Manufacture of wearing apparel; dressing and dyeing of fur	<p>A: None</p> <p>B: None</p> <p>P: None</p> <p>U: None</p>	<p>A: None</p> <p>B: None</p> <p>P: None</p> <p>U: None</p>

Sector or subsector	Limitations on market access	Limitations on national treatment
19. Tanning and dressing of leather; manufacture of luggage, handbags, harness and footwear.	A: None B: None P: None U: None	A: None B: None P: None U: None
20 Manufacture of wood and of products of wood and cork, except furniture; manufacture of articles of straw and plaiting materials	A: None B: None P: None U: None	A: None B: None P: None U: None
21 Manufacture of paper and <sup>1</sup> paper products	A: None B: None P: None U: None	A: None B: None P: None U: None
22 Publishing, printing and reproduction of recorded media	A: None B: None P: Refer to Paraguay Services List U: None except that the director of redaction must be of Uruguayan nationality	A: None B: None P: Refer to Paraguay Services List U: None except that the director of redaction must be of Uruguayan nationality
23 Manufacture of coke, refined petroleum products and nuclear fuel. 231 Manufacture of coke oven products. 232 Manufacture of refined petroleum products	A: None B: None A: None B: None, except as indicated above	A: None B: None A: None B: None

<sup>1</sup> \* The related service activities are included in the Service Chapter, also the distribution and the transportation.

Sector or subsector	Limitations on market access	Limitations on national treatment
233 Processing of nuclear fuel	A: Unbound B: Unbound	A: Unbound B: Unbound
24 Manufacture of chemicals and chemical products	A: None B: None P: None U: None	A: None B: None P: None U: None
25 Manufacture of rubber and plastics products.	A: None B: None P: None U: None	A: None B: None P: None U: None
26 Manufacture of other non-metallic mineral products.	A: None B: None P: None U: None	A: None B: None P: None U: None
27. Manufacture of basic metals	A: None B: None P: None U: None	A: None B: None P: None U: None
28. Manufacture of fabricated metal products, except machinery and equipment	A: None B: None P: None U: None	A: None B: None P: None U: None
29. Manufacture of machinery and equipment n.e.c.:	A: None, except the class 2927 Manufacture of weapons and ammunition: Authorisations for production of weapons and ammunition limited to Argentine controlled companies.	A: None, except the class 2927 Manufacture of weapons and ammunition: Authorisations for production of weapons and ammunition limited to Argentine controlled companies.
291. Manufacture of general purpose machinery	B: None P: None U: None	B: None P: None U: None
293 - Manufacture of domestic appliances n.e.c.		

Sector or subsector	Limitations on market access	Limitations on national treatment
30 Manufacture of office, accounting and computing machinery	A: None B: None P: None U: None	A: None B: None P: None U: None
31 Manufacture of electrical machinery and apparatus n.e.c.	A: None B: None P: None U: None	A: None B: None P: None U: None
32 Manufacture of radio, television and communication equipment and apparatus	A: None B: None P: None U: None	A: None B: None P: None U: None
33 Manufacture of medical, precision and optical instruments, watches and clocks	A: None B: None P: None U: None	A: None B: None P: None U: None
34 Manufacture of motor vehicles, trailers and semi-trailers	A: has adopted an automotive regime which includes dispositions on domestic content and compensated trade. B: None P: None U: None	A: has adopted an automotive regime which includes dispositions on domestic content and compensated trade. B: None P: None U: None
35 Manufacture of other transport equipment	B: None P: None U: None	A: None B: None P: None U: None
36 Manufacture of furniture; manufacturing n.e.c.	A: None B: None P: None U: None	A: None B: None P: None U: None
37. Recycling	A: None B: None P: None U: None	A: None B: None P: None U: None

Sector or subsector	Limitations on market access	Limitations on national treatment
<b>E. PRODUCTION OF ELECTRICITY,GAS, STEAM AND HOT WATER (excluding related services)</b>		
4010 Production of electricity	- A: Conditions to be regulated by individual contracts of concession B: Conditions to be regulated by individual contracts of concession  U:None,except limitations derivated from distribution conditions	A: Conditions to be regulated by individual contracts of concession B: None  U:None,except limitations derivated from distribution conditions
4020 Manufacture of gas except petroleum gases and derivatives	- A: Conditions to be regulated by individual contracts of concession B: Conditions to be regulated by individual contracts of concesión U: None	A: Conditions to be regulated by individual contracts of concession B: None U: None
4030 Production of steam and hot water	- B: Conditions to be regulated by individual contracts of concesión U: None	B: None U: None