

This document contains the consolidated text resulting from the 28th round of negotiations (3-7 July 2017) on Trade in Goods in the Trade Part of the EU-Mercosur Association Agreement. This is without prejudice to the final outcome of negotiations. Both sides reserve the right to make subsequent modifications to their proposals.

EU Mercosur negotiations

Chapter on Goods

Draft consolidated text

TITLE X

TRADE IN GOODS

Article 1

Objective

Mercosur and the European Union agree to establish a Free Trade Area over a transitional period starting from the entry into force of this Agreement, in accordance with the provisions of the Agreement and in conformity with Article XXIV of the GATT 1994.

Except as otherwise provided in this Agreement, the provisions of this Title shall apply to trade in goods of a Party.

CHAPTER I

[NAME TO BE DEFINED]

Section 1 - Common provisions

Article 2

Each Party shall accord national treatment to the goods of the other Party in accordance with Article III of GATT 1994, including its interpretative notes. To this end, Article III of GATT 1994 and its interpretative notes, are incorporated into and made part of this agreement.

Article 3

1. For purposes of this Chapter, "originating" means qualifying under the rules of origin set out in Annex X (Rules of Origin).
2. Except as otherwise provided for in this Agreement, each Party shall reduce and/or eliminate its customs duties on originating goods in accordance with the Schedules set out in Annex.... (hereinafter referred to as "Schedules").
3. A customs duty includes any duty or charge of any kind imposed on or in connection with the importation of a good, including any form of surtax or surcharge imposed on or in connection with such importation,¹ but does not include any:
 - a) internal taxes or other internal charges imposed consistently with Article III of GATT 1994
 - b) Antidumping or countervailing duties applied in accordance with Articles VI and XVI of GATT 1994 and the WTO Agreement on the Implementation of Article VI of GATT 1994 and the WTO Agreement on Subsidies and Countervailing Measures in conformity with the Chapter (Trade Remedies).
 - c) measures applied in accordance with Article XIX of GATT 1994 and with the WTO agreement on Safeguards, or with other safeguard measures of the Agreement.
 - d) measures authorised by the WTO Dispute Settlement Body or under the Dispute Settlement provisions of this Agreement.
 - e) fee or other charge, imposed consistently with Article VIII of GATT 1994.

¹ This includes ad valorem import duties, agricultural components, additional duties on sugar content, additional duties on flour content, specific duties, mixed duties, seasonal duties, additional duties from entry price systems, among other measures of equivalent effect.

g) measures adopted to safeguard a Party's external financial position and its balance of payments, in conformity with Article XII of GATT 1994 and the Understanding on Balance of Payments Provisions of GATT 1994.

4. The classification of goods in trade between Mercosur and the European Union shall be that set out in each Party's respective tariff regimes in conformity with the Harmonised Commodity Description and Coding System. A Party may create a new tariff line as long as the customs duty applicable to the corresponding products under the new tariff line to the other Party is equal to or lower than the original tariff line, according to its Schedule, and that the agreed tariff concession remains unchanged. The respective Parties Schedule shall indicate which HS version each Party has used.
5. For each good, the base rate of customs duties on imports, to which the successive reductions are to be applied under paragraph 2, shall be [MCS: effectively applied by the Parties (option 1: on the date xx/xx/xxxx) (option 2: on the date of entry into force of the Agreement), including the unilateral concession granted to Paraguay] [EU: that specified in the Schedules].
7. Except as otherwise provided for in this Agreement, no new customs duties shall be introduced, nor shall those already applied according to the Schedules be increased, in trade of originating goods between Mercosur and the European Union as from the date of entry into force of this Agreement. For greater certainty, a Party may raise a customs duty to the level set out in Annex [X] (Tariff Elimination Schedule) for the respective year following a unilateral reduction.

[EU: 8. If a Party lowers a MFN applied rate to a level below the base rate in relation to a particular tariff line, the MFN applied rate shall be deemed to replace the base rate in the Schedule, for as long as the MFN applied rate is lower than the base rate, for the purpose of the calculation of the preferential rate for that particular tariff line. In this regard, the Party shall [MCS²: , for as long as the tariff elimination period lasts], effect the tariff reduction on the MFN applied rate to calculate the applicable rate, maintaining at all times the relative margin of preference. The relative margin of preference for any given tariff line corresponds to the difference between the base rate set out in the Schedule and the applied duty rate for that tariff line in accordance with the Schedule divided by that base rate, expressed in percentage terms.]

² MCS could accept the EU proposal if this language was accepted.

9. Each Party may accelerate its tariff elimination schedule, or otherwise improve the conditions of market access, if its general economic situation and the situation of the economic sector concerned so permit. In addition, beginning three years after the entry into force of this Agreement, on the request of either Party, the XXX Committee shall consult to consider measures providing for improved market access. An agreement by the Parties in the XXX Committee on any preferential treatment on a good originating in the other Party shall supersede any duty rate or staging category determined in the respective Schedule for that good.

Article 4

[MCS: For the purposes of this Agreement and in respect of used goods, refurbished, remanufactured or goods that have gone through similar modifications, including those identified or not identified as such in the Harmonized System, the Parties shall be governed by their national legislation. In any event the provisions of this Agreement shall not apply to those goods.]

[EU: Article XXX

Remanufactured goods

1. The Parties shall accord to remanufactured goods the same treatment as that provided to new like goods. A Party may require specific labelling of remanufactured goods in order to prevent deception of consumers.
2. For greater certainty, Article [X] (Prohibition of quantitative restrictions) applies to prohibition and restrictions on remanufactured goods.
3. In accordance with its obligations under this Agreement and the WTO Agreements, a Party may require that remanufactured goods:
 - (a) be identified as such for distribution or sale in its territory; and
 - (b) meet all applicable technical requirements that apply to equivalent goods in new condition.
4. If a Party adopts or maintains prohibitions or restrictions on used goods, it shall not apply those measures to remanufactured goods.]

[New EU: 5. This Article applies after a transitional period of no longer than three years from the entry into force of this Agreement. The Trade Committee may decide to apply this Article before the end of the transitional period.]

[EU: Definition of a remanufactured good (to be moved to a definition section):

A remanufactured good means a good in HS chapters 84, 85, 87, 90 and 9402 that:

- a) is entirely or partially comprised of parts obtained from goods that have been used beforehand;
- b) has similar performance and working conditions compared to the equivalent good in new condition; and
- c) is given the same warranty as the equivalent good in new condition.]

Article [X]

Goods re-entered after Repair

1. For the purposes of this Article, repair means any processing operation undertaken on goods to remedy operating defects or material damage and entailing the re-establishment of goods to their original function or to ensure their compliance with technical requirements for their use, without which the goods could no longer be used in the normal way for the purposes for which they were intended. Repair of goods includes restoration and maintenance. It shall not include an operation or process that either:
 - (b) destroys the essential characteristics of goods or creates new or commercially different goods,
 - (c) transforms the unfinished goods into finished goods, or
 - (d) is used to improve the technical performance of goods.

[EU: 2. A Party shall not apply customs duty to goods defined in paragraph 1, regardless of their origin, that re-enter its customs territory after those goods have been temporarily exported from its customs territory to the customs territory of the other Party for repair, regardless of whether such repair could be performed in the customs territory of the Party from which the goods were exported for repair.]

3. Paragraph 2 does not apply to a goods imported in bond, into free trade zones, or zones of similar status, that are exported for repair and are not re-imported in bond, into free trade zones, or zones of similar status.
4. A Party shall not apply customs duty to goods, regardless of their origin, imported temporarily from the customs territory of the other Party for repair.

[MCS: Article 5

New Proposal – MCS

After the entry into force of the Agreement, MERCOSUR may adopt exceptional measures during the transitional period concerning the establishment of infant industries, or sectors undergoing restructuring or facing serious difficulties.

The reference to the establishment of infant industries shall apply not only to the establishment of a new industry, but also to the establishment of a new branch of production in an existing industry and to the substantial expansion of an existing industry supplying a relatively small proportion of domestic demand, according to the definition established in the Notes and Supplementary Provisions of Article XVIII of the GATT.

These exceptional measures may be taken by MERCOSUR in the form of increased customs duties, derogating from the provision of Article (2) paragraphs (xx) and Article (3).

Customs duties derived from these measures applied on imports originating in the Community may not exceed the level of the applied MFN customs duty. The total value of imports of goods which are subject to these measures may not exceed 15% of total imports originating in the Community during the last year for which statistics are available.

MERCOSUR shall inform the Association Council of any exceptional measures it intends to take, and, at the request of the Community, consultations shall be held in the Association Council on such measures before they are applied in order to reach a satisfactory solution. If no agreement on the proposed measures has been reached within 30 days of such notification, MERCOSUR may take the appropriate measures.

When taking such measures, MERCOSUR shall provide the Association Council with a schedule for the elimination of the customs duties introduced under this Article. This schedule shall provide for the phasing out of these duties in a period not exceeding 8 years,

starting from the following year after their introduction, at equal annual rates. MERCOSUR may accelerate this tariff elimination schedule if the situation of the economic sector concerned so permits. MERCOSUR shall not adopt such measures after the end of the transitional period.]

CHAPTER II

NON -TARIFF MEASURES

(The title of this chapter or the final placement of the provisions contained in it, will be agreed upon at a later stage.)

Section 1 – general provisions

Article 6

Fees and Other Charges on Imports and Exports

[EU: Each Party shall ensure, in accordance with Article VIII of GATT 1994, including its Notes and Supplementary Provisions that all fees and other charges of whatever character other than import and export duties imposed on or in connection with importation or exportation shall be limited in amount to the approximate cost of services rendered, which shall not be calculated on an ad valorem basis, and shall not represent an indirect protection for domestic products or a taxation of imports or exports for fiscal purposes.]

2. Each Party may impose charges or recover costs only where specific services are rendered, in particular the following:
 - (a) attendance, where requested, by customs staff outside official office hours or at premises other than customs premises;
 - (b) analyses or expert reports on goods and postal fees for the return of goods to an applicant, particularly in respect of decisions relating to binding information or the provision of information concerning the application of the customs legislation;
 - (c) the examination or sampling of goods for verification purposes, or the destruction of goods, where costs other than the cost of using customs staff are involved;

- (d) exceptional control measures, where these are necessary due to the nature of the goods or to a potential risk.

[EU: 3. No Party shall require consular transactions, including related fees and charges, in connection with the importation of goods from the other Party.

- 4. Each Party shall publish a list of the fees and charges it imposes in connection with importation or exportation.]

MERCOSUR proposal for Art. 14. Fees and Charges

[MCS: 1. The disciplines on fees and other charges on imports and exports shall apply to all fees and charges other than import and export duties and other than taxes within the purview of Article III of GATT 1994 imposed by Members on or in connection with the importation or exportation of goods.

- 2. Fees and charges for customs processing:

- (i) shall be limited in amount to the approximate cost of the services rendered on or in connection with the specific import or export operation in question;
- (ii) are not required to be linked to a specific import or export operation provided they are levied for services that are closely connected to the customs processing of goods.
- (iii) shall be published in accordance with Article 10 and
- (iv) shall be reviewed periodically with a view to reducing their number and diversity, where practicable.

- 3. No Party shall introduce consular transaction fees or any equivalent fees or charges, in connection with the importation or exportation of goods originating under this Agreement with respect to those currently applied by the Parties.]

Article 9

Import and export licensing procedures

- 1. The Parties shall ensure that all import and export licensing procedures are neutral in application, and administered in a fair, equitable, non-discriminatory and transparent manner.

2. The Parties shall only adopt or maintain licensing procedures as a condition for importation into its territory or exportation from its territory to the other Party when other appropriate procedures to achieve an administrative purpose are not reasonably available.
3. The Parties shall not adopt or maintain non-automatic import or export licensing procedures³ unless necessary to implement a measure that is consistent with this Agreement. Any Party adopting non-automatic licensing procedures shall indicate clearly the measure being implemented through such licensing procedure.
4. The Parties shall introduce and administer any licensing procedures in accordance with Articles 1 to 3 of the WTO Import Licensing Agreement (hereinafter referred to as "Import Licensing Agreement"). To this end, Articles 1 to 3 of the Import Licensing Agreement are incorporated into and made part of this Agreement. The Parties shall apply those provisions, mutatis mutandis, for any licensing procedures for exports to the other Party.
5. Any Party introducing licensing procedures or changes in these procedures shall make the corresponding information available on an official governmental website on the Internet. This information shall be accessible, whenever practicable, 21 days prior to the effective date of the requirement but in all events not later than such effective date. The information available on the Internet shall contain the data required under Article 5 of the WTO Import Licensing Agreement. The notification foreseen in Article 5 of the Import Licensing Agreement shall be carried out between the Parties with regard to licensing procedures for export.
6. Upon request of the other Party, each Party shall promptly provide any relevant information regarding any licensing procedures which the Party to which the request is addressed intends to adopt or has adopted or maintained, including the information indicated in paragraph 4.

³ For the purposes of this Article, "Non-automatic licensing procedures" is defined as licensing procedures where approval of the application is not granted for all legal and natural persons who fulfil the requirements of the Party concerned for engaging in import or export operations involving the goods subject to licensing procedures.

[MCS: Article 10

The Parties agree to create a mechanism to neutralise the distorting effects of the application of some domestic support measures on bi-regional trade

1. Those agricultural products subject to product-specific distorting domestic support (product-specific AMS) and not fully covered by this Agreement shall benefit from the opening/expansion of preferential tariff quotas, according to the following criteria:
 - If the product-specific AMS for the last three years notified, represents between 1% and 5% of the Gross Value of Production (GVOP) of the product, a tariff quota equal to 1% of the domestic consumption of that product in the Party shall be opened or expanded.
 - If the product-specific AMS for the last three years notified, represents more than 5% of the GVOP of the product, a tariff quota equal to 2% of the domestic consumption of that product in the Party shall be opened or expanded.
2. Quotas shall be updated every three years, on the basis of the average AMS notified by the Parties to the WTO for the last 3 years.
3. The Party affected by the AMS shall provide the other Party with all the supporting data, including:
 - Product concerned (including HS heading);
 - Level of product-specific AMS, average for the last 3 years;
 - Estimated level of GVOP of the product, average for the last 3 years;
 - Tariff treatment of the product in the Agreement;
 - Tariff treatment requested based on the AMS/GVOP ratio (including estimated data of domestic consumption in the Party).]

[MCS: Article 11

The Parties shall not maintain, introduce or re-introduce export subsidies or measures of equivalent effect on agricultural products.

For the purposes of this Article, the meaning of “export subsidies” will be the one set in Article 1 e) of the WTO Agreement on Agriculture.]

[The EU counter-proposal on export competition is part of “EU DRAFT TEXTUAL PROPOSALS RELATED TO AGRICULTURE IN TRADE PART OF EU-MERCOSUR ASSOCIATION AGREEMENT already shared with TPC]

[EU: Article 12

Duties, Taxes or Other Fees and Charges on Exports

Neither Party may maintain or institute any duties, taxes or other fees and charges imposed on or in connection with the exportation of goods to the other Party; or any internal taxes, fees and charges on goods exported to the other Party that are in excess of those imposed on like products destined for domestic consumption.]

Article 13

Origin marking

[this Article has been moved to the TBT text]

Article 14

State Trading Enterprises

1. Nothing in this Agreement shall prevent a Signatory Party from maintaining or establishing a state trading enterprise in accordance with Article XVII of GATT 1994, its Notes and Supplementary Provisions and the WTO Understanding on the Interpretation of Article XVII, [EU: which are hereby incorporated into and made part of this Agreement.]
2. Insofar as one of the Parties requests information of the other Party on individual cases of state trading enterprises, the manner of their operation and the effect of their operations on bilateral trade, the requested Party shall ensure full transparency in line with the rules set out in GATT Article XVII.

[EU: paragraphs 1 & 2 to be reviewed in the light of the outcome on the discussion regarding the EU proposed SOE chapter]

[EU: 3. As a derogation from paragraph 1, no Party shall designate or maintain a designated import or export monopoly. For the purposes of this Article, import or export monopoly means the exclusive right or grant of authority by a Party to an entity to import a good from, or export a good to, the other Party.

4. For greater certainty, paragraph 3 is without prejudice to provisions in Title X Trade in Service and Investment [and Service and Investment Schedules], and does not include a right that results from the grant of an intellectual property right.]

Article 15

Prohibition of quantitative restrictions

[EU: 1.] No Party may adopt or maintain any prohibition or restriction, on the importation of any good of the other Party or on the exportation or sale for export of any good destined for the territory of the other Party, whether applied by quotas, licenses or other measures, except in accordance with Article XI of GATT 1994, including its interpretative notes. To this end, Article XI of GATT 1994 and its interpretative notes, are incorporated into and made part of this Agreement. [MCS: This paragraph is without prejudice to Article XIX of GATT 1994.]

[EU: 2. No party shall adopt or maintain export or import price requirements,⁴ except as permitted in the enforcement of antidumping and countervailing duty orders or price undertakings.]

Article 16

Preference utilisation

1. For the purpose of monitoring the functioning of the Agreement and calculating preference utilisation rates, the Parties shall annually exchange import statistics for a period starting one year after the entry into force of this Agreement until 10 years after the tariff elimination is completed for all goods according to the Schedules in Annex [x]. Unless the [Trade Committee] decides otherwise, this period shall be automatically

⁴ [EU: For greater certainty, this provision is not meant to prevent a Party from relying on the price of imports in order to determine the applicable rate of a customs duty [in accordance with this Agreement]]

extended for five years, and thereafter this Committee may decide to subsequently extend it.

2. The exchange of import statistics shall cover data pertaining to the most recent year available, including value and, where applicable, volume, at the tariff line level for imports of goods of the other Party benefitting from preferential duty treatment under this Agreement and those that received non-preferential treatment.
3. Without prejudice to paragraph 2 no Party shall be obliged to exchange import statistics granted confidentiality according to domestic legislation.

CHAPTER III

COMMON PROVISIONS

Section 1 – Exceptions [EU/MCS: note that these articles would be better placed in a general exceptions chapter] These exceptions are under review by the Institutional working group.

Article 17

General exception clause

1. The Parties affirm their existing rights and obligations under GATT Articles XX and XXI and its interpretive notes, which are hereby incorporated into and made part of this Agreement.

[MCS: 2. A Party adopting measures provided for paragraph 1 shall enter into consultations, upon request of the other Party, within 60 days after the measure is made public.]

[EU: 2. The Parties understand that before taking any measures provided for in GATT Article XX(i) and Article XX (j), the exporting Party intending to take the measures shall supply the other Party with all relevant information, with a view to seeking a solution acceptable to the Parties. The Parties may agree on any means needed to put an end to the difficulties. If no agreement is reached within 30 days, the exporting Party may apply measures under this Article on the exportation of the product concerned. Where exceptional and critical circumstances requiring immediate action make prior information or examination impossible,

the Party intending to take the measures may apply forthwith the precautionary measures necessary to deal with the situation and shall inform the other Party immediately thereof.]

Article 18

Balance of Payments difficulties

[MCS: decision about negotiating group and placement needed]

[EU: (The final placement of the provisions contained in this article will be agreed upon at a later stage, in order to extend the scope of this provision to issues others than goods)]

[EU proposes to refer this discussion to the Institutional group]

[MCS: 1. The Parties shall endeavour to avoid the imposition of restrictive measures relating to imports for balance of payments purposes.

2. Notwithstanding paragraph 1, the Signatory Parties, in order to safeguard its external financial position and its balance of payments, may adopt restrictive measures in accordance with GATT Article XII and the WTO Understanding on Balance of Payments Provisions of The General Agreement on Tariffs and Trade 1994.
3. In the event of their introduction, the Party shall inform the other Party, as soon as possible, a time schedule for their removal, as well as any modification taking into account changes in its balance-of-payments situation.]

[EU:

1. The Parties shall endeavour to avoid the imposition of restrictive measures relating to imports for balance of payments purposes. In the event of their introduction, the Party having introduced the same shall present to the other Party, as soon as possible, a time schedule for their removal.
2. Where one or more Member States of the Community or members of Mercosur is in serious balance of payments difficulties, or under imminent threat thereof, the Community or Mercosur may in accordance with the conditions established under the GATT 1994, adopt restrictive measures relating to imports, which shall be of limited duration and may not go beyond what is necessary to remedy the balance of payments situation. The Community or Mercosur shall inform the other Party forthwith.]

Section 2 – Customs unions and free trade areas

Article 19

[EU: The Parties referred the discussion of this provision to the Institutional working group]

1. Nothing in this Agreement shall preclude the maintenance or establishment of customs unions, free trade areas or other trade arrangements between either of the Parties and third countries, insofar as they do not alter the rights and obligations provided for in this Agreement.
2. At the request of a Party, consultations between the Community and Mercosur shall take place within the Association Committee concerning agreements establishing or adjusting customs unions or free trade areas and, where required, on other major issues related to the Parties' respective trade policies with third countries.

[MCS: 3. Without prejudice to the rights of the Parties in accordance with GATT 1994, before the accession of a third country to the EU consultations shall take place within the Association Committee with a view to evaluating if this accession affects the balance of rights and obligations derived from the tariff elimination schedules of the Parties and to agreeing measures to re-establish this balance of rights and obligations.]