

POSITION PAPER
EUROCAMARAS BRAZIL
The EU-Mercosur FTA Negotiations



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BACKGROUND

EUROCAMARAS Brazil, founded in 1999 and headquartered in São Paulo, represents the interests and needs of more than 5.000 European industries and companies in the Brazilian business community. In 2001, EUROCAMARAS Brazil also incorporated its Chamber of Mediation and Arbitration (CAE) to secure trade and investment dispute resolution for Small and Medium Enterprises (SME) operating in Brazil. It is also the Brazilian recognized partner of Eurochambres, the European Association of Europeans Chambers of Commerce and Industry, which has National Chambers in 46 countries, as well as 2.000 local and regional Chambers. Furthermore, EUROCAMARAS Brazil is member of the EBO Network which extends in more than 35 countries over 5 continents (Asia-pacific, Europe and the Americas). EBO aims at providing advocacy, information and a networking platform for European businesses worldwide.

We strongly salute the momentum reached in the negotiations of the Free Trade Agreement between the EU and Mercosur (the "FTA") on the 60th anniversary of Rome Treaties and the 26th year of the Treaty of Asuncion. We understand that a comprehensive, balanced and ambitious agreement is now close to be completed and to be put into practice between the blocs.

The FTA negotiations started in 1999 and overcame the 2004 intermission as well as the 2008-World-Financial Crisis. Negotiations developed significantly in different areas, since 2010. The talks gained thrust in the last few years, and now carry a pragmatic sense of opportunity, as socio-political and economical drivers on both sides are aligned in the defence of free trade and international cooperation.

Importantly, the EU and Brazil share

crucial values and principles. Democratic decision making, the protection of fundamental rights and human dignity, corporate social responsibility, the promotion of sustainable development, the advancement of stable and peaceful international relations, and the rule of law are strictly linked to continuous developments of our common heritage.

Concerning trade figures, the EU has been Brazil's major trade partner since the 1960's, being responsible for approximately 20% of the US\$ 322,8 billion Brazilian trade flows observed in 2016. In that year, Brazilian exports to the EU were composed of basic products (44,3%), such as food, beverages, vegetables, and mineral products; manufactured products (37,8%), such as machinery, transport equipment, steel tubes and orange juice; and semi-manufactured products (16,9%), covering pulp, soy oil, fur and skins, iron garters, and gold. Brazilian imports from the EU consisted mainly of manufactured goods (94,8%), such as pharmaceuticals, chemicals, and transport equipment; semi-manufactured products (3,3%), such as olive oil, fertilizers, and rubbers; and some basic products (1,89%), including fruits and fish.

According to the Brazilian official statistics, from 1999 to 2016, Brazilian exports to the EU summed up to US\$ 586,7 billion, while reverse flows amounted US\$ 517,1 billion, in an average yearly trade surplus of US\$ 4,1 billion.

In accordance with the Brazilian Central Bank, the EU is the largest investor in terms of Foreign Direct Investment ("FDI") in Brazil in this century, accruing for more than US\$ 350 billion or 55,4% of all new net FDI brought into the country from 2001 to 2016. Since 2010, the EU's FDI in Brazil was mostly allocated into the services sector (43%), such as non-automotive commerce, electricity and gas, telecom, and financial services; manufacturing

(37%), covering food, chemicals, and automobiles; and in the primary sector (19%), such as oil, gas extraction, and mining activities.

The FTA is a broad agreement aimed at promoting and facilitating free trade and movement of goods, services, labour and capital. Its implementation will positively reflect on the above figures. Furthermore, it will signal the benefits and gains that trade has brought to people around the world, at times when increasing protectionist “solutions” are being considered.

EUROCAMARAS Brazil supports economic diplomacy and views that important objectives would be attained with the implementation of the agreement, such as: strengthening business linkages between the regions through Global Value Chains (GVC); modernizing infra-structure and competitiveness; providing better access to technology for enterprises; converging regulatory framework; and enhancing customs procedures. Each of these subjects need to be addressed in more detail.



STRENGTHENING BUSINESS LINKAGES BETWEEN THE REGIONS THROUGH GLOBAL VALUE CHAINS

GVCs involve the fragmentation of production around the globe. Particularly, steps of conception, design, acquisition of raw and intermediary inputs, marketing, and distribution occur considering competitive advantages offered in

distinct markets. Insufficient supply capacity, lack of competitiveness, and deficiency in infrastructure are important aspects that can hinder this process.

Recent studies from OECD (2015) have indicated that 75% of international trade is about firms buying inputs, capital goods or services that contribute to the production process. Well-functioning value chains require efficient services, and the possibility to move people, capital and technology across countries. When those elements do not operate properly, it reduces countries' ability to participate in GVCs.

The development of human capital in this context is essential and can be achieved with joint efforts to promote professional and technical education with theoretical and practical instruction, thus creating a basis for sustainable growth and development.

Thus, the relation between GVCs and trade agreements reveals the need for partners to have open, predictable and transparent trade, services, labour and investment regimes. This includes tariffs, non-tariff barriers and other restrictive measures impacting foreign suppliers and domestic producers.

EUROCAMARAS Brazil supports:

- regarding tariffs (trade in goods), the consideration of new levels of opening commitments including, among other sectors, automotive, aviation and railway, machinery, IT, processed food, chemicals, pharmaceutical and medical devices.
- concerning services, improved commitments for

- service providers on telecommunication, energy, sanitation and environment-related, postal, maritime transport, banking, insurance, and reinsurance sectors, including the possibility, where applicable, of cross-border providers.
- concerning FDI, in sectors where parties make commitments, the guarantee of market access and national treatment, especially with the removal of limitations on foreign capital participation in terms of maximum percentage limit on foreign shareholding, and the total number of foreign natural persons that may be employed in a particular sector.
- free movement of labour, modern visa rules (including temporary workers), and the possibility of degree, certification and qualification recognition of workers and technical staff under adequate procedures aimed at verifying professional quality, competence and credentials.
- joint efforts to promote professional, technical and academic education.

MODERNIZING INFRASTRUCTURE AND COMPETITIVENESS

The improvement of a country infrastructure is a key factor to insert business and people into the dynamic of internationalisation and fragmentation of production that characterize GVCs. Before this happens though, fiscal constraints, pressure on public budgets,

and heavy costs associated with government procurement need to be dealt with.

The Brazilian infrastructure is crossing a period of renovation through privatisation programs.

Concerning logistics-related infrastructure, ports, airports, highways, and railroads are current targets of the new stage of the Logistics Investment Program (PIL), for the 2015-2018 period. The PIL emphasizes private sector participation and introduces guidelines for reduced regulatory risks and improved legal certainty for investments.

The energy infrastructure in Brazil, in turn, though being one of the cleanest and plentiful array of the world, faces further challenges to assure regularity of supply, promotion of renewable energy, and responses to climate change.

Last, but not least, enhancements on social infrastructure, such as sanitation and water, contribute to better population's health, higher standards of living, and the attainment of fundamental rights.

In this perspective, continuous dialogue with the private sector is needed to develop auction rules for infrastructure projects, improve the quality of basic viability studies, and nurture a broad cooperation on infrastructure.

EUROCAMARAS Brazil is certain that the relevant expertise of each region's providers, and the proximity created by the Agreement, would contribute for such cooperation. In this sense, the FTA must provide for a more open environment on government procurement, PPP, and FDI, boosting competition, decreasing costs, contributing for the sharing of best practices between businesses, and leading, ultimately, to increased logistics and social infrastructure.

EUROCARAMAS Brazil encourages:

- the adoption of relevant commitments aiming at national treatment on public procurement and auctions, including deposit and performance bonds.
- the inclusion of the federal, state, and municipal level in the scope of public procurement foreign participation.
- the reduction of local content policies, especially in the field of energy infrastructure.
- the lessening of potential regulatory risks for investors, with transparency and dialogue mechanisms, such as timely consultation and advanced notification of regulatory changes that may affect medium and long-term legitimate expectations of concessionaries and private parts of PPP.

PROVIDING BETTER INCENTIVES AND ACCESS TO TRADE-RELATED INTELLECTUAL PROPERTY

Intellectual property (IP) encompasses a variety of subjects including patents, industrial design, software protection, trademarks, geographical indication (GI) and traditional knowledge. They have been incorporated in multilateral trade negotiations under the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and they bear different economic and social reasoning.

Patents, for instance, create incentives

for innovation and knowledge transfer. Access to technology produces positive spillovers, helps to overcome human capital deficiencies, and generates steady gains that are well known in the specialized literature. Trademarks, in turn, are a mechanism for providing information to consumers by reducing search costs and avoiding errors. GIs are more concerned with preserving and sustaining local traditional practices and resources.

Overall, a common denominator underpins trade-related intellectual property, regardless of their foundations: a well-established system, with appropriate mechanisms of protection, enforcement, access and cooperation leads to joint gains to producers and users in a manner conducive to social and economic welfare.

Currently, both parties to the FTA have comparative advantages on specific technological areas, distinguished trademarks, GI and traditional knowledge that complement each other.

In 2012, with a view to supporting innovation through improved use of the patent system, the Brazilian National Institute of Industrial Property (INPI) and the European Patent Office (EPO) signed a bilateral agreement aimed at enhancing co-operation. Under the agreement, the exchange of patent documents in Portuguese and English intends to facilitate the filing of patent applications by Brazilian companies in Europe and by European companies in Brazil.

Comparing 2016/2015, the EU maintained its position as the second largest foreign origin of patent requests in Brazil with more than 8.000 filings, though one observes a decrease of requests in absolute terms. Brazil, which ranks 12th among EPO non-member states in terms of origin of patent requests in the EU, increased approximately 4% the number of filings, accomplishing 625.

In 2016, the number of patent applications with Brazilian origin in the EU was in fact greater than requests originated in 23 EU members, individually considered, filed in Brazil.

Finally, as the digital transformation and use of disruptive technologies advance (bots, drones, robots, sensors, internet of things), in a process called the “fourth industrial revolution” (industry 4.0) or the “industrial internet”, relevant opportunities loom. New business dynamics in both regions will have to find an environment that offers suitable protection of intellectual property.

The FTA should provide ways for Brazilian and European entrepreneurship to improve matches on trade-related intellectual property issues and find ways to tackle challenges with the latest technology advancement. Societies from both sides can benefit even more from a fuller menu comprising IP protection, technology transfer from R&D centres, and cooperation.

EUROCAMARAS Brazil recommends:

- the implementation of speedier and less bureaucratic procedures for trademark registration and patents granting, including adjustment of the term of the grant to compensate for delays.
- the improvement of cooperation and enforcement mechanisms, such as electronic communication between customs authorities and joint task-forces to prevent the dispatch of counterfeiting products from ports.
- the recognition of GIs and traditional knowledge either by product or sector.

- the elaboration of provisions that foresees IP protection under the so-called industry 4.0 pattern.



CONVERGING REGULATORY FRAMEWORKS

Nowadays, one of the most relevant points to be discussed in any new preferential agreement relates to standards concerning regulatory coherence among parties.

The Agreements on Technical Barriers to Trade (TBT) and on Sanitary and Phytosanitary measures (SPS) are landmarks regulating these types of measures at the multilateral level (WTO).

In the first case, standards-related measures comprise documents and procedures setting out requirements for products or processes. They also involve procedures to ensure that these requirements are met (conformity assessments). They are diverse and encompass packaging, marking and labelling requirements, and procedures for assessment of conformity. They have a fundamental role in the flow of trade, while ensuring the compatibility of in-

puts sourced in different markets, increasing the connectivity of GVCs, and safeguarding important regulatory objectives, such as product safety, the prevention of deceptive practices, and environmental protection.

In the second case, sanitary and phytosanitary measures involve governmental measures aimed at protecting human health, domestic harvests and livestock from pests or animal diseases. Examples of SPS measures are maximum levels of pesticide residues in food and requirements that imported fruits, vegetables, and feed products be treated in a particular manner.

As the scope of these measures are broad, specific trade concerns (STCs) among members at the WTO have significantly increased. For instance, notifications of TBT related measures soared from 364 (1995) to 1.644 (2016), a 352% increase. A similar trend is observed at the SPS level, climbing from 189 (1995) to 935 (2016) notifications.

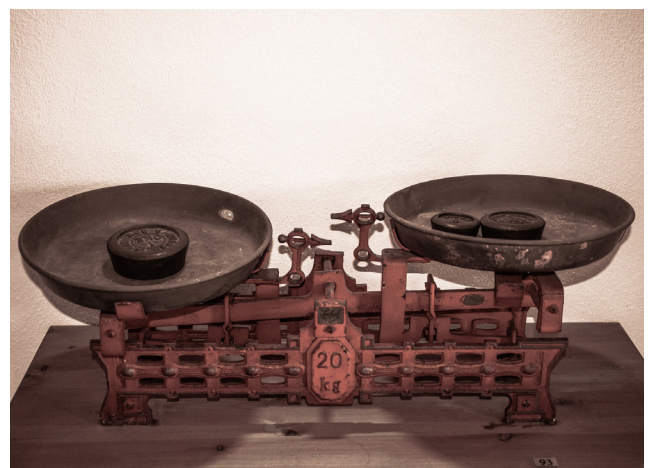
Not all of the above notifications represent obstacles to international trade and countries should not be prevented from taking measures of this nature. They must deal with two competing interests: (i) improving efficiency of production and facilitating the conduct of international trade by using commonly agreed standards and conformity assessment systems; and (ii) protecting important societal values, such as human, animal or plant life or health.

We encourage efforts that promote the flow of goods, services and agricultural products, in accordance with converged technical, sanitary and phytosanitary measures, mutually agreed or recognized. Conformity assessment should facilitate access to global markets while also acting as a risk assessment tool. A thoughtful and cooperative formulation is essential between parties. Special attention should be given to technology

transfer, human training and transparency, as SMEs often do not have the capacity to meet certification, standards and conformity assessment procedures.

EUROCAMARAS Brazil emphasizes:

- the need for regulatory convergence in the FTA, including, among other sectors, vehicles, machinery and equipment, IT, food, chemical, pharmaceuticals, and medical devices.
- the importance of commitments on test equivalence, mutual recognition, and the elaboration of accepted list of certification institutes and accreditation processes.
- the creation of a Joint Committee between the parties establishing a focal point to speedily address specific concerns regarding TBT-related and SPS-related measures raised by exporters/importers, with fast track procedures for SME's enterprises.



ENHANCING CUSTOMS PROCEDURES

Customs procedures can create burdensome bottlenecks for business. The often called “red tape” procedures may become time and budget consuming, leading to supply chain delays. The effect is slower and more expensive exports and imports processes, harming both suppliers and consumers.

In daily business activities, these procedures involve licensing, clearance of goods, and authorization from authorities. The subject is of such relevance that WTO members have recently agreed on the Trade Facilitation Agreement (TFA), which entered in force on February 2017, and, once implemented, can generate more than 0,5% to world GDP growth.

Poor records on customs procedure can impact the quality of the business environment. Brazil ranks 123rd in the World Bank, 2017 Doing Business Report, and the report’s “trading across borders” item supports this delicate position. At the same time, Brazil has been advancing in some initiatives such as the implementation of the Single Window Programme (SWP).

We do support that the FTA identifies remaining reform bottlenecks and specific trade facilitation domains of action, providing a transparent basis for an effective cooperation between border agencies and supply chain stakeholders.

EUROCAMARAS Brazil reinforces:

- the need to keep track of the general TFA framework and implement it.

- the enhancement of customs procedures in specific sectors, such as medical devices, pharmaceuticals, machinery, food and agricultural products, and temporary imports in general.
- Support from the EU towards the Brazilian regulators aiming for the simplification of Authorized Economic Operators’ qualification and its implementation.



FINAL REMARKS

The opportunity is unique after continuous advancements on the negotiations.

There are many expected gains that go way beyond the reduction of tariffs and non-tariff obstacles to trade. EUROCAMARAS Brazil particularly emphasizes:

1. A reciprocal insertion of business in GVCs, as a result of increased integration between markets, capital, and people.
2. The modernization of infrastructure because of attraction of long-term investment to each region. The alleviation of fiscal constraints for the deepening of competition in government procurement.

3. A greater atmosphere for innovation and technology transfer, enabling societies to tackle present and future challenges (fourth industrial revolution), including the furtherance of intellectual property enforcement and cooperation.
4. An increased flow of “healthier” international trade as a result of convergence on the regulatory framework of technical, sanitary and phytosanitary measures.
5. Expedited procedures to business and reduced costs to consumers as a consequence of enhancement of customs procedures.

The FTA may also bring additional benefits which were not anticipated, such as a quicker resumption of growth for both sides, support and synergy in reforms, and reassurance of free trade and cooperation as a solution, rather than the cause of world economic imbalances.

In conclusion, EUROCAMARAS Brazil’s viewpoint is that the forthcoming FTA will provide real and tangible positive effects to businesses, governments, and the civil society of both blocs.

