

MERCOSUR–EU STRATEGIC PARTNERSHIP AGREEMENT

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The EU starts the translation stage and manages to approve an historic economic recovery plan. Meanwhile, Brazil seeks to reverse its negative image related to environmental matters.



INTRODUCTION

At the European Parliament's Committee on International Trade (INTA), Phil Hogan, Commissioner for Trade, confirmed that the legal scrubbing process of the agreement was completed and translations had begun. In the same way, Hogan addressed the Parliament of the Belgian region of Wallonia with the purpose of convincing them of the benefits of the bi-regional partnership. On another front, the EU responded with more integration to the economic challenges posed by the pandemic, an antecedent which could give some insight into how the European debate on the agreement with Mercosur will be. On the other hand, the Brazilian government, driven by commercial needs, has been trying to change how its environmental approach is perceived abroad. In addition, the European Ombudsman opened an inquiry regarding whether the European Commission committed irregularities when it arrived at an understanding with the South American bloc.

RATIFICATION PROCESS

In order to implement the Mercosur-European Agreement, a series of steps must first be developed. Since July 2019 both blocs were focused on the legal scrubbing process, in order to unify the use of terminology in the text and harmonize its content. That task has already finished and translations into the different languages of the UE have begun. Afterwards, both blocs will enter into their own decision-making processes.

In the European Union, the Commission will have to rule on the agreement and present it to the Council. To this end, it has two options: if the Agreement is conceived as a Mixed Partnership Agreement, this means that goes beyond the exclusive commercial faculties of the European Union, the approval of all countries will be needed in the Council, opening the possibility to any member to exercise its right to veto. However, if it is considered just as a simply commercial agreement, a qualified majority will be sufficient for the approval (which at the present, does not seem difficult to obtain). A third option is to divide the agreement, ratifying the commercial area in a first instance, in order to sign the agreement with the Common Market Council at the end of the second semester of 2020.

No matter what decision is taken by the Commission, the process continues at the European Parliament, where a simple majority of the votes is required for the approval. What is relevant here is that if it is considered a Mixed Partnership Agreement, it will have to be ratified by all EU member states. In any case, the Council may establish that the Agreement must be applied provisionally, completely or in part, but circumscribed to issues in which the EU has exclusive competence for the sovereignty granted to it by the member states.

Things are simpler in the other block. Once obtained the approval of the Council of the European Union, the institution that will stamp the signature on the agreement on behalf of Mercosur, is the Common Market Council. Subsequently, the ratification of each national legislature will be sought. Therefore, when a Mercosur member ratifies the Agreement in its own Parliament or National Congress, it will enter into force bilaterally between such country and the European Union, without having to wait for the accessions of the remaining members.

THE EU OPTS FOR FURTHER INTEGRATION

After 90 hours of meetings, the European Union (EU) took a step forward in its integration process: for the first time the European Commission will be able to take out loans in the financial markets, in order to cope with the economic consequences of the pandemic. Such measure, that estimates the issuance of bonds valued in EUR 750 billion that will be distributed as grants and loans, was accompanied by the approval of the regional budget for the period 2021-2027.



Nevertheless, some considerations should be taken into account prior to analyse how the measure above mentioned is connected to the European ratification process of the agreement with Mercosur. Firstly, it was an intra-European issue. Secondly, the initiative was conceived by France and Germany, which were forced to deal with the objections of the *frugal* (Netherlands, Austria, Denmark and Sweden). The countries positions are different when it comes to the bi-regional partnership, because, although the Dutch and Austrian rejections coincide, the opposition towards the agreement is also shared by the French government. The *Frugals* had a different point of view regarding the new instruments and the conditions to put them under exercise. They are countries with economies characterised by a greater fiscal tightening than those at the south. On the contrary, agricultural and environmental issues were not the determining factors.

Moreover, those new measures had to be approved by all the Union members, whereas such requirement is not necessary regarding the agreement with Mercosur. Indeed, there is a possibility that the European Commission will send just the trade section of the partnership to the Council of the EU. In that case a qualified majority would be sufficient for the approval - a fact that does not seem difficult to occur-. However, if the Agreement is presented as a Mixed Partnership one, the recent events are encouraging: Once again, the European bloc has shown that it can reach consensus through negotiation and dialogue as happened in 2016 when the Comprehensive Economic and Trade Agreement (CETA) with Canada was discussed.

Hogan seeks to convince the Walloon Parliament

The same conciliatory spirit was displayed in mid-July by Phil Hogan, Commissioner for Trade, when he had a videoconference with the Parliament of the Belgian region of Wallonia, which in February bindingly established that the federal government must reject the bi-regional partnership at the Council of the EU. To begin with, Hogan noted that many previous fears concerning CETA, which to some extent are similar to those now felt about the Mercosur agreement, did not materialize. In fact, in the last four years since CETA entered into force provisionally, EU imports of Canadian agri-food products have decreased by 10%. Not only that, but also, according to Hogan, the growth of 11% in Walloon exports between 2019 and 2020 was partly due to this treaty with Canada, with the pharmaceutical sector as one of the most favoured.

Afterwards, Hogan expanded his vision on the bi-regional partnership with Mercosur. In this regard, he highlighted the strong commercial ties between the South American bloc and Belgium. As a matter of fact, South America is Belgium's eighth largest trading partner. Furthermore, over 1600 Belgian companies, 83% of which are SMEs, already export to Mercosur for a value of almost 5 Billion Euros, so a reduction in tariffs would consequently increase profits.



Nonetheless, Wallonia's scepticism arises mainly from the agricultural sector. Therefore, the commissioner claimed that reducing the existing tariffs would mean benefits for local exports, especially referring to malt, potatoe, chocolate and biscuits. Additionally, Hogan remarked that the agreement does not compromise Walloon agricultural misgivings regarding beef, sugar and poultry. In fact, the Agreement has various instruments, such as different types of quotas that can be progressively applied, safeguard clauses (they provide the capability to temporarily suspend imports of a good which increase may cause, or threaten to cause, serious injury to the domestic industry) and the precautionary principle (public authorities have a legal right to act in order to protect human, animal or plant health, or the environment, in the face of a perceived risk even when scientific analysis is not conclusive). Besides to ensuring that no Mercosur product will enter the European market unless it complies 100% with EU standards, Hogan conveyed that a fund of one billion euro will be available to aid farmers who may be negatively affected.

Finally, regarding the potential harm on the environment that may arise out from the agreement, Hogan addressed that *"If any Mercosur leader threatens to pull out from the Paris Agreement anytime during the implementation period, the deal falls. In my view, this is a far better outcome for the climate than if we had no deal with Mercosur at all"*.



BRAZIL AIMS TO CHANGE THE IMAGE OF ITS ENVIRONMENTAL POLICY

Due to commercial needs, the Brazilian government has been seeking to overturn the negative portrayal of its environmental policy through better communication and concrete measures. By early July 2020, at the 56th Mercosur Summit of Heads of State, President Jair Bolsonaro referred to the agreement with the EU stating that *"Our government will continue the dialogue with different interlocutors in order to change distorted opinions about Brazil and to expose the measures that had been taken in favor of the protection of the Amazon forest and the well-being of the indigenous population."* To this end, it is being considered the allocation of R\$60 million to the Seretariat of Social Communication (Secom) as a means to improve the government's image abroad, which was also damaged by international criticism about how the pandemic was handled - an issue to which this agency did not gave much relevance -.

These efforts will not be enough to convince the European public opinion that is profoundly awared by ecological concerns and had shown its strength during the last municipal elections in France. A result that can easily happen again in the local elections in North Rhine-Westphalia (Germany), scheduled for September 2020. As if all this was not enough, the closer we get to the defining stages, the more empirical evidence showing the environmental deterioration is gathered by multiple actors such as civil society organizations, scientists and even the National Institute for Space Investigations of Brasil (INPE).



Consequently, the Brazilian government issued a decree that bans the slash-and-burn in the Amazonia for 120 days and extended the deployment of the military to prevent illegal deforestation. The politician behind these resolutions is Vice President Hamilton Mourão, commonly characterized as the "military wing" of the Bolsonaro administration, and who continually moderates the most controversial guidelines in the president's foreign policy. Since he also chairs the National Council for the Legal Amazonia, Mourão's profile has shown helpful to compensate the distrust around Ricardo Salles, Minister of Environment. In contrast to Salles, Mourão has been more open to criticism, even assuring that the government should have paid attention to this area earlier and that *"denial leads nowhere."*

Nevertheless, these pro environment decisions were not mainly taken with the Mercosur-EU agreement in mind. Instead, it was crucial the warning from foreign investors (among whom Europeans predominated) and the Brazilian business sector's fear for losing international partners and customers. In the middle of a sharp economic decline due to the pandemic, these warnings with short-term effects became highly important. In any case, an important share in the European decision to pass the bi-regional partnership depends on Mercosur avoiding during the second semester of 2020 the massive forest fires occurred in Brazil during 2019.



The European Ombudsman's Office investigates the European Commission

On a separate issue, the European Ombudsman, led by Emily O'Reilly, announced that an inquiry will be conducted into whether the European Commission committed illegalities when it agreed to the partnership with Mercosur. The complaint was submitted by five civil society organisations: ClientEarth, Fern, Veblen Institute, La Fondation Nicolas Hulot pour la Nature et l'Homme and International Federation for Human Rights. They argue that the European Commission violated its internal regulations by closing the negotiation without having taken into account a Sustainability Impact Assessment (SIA) and, consequently, failed to comply with the Treaty on the Functioning of the EU, which contains goals of sustainability for the whole bloc's trade.

Although the European Commission has three months to answer the questions sent, it has already expressed its willingness to cooperate with the investigation, and to prove that all the legal provisions were properly obeyed. At the same time, it stressed that the inquiry concerns only the SIA and not the whole agreement.

If the complaint is found to be accurate, the next step would take place in the Court of Justice of the EU. At this instance, it is unlikely that the partnership with Mercosur will be blocked because of this investigation, not to mention that it could take longer than the ratification process itself. At the European Parliament's International Trade Committee (INTA), Phil Hogan, Trade Commissioner, commented that the legal scrubbing process of the agreement was completed and translations had begun.



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