

# MERCOSUR–EU STRATEGIC PARTNERSHIP AGREEMENT

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*The first advances towards the signing of an additional environmental agreement were achieved*



## INTRODUCTION

The recent approaches to reaching an additional agreement, which would attempt to ease the environmental concerns, have opened a new chapter in the story of the Mercosur-EU partnership, but, despite of this, the path to unlocking the current situation is far from being easy. On a positive note, nearly a dozen European foreign and trade ministers have openly expressed their support towards the bi-regional partnership, and the Uruguayan Foreign Minister, Francisco Bustillo, is preparing his imminent official visit to the EU. Furthermore, the new Regional Comprehensive Economic Partnership (RCEP) has been considered to be a wake-up call for the EU to speed up the agreement with Mercosur.

## THE RATIFICATION PROCESS

In order to carry out the Mercosur-EU Agreement, a series of steps must first be followed. Since July 2019, Mercosur and the EU have focused on the legal scrubbing process, in order to unify the terminologies in the text and harmonize its content. Once this task is completed, the next step will be to translate the text into the different EU languages and, afterwards, both blocs will effectuate their own decision-making processes.

On the one hand, the European Commission will have to present the agreement to the European Council. The partnership between Mercosur and the EU consists of three pillars: political dialogue, cooperation and trade. If the European Commission puts to vote the entire agreement, shared competencies between the EU and the member countries will be involved; therefore, the approval of every state will be needed, existing the possibility of objecting by veto. Nevertheless, there is a feasibility of splitting the agreement; in this case, a qualified majority would be sufficient in order to approve the trade pillar (55% of the Member States, covering at least 65% of the EU's population), because that section includes issues in which the EU has exclusive competence.

If this stage is successful, the partnership will be signed and taken to the European Parliament, where a simple majority of votes will be required for its approval (the three pillars can be voted at the same time or separately). Afterwards, the process will continue in the national parliaments, although, the EU Council can decide to provisionally start applying matters that are under EU's authority.

Things are simpler on the other bloc. Once the European Union's Council gives his approval, the institution that will stamp the signature on the agreement on behalf of Mercosur is the *Consejo del Mercado Común* (CMC). Subsequently, the ratification of each national legislature will be sought. 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 accession of the remaining members.

## IN SEARCH OF A COMPLEMENTARY AGREEMENT

In recent months, some obstacles to the implementation of the Mercosur-EU agreement have emerged, although, during November, the situation began to improve. To begin with, the foreign and trade ministers of the Czech Republic, Denmark, Estonia, Finland, Italy, Latvia, Spain, Sweden and Portugal sent a letter of explicit support for the bi-regional partnership to the European Commissioner for Trade, Valdis Dombrovskis. In addition to pointing out the values shared by both blocs and the reciprocal trade benefits that the FTA would generate in a sustainable manner, the signatories also emphasized on the negative effects that rejecting the partnership would have: a decline in the EU's credibility as a negotiating and geopolitical partner and the strength of its competitors position in the region. Nonetheless, the letter manifests that they are prepared to consider any instrument that could contribute to enforce the environmental commitments; something regarded as the main possible way to unlock this situation.



Valdis Dombrovskis, European Commissioner for Trade (EFE/Olivier Hoslet).

The Mercosur countries' official position is that, technically, there is no need for extra clauses regarding sustainable development. This posture is also held by many actors in Europe. Nevertheless, the growing opposition in Europe has led to a negative reaction in Brazil in terms of achieving an additional agreement, at least for now. This new stage towards the ratification of the bi-regional partnership involves bringing positions together once again, as has been happening for over 20 years, so it should not be a surprise if new ups and downs are being experienced. One of the issues that has to be defined is when to address this complementary document, since there are aspects of the legal scrubbing, started in July 2019, that are still open and that Mercosur would choose to prioritize.

Regarding to the mechanism required in order to formalize these new provisions, it can be useful to recall how the European Council approved the Comprehensive Economic and Trade Agreement (CETA) with Canada in 2016. On that occasion, it was still not possible to divide the partnership into parts, so there was no other option rather than achieving the consensus of all member states, which turned out to be a serious challenge, due to the fact that the Belgian region of Wallonia was not allowing its federal government to approve it. Sorting out that institutional problem was an urgent matter, so the veto was lifted by the signing of a Joint Interpretative Instrument, a binding type of document established in the 31st article of the Vienna Convention on the Law of Treaties. This additional agreement was meant to appease some of the concerns previously raised, especially those referring to the Investment Court System (ICS) that aims to resolve investor-state disputes. In particular, the CETA Joint Interpretative Instrument added the commitment to agree on a selection method and a code of conduct to ensure the impartiality of the judges.

It is clear that the complementary agreement that is being considered for the partnership with Mercosur would be focused on environmental issues, especially on the topics of deforestation and accession to the Paris Agreement. Even though some of the new provisions may seem redundant with what has already been included in the original agreement, there is a chance that the additional agreement will be aimed to strengthen the dispute resolutions mechanism, foreseen in the sustainable development chapter, which states that, if a dispute arises, consultations have to be held between the parties involved. If no mutually satisfactory resolution is reached, a panel of experts will be established, which will give a recommendation that must be taken into account in order to resolve the dispute. The difference between this case and the dispute settlement mechanism, which covers the rest of the trade pillar, is that here, ultimately, there is an arbitration panel which issues a final ruling. However, there is a precautionary principle that allows the parties to temporarily suspend the agreement if there is an urgent risk of environmental degradation, even if the scientific evidence is inconclusive.

This last point was stressed by the Uruguayan Foreign Minister, Francisco Bustillo, who will be engaging an official visit to the EU in the next few days. As a prelude to his meeting with the European leaders, Bustillo gave one of the opening speeches at the 3rd European Investment Forum in Uruguay, stating that *"we would like Uruguay and Mercosur's commitment to be matched by the European bloc. After 20 years of technical negotiations, it is now time for politics. The final process no longer needs leaders who are often caught up in their own internal affairs, it requires real statesmen"*.



Francisco Bustillo, Uruguayan Foreign Minister (Uruguayan Presidency/Ricardo Rey Fernandez).

Moreover, the recent signing of the Regional Comprehensive Economic Partnership (RCEP), which brings together fifteen countries in Asia and Oceania, highlighted the urgency of implementing the Mercosur-EU agreement. Indeed, Jürgen Hardt, spokesman for the Christian Democratic Union of Germany (CDU) and the Christian Social Union of Bavaria (CSU), argued that *"we cannot wait for China to also reach an agreement with the South American countries without Europe. [...] The excessive criticism of the Mercosur agreement is incomprehensible. The agreement would significantly raise common environmental standards and, therefore, meet our expectations not only in terms of trade policy"*. In the same vein, the president of the German branch of the International Chamber of Commerce (ICC), Holger Bingmann, expressed *"the conclusion of the RCEP agreement shows that Europe is acting too slowly on similar trade initiatives such as Mercosur or CETA"*, the latter being provisionally in force since 2017, after the approval of the European Parliament.

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