

This document contains the EU proposal as it stands at the end of the XXXIInd round of negotiations (21 February – 2 March 2018) on Energy and raw materials 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.

Energy and Raw Materials – EU proposals

Paragraphs to be added to Articles placed in the Title on Trade in Goods

**New Paragraphs 3 and 4 (prohibition of Import and export monopolies) in the article on STEs
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, 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.

[New EU proposal: 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.]

New Paragraph 2 (prohibition of import and export Pricing requirements) in the article on Prohibition of quantitative restrictions.

Paragraphs to be added to Articles placed in the Title on Trade in Services and Establishment

Authorisation for exploration and production of crude oil, natural gas and electricity

1. If a Party requires an authorisation to explore for or produce crude oil, natural gas or electricity, that Party shall grant such an authorisation in accordance with the conditions and procedures set out in Articles [X] and [X] of Section [A] [Domestic Regulation].
2. That Party shall publish, *inter alia*, the type of authorisation, the relevant area or part thereof, and the proposed date or time limit for granting the authorisation, in such a manner as to enable potentially interested applicants to submit applications.
3. The Parties may grant authorisations without complying with paragraph 1 in any of the following cases:
 - a) the area has been subject to a previous procedure complying with Articles [X] and [X] which has not resulted in an authorisation being granted;
 - b) the area is available on a permanent basis for the exploration for or production of crude oil or natural gas; or
 - c) the authorisation granted has been relinquished before its date of expiry.
4. When granting an authorization in accordance with paragraph 3 a Party shall, without undue delay, make public a notice in such a manner as to inform potentially interested applicants indicating the areas within its territory which are available under paragraph 3 and where detailed information in this regard can be obtained. Any significant change in this information shall be the subject of an additional notice. No application for an authorization under this paragraph can be considered until after the publication of the relevant notice.
5. Each Party may require an entity which has been granted an authorisation to pay a financial contribution or a contribution in kind. The contribution shall be fixed in such a manner so as not to interfere with the management and the decision-making process of the entity which has been granted an authorisation.
6. Each Party shall ensure that the applicant is provided with the reasons for the rejection of its application so as to enable such a person to have recourse to procedures for appeal or review where necessary. The procedures for appeal or review shall be made public in advance.

Third-party access to energy transport infrastructure

1. Each Party shall ensure that owners or operators of transmission networks in its territory grant access to the energy infrastructure for the transport of natural gas and electricity of any entity of the Parties. Access to the energy infrastructure shall be granted within a reasonable period of time from the date of the request for access by that entity.
2. Notwithstanding paragraph 1 of this Article, a Party may introduce or maintain a limited list of derogations from the right to third party access based on objective criteria set out in legislation, provided that they are necessary to fulfil a legitimate policy objective.

3. Each Party shall ensure that entities of the Parties are accorded access to and use of energy transport infrastructure for the transport of gas and electricity on reasonable and non-discriminatory terms and conditions, including non-discrimination between types of energy, and at cost-reflective tariffs. Each party shall publish the terms, conditions and tariffs for the access to and use of energy transport infrastructure.

4. Each Party shall maintain or establish a regulatory body or any other independent body that is separate from, and not accountable to, operators providing or entities having access to energy transport infrastructure, and which shall be entrusted to resolve disputes regarding appropriate terms, conditions and tariffs for access and use within a reasonable period of time.

