

This document contains the side by side text as it stands at the end of the XXXIInd round of negotiations (21 February – 2 March 2018) on Transparency 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.

TRANSPARENCY - SIDE BY SIDE

MERCOSUR PROPOSAL	EU PROPOSAL
<p>ARTICLE 1: DEFINITIONS</p> <p>For the purposes of this [Chapter]:</p> <p>measure of general application means laws, regulations, judicial decisions, procedures and administrative rulings of general application that may have an impact on any matter covered by this Part of the Agreement; and</p> <p>interested person means any natural or legal person that may be affected by a measure of general application.</p> <p>administrative decision means a decision with a legal effect that affects the rights and obligations of a specific person in an individual case, and covers an administrative action or failure to take an administrative action or decision as provided for in the Party's domestic law and legal system.</p> <p>ARTICLE 2: OBJECTIVE</p> <p>1. Recognising the impact which their respective regulatory environment may have on trade and investment between them, the Parties agree on the importance of promoting a transparent and predictable regulatory environment taking into consideration the following guiding principles:</p> <p>a) The importance of promptly publishing or making available in accordance with its respective rules and procedures, and where feasible via electronic means, any laws or</p>	<p>ARTICLE 1: DEFINITIONS</p> <p>For the purposes of this [Chapter]:</p> <p>measure of general application means laws, regulations, judicial decisions, procedures and administrative rulings of general application that may have an impact on any matter covered by this Part of the Agreement; and</p> <p>interested person means any natural or legal person that may be affected by a measure of general application.</p> <p>administrative decision means a decision with a legal effect that affects the rights and obligations of a specific person in an individual case, and covers an administrative action or failure to take an administrative action or decision as provided for in the Party's domestic law and legal system.</p> <p>ARTICLE 2: OBJECTIVE</p> <p>1. Recognising the impact which their respective regulatory environment may have on trade and investment between them, the Parties shall aim at promoting a transparent and predictable regulatory environment and efficient procedures for economic operators, especially small and medium-sized enterprises in accordance with the provisions of this Chapter.</p> <p>ARTICLE 3: PUBLICATION</p> <p>1. Each Party shall ensure that a measure of general application with respect to any matter covered by Part []:</p>

regulations related to matters covered by this Agreement in such a manner as to enable any person to become acquainted with them, providing to the extent possible, an explanation of their objectives of and rationale for;

- b) The value of providing reasonable opportunities to interested persons to comment on draft laws or regulations of general application with respect to any matter covered by this agreement in accordance with its respective legislation;
- c) The relevance of establishing appropriate mechanisms for receiving and responding to enquiries from the other Parties to the present Agreement and from any person regarding measures of general application proposed or in force with respect to matters covered by this Agreement;
- d) The need to administer in an objective and impartial manner measures affecting any matter covered by this Agreement and to provide for judicial or administrative tribunals or procedures for reviewing administrative decisions with respect to matters covered by this Agreement, ensuring the impartiality and independence of such procedures, as well as the respect of due process.

ARTICLE 3: PROVISION OF INFORMATION

Upon request of a Party, the other Party shall, to the extent possible, promptly provide information and respond to questions pertaining to any measure of general application or any proposal to adopt or amend any measure of general application with respect to any matter covered by this Agreement.

ARTICLE 4: PROMOTION OF GOOD

- (a) is promptly published via an officially designated medium and where feasible, electronic means, or otherwise made available, in such a manner as to enable any person to become acquainted with them;
- (b) provide an explanation of the objective of, and rationale for, the measure; and
- (c) allow for sufficient time between publication and entry into force of such measures, except where it is not possible on grounds of urgency.

2. When adopting or amending laws or regulations of general application with respect to any matter covered by Part [], each Party shall, in accordance with its respective rules and procedures:

- (a) publish at an early appropriate stage the draft law or regulation or consultation documents providing details of the objective of, and rationale for the law or regulation;
- (b) provide reasonable opportunities and an appropriate time period for interested persons to comment and
- (c) endeavour to take into consideration the comments received.

ARTICLE 4: ENQUIRIES

1. Each Party shall establish or maintain appropriate mechanisms for receiving and responding to enquiries from any person regarding any measure of general application which is proposed or in force with respect to any matter covered by Part [], and how they would be applied.

2. Upon request of a Party, the other Party

REGULATORY PRACTICES

1. The Parties recognize the importance of promoting regulatory quality and performance and good regulatory practices, including by:
 - a) encouraging the use of regulatory impact assessments when developing major initiatives;
 - b) establishing or maintaining procedures to promote periodic retrospective evaluation of measures of general interest; and
 - c) exchanging information on their good regulatory practices.
2. The Parties shall endeavour to cooperate in regional and multilateral fora to promote good regulatory practices and transparency in respect of international trade and investment in areas covered by this agreement.

ARTICLE 5: DISPUTE SETTLEMENT

Chapter X (Dispute Settlement) shall not apply to this Chapter.

ARTICLE 6: RELATION TO OTHER CHAPTERS

The specific transparency commitments under this Agreement shall be governed by the established under its specific Chapters. In the event of any inconsistency between the principles established in this Chapter and the provisions included in another Chapter of this Agreement, the other Chapter shall prevail to the extent of the inconsistency.

shall promptly provide information and respond to questions pertaining to any measure of general application or any proposal to adopt or amend any measure of general application with respect to any matter covered by Part [] that the requesting Party considers might affect the operation of this Agreement.

ARTICLE 5: ADMINISTRATION OF MEASURES OF GENERAL APPLICATION

1. Each Party shall administer in an objective, impartial and reasonable manner all measures of general application with respect to any matter covered by Part [].
2. Each Party, in applying such measures to particular persons, goods or services of the other Party in specific cases, shall:
 - (a) endeavour to provide interested persons, that are directly affected by administrative proceedings, with reasonable notice, in accordance with its laws and regulations, when such proceedings are initiated, including a description of the nature of the proceedings, a statement of the legal authority under which the proceedings are initiated and a general description of any issues in controversy;
 - (b) afford such interested persons a reasonable opportunity to present facts and arguments in support of their positions prior to any final administrative decision, in so far as time, the nature of the proceedings and the public interest permit.

ARTICLE 6: REVIEW AND APPEAL

1. Each Party shall establish or maintain judicial, arbitral or administrative tribunals or procedures for the purpose of the prompt review and, where warranted, correction of an administrative decision with respect to any

matter covered by Part []. Each Party shall ensure that its procedures for appeal or review are carried out in a non-discriminatory and impartial manner by tribunals that shall be impartial and independent of the authority entrusted with administrative enforcement and those responsible for such tribunals shall not have any substantial interest in the outcome of the matter.

2. Each Party shall ensure that the parties to the proceedings in paragraph 1 are provided with the right to:

- (a) a reasonable opportunity to support or defend their respective positions; and
- (b) a decision based on the evidence and submissions of record or, where required by its law, the record compiled by the administrative authority.

3. The decision in paragraph 2 shall, subject to appeal or further review as provided for in its law, be implemented by, and shall govern the practice of, the office or authority entrusted with administrative enforcement.

ARTICLE 7: REGULATORY QUALITY AND PERFORMANCE AND GOOD REGULATORY PRACTICES

1. The Parties recognise the principles of good regulatory practices and shall promote regulatory quality and performance, including by:

- (i) encouraging the use of regulatory impact assessments when developing major initiatives;
- (ii) establishing or maintaining procedures to promote periodic retrospective evaluation of measures of general interest.

2. The Parties shall endeavour to cooperate in regional and multilateral fora to promote good regulatory practices and transparency in respect

	of international trade and investment in areas covered by Part [].
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