EUROPEAN UNION

DELEGATION TO BRAZIL

TRADE SECTION

EU Trade and Economic Counsellors Meeting
20 January 2016
Report

Venue: EU Delegation
Attended: AT, DE, BE, CZ, DK, EE, EL, ES, FI, FR, HR, HU, IT, NL, PL, PT, SE, SK, UK,
I. DISCUSSION POINTS.
1. Meeting report approval.
The report of the last meeting, held on 16 of December, was approved without additional comments.
2. MA issues:

- **Market Access new follow-up table.**

  DEL thanked all 10 MS that have identified the market access issues of their greatest interest and of course other MS willing to participate shall be more than welcome. Additionally, DEL informed that it is going to launch the first two MA Small Committee meetings to deal with trade irritants in the month of February. Depending on the importance and the interest indicated by MS each barrier will be subject to 15-30 minutes discussions every two months.
- **MP 690. Measures affecting taxation of wine and spirits.**

  DEL informed that MP 690/15 was finally adopted into Law 13.241 of 30 December 2015. Key amendments introduced by the Congress – e.g. reduction of the ad valorem IPI tax for wines from originally proposed 10% to 6% in 2016 and 5% in 2017 as well as the reduction of the tax rate for cachaça (originally set at 25% vs 30% for other spirits) to 17%, thus widening the discrimination against other spirits set by the previous text – were vetoed by the President.
  DEL informed that the Congress still could reject the vetoed provisions, however given the requirement of the absolute majority and a dedicated joint session that would have to be conveyed within 30 calendar days as of notification of the veto this option seems unlikely.
  The final text of the law 13.241/15 seems to be acceptable to the EU industry that is particularly keen on switching from the administratively complicated (and also discriminatory) "ad rem" system to the more streamlined "ad valorem" calculation of the IPI tax.

  In relation to the remaining discrimination of other spirits vs cachaça, DEL confirmed that it appears that the difference of 5 percent in IPI taxation is more than de minimis. While it is unlikely that the Commission would take this issue to the WTO, the

Commission will raise this in formal meetings with Brazilian authorities in the future such as the annual EU-Brazil Trade Sub Committee.

- **WTO Notification TBT/BRA/649 Wine Coadjuvants.**

  DEL informed that, in addition to comments submitted by several EU and Brazilian sectoral organizations such as CEEV or ABRABE, the Commission submitted early in January its comments to ANVISA's Technical Regulation on additives & technology used in the production of wine. Comments are very technical and therefore were not discussed in detail. DEL explained that the Commission underlining objective was to request ANVISA for further alignment of its provisions to OIV's standards. The Commission comments will be circulated as a follow-up to this meeting.
  DEL also summarized several issues affecting EU wine exports to Brazil, which include disparities in sugar level classifications and testing methodologies and TBT consultations nº 613 and 649 on wine making standards.

- **PL 6.897/2006 regarding imported agricultural goods.**

  The Chamber of Deputies –approved in 2015 the PL nº 6.897/ 2006, from deputado Luis Carlos Heinze, which would impose testing for pesticide residuals and harmful organisms on all imported agricultural products. This project was sent to the Senate, in June 2015, and adopted by the Senate Agriculture and Agricultural Reform Committee in December 2015, despite the potential problems Brazil could face within the WTO and Mercosur, as pointed out by Senator Donizetti Nogueira and by government representatives at a public audience in the Senate. Several MS pleaded for a proactive approach, towards the Senate possibly using CNA contacts. DEL will coordinate follow-up actions and report back.

3. Anti-dumping issues.

- **Investigation on frozen French fries (MDIC/SECEX nº52272.001705/2015-32).**
  DEL informed MS on the new AD investigation opened on 14 December against frozen potatoes imported from Belgium, Germany, France and the Netherlands.
  DEL also indicated that although this investigation concerns only 4 MS, it is receiving lots of attention form the industry since BRZ represents 10% of the their global exports. They also fear that domestic producers from other countries with growing industrialisation will take the example of Brazil and South Africa and initiate more AD cases against these products.
  Given the importance and attention received by this investigation, both from the industry and the concerned MS, DEL has conveyed a dedicated meeting taking place on Wednesday, 27 January.
- **New DECOM requirements for 3rd parties to register in AD investigation procedures.**
  DEL informed MS that as of adoption of attached the SECEX Ordinance 58/2015 of 29 July this year, on a new electronic system of submission of the documents within AD investigations. All new investigations (opened after 31 July) will require the use of this system (SDD- ´´Sistema DECOM Digital´´).
  The Ordinance includes instruction as to the first entry and registration in the system through filling in an on-line form. In addition to that any submitted documents would have to be accompanied by a digital signature issued in accordance with Brazilian ICP-Brasil certificate. Instructions concerning obtaining this certificate are available on the National Institute of Technology and Information website: www.iti.gov.br.

DEL advised MS to obtain a digital certificate as soon as possible since the procedure may be lengthy and require a number of administrative formalities to be fulfilled.

4. 2015 overview and 2016 outlook, perspectives and objectives.

DEL mentioned that in 2015 several relevant initiatives developed in coordination with MS were launched, resumed, or reinforced such as: the Trade & Economic visits to Brazilian States; a Seminar co-organized with Eurocâmaras (and FIESP) on CSR in São Paulo; several Market Access Meetings with Chambers of commerce in São Paulo; a new working method to deal with Market Access barriers more efficiently; monthly coordination meetings with MS plus ad-hoc meetings on several specific issues (IPR; Agri & SPS; Civil Aviation). These initiatives were positively assessed and to the extent possible further developed in 2016.

DEL informed that in the context of the next EU – Brazil Summit to be held in 2016 in Brasilia, DEL would co-organise a EU-Brasil Business Summit as well as a Two Ways Investment Seminar. DEL is also considering an event on infrastructure.

DEL also indicated that the next Trade and Economic visit to a State should be to Minas Gerais, in March or April.

ES commented on the suggestion of an event on investment opportunities in infrastructure. Although a very interesting subject, most private stakeholders are big companies from different MS, which are generally well informed and competing with each other.

5. AOB.

IT raised the issue of the import regime for participants in the Rio Olympics. NL and BE mentioned that the basic legislation is in place since before the 2014 World Cup, but there have been some additions and modifications. The Ministry of Finance has been briefing the consulates in Rio and São Paulo and DEL will look into the possibility of organising a briefing in Brasilia.

PT mentioned an increase in taxation on payments made by companies outside Brazil, which needs further investigation.

6. Follow-up actions

- DEL to circulate COM comments on ANVISA's Technical Regulation on additives & technology used in the production of wine. **Done on 21/01 via email.**

- DEL will circulate the guest presentation. **Done on 21/01 via email.**

II. PRESENTATION

'Acordo de Cooperação e Facilitação de Investimentos: características, diferenças com modelos tradicionais e evolução do modelo'.

George Marques, Chefe da Divisão de Negociações de Serviços
Pedro Mendonça Cavalcante, Secretário da Divisão de Negociações de Serviços
Departamento de Assuntos Financeiros e Serviços,
Subsecretaria-Geral de Assuntos Econômicos e Financeiros
Ministério das Relações Exteriores

Mr. Marques and Mr. Cavalcante presented an interesting overview of the Brazil's historical stance towards BITs highlighting the fact that the 14 agreements negotiated by the Government in the nineties were never formally voted by Congress. They were eventually withdrawn by the Government in the light of the lack of political support and objections raised in their examination by Congress.

Regarding Brazil's stance on rejecting the ISDS system, Mr. Marques pointed out that while one of the key arguments in favour of the mechanism is that an ad-hoc arbitrage court might be more impartial than the host country's courts of justice, the fact remains that the arbitrage award would have to be implemented by a local court of justice anyway. Therefore its content could be altered or neglected through the Government's direct or indirect actions or ad-hoc

regulations (e.g. creating a tax over an eventual compensation awarded by the arbitrage court).
The speakers also mentioned that Brazil's new model of BIT, the Investment Cooperation and Facilitation Agreement (ICFA), is the result of the specific demand of Brazil's private sector to protect their overseas investments and facilitate their business, mostly, in African countries. However after signing the three first agreements with African countries (Mozambique, Angola and Malawi) the model was very well received from other trading partners and negotiations resulted in the signature of another three agreements with LA countries (México, Colombia and Chile), and one more agreement on track for signature early this year (Peru). Information requests from many other countries may result in some more agreements signed during 2016.
Asked about the eventual negotiation of an investment chapter in the context of the EU-Mercosul Association Agreement negotiations Mr. Marques said that, despite the still large differences between the EU and Brazil stances on foreign investment protection provisions, the recent steps undertaken by both partners to evolve their models lead to a converging new scenario in which prospects for a successful negotiation can be more positively considered.