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Via email: [consultations@international.gc.ca](mailto:consultations@international.gc.ca)

Canada–MERCOSUR Trade Consultations  
Global Affairs Canada  
Trade Negotiations Division (TCW)  
Lester B. Pearson Building  
125 Sussex Drive  
Ottawa, ON K1A 0G2

Dear Trade Negotiations Division:

**Re: Canada–MERCOSUR Trade Consultations**

We are writing on behalf of the Canadian Bar Association's International Law, Immigration Law, Competition Law sections, its Anti-Corruption Team and the Canadian Corporate Counsel Association to provide our views on the scope of negotiations regarding a potential Free Trade Agreement (FTA) between Canada and MERCOSUR (Argentina, Brazil, Paraguay and Uruguay).

The CBA is a national association representing over 36,000 jurists, including lawyers, notaries, law teachers and students across Canada. We promote the rule of law, access to justice, effective law reform and provide expertise on how the law touches the lives of Canadians every day.

**Current State of International Trade and Investment**

In our view, the international trade and investment landscape is in a state of flux and Canada's trade and investment priorities should be set against this backdrop.

These "shifting grounds" include the stalled WTO Doha Round, China's "One Belt, One Road" initiative, the China-conceived Asian Infrastructure Investment Bank, the Canada-European Union Comprehensive Economic and Trade Agreement (CETA), the uncertain fate of the Trans-Pacific Partnership (TPP), the U.S. threat of protectionism and the formation of trading blocs.

## General Support for a Free Trade Agreement with MERCOSUR

We generally support a Canadian re-engagement with the region and an FTA with MERCOSUR for the following reasons:

- Canada is a member of the Organisation of American States (OAS) and has concluded several FTAs with Latin American states and groups of states. Moreover, in the early 2000s, Canada was actively promoting a Free Trade Area of the Americas (FTAA). While it may have been premature at the time, we believe the TPP encouraged a narrowing of the gap that divided some of the FTAA negotiating countries.
- Brazil, a leading MERCOSUR party, could serve a potential interlocutor and advocate for common Brazil/MERCOSUR-Canada interests with other parties such as its fellow BRIC countries (Brazil, Russia, India and China, which are at a similar stage of economic development).
- Given the uncertainty surrounding U.S. trade and investment policy, Canada may offer a stable North American anchor for MERCOSUR and benefit from opportunities to trade and invest in the Southern Cone region.

## Specific Comments

The following addresses some of the specific areas where the Government indicated it would appreciate receiving views.

### Trade & Investment

#### *Model FTA*

We recommend that Canada use this opportunity to review its model FTA. We suggest that the experience and lessons learned from the Canada-Chile, CETA and TPP negotiations be relied upon when negotiating a Canada-MERCOSUR FTA. More specifically, investment provisions and dispute settlement mechanisms – namely discussions on modifications to the International Centre for Settlement of Investment Disputes (ICSID) mechanism – merit careful attention.

#### *Incidents Affecting Business Practices Regarding State-Owned Enterprises*

A current challenge to the global liberal trade regime established after the Second World War is the blurring of lines between the private and public sectors' interests and relationships with each other. The challenge is that on one hand, the global liberal trade regime has been premised on the State's role in promoting fair competition, economic efficiency and prosperity through the private sector. On the other hand, trade and investment by state-owned or state-controlled enterprises may be aimed at satisfying national particularistic interests. The participation of at least certain types of state-owned or controlled enterprises in a regime custom-made for global liberal trade may undermine the success of the system.

### Interests and Values of Canadians

**Corporate social responsibility:** Canada should be mindful of how past experiences of Canadian operations in Latin America may be perceived and how it could affect public buy-in.

**Transparency:** It will be important that any FTA provide for an acceptable level of transparency and allow a close scrutiny of business practices of MERCOSUR partners.

***Equality, non-discrimination, and human rights:*** Canada should ensure that the FTA promotes these rights both in Canada and in the MERCOSUR region. Given the potential challenges in some Latin American countries, it will require vigilant and constant attention to ensure that the FTA results in an equitable and fair distribution of economic prosperity.

***Trade and gender:*** Pay equity, equal access to education and training, proportional gender representation across professions are all drivers of economic prosperity, societal and individual well-being. Fostering these rights should be a priority for Canada.

***Good governance and rule of law:*** Canadian businesses benefit from an environment where good governance and the rule of law are protected. While foreign companies will benefit from the Canadian environment, it will be important to ensure that Canadian companies are afforded the same protections when doing business abroad. In the absence of these protections, the trading relationship can become skewed in favour of foreign businesses.

***Respect for the environment:*** Both Canada and several Latin American countries are committed to sustainable economic development. International trade and investment obligations must promote respect for the environment.

***Culture:*** Cultural differences enhance a country's opportunity to distinguish itself when competing for a share of the global marketplace. These differences, however, may require protection against appropriation and decimation by aggressive trade and investment practices. For example, cultural practices of indigenous people, of rural ways of life, intellectual and other property rights should be protected under trade and investment agreements.

### Other Topics

We also recommend that the following topics be included in a Canada-MERCOSUR FTA:

***Robust anti-corruption and transparency:*** At a minimum, this chapter should reflect the contents of TPP Chapter 26. However, we would recommend using this opportunity to include a stronger chapter.

***Anti-competitive business conduct:*** Provisions designed to encourage each party's adoption and enforcement of domestic measures to proscribe anticompetitive business conduct should be considered, as well as commitments to facilitate cooperation between parties on issues of competition law enforcement policy.

***State-owned enterprises and designated monopolies:*** We recommend including a chapter similar to TPP Chapter 17 and a chapter on Small and Medium-Sized Enterprises such as in TPP Chapter 24 to protect the values and interests discussed above and ensure appropriate limitations on the ability of the state to distort trade or hinder investment through state ownership or designation of monopolies.

***Consumer protection:*** We also recommend considering provisions encouraging each party's adoption and enforcement of domestic measures to proscribe fraudulent and deceptive commercial activities and promoting cooperation between parties on consumer protection laws.

***Education Chapter:*** We also take this opportunity to suggest the inclusion of an *Education Chapter* to promote universal primary education.

**Global Mobility:** Promoting international investment and trade requires the removal of barriers to the movement of individuals. We recommend including a chapter on the global mobility of individuals – such as professionals, intra-company transferees and business visitors – containing provisions similar to those included in the Canada-Chile or NAFTA agreements.

## **Conclusion**

We appreciate the government seeking input on a proposed FTA with MERCOSUR and would welcome an opportunity to discuss our comments. We also look forward to the opportunity for continued participation should this initiative proceed.

Yours truly,

*(original signed by Marc-André O'Rourke on behalf of Noemi Gal-Or, Vance Langford, Rodney Frank, Stephen Rotstein and the Anti-Corruption Team)*

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