EU-Mercosur Trade Agreement: A bad deal for transparency, policy coherence and access to medicines

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The European Union (EU) and Mercosur have been negotiating a free trade agreement for the last 16 years, with talks picking up pace in the last 15 months. Negotiations are now nearing completion and there are increasing concerns among public health advocates, patient and consumer organisations, and other stakeholders, both in Europe and the Americas. They are rightly worried about how these talks have been conducted and the impact some of the provisions reportedly put forward by the European Commission (EC) could have on the fulfillment of Sustainable Development Goals (SDG), in general, and sustainable access to medicines, in particular.

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Despite pleas for transparency and commitments to a greater openness, this deal has been largely negotiated far from the public eye. Taking into account potential implications for the lives and wellbeing of millions, EU and Mercosur citizens have a right to know what is being discussed—and traded away—in their name. Private sector representatives, including pharmaceutical companies, have been granted far greater access to both EC and Mercosur negotiating delegations and working documents than other stakeholders and concerned parties, such as public health advocates, consumer groups, and other organisations which form part of the European Economic and Social Committee (EESC).

Sustainability impact assessments (SIA) constitute a key mechanism by which to provide the EC "*with in-depth analysis of the potential economic, social, human rights, and environmental impacts of ongoing trade negotiations*" . At the time of writing, the SIA commissioned for this deal has yet to be released, and its terms of reference, from March 2017, only refer to health in the general domain of public policy, with no specific mention to access to medicines.

It has been said that, in contrast with the Transatlantic Trade and Investment Partnership (TTIP), or the Comprehensive Economic And Trade Agreement (CETA), there are no investor protection mechanisms under discussion at this point of the negotiations. This is a welcome move because if these mechanisms were on the table, they could impair the ability of the parties to take sovereign decisions regarding public health such as enforcing patentability criteria, establishing price controls on medicines, or undertaking joint procurement of

pharmaceuticals.

The EC has expressed its commitment to the World Trade Organization (WTO) Doha Declaration on the Trade Related Aspects of Intellectual Property (TRIPS) and Public Health (see, for instance, Article 8.2 – Patents and Public Health) of the EU proposal for a legal text on Intellectual Property Rights Chapter of the trade agreement with Mercosur:

"The Parties recognize the importance of the declaration on the TRIPS Agreement and Public Health, adopted on 14 November 2001 (hereinafter referred to as the "Doha Declaration") by the Ministerial Conference of the WTO. In interpreting and implementing the rights and obligations under this Chapter, the Parties shall ensure consistency with the Doha Declaration"

Any measure that limits the policy space to make use of flexibilities, such as voluntary and compulsory licences/government use, or parallel import of medicines, would contravene the spirit of the Declaration.

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Despite the EC having stated it would not seek intellectual property (IP) protection measures contained in TRIPS, negotiating text released in November 2016 included demands like extension of patent protection terms and data exclusivity (Article.10.2). Furthermore, the EC is reported to be proposing the inclusion of supplementary protection certificates (SPC) in the agreement; SPC are an artificial extension of the patent term of protection and its usefulness is currently under examination by the EC itself following demands from Member-states and opposition from public health advocates.

Before negotiations end, we would like to see the parties explicitly refusing to pursue investor-state dispute settlement (ISDS)-like mechanisms to any issues related to—or having implications for—public health. This includes, but is not limited to, IP protection, price regulation, formulary selection, and public procurement of medicines. We also hope that any approved text will explicitly endorse the Doha Declaration and not include measures that go beyond the TRIPS Agreement, which may hinder SDG 3.8. This should also apply to other trade agreements currently in negotiation by the EC—with India, Mexico and New Zealand.

We look forward to all parties agreeing to an impact assessment evaluating the effects of any IP clauses on access to medicines. The findings of such an evaluation must be made public and entail the renegotiation of those clauses, if found, to be negative for public interest. Finally, we call on Mercosur governments to uphold the Declaration on Access to Medicines, Public Health and Intellectual Property signed by the Health Ministers of Argentina, Brazil, Paraguay and Uruguay (and Chile as an associated member) in June 2017, with particular emphasis on patentability criteria, joint procurement of medicines and introduction of generic and biosimilar medicines.

This blog follows a series of interventions on the trade talks by Health Action International and a number of other civil society organisations, as well as Members of the European Parliament:

Joint Statement on Leaked Documents from EU-Mercosur Trade Talks (December 2017)

Joint Letter to Chief Negotiators (December 2017)

Letter to EU Trade Commissioner from Members of the European Parliament (November 2017)