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Entry into force of the EU-Mercosur agreement remains uncertain – will it be provisionally applied?

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On 17 January 2026, following more than 26 years of negotiations, the EU and the Mercosur countries Argentina, Brazil, Paraguay and Uruguay signed the EU-Mercosur agreement. The agreement comprises a political partnership agreement and an interim trade agreement. Whether and when it will fully enter into force remains to be seen. On 21 January 2026, a narrow majority of the European Parliament decided to request an advisory opinion from the ECJ. Irrespective of this, the trade agreement could enter into force on a provisional basis. The agreement would serve to create the world's largest free trade area, with around 700 million consumers.

1 Two-part agreement – ECJ review

The agreement consists of two parts: the partnership agreement and the interim trade agreement. The partnership agreement commits the contracting parties to political cooperation in areas such as democracy, the rule of law, human rights, gender equality, combating terrorism, cyber security, migration and the environment. This part of the agreement is intended to be approved by the European Parliament and, in addition, ratified by all EU Member States. The trade agreement, on the other hand, deals exclusively with trade between the contracting parties. This division is one of the three issues on which the Parliament has referred a request to the ECJ for an expert opinion in accordance with Art. 117 para. 5 of the Rules of Procedure of the European Parliament. There is a precedent for this issue. In 2017, in connection with the trade agreement between the EU and Singapore, the Court held that, for agreements falling outside the Union's sphere of competence, ratification by national parliaments is required (ECJ, Opinion 2/15 of 16 May 2017). The second aspect of the opinion will be the rebalancing mechanism provided for in the agreement, which gives corporations in Mercosur countries the right to file proceedings, for example against European environmental legislation. The third issue concerns compliance

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with the precautionary principle, which is a central principle of the EU environmental, consumer protection and health policy. If the ECJ's opinion finds that the agreement is incompatible with Union law, renegotiation would be necessary.

Until then, the trade agreement could, in any event, enter into force on a provisional basis (Art. 218 para. 5 of the TFEU). However, it is controversial whether a decision by the Council of Ministers is sufficient for this. The Council of Ministers had already expressly advocated provisional application when it granted the mandate to sign the agreement. The European Commission and the Council of Ministers are currently pushing ahead with provisional application. A vote in the European Parliament is also being considered.

2 Contents of the trade agreement and conditions for its application

The core element of the trade agreement is the reduction and elimination of customs duties for goods with preferential origin from the respective other contracting party. A total of 90% of the customs duties currently in force are to be abolished over a period of 15 years. A prerequisite for applying the favourable trade rules is that the relevant goods have preferential origin in one of the contracting states. Goods acquire preferential origin in a contracting party if they have been:

- wholly obtained or produced there,
- produced there exclusively from materials with preferential origin, or
- produced using materials without preferential origin, provided that further requirements of the agreement are met.

The other conditions impose requirements on the extent of the processing or working of the non-preferential origin materials. For example, as a result of processing, goods must fall under a different heading in the Harmonised System (Change of Tariff Heading – CTH). Depending on the goods, materials without preferential origin may account for only a specified maximum value of the ex-works (EXW) price.

To prove preferential origin, the exporter must have available a certificate of origin. In addition to a movement certificate to be issued by the customs authorities, an economic operator may – without involving the customs authorities – make a statement on origin in the prescribed wording on the invoice, delivery note or another commercial document. Statements on origin for consignments with a value exceeding EUR 6,000 may be made only by a registered exporter ("REX"). "REX" status is subject to authorisation. Once authorisation has been granted, preferential origin is challenged only in justified cases. Proof of direct transport from one contracting party to the other is currently not provided for. The agreement provides for further facilitations for Authorised Economic Operators (AEO).

3 Impact on EU businesses

Businesses whose goods meet the requirements for preferential origin can benefit significantly from the agreement. An examination of production processes and purchasing can also bring massive advantages here. Within the EU, export-oriented sectors in particular may benefit from easier market access. On the other hand, the agreement could be disadvantageous for EU farmers. Due to the lack of codification of uniform environmental standards, they fear a loss of competitiveness. The agreement therefore includes bilateral safeguard measures that provide for reviews if the importation of goods, of a certain type, increases to such an extent that the respective industry in one of the contracting parties fears the prospect of serious disadvantages. Passenger cars are among the items exempt from the safeguard measures – good news for the European and, in particular, the German automotive industry.