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Brussels, 20 December 2018

Art. 4(1)(b)

Dear

Art. 4(1)(b)

Thank you for your letter and attached position paper in which you express concerns regarding the treatment of tobacco in EU free trade agreements, with particular reference to the Association Agreement under negotiation with Mercosur, Out of scope

As a first point, it is important to recall that today, tobacco is an agricultural product that is traded freely on the world market and legally commercialised both in the European Union and outside. This is without prejudice to the fact that there are of course serious public health concerns related to tobacco and tobacco products, which is the reason why they are highly regulated.

As regards treatment in trade negotiations, it must be stressed that tobacco is neither an offensive nor a defensive interest of the EU in the negotiation. However, any free trade agreement is expected to reduce import duties on nearly all products imported by the European Union. Thus, tariffs on tobacco could be removed as in most other sectors. However, each party would retain the right to tax and regulate tobacco products as much as it deems appropriate – indeed, the right to regulate of both Parties is specifically reaffirmed in our Agreements. Therefore, elimination of customs duties would in no way affect the possibility of the government to tax imported tobacco products in the same way as domestic ones, via internal non-discriminatory excise duties, which apply to all tobacco products marketed regardless of their origin. In addition, as regards the regulation of tobacco products, if the European Union, any of its Member States or any partner country decide to take stronger tobacco control action, there would be nothing in any of our trade agreements that would prevent this.

You also express concern regarding the precautionary principle. Let us in that respect underline the importance that the EU attaches to this principle, including in the future Agreement with Mercosur, Out of scope as well as other Agreements with the rest of the world.

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European Public Health Alliance

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Campaign for Tobacco-Free Kids

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Inter American Heart Foundation

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NCD Alliance

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Inter American Heart Foundation

Turning to the other points in your position paper, you raise concerns over the potential impact of trade agreements on the consumption of unhealthy foods and alcohol. For the same reasons as set out above, we believe that measures that do not discriminate by origin, such as excise taxes and content labelling requirements, are a more effective means to address public health concerns surrounding these products than customs duties. As regards the chapters on technical barriers to trade about which you express concern, they reaffirm countries' right to regulate in the interests of public health, while also setting out provisions to help ensure that the measures taken are indeed those needed to achieve those policy goals without any undue negative impact on market access

As regards access to medicines, the EU is committed to sustainable development goal 3.8, of achieving universal health coverage, including quality and affordable essential medicines and vaccines for all. All provisions that we negotiate in this regard are compatible with it and will not curtail Brazil's capacity to ensure that generics duly contribute to achieving this objective.

Let us also stress that the Agreements under negotiation with Mercosur ^{Out of scope} will also include other provisions which favour public health concerns, such as on cooperation on the important issue of anti-microbial resistance – Out of scope

You also refer to the need to cover health impacts in the trade and sustainability impact assessment (SIA) for the EU-Mercosur negotiation, which is currently under preparation. It will be covered under a specific section.

The SIA also represents an important possibility for civil society to provide input to the negotiation process by commenting on the report and by participating in workshops and meetings.

Out of scope

We are therefore confident that transparent public consultations have taken place in the negotiations. They have included a wide variety of stakeholders in both the EU as well as in our partner countries and the results have fed effectively into the negotiation process and have allowed the points that you set out in your letter to be taken into account.

Finally, let us stress that the EU remains fully committed to safeguarding public health measures, including tobacco control measures, under trade and investment agreements and in compliance with international commitments.

Yours sincerely,

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Frans Timmermans

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✓ Cecilia Malinström

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Vytis Andriukaitis