

State of Play of Global Trade

March 2019

"Trade wars"

After the imposition of tariffs on steel and aluminium by the Trump administration last year, and retaliatory measures by EU, Mexico and Canada, the US is now threatening with car tariffs that would chiefly affect German manufacturers as well as additional tariff measures on China. The situation deteriorated further, earlier this year, when the US imposed an almost 35% tariff on Spanish black olives for illegal subsidies.

At the 2018 G20 Buenos Aires Summit, Trump and Xi met to discuss trade relations. Trump rushed to declare an "incredible deal" that included a 90-day deadline for progress in trade talks - that is, a moratorium on additional tariffs until the end of March 2019. He also announced additional market access for American cars and a commitment from China to buy large amounts of American agricultural products. However, it seems that the US administration's handling of the outcomes' announcement enraged the Chinese, who then only confirmed the 90-day timetable.

Bilateral/Regional level

The negotiations for a **Regional Comprehensive Economic Partnership (RCEP)**, or ASEAN plus six (ASEAN plus Australia, New Zealand, China, India, Korea and Japan), have entered the sixth year. The last round was held in February in Indonesia. The negotiating Parties agreed to double efforts to conclude an agreement in 2019. In particular, China is under pressure by US tariffs and seek urgently greater market access elsewhere. Japan-China relations seem to have warmed recently and this facilitates reaching an agreement. India however, with the immense untapped potential of its domestic market, aims at downgrading the agreement's ambition. However, lower level of ambitions in goods, services and investments, does not augur well for the agreement that seeks to be comprehensive in nature.

The RCEP was designed with an evolutionary approach, rather than TPP's comprehensive approach. This means that different stages of development are recognised, that the review process is central in the framework, and that more emphasis is put on cooperation. However, deep and comprehensive chapters (TPP-like) are on the table of negotiations. For instance, the proposed text on Intellectual Property Rights brings about provisions virtually identical to the one of TPP. The RCEP would also establish the privilege of investors to use ISDS, remove performance requirements for investment and remove local content requirements for foreign investment.

The **United States–Mexico–Canada Agreement (USMCA), or New NAFTA**, was signed on November 30, 2018 at the 2018 G20 Summit in Buenos Aires. The legislatures are still to ratify the agreement. The AFLCIO states that "[w]hile there are positive provisions in the renegotiated NAFTA, including improved labor and investment terms, both the labor rules and enforcement tools should be improved. There are also provisions in the agreement that undermine the interests of workers and consumers, as a result of provisions including pharmaceutical monopolies, financial services, and regulatory practices." The CLC-Canada said that the agreement "represents some points of progress, but are raising concern over protections for some Canadian workers."

The agreement's key updates include the scrapping of the chapter 11, that included an Investment to State Dispute Settlement mechanism (ISDS), the incorporation of the labour side-agreement into the body of the agreement, but also the extension of patents, including pharmaceutical patents.

The **US-EU FTA negotiations** seems to be having a chance for revival but Europe would like a limited-scope agreement certainly without agricultural market access. Trump has threatened tariffs on European cars and uses that as a leverage to open trade negotiations hoping for an imbalanced result for additional market access for US products. The deadline for a decision on the imposition of such tariffs is mid-May but Trump could postpone the deadline. Earlier this year, the European Parliament's International Trade Committee (INTA) had approved a motion

to re-open negotiations on the basis of the Trump-Junker agreement in July 2018. The agreement would provide “for the elimination of tariffs for industrial goods; increased cooperation on regulatory issues and standards; facilitation of trade in soybeans; and increased trade in liquefied natural gas (LNG)”. An additional issue that keeps coming up is ‘regulatory cooperation’ where negotiators see space for an early harvest.

On March 14, 2019, the EP voted down a resolution on the trade negotiations. Practically, this means that the majority of the parliament does not want to give the European Council a roadmap for the negotiations; however, the discussion of the topics also reveals that the majority of the EP does not feel comfortable with the current mandates.

In the meantime, the US Ambassador in the UK stirred public debate when he called the UK to accept US agricultural products in an FTA after UK’s exit from the EU, calling EU’s agricultural policy a museum item.

The EU is mounting pressure on **African regions** to agree and ratify **Economic Partnership Agreements (EPAs)**. For instance, the last East Africa Community (EAC) Summit on 1 February 2019 decided that the EAC engages with the EU on the matter in the next four months to get more clarification on the pertinent issues of concern. Kenya and Rwanda have ratified and Tanzania is under pressure to agree with Uganda having flagged joining the agreement when all others agree too. In the meantime, the Brexit prospects undermine the coverage of the EPAs because many countries’ trade is UK-intensive and the withdrawal of the UK from the EU has consequences on the agreements’ trade-offs and balance. Nigeria has explicitly named industrial policy and policy space as the reasons for rejecting the agreement. Meanwhile, the ITUC, ITUC-Africa and the ETUC are working towards adopting the first joint statement on the EPAs.

The ITUC-Africa-ETUC-ITUC have concluded the first joint statement on the EPAs calling the Parties “to stop the negotiations, withdraw from and reform signed agreements according to principles [...]. The EU should ensure African countries that withdraw from EPA agreements do not lose preferential access to EU markets.”

Multilateral/Plurilateral level

The appointment of new members on the **Appellate Body** is being blocked and the Organisation’s jurisdictional competence will come to a halt in the end of the year. Many Members have voiced concern over the system’s relevance and prominent Members are already proposing a discussion on a fundamental reform. Among them, the EU, Canada and Japan, took the initiative to offer proposals for **a reform of the WTO** focusing on ‘forced’ technology transfers, the subsidies notification system, and the manner negotiations are conducted. The US have developed work on misclassification of developed countries as developing, in particular focusing on South Korea, Singapore, China, India and others.

The ITUC will soon present for consultation a document with recommendations on the inclusion of labour issues and other WTO reform options.

The 11th Ministerial Conference of the World Trade Organisation (WTO MC11) concluded without a Declaration. Instead, the Argentine hosts issued a non-binding Chair’s summary under their own responsibility. It is the second time, after the Cancun Ministerial of 2003, that negotiations collapsed and no Declaration was adopted. The ministerial failure to agree on the working programme of the organisation for the following years comes at a crucial moment, as multilateralism is weakened and global governance does not offer solutions to pressing crises. The lack of outcomes in MC11 is both bad and good news. The WTO Members failed once again to act on the development mandate of the Doha Round; however, at same time, this failure kept the aggressive corporate agenda of e-commerce negotiations at bay for the moment.

Since the MC11, different WTO committees discuss and make progress on:

- an agenda that could introduce further *disciplines on services domestic regulation*;
- a working plan on investment facilitation, which is a misnomer for introducing rules that would give business lobbying new means and ways to influence governmental regulation-making;
- a work programme on micro-, small- and medium-sized enterprises (MSMEs) to participate in and benefit from trade, which deals with many e-commerce-related issues.

In the Davos WEF of 2019, 76 governments announced intentions for negotiations on e-commerce. This very broad agenda could lead to extensive liberalisation in goods and services, as well as significant policy disciplines on

governments. The Japanese Presidency of the G20 has announced e-commerce (data management and administration systems) as a priority. The PSI, EI, IUF and ITUC have endorsed a letter coming from a coalition of the civil society (Our World Is Not For Sale) setting the tone of concerns. The ITUC will develop a set of principles for global e-commerce rules putting emphasis on state competence, to regulate and enforce laws in the cyberspace, including taxation and labour laws, as well as the development of a global floor of standards for different types of data (storage, access, collection, use).

Investment Protection – Investor-to-State Dispute Settlement (ISDS) and Court Systems (ICS/MIC)

The European Commission recently presented in writing its views on the structure of a Multilateral Investment Court (MIC). The topic of ISDS reform is discussed at UNCITRAL, where the ITUC and ETUC acquired observer status. For further information see the separate note on this topic.

Labour chapters

After the publication of two non-papers on Trade Sustainable Development Chapters, the EU seems to be making an effort to enforce commitments with the tools it has in its hands. The Commission called for ‘Formal Consultations’ between EU and Korea under their FTA for the following list of violations:

- Article 2 paragraph 1 of the Korean Trade Union Act defining a “worker” as a person who lives on wages, salary, or other equivalent form of income earned in pursuit of any type of job. This definition, as interpreted by the Korean Courts, excludes self-employed persons (including those working mainly for one employer) as well as dismissed and unemployed persons from the scope of the freedom of association.
- Article 2 paragraph 4 d) of the Korean Trade Union Act stating that an organisation shall not be considered as a trade union in cases where persons who do not fall under the definition of “worker” are allowed to join the organisation.
- Article 23 paragraph 1 of the Korean Trade Union Act stating that trade union officials may only be elected from among the members of the trade union.
- Article 12 paragraphs 1 to 3 of the Korean Trade Union Act, in connection with Article 2 paragraph 4 and Article 10, providing for a discretionary certification procedure for the establishment of trade unions.
- Article 31 paragraphs 2 and 3 of the Korean Trade Union Act and the practice of Korea’s Labour Administration to request changes in collective agreements.
- Section 314 of the Korean Criminal Code3 (obstruction of business) and its application by the Korean police and public prosecutor’s office to certain peaceful strike actions.

The Commission has notified that if no solution is marked on these issues by early April, the second stage of the procedure will be triggered and a Panel of Experts will be established. The ITUC coordinates inputs to the Commission between the KCTU, FKTU and ETUC.

The Commission also started a process that could lead to suspension of trade preferences (under its GSP) for Myanmar and Cambodia due to labour and other violations, notably the Rohingya massacres. The ITUC is in close contact with the relevant EU services on the matter as well as the unions of Cambodia and Myanmar.

At the same time, the US has threatened to cut their trade preferences for Thailand for failing to fully respond to its previous request for amendments to Thailand’s labour law and removal of restrictions on imports of US pork. Thailand claims that five out of seven points for amendments in the labour laws requested by the USTR have been addressed and that they work in cooperation with the ILO. The AFLCIO is coordinating the provision of information to the US government.