Expert Group on Trade Agreements

5 November 2018

Meeting report
1. **Welcome**

The Chair welcomed the members to the fifth meeting of this group and introduced the two agenda points:

- Second appearance by Commissioner Malmström to debrief the members on the latest state of play and challenges in EU trade policy.
- Overview of the latest developments in the negotiations with China for an EU-China investment agreement.

2. **Discussion with Commissioner Cecilia Malmström: Trade policy state of play and challenges**

The Commissioner noted the contribution of the group to a more efficient, transparent, inclusive and value-based trade policy and the steps taken in a number of areas since the inception of the group.

The Commissioner focused on the ongoing talks on how to modernise the WTO, which are central to the EU trade policy agenda. Work is ongoing in different fora and formations with the US, China and a number of like-minded WTO members. The urgency related particularly to the situation of the Appellate body. This is one of the main issues on which the European Commission and the expert group can work together in the coming months.

The Commissioner gave an overview on the state of play regarding the recently concluded or ongoing trade negotiations, including with Japan, Mexico, Singapore, Vietnam, Mercosur, Indonesia, New Zealand, Australia, and CETA implementation. She noted that the 2017 Report on Implementation of EU Free Trade Agreements was published on 31 October 2018.

On the EU relationship with the US the Commissioner pointed to the importance of that trade relationship and the continued discussions to implement the joint statement of Presidents Juncker and Trump from July. The focus is currently on regulatory issues and on industrial goods. With regard to regulatory cooperation, any partnership must respect domestic laws and be transparent and open for stakeholder participation.

In the discussion:

- Several members thanked the European Commission for establishing the group and supported the Commission’s trade agenda.

- Several members asked about and commented on **WTO reform**, many noting that they have published or are in the process of developing a contribution. The complexity of bringing key WTO members on board was noted, but also of not leaving developing members on the side. One member suggested that the Sustainable Development Goals (SDGs) should underpin in EU proposals on WTO reform. One member inquired about prospects for **e-commerce negotiations in the WTO**.
Several members commented on the trade relations with the US. Several members pointed to the importance of EU-US discussions on regulatory cooperation, notably on standards. This should be seen in the light of the new US-Mexico-Canada agreement, which should not become a global template on regulatory issues.

The publication of the implementation report was welcomed but several members suggested that the Commission could do more to address market access barriers and ensure the proper implementation of trade agreements. Suggestions were made for the next FTA implementation report to focus specifically on small and medium-sized enterprises and on services. Another member proposed for the report, and the Commission's communication in general, to dedicate more attention to imports and their role in EU competitiveness. The importance of ensuring coherence and simplification on rules of origin in trade agreements was noted, in particular with regard to the Japan EPA. One member inquired about how work on implementation, the market access strategy and the domestic advisory groups (DAGs) will work together.

One member supported the enhanced consumer protection in the EU's free trade agreements, in particular the link between food safety and trade, which affects consumers and producers.

One member elaborated on data flow language in trade agreements and stressed the importance of ensuring consistency and legal certainty in all trade agreements.

One member raised concerns related to the agriculture sector in view of future agreements with Australia and New Zealand. Several members supported further progress on the implementation of CETA specifically with regard to services, cheese tariff rate quotas and the commitments by both parties in the joint interpretative instrument on trade and sustainable development.

Some members inquired about impact of the recent Brazilian election results on EU-Mercosur negotiations. The strategic importance of a trade deal with Mercosur was emphasised by one member. One member expressed concerns that some statements made in the Brazilian Presidential campaign would not align with EU's value-based trade policy.

Two members highlighted the strategic importance of India and the need to consider reopening the negotiations.

Several members raised the Commission's position on the possible suspension of Everything But Arms preferences with Myanmar and Cambodia. Support for the Commission's position as well as concerns over the possible implications for workers were raised. According to one member, there are insufficient safeguards to ensure that land rights are not violated and the EU should do more in terms of grievance mechanisms and transparency.

On the Indonesia agreement, one member noted the importance of the energy and raw materials chapter and the need to address issues linked to the Renewable Energy Directive.

One member is currently working on an opinion in ISDS reform and the Multilateral Investment Court. Another member expressed concern that the scope of ISDS reform in the UNCITRAL process is too narrow.
Two members asked for **Brexit and the future EU-UK relationship** to be addressed in future meetings, an initiative which got wider support from the group.

The Commissioner pointed out that the implementation of trade agreements is mainly a responsibility of the member states, but noted that the Commission could always do more. The Commissioner took note of topics raised and agreed on the importance of reaching a balanced agreement with New-Zealand and Australia. At this point in time discussions on Mercosur negotiations are continuing with the current Brazilian administration, pending the new Brazilian administration taking office in January 2019.

The Commissioner highlighted that newer trade agreements, such as Mexico, extend the scope of DAGs beyond the trade and sustainable development chapter to the whole agreement. On WTO reform, there is a clear need to align the current system to the changed economic and political environment (e.g. on e-commerce). **The Commissioner commented that while work was moving ahead in the regulatory area with the US, negotiating on tariffs would require formal negotiating directives in the usual way, which would only be requested once there was clarity on the scope and ambition of future work.** Regarding Brexit, the EU is waiting for an official withdrawal agreement.

The Commissioner referred to the legal possibility in the agreement with Myanmar and Cambodia to withdraw benefits, when human rights are systematically violated and explained that a list with expected improvements has been sent to Cambodia. Regarding Myanmar similar steps will be taken, so that the two countries will have time to show that they are making efforts to address our concerns. The Commission's reaction is in line with the EU value-based trade policy it supports. On Indonesia the Commission aims to help Indonesia to make palm oil production more sustainable. Regarding data transfer, it would be difficult to go back to reopen deals already concluded to address these points, but we have a strong position which we are introducing into on-going negotiations.

The Chair took note of the concerns of some members, who had not had time to take the floor, that consideration should be given to managing the length of interventions more effectively. The Commissioner indicated her willingness to engage in a longer session next time.

3. **EU-China investment agreement**

The Commission presented the state of play of negotiations with China on a comprehensive agreement on investment. After the first exchange of market offers in the summer, the discussion on the respective offers has dominated the negotiating agenda but work has also continued on the key elements of the investment liberalisation and protection disciplines, as well as on dispute settlement and sustainable development. The EU’s overall objective is to establish a single EU-China comprehensive agreement on investment which would improve the market access conditions for EU investors is China and would also replace Member States’ individual bilateral investment protection treaties with China.
Most members welcomed an agreement on investment with China and increased market access and asked about the timeline for the negotiations and China's level of engagement given its stated preference for a Free Trade Agreement with the EU and also the current context. A suggestion was made for the group to have a broader discussion on China.

While some members commented that the EU-China investment treaty would help level the playing field, other members noted that the negotiations should not lead to a lower level of investment protection than the one enjoyed by Member States already, as well as greater market access beyond existing commitments from China, including for services.

Several members asked questions on the trade and sustainable development (TSD) chapter, specifically on the mechanisms to ensure its enforcement, the need to ensure investments do not have negative impacts on human rights and labour rights and the possibility to use the chapter to address land grabbing.

Other comments related to the need to make investment protection dispute processes more accessible for small and medium sized businesses (SMEs) and the importance of intellectual property rights and certifications as key issues for companies investing in and trading with China.

Another question related to China's stance on the Investment Court System (ICS) and the Multilateral Investment Court.

In response to a question referring to the case when the EU negotiates an FTA in parallel with an investment protection agreement such as with Singapore, the Commission clarified that if an investment agreement was negotiated together with an FTA, the TSD chapter of the FTA would not need to be duplicated in the investment part. Intellectual property right disciplines are not specifically addressed in this investment agreement. For TSD the Commission proposed the same provisions on enforceability like in FTAs: institutional structures, mechanisms to allow parties to submit complaints on TSD to non-member panels etc. Discussions on these issues are at an early stage.

A change of pace and a different level of engagement in 2018 led to the exchange of market access offers in the margins of the last Summit. China understands that an investment agreement needs to be concluded first before any discussion on a broader trade agreement. China is an important investor in the EU and elsewhere, and they are interested in securing a good level of market access in the EU. Regarding discussions on the ISDS reform within UNCITRAL, China is taking constructive positions. For SMEs the EU includes simplified process in the Investment Court System (ICS).

With regard to the timing, the next formal round of negotiation is expected to take place early next year in Brussels. There is no clear timeline for conclusion of the negotiations, naturally, the substance prevails over the speed. There are still a number of important gaps to be bridged. We expect China to show more ambition and flexibility in order to maintain the momentum created by the exchange of market access offers.
4. **AOB**

The Chair announces the next Trade Expert Group meeting on 13 December 2018 and a broader Civil Society Dialogue meeting on China on 3 December 2018.

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**Meeting participants**

**European Commission**
Commissioner Malmström  
CAB MALMSTRÖM  
DG TRADE

**Expert Group Members:**
ACEA  
ACT Alliance EU  
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