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Introduction

Uncertainty is perhaps the word that would best describe the future of regional trade agreements. During the period covered by this News Digest international trade policy has moved in zigzags. On November 1st the European Union and Canada signed their Comprehensive Economic and Trade Agreement (CETA), thus reinforcing the tendency towards ever more ambitious and complex mega-regional deals. This however was followed shortly by the announcement of US President-elect Donald Trump to withdraw from the Trans Pacific Partnership (TPP) (another mega-regional trade agreement) on the first day of his Presidency. The UK strategy to negotiate its withdrawal from the European Union following the Brexit referendum continues to be an enigma.

Carnival of Binche, Wallonia, 2012
Source - Euroaktiv

Is the US moving towards a new trade policy? Most analysts, including major international newspapers, are trying to understand what the future will be for trade agreements and open markets. In the words of Martin Wolf, “the consequences of a Trump presidency will be many and various. But the economic ones will not be the least important. His administration might even reverse globalisation, destabilise the financial system, weaken US public finances and threaten trust in the dollar”.

Above all, the new US president has suggested imposing high tariffs, especially on imports from China and Mexico, “to discourage companies from laying off their workers in order to relocate in other countries and ship their products back to the US tax-free”. If imposed these tariffs would almost certainly be contrary to World Trade Organisation rules. They would also create a risk of retaliation. As pointed out in a briefing published by the Washington-based Peterson Institute of International Economics (PIIE), the costs to the US, world trade and the credibility of the trading system might prove very high.

As recorded by The Economist, the President-elect has vowed to renegotiate existing agreements like the North American Free Trade Agreement (NAFTA), which he called the “worst trade deal ever”, and to pull out of nascent deals like the TPP and the Transatlantic Trade and Investment Partnership

(TTIP). Under the next US administration, America could even conceivably withdraw from the 164-member World Trade Organization, which Mr Trump has described as "a disaster".[1]

In the words of Francis Fukuyama, Mr. Trump´s electoral victory marks a watershed not just for American politics, but for the entire world order. We appear to be entering a new age of populist nationalism, in which the dominant liberal order that has been constructed since the 1950s has come under attack from angry and energised democratic majorities. The risk of sliding into a world of competitive and equally angry nationalisms is huge, and if this happens it would mark as momentous a juncture as the fall of the Berlin Wall in 1989.

How would a resurgence of nationalism impact regional trade agreements? Until now, a key concern of trade negotiators crafting regional deals was to ensure that trade pacts conform to multilateral rules and commitments, i.e. are consistent with the WTO disciplines. From now on, they may have to ensure as well the viability of the agreements vis-à-vis a renewed sense of nationalism or a new type of nationalism in some key economic players.

Additionally, trade negotiators need to pay serious attention to the concerns of the anti-globalization movement to succeed in getting their trade agreements ultimately implemented, as stressed in a recent Bloomberg analysis.

They need perhaps to start thinking about introducing some flexibility in their trade negotiations/agreements. In some cases, particularly contentious provisions, may not be strictly necessary. Arrangements for resolving disputes between foreign investors and host-country governments through international arbitration measures might be more trouble than they're worth, especially for agreements between countries that have well-functioning legal systems.

The main challenge for the governments involved, though, is to make the case for trade liberalization and competition, as they can't expect to succeed unless they meet anti-globalist opinion head on.

TPP AND TTIP

The world's most ambitious free-trade deal in decades is all but dead. President-elect Donald Trump has said that on his first day in office, the US will quit the TPP, a pact that took nearly a decade to negotiate. He made the announcement in a video message outlining what he intends to do first when he takes office in January.

Mr. Trump announcement was preceded a few days before by indications from the Obama administration that it would not seek to get the TPP considered by Congress during the lame-duck period, i.e., between Election Day and the beginning of the new government.

[1] The WTO Director-General Roberto Azevedo, has said that he had no indication that U.S. President-elect Donald Trump wanted to withdraw the United States from the global trading body. "I think that at this point in time what we have to do is be ready for a conversation," Azevedo told reporters, adding that he was convinced the United States could be a very important partner in reviving global trade growth, http://www.reuters.com/article/us-usa-trump-wto-idUSKBN13J15U

Encompassing 12 Pacific Rim countries, the TPP would have covered nearly two-fifths of the global economy. In declaring his intent to withdraw from the TPP, Mr. Trump said it was "a potential disaster for the country". But proponents say it would have been a big improvement on existing trade deals and very good for America.[2]

A TTIP Protestor in Brussels,
Source – The Telegraph

The purpose of the TPP was always partly strategic. Parties to the TPP hoped the deal would let them shape the architecture of international trade in Asia and beyond. Their ambition was that the TPP would set a new standard for future deals. The deal was most notable, though, for its exclusion of China.

As stressed by Shiro Armstrong, senior editor of the East Asia Forum, there are many things that endure in international relations because of the permanent and entrenched interests of nation states and that are independent of the personality and predilections of particular national leaders. But there's no doubt that Donald Trump's election to the US presidency has changed things, partly because of the uncertainties he himself has created about continuity in US policies, partly because of his unconventional conception of the awesome power he is now entrusted to assume. Nobody in Asia can sensibly pretend that it's business as usual.

The prosperity and the security of Asia has been built significantly upon the foundations of the post war international institutions of which the United States was principal patron. They provided the guarantee for free and open markets as well as political security through cooperative economic exchange. The US alliance arrangements across the Pacific also provided reassurances against challenge to these interests. These verities are now less reliable and it is foolish to pretend otherwise. Adding salt to the wounds, the expected demise of the US-led high-end free trade agreement, the TPP, has demoralized the Asian signatories, especially the four ASEAN members (Brunei, Vietnam, Malaysia and Singapore) who were most interested in the rewards offered by US economic engagement.

Thus, the collapse of the TPP would create a void in Asia, and observers are now looking for China to assume the mantle of economic leadership in Asia. Conveniently, it is negotiating a free-trade deal - the Regional Comprehensive Economic Partnership (RCEP) - that is close to completion. But the RCEP is not a substitute for the TPP, and Asian countries may need to turn to the messy work of building up bilateral agreements. The hole left by an US's withdrawal is a big one, and not easily filled.

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[2] As indicated by The Economist, measuring the precise impact of trade deals that have been in place for years is hard enough, but forecasting the impact of future deals is even harder, http://www.economist.com/blogs/economist-explains/2016/11/economist-explains-14?cid1=cust%2Fddnew%2Fn%2Fn%2Fn%2F20161124n%2Fowned%2Fn%2Fn%2Fnwl%2Fn%2Fn%2FE%2F8207260%2Femail&etear=dailydispatch

What is the Trans-Pacific Partnership?[3]

The Trans-Pacific Partnership will create a free-trade zone with common labour and environmental standards, and measures to protect data and intellectual property of large companies.

It was agreed after nearly a decade of international talks between Washington and its international partners and is the most significant free trade deal since the US signed the North America Free Trade Agreement in 1994.

But it will still need ratification in all the parliaments of its major participants.

There are 12 countries involved across the Pacific Rim: Japan, the US, Australia, Brunei, Canada, Chile, Malaysia, Mexico, New Zealand, Peru, Singapore and Vietnam.

The Pact was a cornerstone of President Barack Obama's strategic "pivot" towards Asia. The idea is that it will benefit the US and its Asian trading partners by levelling the playing field and eliminating unnecessary trade barriers. It could also lead to strong commitments on labour practices and the environment.

The US' withdrawal from TPP could be to the advantage of China, which is now part of the only mega-regional in the Asia-Pacific region.

What is the Transatlantic Trade and Investment Partnership?[4]

This is a deal being negotiated between the European Union and the United States.

Deliberations over the deal have been going on for years, but the first official round of talks took place in 2013.

It is hoped that whatever the agreement eventually looks like, it will result in increased trade and prosperity for those on both sides of the Atlantic.

Lower barriers to trade should mean that more of it takes place, and the ensuing competition should result in better and cheaper goods and services, making all sides better off.

But it's not just tariffs that the TTIP is meant to tackle. Politicians also want to get rid of non-tariff barriers, known as NTBs, which are rules that countries or regions, such as the EU, impose on goods, such as product standards and sizes.

The TTIP is intended to bring about lower trade tariffs, and to reduce regulatory barriers that make trade between the US and the EU less costly than it need be. If approved by the US and EU governments, the TTIP would be the biggest agreement of its kind.

But the UK's decision to vote for Brexit, and the election of Trump, make TTIP's future decidedly uncertain, with many commentators now assuming that the agreement, like the TPP, is dead in the water.

[3] http://www.telegraph.co.uk/business/2016/11/22/difference-ttip-tpp-does-donald-drump-want-scrapped/

[4] *Ibid.*

Brexit

Sooner rather than later, the British government must finally decide what kind of trade-offs it is willing to accept when it leaves the European Union. According to a recent paper published by the UK trade policy observatory at the University of Sussex, and referred to in The Economist, the British government seems to have four red lines regarding its Brexit strategy.

It wants to “take back control” of its economy, for which it needs to stop free movement of labour; be allowed to pursue an independent trade policy; not to contribute to the EU Budget; and to break away from legal oversight by the European Court of Justice. The EU's sole red line seems to be that Britain cannot benefit from "cherry picking"—for example, benefiting from membership of the single market in terms of goods trade, but not allowing free labour movement.

To arrive at the right trade-off requires a lot of patient negotiations, which seem unlikely to be completed by March 2019 when the formal date for EU exit is supposed to materialize. As if things were not already complicated enough, the UK government may be facing a number of legal battles regarding its Brexit strategy. Thus, Brexit means a different Brexit to different people.

On 4 November the UK High Court ruled that Parliament must give its approval before the process can begin. The court’s decision seemed likely to slow — but not halt — the British withdrawal from the bloc, a step approved by nearly 52 percent of voters in the June referendum. Nevertheless, the court’s decision was a significant blow to Prime Minister Theresa May. She had planned to begin the legal steps for leaving the European Union by the end of March, and to prepare for the negotiations over Britain’s exit mostly behind closed doors. If the court’s ruling is upheld — the government immediately vowed to appeal — that plan would be thrown into disarray, analysts said.

Also, there is a possible a legal battle over whether the UK stays inside the EU single market after it has left the EU. Lawyers say uncertainty over the UK's European Economic Area (EEA) membership means ministers could be stopped from taking Britain out of the EU single market. They will argue the UK will not leave the EEA automatically when it leaves the EU and it is up to Parliament to decide. But the government said the EEA membership ends when the UK leaves the EU.

As known, the EU single market allows the tariff-free movement of goods, services, money and people within the EU. The EEA, set up in the 1990s, extends those benefits to some non-EU members like Norway, Iceland, Liechtenstein and Switzerland. Non-EU members are outside the Common Agricultural Policy and customs union, but get barrier-free trade with the single market in return for paying into some EU budgets and accepting the free movement of workers.

If the courts give Parliament the final say over the EEA membership, then MPs could vote to ensure that Britain stays in the single market until a long-term trading relationship with the EU has been agreed. But some lawyers argue that leaving the EEA would not be automatic and would happen only if Britain formally withdraws by triggering Article 127 of the EEA agreement. Summing up, the legal question is focused on whether the UK is a member of the EEA in its own right or because it is a member of the EU.

Article 127 of the European Economic Area Agreement
Each Contracting Party may withdraw from this Agreement provided it gives at least twelve months' notice in writing to the other Contracting Parties. Immediately after the notification of the intended withdrawal, the other Contracting Parties shall convene a diplomatic conference in order to envisage the necessary modifications to bring to the Agreement.

Finally, there are "many, many different ways" Britain's departure from the EU could end up before the European Court of Justice, the president of the EU's highest court, Koen Lenaerts said, underlining the institution's potentially pivotal role as Brexit unfolds. In an interview with The Financial Times, Mr. Lenaerts said that issues such as the treatment of Article 50 of the Lisbon Treaty, the legal path for a country to leave the EU, "can be interpreted by our court like any other provision of union law". The European Court of Justice — held up by Brexiteers as an apotheosis of EU interference — may be a decisive voice in disputes over the process, content and implementation of exit terms.

He declined to comment on the specifics of Brexit but warned that there were myriad unforeseen legal consequences of sovereign exit from the union that the EU's top court may be called on to resolve. "I can't even start intellectually beginning, imagining how and where and from which angle it might come" Mr. Lenaerts said.

On the economic front, Prime Minister Theresa May has tried to reassure businesses fearing a sudden change in rules once the UK leaves the EU. Speaking at the Confederation of British Industry's conference, Mrs. May promised early agreement on the status of UK nationals in Europe and EU nationals in the UK. "People don't want a cliff-edge; they want to know with some certainty how things are going to go," she said.

Several business lobby groups have pushed for an interim deal to let them trade in the same way post-Brexit. Mrs May said she understood companies' concerns and was "conscious that there will be issues that will need to be looked at."

"That will be part of the work that we do in terms of the negotiation that we are undertaking with the European Union," she added. She also pledged to provide clarity on the government's plans where possible, but said there would not be "a running commentary on every twist and turn".

On the external front, Germany's finance minister Wolfgang Schäuble has set out a tough line on EU divorce talks with Britain on issues from tax breaks to exit costs, dashing the UK government hopes Berlin would soften Europe's stance on a Britain departure from the bloc. Theresa May's government has been looking to Germany, a net exporter to the UK, to temper French demands that Britain "pay a price" for its decision to leave.

But Mr Schäuble told the Financial Times that, even after Brexit, the UK would be bound by tax rules that would restrict it from granting incentives to keep investors in the country — and would also face EU budget bills for more than a decade. Until the UK's exit is complete, Britain will certainly have to fulfil its commitments, he said. Berlin had been one of the most UK-friendly EU governments in the immediate aftermath of the vote to leave the EU, with Chancellor Angela Merkel signalling Europe risked damaging ties to Britain if it drove a hard Brexit bargain.

Making India her first bilateral visit outside the European Union in early November, the UK Prime Minister Theresa May explored with Prime Minister Narendra Modi, the future of ties between India and Britain in a post-Brexit world.

Thierry Monasse, Source – Associated Press

Finally, Colombian President Juan Manuel Santos, for his part, said a new agreement with the UK could be better than Colombia's current free trade deal with the EU. Interviewed by the BBC, he said there was an opportunity for greater UK trade with emerging markets. Mr Santos held talks with Prime Minister Theresa May during his state visit to the UK in early November. He said Colombia, Chile, Peru and Mexico - the Pacific Alliance free trade bloc - represented “a huge opportunity for British business.”

He told the BBC: "What I said to Prime Minister May is, 'listen, we are ready to simply have a free trade agreement with the UK and have the same conditions or even improved', because many times in free trade agreements with a group of countries some countries object to some issues and maybe we can even go further."

CETA

At the beginning of the month, Canada and the European Union signed their CETA. This mega-regional, free-trade agreement goes far beyond the elimination of most tariffs on goods: it breaks down non-tariff barriers, and also aims to foster trade in services and increase flows of foreign investment.

But CETA will have to go ahead in two stages. Tariff reductions and other conventional trade measures will happen “provisionally” starting in 2017, but some of its provisions will have to await ratification, which could yet take years. A regional parliament in one EU country – Wallonia, the French-speaking part of Belgium -- was able to nearly kill CETA because Europe had deemed the pact to be a so-called mixed agreement, as opposed to an ordinary trade deal.

EU trade deals do not require parliamentary ratification; mixed agreements do. This would not bode well if the EU wants to reach more CETA-like deals, as securing agreement in all the EU’s national (and some of its regional) parliaments will never be easy, and the fact that CETA almost failed is especially telling, as Canada’s attitude toward regulating business and investment is not that different from Europe’s. If TTIP negotiations are ever completed, and subsequently put to EU parliaments, opposition will likely be stronger, fuelled by antipathy to American-style capitalism.

As indicated in an analysis by The New York Times, CETA´s near-death underscores the degree to which trade, and globalization in general, once trumpeted as a force for progress, have come to be seen as a vehicle for destroying jobs, making the rich richer and undermining national sovereignty. The backlash has been evident in the American presidential campaign, in the British vote to leave the European Union and in the populist parties sprouting across Europe.

And, indeed, the concerns raised by Wallonia – that CETA would undermine local standards on labour, the environment, and consumer protection, as well as allowing multinational companies to override smaller organizations and influence public policy – are not unique to that small corner of Belgium.

In reality, on both sides of the Atlantic, many of the people who are most upset about the new free trade deal between Canada and the European Union are dairy farmers. But they have opposite worries. The deal was nearly derailed by enraged farmers in the Wallonia region of Belgium because of how much they had been struggling. In Canada, by contrast, farmers are anxious because they have been doing so well. The way the country's "supply management'" system works now, Canadian dairy farms are almost guaranteed to prosper. Milk production is controlled by quotas, marketing boards keep prices high and stable, and import duties of up to 300 percent largely shut out competition from abroad.

RCEP

Negotiations for the 16-country RCEP are increasingly making progress towards crafting a future trade and investment deal, officials say, though whether talks will be concluded this year as previously envisioned is less clear.

The proposed RCEP agreement, for which negotiations commenced in 2012, includes 16 economies in the Asia-Pacific, comprising almost half of the global population and a third of the world's GDP. The scope of the free trade agreement covers goods, services, and investment, as well as competition, intellectual property rights, and dispute settlement.

The most recent RCEP negotiating round, held in Tianjin, China, from 17-21 October, focused on delineating market access on trade in goods, services, and investment, as well as on rules of origin, intellectual property, competition, and e-commerce. The chapter on economic and technical cooperation was concluded, which ministers said was a promising development that could inject additional momentum for talks and help address development gaps among RCEP members.

The RCEP's progress and prospects were also informally discussed at the Asia-Pacific Economic Cooperation (APEC) meeting held on 20 November in Lima, Perú, which brought together heads of government from 21 countries in the Asia-Pacific region, including Australia, Canada, Chile, China, Japan, Mexico, Russia, South Korea, and the United States.

The US, the EU and African trade

President-elect Donald Trump made scant mention of Africa during his campaign, thus any efforts to discern his Africa policy at this stage are speculative at best. However, there is a general consensus that because other, more pressing priorities are likely to get in the way, the new President will be restrained from implementing radical changes to US-Africa policy. A more aggressive stance may be adopted should trade deals hit American jobs – which they currently do not.

"If you're looking at the broader picture of trade, I don't think the Trump administration will be terribly antagonistic towards Africa," says Frank Samolis, who sits on the Board of Directors of the US-Africa Chamber of Commerce. "Trade with Africa is not a case of displacing US jobs. It's a case of promoting US interest and developing stronger commercial ties."

He suggests that the way in which it can do so is by making improvements to the Africa Growth and Opportunity Act (AGOA), a 16-year-old preferential trade agreement that provides duty-free market access to the US for qualifying Sub-Saharan African countries.

The United States does $37 billion worth of goods trade with Africa, mainly through AGOA. The agreement, renewed last year through 2025, allows for duty-free access for around 4,600 products from 38 Sub-Saharan countries. Under the AGOA, the President decides which countries receive duty-free and quota-free access to the United States — a decision bound to worry African leaders concerned by Trump's pledge to scrape any deal that hurts American manufacturers.

But since most African exports to the US are either natural resources or low-value goods, "lobby groups rarely argue that the AGOA has hit American jobs," says Ben Payton, head of Africa research at global risk consultancy, Verisk Maplecroft. "When such pressure does arise, the new US president would be likely to take an aggressive stance on the legislation."

Peter Draper, a well-known African analyst is less optimistic. As the Brexit vote showed, and as the rise of populism in Western Europe affirms, the politics of the old industrial west have now shifted decisively in the wake of the global financial crisis.

These are sobering days for the world, and particularly for the fortunes of the global trade and investment system. Why? Consider the key contours of a potential Trump trade agenda, and the powers he will shortly exercise should he seek to deliver fully on his promises. Draper quotes two pieces.

In the first, Deborah Elms dissects the Trump economic plan, in which trade features centrally. At the heart of the Trump ideology is a mercantilist view of the world, in which the US trade deficit is caused by 'cheating' trading partners, from which it follows logically that the US, being the most powerful nation on earth, must use trade instruments to correct the perceived imbalances.

Would President Trump have the legal authority to implement such policies? Gary Hufbauer of PIIE argues that he does, and that the full extent of his powers is actually far greater, and potentially far more damaging, than most people realise. President Trump could draw from at least 6 statutes on the US legislative books, one dating back to 1917, without recourse to Congress, and likely with little push back from the US judicial system. Business groups are bound to challenge these trade policies but, if President Trump sticks to them, seemingly to little avail.

Brexit – whether you welcome it or not – provides a game-changing opportunity for Africa and the UK. Outside the customs union, the new Government could fundamentally change its relationships with the countries of the continent to the advantage of both Africa and the UK. These benefits have been identified in a report from a committee of distinguished African and British politicians and business leaders.

Tony Karumba,
Source – Getty Images

Their inquiry into the UK's efforts to boost trade in Africa through the Africa Free Trade Initiative gathered evidence from more than 60 experts over six months. The report does not shy away from the significant short-term challenges to trade posed by Brexit, but these are eclipsed by what Ali Mufuruki, the Tanzanian entrepreneur who co-chaired the inquiry, describes as the "big prize". Brexit, the inquiry concludes, provides "an opportunity for the UK to lead the world in structuring a pro-development trade policy with Africa".

The example of the US shows what could be achieved. Through the AGOA, almost all products from the continent now have duty-free entry into the US. This has been coupled with a package of trade-boosting summits, missions, business councils and regional trade hubs. The impact for both Africa and US businesses has been dramatic. The Act is credited since 2000 with creating more than a million jobs in Africa and generating more than $26bn in duty-free exports to the US. At the same time US exports to sub-Saharan Africa have quadrupled. It all points to what the UK could do.

An interesting piece was written recently by Mohammad A. Razzaque and Brendan Vickers and published in Tralac (Trade Law Centre). The EU and its ACP partners have negotiated seven regional EPAs that are at different stages of finalisation or implementation. During the withdrawal negotiations, once the UK has triggered Article 50 of the Lisbon Treaty, the UK will continue to implement the EU's common commercial policy and all bilateral and regional trade agreements, such as the EPAs.

Once the UK has formally exited the EU, however, all rights and obligations under these various agreements will cease to apply and the UK will devise its own trade policy. Because the EPAs provide 'better-than-MFN' market access, the immediate impact could be that ACP exporters face MFN conditions in the UK market.

While there is debate on what these MFN conditions would look like in a post-Brexit UK, one dominant view is that the EU MFN regime would be the starting point. Although current EU-UK MFN duty rates tend to be low, certain product categories, including those where ACP countries have export interests, attract much higher rates, known as tariff peaks.

In the absence of more favourable trading arrangements, ACP exports to the UK could face a double impact. First, certain products could face higher MFN tariffs. Second, this would expose them to greater competition in the UK market, particularly from non-ACP developing countries. The overall impact will, however, depend on the relative significance of the UK market for ACP exports.