Council of the European Union

PRESS
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BACKGROUND[1]
Brussels, 5 November 2018

FOREIGN AFFAIRS COUNCIL - TRADE ISSUES

Brussels, 9 November 2018

The Council, chaired by Margarete Schramböck, Austrian federal minister for digital and economic affairs, is expected to discuss the ongoing work towards **modernisation of the WTO**. Ministers will then take stock of the latest developments in **ongoing bilateral trade negotiations**, in particular with Mercosur, Indonesia, Chile, Australia, New Zealand, China (investment) and Tunisia.

The Commission will present its latest report on **implementation of free trade agreements**.

Ministers will also be informed by the Austrian presidency of the state of play of negotiations on two legislative files: the proposal on **foreign direct investment screening regulation**, currently under "trilogue" negotiations with the European Parliament and the **horizontal bilateral safeguard regulation**, for which Coreper endorsed the Council mandate on 24 October.

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Over lunch, ministers will discuss recent developments in the **EU's trade relations with the US**.

The Council meeting is scheduled to start at 10:00. A presidency **press conference** will be held after the lunch.

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1 This note has been drawn up under the responsibility of the press office.

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Modernisation of the World Trade Organization

The Council will discuss ongoing work towards the modernisation of the World Trade Organization (WTO). The Commission is expected to brief ministers on the latest developments in its initiative to flesh out and promote the EU comprehensive approach.

The growing trade tensions which negatively affected the multilateral trading system and the WTO have prompted the EU to start a **general, strategic reflection on the possible future WTO agenda and ways to revitalise cooperation in the multilateral framework**. In June 2018, the European Council invited the Commission to propose a comprehensive approach to improving the functioning of the WTO in crucial areas.

On 18 September, the Commission published a concept note setting out ideas to modernise the main WTO functions: rulemaking, monitoring and dispute settlement.

The EU is now expected to deliver concrete proposals for improvements:

- **dispute settlement:** the ongoing crisis of the WTO appellate body, due to the US blockage of appointments of new judges, has been identified as the issue requiring the most urgent solutions, as the body is now left with only 3 members. The EU is working on a a draft proposal aiming at improving the appellate body's functioning while safeguarding its essential principles.

- **monitoring**: the EU has worked with the US and Japan, in the framework of a trilateral cooperation, in order to strengthen the WTO as an institution. On this basis, it is working on a draft proposal to enhance transparency and improve compliance with members' notification of trade measures.

- **rulemaking:** the EU has intensified work on developing new rules with a focus on industrial subsidies and forced technology transfer among other elements identified in the concept note, so as to address the underlying tensions in the multilateral system.

In addition to the work carried out within the WTO bodies, the Commission has engaged dialogue with key partners: with the US and Japan within the trilateral group or with China through a joint working group. The EU has also been promoting its WTO reform agenda in the framework of G20 discussions or other multilateral ministerial meetings. Most recently, Canada hosted a ministerial meeting of 13 like-minded WTO members on 24-25 October 2018 to discuss the issue in which the EU participated.

The last ministerial discussion on the WTO modernisation took place at the informal FAC (Trade) meeting on 5 October 2018 in Innsbruck. During the discussion, Ministers expressed their full support for the Commission’s approach on modernising the WTO and indicated that solving the Appellate Body crisis was a priority.

State of play of ongoing trade negotiations

The Commission will inform ministers about the state of play of ongoing bilateral trade negotiations. The Commission will also touch on the latest progress with regard to the discussions related to the Multilateral Investment Court project, and on the possible accession of the EU to the Mauritius Convention on transparency.

- **Mercosur**

Based on Council negotiating directives from 1999, negotiations for a free trade agreement (FTA) with Mercosur started in 2000 as part of the wider negotiations of a bi-regional association agreement covering also political dialogue and cooperation with the founding members of Mercosur: Argentina, Brazil, Paraguay, and Uruguay. After a long hiatus, negotiations were re-launched in 2010.
Significant progress has been achieved since the relaunch of the negotiations in 2010, with the text of the agreement largely agreed. However, following big expectations for possible conclusion of the negotiations in the margins of the WTO Ministerial Conference in December 2017, the pace of progress has slowed down. The last negotiating round was held in the week of 14 September 2018 (see report). Overall, only limited progress was made, in particular regarding the four key

outstanding issues for the EU: (i) market access for cars and car parts; (ii) market access for dairy products; (iii) maritime services; and (iv) protection of GIs.

- **Indonesia**

Negotiations for an EU-Indonesia free trade agreement were launched in July 2016 (see press release). The aim of these talks is to conclude a free trade agreement that will facilitate trade and investments, and cover a broad range of issues, including tariffs, non-tariff barriers to trade, trade in services and investment, trade aspects of public procurement, competition rules, intellectual property rights as well as sustainable development.

Six rounds of negotiations have been held so far. The latest one took place from 15 to 19 October in Palembang, Indonesia, where a wide range of issues were discussed. Initial tariff offers were exchanged in July, while initial market access offers for services and investment were exchanged before the last round.

The next round is planned for 11 to 15 March 2019 in Brussels.

- **Chile**

On the basis of a Council mandate granted in November 2017 (see press release and mandate 13553/17 ADD 1 DCL 1), the EU and Chile are currently negotiating the modernisation of the trade part of the EU - Chile Association Agreement. The latter was concluded in 2002 and includes a comprehensive FTA that entered into force in February 2003.

So far three rounds of negotiations have taken place, the last of which took place in Brussels from 28 May to 1 June 2018. In total, 22 negotiating groups met, which resulted in constructive exchanges and substantive progress in most areas ranging from trade in goods, services, investments dispute settlement and so on (see report).

- **Australia**

On 22 May 2018, the Council adopted the decision authorising the opening of negotiations for a free trade agreement between the EU and Australia (see press release and mandate).

So far the EU and Australia have been conducting their trade and economic relations under the 2008 EU-Australian Partnership Framework. This aims to facilitate trade in industrial products between the EU and Australia by reducing technical barriers and improve trade in services and investment.

The aim of negotiations is to further reduce existing barriers to trade, remove custom duties on goods and giving better access for services and public procurement. The sectors likely to benefit the most from an FTA are motor equipment, machinery, chemicals, processed foods and services.

So far only one round of negotiations has taken place on 2-6 July in Brussels (see report). Discussions were held in a constructive atmosphere and showed a shared commitment to negotiate an ambitious and comprehensive agreement. 17 working groups met covering almost all areas of a future FTA. Negotiators presented their respective approaches, in most cases already on the basis of textual proposals. The second round is scheduled for November in Australia.

- **New Zealand**

On 22 May 2018, the Council adopted the decision authorising the opening of negotiations for a free trade agreement between the EU and New Zealand (see press release and mandate).

In 2017 the EU and New Zealand entered into a partnership agreement which contains a number of economic and trade cooperation rules. The newly started trade negotiations aim to reduce existing barriers to trade in goods and services, create a level playing field for European companies, and promote smart, sustainable and inclusive growth.

So far two negotiating rounds have taken place, the last of which was held in Wellington from 8 to 12 October and covered all areas except for small and medium enterprises and digital trade. In majority of cases, the negotiations were based on the EU textual proposals.

The discussions allowed to bridge gaps between both sides' positions in a number of areas, and to close corresponding portions of texts. They also allowed to clearly identify follow up actions which each side has to complete ahead of the third negotiating round, scheduled to take place in Brussels in February 2019.

- **China**

In 2013 the EU and China launched negotiations for an investment agreement. The aim is to provide investors on both sides with predictable, long-term access to the EU and Chinese markets and to protect investors and their investments. On 15 January 2016 EU and China agreed on the scope of the future investment deal, thereby implementing the political commitment made by European and Chinese leaders at the June 2015 EU-China Summit.

The EU and China agreed in particular that the future deal should improve market access opportunities for their investors by establishing a genuine right to invest and by guaranteeing that they will not discriminate against their respective companies. The EU and China are also determined to address key challenges of the regulatory environment, including those related to transparency, licensing and authorisation procedures, and to provide for a high and balanced level of protection for investors and their investments. The agreement will also include rules on environmental and labour-related dimensions of foreign investment.

Since then 18 round of negotiations have taken place, the last of which took place in Brussels from 12 to 13 July 2018 (see report).

- **Tunisia**

Negotiations for a Deep and Comprehensive Free Trade Area (DCFTA) between the EU and Tunisia were launched on 13 October 2015, building on the existing EU-Tunisia Association Agreement, which entered into force in 1998 and created a free trade area between the EU and Tunisia.

The aim of the negotiations for a DCFTA is to create new trade and investment opportunities and ensure a better integration of Tunisia's economy into the EU single market. The DCFTA also aims at supporting ongoing economic reforms in Tunisia and at bringing the Tunisian legislation closer to that of the EU in trade-related areas. Discussions cover a wide range of issues including agriculture, services, and sustainable development.

Two negotiating rounds have taken place so far, in April 2016 and May 2018 and the next one is scheduled for 10-15 December 2018 in Brussels.

Implementation of free trade agreements

The Commissioner will present its **second report** on the implementation of free trade agreements, with a particular emphasis on the lessons learned from the first year of provisional application of the free trade agreement with Canada.

The Commission published its first report in 2017 November with the aim of shedding light on what happens after trade agreements are negotiated and have entered into force, and of increasing the transparency and inclusiveness of trade policy, in line with the Commission's commitments set out in the EU's 2015 'Trade for All' strategy.

Other issues

Under "other business", the Council will be informed about the **state of play of legislative files:**

- **foreign direct investment screening:**

The Commission presented its proposal for a regulation establishing a framework for screening of foreign direct investments (FDI) into the EU in September 2017.

The proposed regulation establishes a framework at EU level for analysing investments from third countries in strategic sectors and creates a cooperation mechanism among member states and also with the Commission with regard to investments likely to affect security and public order.

The proposal is among the priority files of the three institutions for this legislative cycle.

The Council agreed on its position on 13 June 2018 (see press release), while the European Parliament voted its report on 5 June 2018. Trilogues with the European Parliament are ongoing, with the common aim by all institutions of finding an agreement with the EP by the end of the year.

- **horizontal bilateral safeguard regulation:**

The Commission presented its proposal for a horizontal bilateral safeguard regulation in April 2018.

The aim was to incorporate into EU law the (i) bilateral safeguard clauses and (ii) any special mechanisms for withdrawal of tariff preferences or other preferential treatments requiring an implementing regulation foreseen in future trade agreements concluded by the EU.

The EU regularly concludes trade agreements with third countries, most of which include bilateral safeguard clauses or other mechanisms for the temporary withdrawal of tariff preferences or preferential treatment. Once the new rules will be agreed on, these safeguard clauses will be included in future trade agreements instead of being proposed separately.

The Council agreed on its negotiating mandate on 24 October 2018 (see press release), while the European Parliament's committee on international trade voted on its report on 11 October 2018 and announced its decision to enter into negotiations in the plenary on 22 October. Negotiations between the two institutions will start soon with the aim of finding an agreement by the end of 2018.

- **EU-US trade relations**

Over lunch, ministers will discuss **recent developments in the EU's trade relations with the United States**, particularly as regards the implementation of the EU-US Joint statement of 25 July 2018, also in light of the US mid-term elections on 6 November.

On 25 July 2018, President Juncker visited President Trump in Washington. The talks resulted in a positive outcome. In a joint statement the US and the EU agreed:

- to work together toward zero tariffs, zero non-tariff barriers, and zero subsidies on non-auto industrial goods
- to strengthen strategic cooperation with respect to energy
- to launch a close dialogue on standards in order to ease trade, reduce bureaucratic obstacles, and slash costs, and
- to work closely together with like-minded partners to reform the WTO and to address unfair trading practices, including intellectual property theft, forced technology transfer, industrial subsidies, distortions created by state owned enterprises, and overcapacity.

The parties set up an Executive Working Group (EWG), co-chaired by Commissioner Malmström and the US trade representative (USTR) Lighthizer, to carry this joint agenda forward. So far the EWC met twice in September and once in October mostly to explore possible synergies on regulatory cooperation- to be conducted in a fully transparent manner, in full respect of both sides' legislative procedures, and without undermining the existing levels of protection..

As regards the possible imposition of Section 232 tariffs on automotive imports into the US, President Trump agreed that those would not be applied to the EU as long as the scoping work and subsequent negotiations for a trade deal are ongoing. As regards steel and aluminium, the US Section 232 tariffs and EU rebalancing measures remain in place, but both sides committed to explore possibilities to resolve the matter.

On 16 October the USTR sent to the US Congress a notification of intent to initiate trade negotiations with the EU, thereby launching a 90-day consultation period.