

## RTA EXCHANGE NEWS DIGEST VOL. 9 DECEMBER 2016

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### A REVIEW OF RTAs AND NEGOTIATIONS IN 2016

#### INTRODUCTION

In 2016, RTAs evolved in the most unexpected way.

At the beginning of the year, the movement towards more and bigger regional trade agreements seemed unstoppable. The already negotiated [Trans-Pacific Partnership \(TPP\) agreement](#) was in the process of ratification and continued to receive high marks from its member countries, in particular the United States.



*Source - Andrea Mohin, The New York Times*

Rapid progress was being made in the negotiations of [the Transatlantic Trade and Investment Partnership \(TTIP\)](#) – designed to solidify the already strong economic relationship between the European Union and the United States – and Canada and the European Union were about to find a way to move on with the ratification of their bilateral trade pact, the [Comprehensive Economic and Trade Agreement \(CETA\)](#).

Elsewhere, like in China, India and among ASEAN countries, conversion to the RTA model had also taken root. By mid-year, however, RTA's prospects deteriorated. Like the picture published in The New York Times (and reproduced above) where a mirror creates a double effect, another face of the RTA presented itself.

Quite unexpectedly, on June 23, the British people voted to take their country out of the European Union, setting in motion a process whose contours continue to divide both British and non-British European nationals, and is threatening to disrupt the further development of the EU itself.

Also, the Canadians and the EU Commission managed to move on with CETA, but on conditions that under the current environment may prove very difficult to accomplish. CETA will be implemented in two stages; while tariff reductions and other trade measures will start in 2017, other CETA provisions, particularly those dealing with investor-state dispute resolution need to be further developed.

But it was in the United States, until now the strongest supporter of the so-called mega-regional agreements, like the TPP and the TTIP, that situation has changed radically.

During the electoral debates, the republican candidate made clear that should he prevail in the elections his government would not continue vis-a-vis trade agreements the politics of his predecessor, and his vocal criticism of the trade agreements entered into by the United States was tacitly -and sometimes explicitly – supported by his Democrat opponent.

Thus, although it may be still be premature to draw final conclusions based in those recent trends, we may now be entering into a new phase of globalization and consequently a new approach to regional trade agreements and negotiations.

For the last few years, a main concern regarding the relationship between RTAs and the multilateral trading system has been to make sure that they reinforce each other. This approach may no longer be applicable. Anti-free trade sentiment is gaining ground all over. It is not regionalism – as we have known it so far - that poses a challenge to multilateralism; it is rather a new nationalism that seems to be gaining ground.



Source - Getty Images

### A “NEW” US TRADE POLICY?

The results of the US presidential elections may have a lasting influence on the future of trade deals. Through his political beliefs, President elect Donald Trump has established a forceful and destructive anti-trade agenda. In many interviews and [speeches](#) during the campaign, he argued that “globalization has [...] left millions of our workers with nothing but poverty...” The direct culprits, according to Trump, are trade deals signed or supported by the US.

“First, the disaster called NAFTA. Second, China’s entry into the World Trade Organization” and “then the TPP, as it is known, which would be the death blow for [American manufacturing.](#)” He has

also suggested that the US could pull out of [the World Trade Organization \(WTO\)](#) if his plans to use tariffs to bring factory jobs back from Mexico were challenged.

President-elect Trump has also underlined that he would “make individual deals with individual countries. No longer will we enter into these [massive transactions with many countries](#), i.e., the TPP or the TTIP, that are thousands of pages long and which no one from our country even reads or understands.”

As noted by Nobel laureate economist Paul Krugman, the newly elected US President seemed to be truly passionate about the need for a new US strategy regarding the “unfair” trade deals his country has entered into in recent years. Once elected, as if to give further assurances that he meant what he said while campaigning, President-elect Donald Trump counted [the renegotiation of the TPP](#) is among his priorities for the first one hundred days of his presidency.



***The Three Musketeers of Mr. Trump’s trade policy – Robert Lighthizer, new designated USTR; Peter Navarro that will lead a new National Trade Council in the White House; and Wilbur Ross, the upcoming Secretary of Commerce.***

According to Krugman the [relevant trade legislation](#) gives the occupant of the White House remarkable leeway should he choose to go protectionist. He can restrict imports if such imports “threaten to impair the national security”; [he can impose tariffs](#) “to deal with large and serious United States balance-of-payments deficits”; he can modify tariff rates when foreign governments engage in “unjustifiable” policies, and so on and so forth.

And what will happen if and when the US increases its tariffs? There will be retaliation, big time. When it comes to trade, America is [not the only superpower](#) — China is also a huge player and the European Union is bigger still. They would likely respond in kind, targeting vulnerable US sectors like aircraft and agriculture, and retaliation isn’t the whole story; there’s also emulation, which could cause a lot of disruption and potentially – as Krugman views it – start a trade war.

Dani Rodrick is less radical. Whereas we have recently witnessed an almost [ceaseless negotiation](#) of trade agreements, both multilateral and regional, the populist revolts of 2016 will almost certainly put an end to this hectic deal-making. Developing countries may pursue smaller trade agreements, but the two major deals on the table, the TPP and the TTIP are as good as dead after the election of Donald Trump as US president. This should not be bad in itself, according to Rodrick, because if we manage our own economies well, new trade agreements will be largely redundant.

At the beginning of 2017, President-elect Donald Trump [chose Robert Lighthizer](#) as his US trade representative, in another signal that his administration would implement the aggressive trade policies he advocated during the campaign.

Mr. Lighthizer served as deputy US trade representative in the administration of Ronald Reagan at a time when the office was renowned for its battles with Japan. As US trade representative, Mr Lighthizer would be the key US trade negotiator; his responsibilities include managing US participation in the WTO, and he would play a key role in delivering on Mr Trump's campaign promises to crack down on unfair trading practices by China and to renegotiate the North American Free Trade Agreement with Canada and Mexico.

The appointment, which must be confirmed by Congress, is the latest signal of what is likely to be a major shift in US trade policy when Mr Trump takes office on 20 January. He had already indicated [that he plans to create a National Trade Council](#) inside the White House to oversee industrial policy, which will be headed by Peter Navarro, a Harvard-trained economist and author of the book *Death by China*. He also has [nominated businessman Wilbur Ross](#) to serve as commerce secretary, a role from which he is expected to guide the administration's trade policy.

## BACK TO THE WTO?



Source - Reuters

All these changes may bring the opportunity to revisit the place of the WTO in trade negotiations and to revalue its role as the key international body with responsibilities in the trade field. For the last two decades, since the GATT was replaced by the WTO in 1995, the centre of gravity of trade policy moved gradually from the multilateral to the regional and intra-regional

spheres, and scholars and trade analysts went to pains to justify the complementarity of regional pacts and multilateral rules.

The proliferation of regional trade agreements – almost 400 are in existence according to the WTO - reflects, in part, a demand for deeper integration than what has been possible to achieve at the multilateral level, particularly since the deadlock of the Doha negotiations.

New negotiations, as the ones dealing with [mega-pacts go beyond existing WTO rules](#). They cover areas such as investment, the movement of capital and persons, competition and state-owned enterprises, e-commerce, anti-corruption, and intellectual property rights, which are essential policy issues that need to be addressed in today's interconnected markets.

The aim of mega-regionals is ambitious; they seek to establish “high standard” rules to facilitate deep and comprehensive trade integration. It is therefore no wonder that concerns about the proliferation of RTAs have focused until now on ensuring that their disciplines are consistent with multilateral rules and that coherence across regional arrangements, as well as between regional pacts and the multilateral system is sought.

In the “new” policy environment regarding regional trade pacts, and the real possibility that mega-regional pacts and negotiations be abandoned or postponed indefinitely, a reconsideration of the rule-making functions of the WTO should be undertaken, and discussions on how the WTO could better respond to the demand and concerns of today’s global economy should soon be undertaken.

This is not going to be an easy process. In a fully functioning multilateral trading system, all new trade agreements should eventually be open to all countries, and no discrimination should be introduced by regional trade agreements and for this the WTO to adjust its trade policy-making functions to the “new” realities of international trade.

As pointed out by Patrick Low, a former chief economist of the multilateral body, the WTO has at least three advantages over the alternatives. First, its near-universality makes it non-discriminatory, which confers [a greater degree of legitimacy on outcomes](#); second, it can build its forward-looking agenda around particular issues when they become ripe for negotiation; and finally, the WTO can “multilateralize” existing preferential deals, and do it in a way that does not push countries that are not ready for particular commitments into making them prematurely.

Thus, a return to a multilateral setting would offer the best chance of progress.

### BREXIT MEANS BREXIT, BUT BREXIT IS STILL UNDEFINED

Brexit is said to be the most important contribution that politics has made to the English language since Watergate generated the “-gate” suffix, which allows journalists to make any scandal sound vastly more scandalous than it is.

You may agree or disagree with this statement, but it’s a fact that the Brexit process is proving more complex than even its strongest supporters realized half a year ago, when the choice was given to the British people to remain in, or exit the European Union, a community to which they have belonged for more than half a century.

Although repeatedly Prime Minister Theresa May has indicated that the [UK would start exit calls in March this year](#), little else is known of her government strategy. At issue are not just the conditions of withdrawing from the UE, but also the type of bilateral relationship both the UK and the EU would entertain in the future; these are resumed by the words “hard” and “soft” Brexit, the first referring to the radical cut of formal relationship with the EU, the second to a variety of models, like the ones offered by the Swiss and Norwegian experiences.

Between these two extremes, “hard” and/or “soft” lay quite a number of issues. Before Christmas, Mrs May announced for the first time that she wants to negotiate a transition deal to help smooth Britain’s EU exit after 2019. Mrs May insisted Britain could conclude a



Source - The Financial Times

divorce agreement and forge a new trade deal with the EU [within two years of starting exit talks in March 2017.](#)

She also said the British government will seek to carry out trade and exit talks in “parallel” despite warnings from Brussels that the bloc will not tolerate any negotiations about Britain’s trading relationship until it has formally left the EU.

Speaking to a committee of MPs, Theresa May added the [UK will not be seeking an extension of the two-year Article 50 process during its negotiations.](#) She added that she told a regular meeting of the EU’s 27 leaders that Britain wanted to give quick “reassurances” to its citizens in Europe and EU citizens in Britain over their residency rights “early on” in the government’s official Brexit talks.

From his part, the UK Chancellor, Philip Hammond, who is increasingly seen as the most vocal proponent within the cabinet of a so-called “soft Brexit”, has warned [against a situation](#) where the UK has to use its membership of the WTO for access to European markets after Brexit. He has indicated that “thoughtful politicians” were open to a transitional deal; that the UK should pay to maintain access to the single market; and that new immigration controls might be moderated.

And while politicians continue debating their strategic options, two alarm bells on Brexit have rung for the UK government and business. According to a [survey](#) on Wednesday by Gowling WLG, a London-based law firm, a third of US business leaders whose companies export to the EU fear their operations will suffer if the UK’s Brexit divorce talks drag on too long. Just over half of them are thinking of bypassing the UK altogether to do business directly with the EU. “The strong UK-US trade relationship that has been carefully nurtured over the past 50 years is in serious jeopardy,” said Bernardine Adkins, a Gowling WLG executive.

The second alarm bell was a [House of Lords Report](#) on the UK’s options for post-Brexit trade relations with the EU. It concludes that it is unrealistic to expect the UK-EU relationship to be put on a new, legally binding foundation within two years. Baroness Verma, the Conservative chair of the Lords’ subcommittee that conducted the study, commented: “It is unlikely that a bespoke EU trade agreement can be agreed within Article 50’s two-year period, so a transitional deal is vital for protecting UK trade and jobs that rely on trade.”



*Source – Reuters*

The true is that the UK has still to make up its mind about what it wants: Norwegian-style involvement in the single market, Turkish-style membership of the EU customs union, a Canada-style free trade accord, a US-style relationship based on World Trade Organisation rules, or something else. One European official speculates that the UK wants a deal “between Norway-minus and Canada-plus”. But the devil will be in the detail. The longer it takes to work out the detail, the more concerned US executives in the UK will become.

## THE CHINA DIMENSION

In these emerging new realities regarding RTAs, China’s growing economic and trade prominence is a key, often implicit concern. Take the TPP, which President Obama has presented as an agreement to counter China’s influence in the Asia Pacific region, or the TTIP, which many see as a way to keep European and US influence in international trade decision making.

Geopolitics as much as pure trade-related issues may determine the future of regional trade agreements. Thus, whereas a key concern of trade policy makers has been to ensure the compatibility of regional initiatives and the multilateral trading system, they may now have to revisit this traditional approach.

As for next year’s outlook for world trade, a wave of protectionism and anti-trade sentiment is washing over the United States and Europe. The political climate, with elections due next year in Germany and France, has put [TTIP negotiations on a very long pause](#), says Caroline Freund, a trade analyst at the Washington-based [Peterson Institute for International Economics](#).

And the next US president has threatened to slap 45 percent tariffs on all Chinese exports to the United States. This could be rhetoric, but if implemented it is highly probably that China would retaliate, making life even harder than it already is for US companies in China. “So much of what American consumers buy is manufactured in whole or in part in China,” points out Debbi Elms, head of the Singapore-based Asian Trade Centre. “And a lot of what US companies produce is produced in China, and [a lot of their profits come off the China market.](#)” Under those circumstances, she warns, “a trade war could be quite catastrophic.”

And while the major developed economies debate how to exclude China from their planned regional trade deals, China is reasserting its rights under the WTO. As 2016 was about to close, it initiated WTO dispute settlement procedures with a view to have its two biggest trading partners to drop the so-called “analogue-country” model that they use in anti-dumping disputes against Chinese imports, China’s Ministry of Commerce announced in a [statement](#) on its website.

The move highlights China's determination to win full WTO rights 15 years after joining the global trade body. Beijing is trying to keep export markets for goods ranging from steel to solar panels accessible in the face of growing European and US political concerns about the threat to their manufacturers posed by Chinese competitors. The US and EU have initiated the most anti-dumping investigations against China, and using third-country models has artificially raised duties on Chinese exports, [hurting businesses and employment](#), according to China Ministry of Commerce.

In doing so, Beijing is charging the US and the EU with failure to honour a pledge in China's 2001 WTO accession agreement that it would by now be regarded as a "market economy". Crucially, in trade law it is easier [to impose antidumping and countervailing duties](#) against imports from a non-market economy. The aggrieved importing nation can pick an "analogue country" with which to make price comparisons rather than having to use data from the trading partner.

As stressed in a piece at the Financial Times, if the WTO rules China's way, Brussels and Washington should rapidly comply. Otherwise they risk undermining the rules-based multilateral trading system. The absorption of such a rising giant as China into the world economy has been eased by the operation of a functioning system of global trade law under the WTO. If the WTO rules that China's accession agreement automatically accords it the status of a market economy, Brussels and Washington should accept without delay.

China has warned US President-elect Donald Trump that [co-operation is the only correct choice](#) after the US president-elect tapped a China hawk to run a new White House trade policy office. The appointment of Peter Navarro, a campaign adviser, to a formal White House post shocked Chinese officials and scholars who had hoped that Mr Trump would tone down his anti-Beijing comments after assuming office.

Adding to rising tensions between the two countries, the US Office of the Trade Representative yesterday put Alibaba, China's biggest e-commerce platform, back on its ["notorious markets" blacklist](#) of companies accused of being involved in peddling fake goods.

Speaking hours before the appointment of Mr Navarro, which was first reported by The Financial Times, China's foreign minister Wang Yi told the People's Daily that China and the US faced "new, complicated and uncertain factors affecting bilateral relations". He said the world's two largest economies must [respect each other's "core interests"](#).

## OTHER RTA NEGOTIATIONS

### I. TPP

The dozen nations in the proposed Trans-Pacific Partnership (TPP) trade group took seven years to hammer out a deal. President-elect Donald Trump promises to take just one day to scrap it. His fiery anti-TPP, anti-NAFTA, and anti-Chinese exports comments [create opportunities](#) for rival powers to promote their own trade agenda. When it comes to global trade there is a leadership vacuum.

China is already moving to replace the US as trade champion. It is in talks to form an Asian trading bloc, [the Regional Comprehensive Economic Partnership \(RCEP\)](#) that would include Australia, India, Japan, South Korea, New Zealand, and the 10 members of [the Association of Southeast Asian Nations \(ASEAN\)](#). [The latest round of negotiations](#) took place from 2 through 10 December 2016 near the Indonesian capital of Jakarta.

China is also promoting regional ties via its One Belt, One Road project, which is supposed to improve transportation links with many of its Asian and European trading partners. To help fund such projects, China has started the [Asian Infrastructure Investment Bank](#), an alternative source of funding than the World Bank in Washington and the Japan-led Asian Development Bank.

The collapse of the TPP would be welcome news for Russian President Vladimir Putin. If we want to effectively influence global economic processes, [there should be no closed associations](#) he told reporters on 20 November 2016, after [the Asia-Pacific Economic Cooperation \(APEC\)](#) summit in



*Source - Altaf Quadri, Associated Press*

Lima. At the same time, Russia is promoting its own version of regional groups, such as [the Eurasian Economic Union \(EAEU\)](#), a trade bloc it launched in 2015 that includes Armenia, Belarus, Kazakhstan, and Kyrgyzstan. According to the TASS news agency, Russia is interested in [linking the EAEU with other Central Asian countries, China, and ASEAN](#).

Among major trading nations, Japan has perhaps the most riding on the success of the TPP, as Prime Minister Shinzo Abe agreed to difficult concessions on opening the domestic market to more imports of beef, rice, and other agricultural products.

On 28 November 2016, the ruling Liberal Democratic Party and its coalition partner agreed to extend by two weeks the current session of parliament, providing enough time for Japanese lawmakers to ratify the agreement. [“Japan needs regional free-trade agreements, because a lot of Japanese production capacity is scattered across Southeast Asia,”](#) says Takako Asano, research fellow at the

Tokyo Foundation, a think tank. That diminishes the value to Japan of the country-to-country agreements that Trump wants. “We can’t just have bilateral deals,” says Asano. “That just worsens the spaghetti-bowl situation.”

Abe is hedging his bets. His government is trying to conclude an economic agreement with the European Union. It’s also negotiating a trilateral agreement with China and South Korea and is taking part in the RCEP talks. Japan also wants to accelerate trade ties with Mercosur, the South American trading bloc, Abe said on a visit to Buenos Aires on 21 November 2016.

## II. NAFTA

President-elect Donald Trump seems determined to follow up on his promises during the elections to implement a tougher trade policy against some of the US main trading partners, like China and Mexico, and take a harder stance on trade negotiations and trade issues dealt with by the WTO.

Dramatically changing the current US trade policy will not be easy or costless. Getting tougher on Mexico and [the North American Free Trade Agreement \(NAFTA\)](#), for instance could threaten 14 million American jobs that rely on trade with Canada and Mexico and send tremors throughout the North American business community, [which has invested billions of dollars](#) in developing ways to manufacture everything from cars and airplanes to pharmaceutical products using labour from multiple countries.

So far, President-elect Trump has offered few details about what changes he’d like to make to NAFTA, other than threatening to withdraw from it entirely unless Mexico and Canada agree to new terms. Business groups are hoping they can persuade him to instead “fix” the agreement in ways that will benefit them.

In an ironic twist, many business groups hope Trump will steal ideas from another trade agreement — the TPP — as he seeks to upgrade NAFTA. [That should be possible](#), since both Canada and Mexico are part of the 12-nation deal that Trump is vowing to jettison on his first day in office.

Canada and Mexico are the second- and third-largest markets for US farm goods, behind China. The three North American countries are also closely integrated in many manufacturing sectors, such as autos and steel, making any talk of US tariff hikes to bring jobs back to the United States a double-edged sword because it could make the entire region less competitive.

[“What we’re looking for is to move forward, not backtracking,”](#) Kenneth Smith Ramos, head of Mexico’s trade and NAFTA office in Washington, said while stressing that Canada and Mexico are the top two export destinations for the United States, taking in more than USD 500 billion in US goods each year.

“We are US top clients,” Ramos said. “Mexico is not a country that simply comes to ask for concessions from the United States. We work together with the US We sell a lot to the US, but we buy more from the US than all the BRIC (Brazil, Russia, India, China) countries combined and all of Western Europe combined.

This may start changing, as suggested by the decision of the Ford Company to cancel a planned new investment of US 1.6 billion on a new plant in San Luis Potosí, Mexico. As pointed out in an article in El País, [Ford decision may be the first but not necessarily the last one of its kind](#), and the effect Trump may have come to Mexico to stay on.

### III. CETA

The European Commission and the Canadian government are appealing for other trading WTO partners to join their planned investment court, which they see as the answer to a major criticism of global trade deals.

Canada and the Commission, which negotiates trade agreements for the 28 EU members, have committed to setting up a permanent investment court (ICS) to settle disputes, but need to bring in others for this to be a truly international body.

Canadian Trade Minister Chrystia Freeland and EU Trade Commissioner Cecilia Malmström will also address the initiative with other trade ministers at the annual World Economic Forum in Davos, Switzerland on 20 January. “We’re not trying to force this on other countries,” said a Commission source, adding that [the court would need more participants](#) than just the EU, Canada and Vietnam, whose trade deal with the EU also refers to such a court.

The planned court is a response to criticism that the investment dispute settlement system (ISDS) in some 3,200 existing bilateral investment deals gives multinational companies too much power. [Investor protection has been focus of protests against the CETA](#), which has been agreed but awaits ratification by participating countries. The investment court would have judges appointed by the trading partners and include an appeals mechanism.

### IV. THE EU AND TURKEY

Brussels is taking steps to reinforce EU trade links with Turkey despite Austria’s failed attempts to halt EU accession talks with Ankara. The European Commission is now seeking to stabilise relations by advancing long-delayed plans to deepen the bloc’s customs union with the country.



Source - The Financial Times

In this context, Cecilia Malmström is now seeking the approval of member states to begin talks to [update the 20-year old arrangement](#) with Turkey, which covers industrial goods but not agriculture, services or public procurement.<sup>1</sup> By including such sectors, Brussels is seeking to boost 140 billion Euros in annual trade with Ankara.

### V. THE EU AND JAPAN

While populism seems to be tearing up the rules of trade around the world, leaving globalisation in crisis, the news has not reached much of Asia. Aside from [ratifying the TPP in early December 2016](#) – the 12-nation trade agreement originally led by the US, which is now turning away from the deal –

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<sup>1</sup> See also: [Austria calls for freeze of Turkey’s EU membership talks](#).

Japan is achieving the apparently impossible. It is close to initialling agreement with the European Commission on a bilateral trade pact, despite the EU recently being wracked by arguments over a similar deal with Canada and a broader one with the US.

The Japan trade deal may have a rockier time being ratified in the EU than it has reaching the initial signing stage. Nonetheless, the remarkably smooth progress so far illustrates two points. First, the supposed movement towards rejecting globalisation in general and trade deals in particular is disproportionately [a western European and US phenomenon](#), and should not be overstated. Second, public opposition to trade deals frequently exceeds opposition to trade itself.

Japan is seeking cuts in EU tariffs on Japanese autos, auto parts and electric devices. Tokyo also wants the EU to cut red tape it says [Japanese companies face doing business with the EU](#). Japan, for its part, could ease the process for foreign companies bidding on construction and materials procurement for public entities, but the EU is also seeking further concessions regarding Japanese tariffs on agriculture products.