

## **EPSU update on trade developments**

**prepared by Dylan Marshall, EPSU Stagiaire, September 2019**

### **1. Implementation of CETA**

In April of this year, the Court of Justice of the European Union (CJEU) held that the investor court system (ICS) established under CETA was compliant with EU law.<sup>1</sup> As outlined by EPSU in previous publications, such a court system can inhibit governments from taking strong and decisive actions in fear of being sued by investors.<sup>2</sup> In an agreement between two partners who both have well-functioning judicial system and a strong respect for the rule of law, the ICS of CETA grants investors special rights over other groups in society to sue governments for policies that threaten their profits or business interests in an opaque manner, away from public attention. This court system puts public services in both the European Union and Canada at risk of attack from foreign investors. In the past; policies regulating public services, from capping the price for water to the promotion of renewable energies to reversed privatisations, have already been targets of claims at investor-state dispute settlement bodies similar to the ICS established under CETA. The agreement included the broadest chapter on trade in services that the EU has ever concluded with a third-country, which included many public services, all of which are subject to this new ICS.

### **2. EU-Vietnam Agreement**

The EU concluded a free trade and investment protection agreement with the Republic of Vietnam on 30 June 2019. A number of MEPs and the ETUC have raised concerns about the situation of labour rights in Vietnam and the lack of protections provided for in the agreement.<sup>3</sup> Vietnam has not ratified many core ILO conventions on freedom of association, collective bargaining and forced labour.

The Sustainable Development Chapter in EU other trade agreements are neither appropriate nor adequate when concluding agreements with one-party states where labour and trade union rights are severely limited yet the European Commission utilised the same template as is found in other “new generation” free trade agreements. The weak protections provided for in this agreement are virtually non-enforceable.

Further, this agreement sets an alarming precedent for a future EU-China trade agreement where labour and trade union rights are similarly curtailed and restricted.

### **3. EU-Mercosur trade agreement**

On 28 June 2019, the European Union concluded a free trade agreement with the South-American trade bloc composed of Argentina, Brazil, Paraguay and Uruguay.

Since the new Brazilian President Bolsonaro took office, there has been an increasing number of human rights violations and attacks on minorities, LGBTIQ and indigenous peoples. The Brazilian government's policy is paving the way for its powerful livestock and soybean companies to accelerate deforestation of the world's largest rainforest. In the last two months

<sup>1</sup> [http://curia.europa.eu/juris/celex.jsf?celex=62017CC0001\(01\)&lang1=en&type=TXT&ancre=](http://curia.europa.eu/juris/celex.jsf?celex=62017CC0001(01)&lang1=en&type=TXT&ancre=)

<sup>2</sup> <https://www.epsu.org/article/ceta-trading-away-democracy-corporate-europe-observatory>

<sup>3</sup> [http://www.heidihautala.fi/wp-content/uploads/2019/06/Joint-MEP-letter-EVFTA\\_IPA.pdf](http://www.heidihautala.fi/wp-content/uploads/2019/06/Joint-MEP-letter-EVFTA_IPA.pdf)

alone, 70,000 hectares of rainforest have been cleared in Brazil. As a result, the threat to the climate increases enormously. In addition, Brazil is seeking to withdraw from the Paris climate agreement. To conclude a trade agreement that favours this development would be irresponsible and counter-productive.

Similar to CETA, the agreement uses a negative list approach for public services. This means that all services will be subject to market liberalisation unless an explicit exception is made. Article 54 of the title on trade in services provides this negative list and essential public services are not found in this provision which could result in the liberalisation and privatisation of many, if not all, of these sectors in line with the proposed agreement.

Since the start of widespread forest fires in the Amazon rainforest in Brazil, both the Taoiseach of Ireland and the President of France have threatened to reject the trade agreement unless the Brazilian government takes serious steps to protect the rainforest and its environmental obligations.<sup>4</sup> Further, on 11 July, the lower chamber of the Irish Parliament passed a non-binding motion to reject the proposed agreement by 84 votes to 46.<sup>5</sup>

#### **4. Modernisation of the Energy Charter Treaty**

On 02 July 2019, the Council empowered the Commission to negotiate a modernisation of the Energy Charter Treaty, which has been in effect since 1998. The Commission's mandate is based on the proposals made in May 2019.<sup>6</sup> The main aim of this renegotiation is to clarify the protections of investors and investments, incorporate new sustainable development provisions, and a reform to the dispute settlement regime under the treaty.

A new report by Corporate Europe Observatory has outlined the many issues present in the Energy Charter Treaty and has criticised the Commission's negotiating mandate.<sup>7</sup> At an event, held in Brussels on 04 September 2019, Luxembourg's Minister of Energy highlighted his discontent at the Commission's negotiating mandate and signalled his willingness to reopen dialogues within the Council in order to strengthen the negotiating mandate with regards to reaching Europe's commitments under the Paris Agreement. He further floated the possibility of Luxembourg to leave the Energy Charter Treaty should the negotiations fail to reform the dispute settlement regime and to strengthen the treaty's promotion of renewable energies and sustainable development.<sup>8</sup>

#### **5. EU starts dispute settlement against South Korea over worker's rights**

The European Commission has initiated a dispute settlement procedure against the Republic of Korea at the Trade and Sustainable Development Committee created under the EU-Republic of Korea trade agreement.<sup>9</sup>

Under the 2011 trade agreement, the Republic of Korea was bound to implement four ILO Conventions and ensure their labour conditions were in line with international standards – of which, only one has been ratified by the Korea National Assembly. The ITUC has recently

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<sup>4</sup> <https://www.euractiv.com/section/energy-environment/news/ireland-threatens-to-vote-against-eu-mercosur-deal/>

<sup>5</sup> <https://www.thejournal.ie/mercosur-deal-voted-down-by-dail-4721099-Jul2019/>

<sup>6</sup> [http://trade.ec.europa.eu/doclib/docs/2019/may/tradoc\\_157884.pdf](http://trade.ec.europa.eu/doclib/docs/2019/may/tradoc_157884.pdf)

<sup>7</sup> [https://corporateeurope.org/sites/default/files/attachments/one\\_treaty\\_to\\_rule\\_them\\_all.pdf](https://corporateeurope.org/sites/default/files/attachments/one_treaty_to_rule_them_all.pdf)

<sup>8</sup> <https://www.euractiv.com/section/energy/news/luxembourg-leads-eu-push-to-climate-proof-energy-charter-treaty/>

<sup>9</sup> <https://www.ituc-csi.org/fundamental-labour-rights-under>

outlined that trade union rights and the right to strike are continuously restricted and undermined by public authorities and private actors.<sup>10</sup>

If the Korean government and the European Commission do not come to agreement, a panel of experts will be called and will produce and publish a report on the situation with policy suggestions. The reports' implementation will be monitored by the Trade and Sustainable Development Committee.

## **6. New Trade Commissioner**

Ursula von der Leyen has revealed the portfolios of each of the Commissioners in her college. Tasked with the trade portfolio will be Phil Hogan, an Irish politician from Fine Gael (EPP) who served from 2014 until 2019 as Commissioner for Agriculture and Rural Development.

Hogan is a career politician who has been involved in national politics for the best part of 40 years. During this time, he has been an local councillor, a TD, and government minister. As Commissioner for Agriculture, he was a member of numerous trade missions with non-EU states including Mexico, Colombia and Japan to expand markets for European agricultural produce. Further, earlier this year, he had to defend the controversial Mercosur agreement in his home country after the farm lobby and Dáil called for a rejection of the agreement.

In his mission letter written by von der Leyen; he is charged with reforming the WTO, utilise trade defence instruments at the Commission's disposal to protect against unfair trade practices, and to strengthen the Commission's trade enforcement instruments. Further, he will seek to expand the EU's trading network by concluding an investment agreement with China by the end of 2020, working towards a EU-Africa free trade area, the continuation of existing trade negotiations. Hogan is also tasked with improving sustainable development in trade agreements – including labour rights and the environmental protections. Finally, he will be challenged with increasing the transparency of trade negotiations.

## **7. New INTA Committee**

The INTA Committee in the European Parliament has a total of 40 members; 10 EPP, 8 S&D, 6 RE, 5 ID, 4 G/EFA, 3 NI, 2 ECR, and 2 GUE/NGL. In addition to this, there are 41 substitutes of the committee.

The committee is chaired by Bernd Lange (SPD-PES/S&D). There are four vice-chairs of the committee; Jan Zahradil (ODS-ACRE/ECR), Iuliu Winkler (RMDSZ-EPP/EPP), Anna-Michelle Asimakopoulou (ND-EPP/EPP) and Marie-Pierre Vedrenne (MoDem-EDP/RE).

This committee will be responsible for Phil Hogan's confirmation hearing before he officially is sworn in as Commissioner for Trade. Further, it will be responsible for scrutinising trade agreements conducted by the Commission and the Commission's trade policy over the next five years.

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<sup>10</sup> <https://www.ituc-csi.org/fundamental-labour-rights-under>