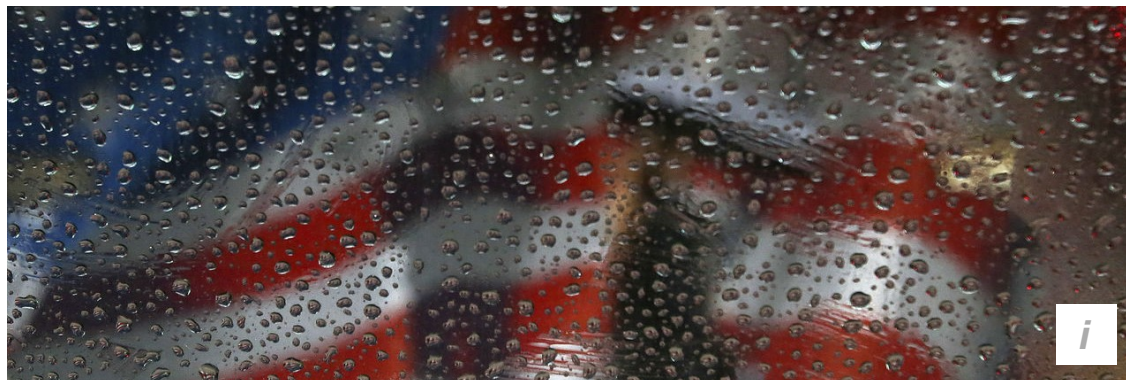


PRACTICAL LAW

ARBITRATION BLOG



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President-elect Trump and the future of TPP, TTIP and NAFTA

Trade and investment agreements featured extensively during the US presidential election campaign.

President-elect Trump has vowed that the USA will withdraw from the *Trans-Pacific Partnership* (TPP) agreement, which was finalised just months before the election took place.

He also claimed that he would re-negotiate the *North American Free Trade Agreement* (NAFTA), which has been operating since 1994.

According to Mr Trump, NAFTA has resulted in the loss of many blue collar American jobs because factories have been moved to Mexico, where it is cheaper to operate. He also fears that the TPP will be a “job killer”.

Hillary Clinton (who was US Secretary of State at the start of the TPP negotiations) had stated that the TPP had set the “gold standard” for trade and investment agreements. However, she also distanced herself from the TPP during the campaign.

So, both candidates reflect the apparently widely shared mood against trade and investment agreements. This can also be sensed in many parts of Europe.

Indeed, the European Commission suspended the *Transatlantic Trade and Investment Partnership* (TTIP) negotiations after Mr Trump’s election. It had become clear that a deal before President Obama leaves office was impossible, and reconsideration of the TTIP negotiations may be required.



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The following question has therefore arisen: how will Mr Trump, as incoming US President, approach the TTIP negotiations, and what will the EU and its member states do in reaction?

By all measures, it can be expected that Mr Trump will be equally as hostile towards the TTIP as he is towards the TPP. Moreover, the proposed *investment court system* (ICS), which would create a new semi-permanent international investment court, will certainly be rejected by the US Congress, which will be led by the Republican Party (in both the House of Representatives and the Senate). So, it seems very unlikely that the TTIP will be greeted with any enthusiasm once President Obama has left office.

Meanwhile, the appetite for the TTIP, or in fact for any other trade and investment agreement, is continuously falling and hitting rock bottom in the EU and its member states. Accordingly, it looks as if the TTIP negotiations will go nowhere in the next few years.

Regarding NAFTA, Mr Trump announced that he would either seek to renegotiate it by obtaining a “better deal” for the US, or terminate it altogether. Unfortunately, Mr Trump has not given any details as to what he considers to be a better deal. Furthermore, re-negotiating a deal requires reaching an agreement with Canada and Mexico. Following Mr Trump’s denigrating comments towards Mexicans, this may not be so easy to achieve.

If NAFTA is terminated by the US, it would be possible for the country to introduce high tariffs and other protectionist measures against Mexico and Canada. However, it is not immediately obvious that this would create any new jobs in the US.

Mr Trump also hinted that he would go “bilateral”, and try to negotiate new and “better” *bilateral trade and investment deals* with the USA’s trading partners. However, Mr Trump has not yet provided any details of how a better deal would look, and nor has he specified which countries he would seek to negotiate such agreements.

Despite the vagueness of the future approach of the President-elect, one trend seems currently irreversible: the trend against mega-trade and investment agreements. This feeling is increasingly shared in the EU, with *Brexit* indicative of a new inclination towards bilateralism.

This does not mean that there will no longer be any trade and investment agreements. Instead, we will see a renaissance of tailor-made bilateral trade and investment agreements. The advantage is that such deals should be negotiated much faster. They could also address the specific needs of the two trading partners involved. For example, post-Brexit UK should be able to conclude a kind of mini-TTIP deal with the US within 2-3 years, without the interference of the European Commission, European Parliament or the other EU member states. In this sense, post-Brexit UK could find itself in a better position than the EU, having agreed a deal with the US in a much shorter space of time.

Interestingly, and in contrast with the situation in the US, it seems that in the *Asia-Pacific region*, the push for ratifying the TPP remains high (although Japan’s Prime Minister said that TPP without the US would not make sense). China may find it attractive to replace the US in the TPP, thereby strengthening its already powerful economic position in the region. With this in mind, it may be strategically unwise for the US to leave the TPP.

In a more global context, there is a question as to whether or not increasing bilateralism will undermine the multilateral trading system as it has been created within the framework of the *World Trade Organisation* (WTO). After all, the move towards multilateralism, which started in the late 1980s, was initiated in order to overcome the stagnation and rising protectionism in

international trade. Indeed, by all accounts, the global economy received a huge boost by the trade liberalisation that was unleashed by WTO agreements. However, it seems that the USA (and potentially the EU) may be on course to reverse, or at least try to slow down, the ongoing globalisation of the world economy. In saying that, it is very questionable whether dumping the TPP, NATFA and TTIP would have any effect on reversing or slowing down globalisation.

In conclusion, it seems that we have now entered a new dark age of protectionism and rising nationalism. This could have tremendous implications for the future of trade and investment agreements, and the global economy. Currently, however, the effects are very difficult to predict.
