ISAC
CENTAR ZA MEĐUNARODNE I BEZBEDNOSNE POSLOVE
INTERNATIONAL AND SECURITY AFFAIRS CENTRE

POLICY OPINION

No 11 / DECEMBER 2020

CHAPTER 30:

ANOTHER POLITICAL OBSTACLE?

ISAC Fund team

Consultant: Milan Igrutinović

In the accession process of other states, the general public and expert communities mainly treated Chapter 30 "External Relations" as "technical" and, therefore, easy to close. In case of Serbia, however, this chapter could easily become a political issue, as it concerns *inter alia* the adoption of regulations on genetically modified organisms (GMOs) and economic aspects of cooperation with certain third countries, of which Russia is certainly the most significant.[1]

The following are the elements of Chapter 30 that Serbia must align with:

- The EU's common commercial policy and investment policy;
- Membership in the World Trade Organisation;
- Commercial relations with third countries;
- Investment relations with third countries;
- Foreign trade regime/Import and export licences;
- Dual-use goods regime;
- Export loans;
- Development assistance and humanitarian aid[2].

1) https://www.isac-fund.org/wp-content/uploads/2017/01/policy_paper-poglavlje_30.pdf

2) Ibid.

Table: Comparative analysis of the 2019 and 2020 Progress Reports

Area	The 2019 Progress Report	The 2020 Progress Report
EU's common commercial policy and investment policy	The 2019 report states that the EU has a common trade and commercial policy towards third countries, based on multilateral and bilateral agreements and autonomous measures.	In 2020, Serbia submitted a draft action plan for its remaining legislative alignment under Chapter 30.
World Trade Organisation membership	In 2020, Serbia should in particular complete its World Trade Organisation (WTO) accession by adopting an amended law on genetically modified organisms and complete remaining bilateral market access negotiations; On the common commercial policy, no progress was made on Serbia's accession to the World Trade Organisation (WTO). The possibility of Serbia becoming a member of the WTO depends on the adoption of an amended law on genetically modified organisms, and on the completion of market access negotiations with a small number of WTO members.	In 2020, no progress was made on the Republic of Serbia's accession to the World Trade Organisation (WTO). The possibility of Serbia becoming a member of the WTO depends on the adoption of an amended law on genetically modified organisms, and on the completion of market access negotiations with a small number of WTO members.

Area	The 2019 Progress Report	The 2020 Progress Report
Commercial relations with third countries	In March 2019, Serbia announced the completion of its Free Trade Agreement (FTA) negotiations with the Eurasian Economic Union. The text of the FTA will need to comply with Serbia's obligations under the Stabilisation and Association Agreement and will have to include an exit clause, which guarantees that Serbia can denounce the agreement by the date of its accession to the EU. Serbia is also negotiating a free trade agreement with Ukraine. Serbia needs to ensure compatibility of all its agreements on trade, investment and economic cooperation and other relevant agreements with the EU *acquis*.	Regarding bilateral agreements with third countries, Serbia signed a free trade agreement (FTA) with the Eurasian Economic Union (EAEU) on October 25, 2019. The agreement was ratified in February 2020 but will enter into force only once ratified by all parties. Serbia had pre-existing FTAs with three members of the EAEU (Russia, Belarus and Kazakhstan), thus expanding the agreement only to Armenia and Kyrgyzstan. The scope of the agreement is widened through minimally extended tariff concessions on goods, an annex on rules of origin and new provisions on dispute settlement. The FTA includes an exit clause, which guarantees that Serbia can denounce the agreement upon accession to the EU. The negotiations of a free trade agreement with Ukraine are on-going. Since December 2018, negotiations are also on-going on a Bilateral Investment Treaty with South Korea. Talks on a future trade agreement with the UK were initiated in 2019. A decision on the type and scope of the agreement is still pending. As for all investment and trade agreements, it is important that Serbia ensures compatibility with the EU *acquis* and includes a sunset clause allowing it to denounce the agreement upon accession to the EU. Serbia should also develop a strategy for amending or terminating existing bilateral investment agreements that fall short of EU standards and expose the country to risks due to the broad and open language used.

Area	The 2019 Progress Report	The 2020 Progress Report
Investment relations with third countries	This area was not covered by the report.	This area was not covered by the report.
Foreign trade regime /Import & export licences	This area was not covered by the report.	In 2020, as a response to market disruptions related to the outbreak of the COVID-19 pandemic, a temporary (30 days) export ban, later extended, was introduced on March 15, 2020 for basic food products (including white flour, salt, bread, milk, sunflower oil, yeast), personal protective equipment, and medicines. The list, initially covering 36 products, was updated on a regular basis to adapt to developments on the market and the overall situation. At most, 56 products were included in the list. The export ban was lifted on a product-by-product basis and was fully lifted on May 7, 2020, following the end of the state of emergency.
Dual-use goods regime	In May 2018, Serbia aligned its national control list of dual use goods with the 2017 EU regime on exports, transfer, brokering and transit of these items. Serbia also aligned its national control list of arms and military equipment with the Common Military List in May 2018. Serbia's 2009 application to join the Wassenaar Arrangement is still on-going.	In October 2019, Serbia submitted a draft action plan for its remaining legislative alignment under Chapter 30. The amendments to the law on dual-use goods entered into force in November 2019. With this, Serbia abolished import control of dual-use items while retaining export controls in accordance with the relevant EU legislation. In April 2019, Serbia adopted the national control list of dual-use goods aimed at fully aligning with the EU's 2018 Regulation on setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items. The national control list of arms and military equipment, aligned with the Common Military List, was adopted in May 2019. Serbia's 2009 application to join the Wassenaar Arrangement is still under consideration, as well as the 2017 application to the Australia Group. Serbia is not a signatory of the Kimberly process on conflict diamonds.

Area	The 2019 Progress Report	The 2020 Progress Report
Export loans	This area was not covered by the report.	This area was not covered by the report.
Development assistance and humanitarian aid	No progress has been made on development policy and humanitarian aid. Serbia has still not established a policy or legal frameworks in this area, and development assistance and humanitarian aid is granted on an *ad hoc* basis. Serbia participates in the EU Civil Protection Mechanism.	No substantial progress was made on development policy and humanitarian aid in 2020. A new law on development cooperation and humanitarian aid is being prepared. Development assistance and humanitarian aid is granted on an *ad hoc* basis. Serbia participates in the EU Civil Protection Mechanism.

Both the 2019 and the 2020 report state that Serbia is moderately prepared in the area of external relations and that some progress was made, but the key areas, such as the WTO membership, did not see any significant change. The reason for such a situation lies in internal political disagreements and extremely adverse public campaign concerning GMOs (genetically modified organisms). Although the WTO membership is a condition for accession to the European Union, the Serbian public is not well aware of the benefits of this membership. The only European countries, beside Serbia, that have not joined the World Trade Organisation are Belarus and Bosnia-Herzegovina. The World Trade Organisation has 164 members; Belarus is in the process of negotiations, while Bosnia-Herzegovina is most likely to accede in 2021. The WTO membership enables all member states to gain access under equal terms to a market of about seven billion people, which accounts for 98 per cent of the global trade. Likewise, accession to the WTO would open up an opportunity for the Serbian businesses to export goods to markets other than those with which Serbia has signed trade agreements. Moreover, the membership could, in addition to increased exports, bring an inflow of foreign direct investments and economic growth in the Republic of Serbia which is not a negligible matter, especially in the post-pandemic period.

The WTO accession process was initiated as far back as 2005 and most of the bilateral negotiations have been finalised. Bilateral negotiations are still on-going with the USA, Brazil, Ukraine and Russia. However, the accession to the World Trade Organisation is associated with certain conditions that members are required to meet. This practically includes the acceptance of non-negotiable rules. These general trade rules include a binding principle that a member state may not impose ban on trade in any goods. The WTO membership offers many benefits, including *inter alia* a possibility of more efficient resolution of bilateral disputes. In 2009, Serbia passed the Law on Genetically Modified Organisms, which put a ban on GMO production and trade, and was more restrictive than the European legislation. According to the WTO rules, trade ban may not be imposed on goods that have not been proven to harm human health. Most of the EU countries that have approved GMO trade continue to pursue restrictive policy and impose considerable limitations and controls on the trade in these products, as well as strict labelling rules. As far as Serbia is concerned, general public and some of the political actors oppose any legislative change that would allow trade in GMOs. Membership in the WTO is essential for any country, especially for a small and underdeveloped economy, not only because of a preferential regime granted by the members under the umbrella of the World Trade Organisation, but also because of the support in the process of internal economic reforms. A small country can far more effectively protect its trade interests within the WTO than in bilateral negotiations with large economies. It may also join various interest groups within multilateral trade negotiations and trigger the WTO dispute resolution mechanism should it deem that its interests have been threatened.[3] The Law on Genetically Modified Organisms (Official Gazette of the RS, number 41/09 of 2009), which includes a provision that declaratively puts a ban on trade in GMOs and GM products, is not compatible with the WTO Agreement on Free Transportation of Goods nor with the EU legislation governing this area. This ban does not allow trade in goods, specifically in GMOs and GM products that have previously been authorised for trade, primarily in the EU market. The requirement of the European Commission and the World Trade Organisation is to delete Article 2 of the Law on Genetically Modified Organisms, whereas the requirement of the Executive Secretary of the Cartagena Protocol on Biosafety[4] is to legally and administratively amend the national legislation so as to implement the Cartagena Protocol on Biosafety.[5] The GMO Law of 2009 is not aligned with:

- The EU legislation in this area, which is Serbia's obligation under the Stabilisation and Association Agreement. Serbia is required to transpose, first of all, Directive 2001/18/EC[6] on the deliberate release in the environment of the genetically modified organisms and Regulation 1829/2003[7] concerning the placing on the market of GMOs as products.

- The WTO Agreements; according to the WTO rules, the organisation's members may not impose explicit (*de jure*) bans on import or export of any goods (including GMO-containing products) as it would represent a barrier to free trade in goods.

- The Cartagena Protocol[8] on Biosafety; the Republic of Serbia has been a member of this protocol since 2006.

3) https://www.isac-fund.org/wp-content/uploads/2017/07/Zašto-je-STO-važna-za-EU.pdf

4) SCBD/BS/NJDY/ps/81050 of November 29, 2012

5) http://demo.paragraf.rs/demo/combined/Old/t/t2005_12/t12_0228.htm

6) https://eur-lex.europa.eu/legal-content/HR/LSU/?uri=celex:32001L0018

7) https://eur-lex.europa.eu/legal-content/HR/TXT/?uri=celex:32003R1829

8) https://www.cbd.int/doc/legal/cartagena-protocol-en.pdf

Irrespective of the European Commission's requirements for the Serbian legislation to be aligned with that of the European Union, a rigorous licencing system has been put in place in the Union which precedes the commercial cultivation of GM crops in the territory of the EU. The system is based on the precautionary principle. The EU's system concerning GMO authorisation is one of the most stringent in the world. Currently, only one GMO variety-hybrid of corn is registered in the EU for commercial cultivation (production) in the territory of the EU. Before the adoption of amendments to Directive 2001/18 of January 2015[9] (Directive EU 2015/412) concerning the prevention of commercial cultivation of GMOs, the member states had recourse to a safeguard clause in EU Directive 2001/18/EC that provided additional safety to member states and allowed them to prohibit commercial cultivation of GMO (previously authorised in the EU) in their territories. No general prohibition of authorisation of commercial cultivation of GMO to be used as food or feed is in force on the EU level, while amended Directive 2001/18 of the European Parliament came into force on January 13, 2015, allowing EU member states to prohibit commercial cultivation and production of GMO in their territories. Applications for work with GMOs (experimental laboratory work, experimental work in the field, placing on the market of GMOs and GM products) are considered and approved for use on a case by case basis. To further tighten the use of GMOs, the European Parliament passed regulatory amendments (Directive 2001/18/EC) on January 13, 2015 allowing the EU member states to prohibit or restrict commercial cultivation (production) of EU-authorised GMOs, in conformity with the adopted amendments, in all or part of their territory. The adopted amendments (Directive 2001/18/EC[10]) give the right once granted to the EU to regulate a certain area back to individual member states, i.e. their respective national legislatures, making an exception from the standard EU practice. This affords possibility to the member states to individually and independently prohibit cultivation of GMOs (authorised at the EU level) in their territories, i.e. allows decisions to be made on the national level. The adopted amendments allow a member state to prohibit or restrict GMO production in all or part of its territory for reasons other than those concerning biosafety and environment that had been considered under the authorisation procedure on the EU level. The prohibition may be requested in two stages:

- In stage one a member state may request exclusion as early as in the process of GMO authorisation for the EU territory, when the member state, dissatisfied with an authorisation decision taken by the EU, may individually submit a request to the EU so as not to allow GMO authorisation in that member state or part of its territory.

- In stage two, after GMO authorisation, a member state may apply national cultivation prohibition or restriction, or may prohibit GMO production in its territory and notify the European Commission about such prohibition, stating reasons therefor. The grounds for national prohibition of GMO cultivation may differ from the criteria of the European Food Safety Authority (EFSA) and may be related to environmental and agricultural policy objectives or to national regulations governing land use, spatial planning, socioeconomic impacts, coexistence and relations with the GMO-opposed public. Refusal to authorise commercial cultivation of GMOs to be used as food or feed by specifying coexistence measures in the member states' national legislation means that conventional, organic and GMO agricultural production exists and is subject to rigorous safety measures (specified by law and by-laws) so as to avoid mixing of seeds.

Furthermore, the new Directive lays down that the member state in which GMO is cultivated must take care to avoid cross-border contamination into neighbouring member states in which cultivation of this GMO is prohibited.

***

The question regarding the progress of negotiations under Chapter 30 or lack thereof can be answered by the Ministry of Agriculture, Forestry and Water Management as an authority responsible for the GMO policy design and implementation, i.e. for the supervision and review of the enforcement of the Law on Genetically Modified Organisms and the Food Safety Law, particularly the provisions on GM food and feed made from GM plants. The responsibility for other elements of Chapter 30 rests with the Foreign Affairs Ministry and the Ministry of Trade, Tourism and Telecommunications that technically failed to ensure progress under this chapter. The Foreign Affairs Ministry needs to propose the Developmental Assistance and Humanitarian Aid Draft Law, whereas the Ministry of Trade, Tourism and Telecommunications needs to propose solutions to all open issues where no progress has been made under this Chapter.

9) https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32015L0412

10) https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32001L0018&from=HR