

THE INTERNATIONAL  
TRADE LAW  
REVIEW

EIGHTH EDITION

Editors

Folkert Graafsma and Joris Cornelis

THE LAWREVIEWS

THE INTERNATIONAL  
TRADE LAW  
REVIEW

EIGHTH EDITION

Reproduced with permission from Law Business Research Ltd  
This article was first published in August 2022  
For further information please contact [Nick.Barette@thelawreviews.co.uk](mailto:Nick.Barette@thelawreviews.co.uk)

**Editors**

Folkert Graafsma and Joris Cornelis

THE LAWREVIEWS

PUBLISHER

Clare Bolton

HEAD OF BUSINESS DEVELOPMENT

Nick Barette

TEAM LEADER

Katie Hodgetts

SENIOR BUSINESS DEVELOPMENT MANAGER

Rebecca Mogridge

BUSINESS DEVELOPMENT MANAGERS

Joey Kwok and Juan Hincapie

BUSINESS DEVELOPMENT ASSOCIATE

Archie McEwan

RESEARCH LEAD

Kieran Hansen

EDITORIAL COORDINATOR

Georgia Goldberg

PRODUCTION AND OPERATIONS DIRECTOR

Adam Myers

PRODUCTION EDITOR

Martin Roach

SUBEDITOR

Janina Godowska

CHIEF EXECUTIVE OFFICER

Nick Brailey

Published in the United Kingdom

by Law Business Research Ltd, London

Holborn Gate, 330 High Holborn, London, WC1V 7QT, UK

© 2022 Law Business Research Ltd

[www.TheLawReviews.co.uk](http://www.TheLawReviews.co.uk)

No photocopying: copyright licences do not apply.

The information provided in this publication is general and may not apply in a specific situation, nor does it necessarily represent the views of authors' firms or their clients. Legal advice should always be sought before taking any legal action based on the information provided. The publishers accept no responsibility for any acts or omissions contained herein. Although the information provided was accurate as at August 2022, be advised that this is a developing area.

Enquiries concerning reproduction should be sent to Law Business Research, at the address above.

Enquiries concerning editorial content should be directed  
to the Publisher – [clare.bolton@lbresearch.com](mailto:clare.bolton@lbresearch.com)

ISBN 978-1-80449-102-7

Printed in Great Britain by

Encompass Print Solutions, Derbyshire

Tel: 0844 2480 112

# ACKNOWLEDGEMENTS

The publisher acknowledges and thanks the following for their assistance throughout the preparation of this book:

ACTECON

AKIN GUMP STRAUSS HAUER & FELD LLP

BAKER MCKENZIE SAS

DUA ASSOCIATES

GH CONSULTS LLC

JUNHE LLP

LINKLATERS

MCMILLAN LLP

MORI HAMADA & MATSUMOTO

NICOLAJ KUPLEWATZKY

PINHEIRO NETO ADVOGADOS

PORZIO RÍOS GARCÍA ABOGADOS

SKRINE

S.U.KHAN ASSOCIATES, CORPORATE & LEGAL CONSULTANTS

VAN BAEL & BELLIS

VVGB ADVOCATEN | AVOCATS

WEERAWONG CHINNAVAT & PARTNERS LTD

WIENER SOTO CAPARRÓS

# CONTENTS

PREFACE.....	v
<i>Folkert Graafsma and Joris Cornelis</i>	
Chapter 1      WORLD TRADE ORGANIZATION .....	1
<i>Tetyana Payosova and Joanna Redelbach</i>	
Chapter 2      UK CUSTOMS AND TRADE .....	14
<i>Matthew Weiniger QC and Alex Fawke</i>	
Chapter 3      ARGENTINA.....	25
<i>Alfredo A Bisero Paratz, Anabella L Lombardo and Anny E Reyes</i>	
Chapter 4      BRAZIL.....	36
<i>Mauro Berenholz, René Medrado, Carol Sayeg and Cora Mendes</i>	
Chapter 5      CANADA.....	47
<i>Peter Jarosz and Philip Kariam</i>	
Chapter 6      CHILE.....	55
<i>Ignacio García and Andrés Sotomayor</i>	
Chapter 7      CHINA.....	62
<i>David Tang, Jessica Cai, Yong Zhou and Jin Wang</i>	
Chapter 8      COLOMBIA.....	74
<i>Juan David López</i>	
Chapter 9      THE EUROPEAN UNION .....	82
<i>Nicolaj Kuplewatzky and Akhil Raina</i>	
Chapter 10     INDIA.....	103
<i>Shiraz Rajiv Patodia and Mayank Singhal</i>	

Chapter 11	JAPAN.....	118
	<i>Kunio Miyaoka, Shunsuke Imura, Ryo Kiuchi and Yu Soh</i>	
Chapter 12	MALAYSIA.....	125
	<i>Lim Koon Huan and Manshan Singh</i>	
Chapter 13	PAKISTAN.....	136
	<i>Saifullah Khan</i>	
Chapter 14	THAILAND.....	146
	<i>Apisith John Sutham, Chalermwut Nilratsirikul and Puminad Pingkarawat</i>	
Chapter 15	TURKEY.....	157
	<i>M Fevzi Toksoy, Ertuğrul Can Canbolat and E Kutay Çelebi</i>	
Chapter 16	UNITED STATES.....	175
	<i>Matthew R Nicely, Devin S Sikes, Julia K Eppard and Brandon J Custard</i>	
Chapter 17	VIETNAM.....	198
	<i>Giang Le</i>	
Appendix 1	ABOUT THE AUTHORS.....	207
Appendix 2	CONTRIBUTORS' CONTACT DETAILS.....	223

# PREFACE

## I LIVING IN A POST-PANDEMIC TRADE WORLD

We had just got used to face masks and started travelling again. Nevertheless, ‘it ain’t over till it’s over’. Thus, while many of us had expected, or at least hoped, that the disruptions caused by the pandemic would this year be a thing of the past, the war in Ukraine, some continuing lockdowns in Asia, as well as new Omicron subvariants, are evidence that difficult times are not entirely behind us.

Moreover, even if the pandemic has now by and large subsided, the illegal invasion of Ukraine has replaced it for prime-time attention. The most immediate trade impact of Russia’s unprovoked and naked aggression against its one-time brother people has been a sharp rise in commodity prices, as both countries are key suppliers of essential goods such as food, energy, and fertilisers.<sup>1</sup> Grain shipments through Black Sea ports have also frozen, with poorer countries dependent on essential commodities bearing the most serious consequences.<sup>2</sup> To support Ukraine’s economy, the European Union adopted a regulation allowing for the temporary trade liberalisation and other trade concessions with regard to some Ukrainian products.<sup>3</sup> Likewise, the United Kingdom and the United States announced that they will suspend tariffs on certain Ukrainian products for a year. Meanwhile, a large number of countries, including the EU, the UK, the US, Canada, Japan and Australia, imposed sanctions against Russia. As demonstrated by Russia’s large and growing export surplus, these sanctions are slowly starting to work and are having an impact on the Russian economy.<sup>4</sup> Furthermore, the discussions concerning Russia leaving – or being expelled from – the World

- 
- 1 United Nations News, ‘Ukraine conflict putting global trade recovery at risk: WTO’ (2022), available at <<https://news.un.org/en/story/2022/04/1116052>>, last accessed on 13 June 2022. While a ‘grain corridor’ deal has been recently reached, the security and robustness of this corridor is not guaranteed. See: BBC, ‘Food crisis: Ukraine grain export deal reached with Russia, says Turkey’ (22 July 2022), available at: <https://www.bbc.com/news/world-europe-62254597> (last accessed 2 August 2022).
  - 2 In fact, in trying to avert the worst, India banned exports of wheat, Turkey banned the exports of beans, lentils and seed and olive oil, Serbia banned exports of vegetables oil, maize and wheat, Indonesia banned exports of Cooking oil and its raw materials – to name a few.
  - 3 Regulation (EU) 2022/870 of the European Parliament and of the Council of 30 May 2022 on temporary trade-liberalisation measures supplementing trade concessions applicable to Ukrainian products under the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Ukraine, of the other part [2022] OJ L152/103.
  - 4 The reason for Russia’s growing export surplus is that Western sanctions imports are working either directly (i.e., by cutting Russia’s imports) or indirectly (i.e., by causing capital flight). According to Mark Harrison, history teaches that, in wartime, export surplus is an indicator of a weaker, not stronger,

Trade Organization (WTO) are prone to resulting in medium to long-term consequences,<sup>5</sup> including a risk of fragmentation in terms of Member-blocs based on geopolitics (i.e., possibly, a US-centric and a China-centric bloc, or variations thereof).<sup>6</sup>

The pace of such dire events makes it difficult to step back from the stream of daily trade happenings. Mercifully, the latest news regarding the remarkable (and, in the words of many, ‘unprecedented’)<sup>7</sup> outcomes achieved through the 12th Ministerial Conference (MC12) of the WTO show (once again) that, in times of crisis, ‘the story is not one of trade as a source of vulnerability; it is one of trade as a source of resilience’.<sup>8</sup>

## II REBUILDING TRUST AT THE WTO

The twice-delayed MC12 finally took place in June 2022, and it was a success. A joint statement by over 50 WTO Members expressing solidarity for Ukraine set the scene for five days of intense and prolonged negotiations,<sup>9</sup> which ultimately led to a historical package of trade agreements. Some of the noteworthy outcomes of the MC12 are briefly summarised below.

### i Covid-19 vaccines

Nearly two years after the development of covid-19 vaccines, WTO Members gave the green light to a waiver of certain procedural obligations under the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). This agreement has been referred to as a major win for the developing countries, which had to wait several months longer than rich countries to receive their vaccines. This wait was accompanied by pain and misery, which could have been entirely avoided. One may wonder whether it took too long to agree on something so critical. Groups advocating for vaccine access were also disappointed that the deal does not cover diagnostic materials and therapeutics – although the decision provides for the WTO Members to consider whether to extend the waiver to those issues at the end of this year.

---

economy. For further details, see: ‘Western sanctions on Russia are working, an energy embargo now is a costly distraction’ (13 June 2022), available at <<https://voxeu.org/article/western-sanctions-russia-are-working-energy-embargo-now-costly-distraction>>, last accessed on 14 June 2022.

5 World Trade Organization, ‘The crisis in Ukraine: implications of the war for global trade and development’ (2022), available at <[www.wto.org/english/res\\_e/booksp\\_e/impactukraine422\\_e.pdf](http://www.wto.org/english/res_e/booksp_e/impactukraine422_e.pdf)>, last accessed on 13 June 2022.

6 Eddy Bekkers and Carlos Goes, ‘The impact of geopolitical conflicts on trade, growth and innovation: an illustrative simulation study’ (29 March 2022), available at <<https://voxeu.org/article/impact-geopolitical-conflicts-trade-growth-and-innovation>>, last accessed on 14 June 2022.

7 Director General Ngozi Okonjo-Iweala, 12MC Closing Speech, available at <[www.wto.org/english/news\\_e/spno\\_e/spno27\\_e.htm](http://www.wto.org/english/news_e/spno_e/spno27_e.htm)>, last accessed on 17 June 2022.

8 Deputy Director-General Anabel Gonzalez, speech of 29 October 2021, transcript available at <[www.wto.org/english/news\\_e/news21\\_e/ddgag\\_29oct21\\_e.htm](http://www.wto.org/english/news_e/news21_e/ddgag_29oct21_e.htm)>, last accessed on 14 July 2022.

9 The MC12 was originally scheduled to last for four days, but it was prolonged by one day, and the negotiations lasted until 5 am local time on Friday, 17 June 2022.



## ii Food security and agriculture

Faced by one of the worst food security crisis since World War II, WTO Members committed to: (1) avoiding unjustified export restrictions on food; (2) improving transparency on export restrictions; and (3) exempting humanitarian purchases for the World Food Programme (WFP) from export restrictions completely.<sup>10</sup> WTO Members, however, could not overcome their differences on a work programme for agriculture.<sup>11</sup> Nonetheless, the decision in support of the WFP clearly shows that the WTO can and will react promptly to exceptional challenges if there is enough negotiating capital to do so.

## iii Fisheries

After two decades of talking, delegates reached a partial deal to stop harmful fishing subsidies.<sup>12</sup> The deal prohibits subsidies contributing to illegal, unregulated and unreported (IUU) fishing as well as subsidies for fishing activities on the unregulated high seas. It also restricts the subsidisation of fleets that fish in ‘overfished’ stocks. Developing countries are not exempted from these provisions. Nevertheless, they are afforded more flexibility and are eligible for technical assistance and financial support. According to Director-General Ngozi Okonjo-Iweala, the deal takes ‘a first but significant step forward to curb subsidies for overcapacity and overfishing.’ Yet, in fact, the commitment to ban subsidies that contribute to overcapacity and overfishing as well as the promise to prohibit fuel and ship construction subsidies were dropped. For these reasons, some referred to the deal as ‘pretty meager’.<sup>13</sup> On the other hand, this remains the first WTO Agreement ‘with environmental sustainability at its heart’.<sup>14</sup> While the deal broadly operates as a standard WTO agreement – by prohibiting the worst, restricting the bad and developing transparency around the rest – it departs from the standard in so far as it does have the potential to form the basis for trade, environmental and development wins.<sup>15</sup> The deal will require attention and maintenance, however, since it is bound to expire within four years unless ‘comprehensive disciplines’ are adopted or otherwise

- 
- 10 WTO, Draft Ministerial Declaration on the Emergency Response to Food Insecurity of 16 June 2022, WT/MIN(22)/W/17/Rev.1, available at <<https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/MIN22/W17R1.pdf&Open=True>>, last accessed on 17 June 2022; and WTO, Draft Ministerial Declaration on World Food Programme Food Purchases Exemption from Export Prohibitions of Restrictions of 10 June 2022, WT/MIN(22)/W/18, available at <<https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/MIN22/W18.pdf&Open=True>>, last accessed on 17 June 2022.
- 11 The debate around India’s demand to seek a permanent exemption on public stockholdings of food grains from the WTO subsidy rules meant that no consensus could be reached on reforming the agricultural trade policy.
- 12 WTO, Draft Ministerial Decision on the Fisheries Subsidies of 17 June 2022, WT/MIN(22)/W/22, available at <<https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/MIN22/W22.pdf&Open=True>>, last accessed on 17 June 2022.
- 13 Statement by Philip Chou, senior director of global policy with the Washington-based conservation group Oceana. Reported by Paul Withers in ‘WTO agreement to curb fishing subsidies is “meagre,” says expert Social Sharing’ (17 June 2022), available at <[www.cbc.ca/news/canada/nova-scotia/wto-agreement-t-curb-subsidies-prevent-overfishing-1.6492624](http://www.cbc.ca/news/canada/nova-scotia/wto-agreement-t-curb-subsidies-prevent-overfishing-1.6492624)>, last accessed on 17 June 2022.
- 14 Director General Ngozi Okonjo-Iweala, 12MC Closing Speech, available at <[www.wto.org/english/news\\_e/spno\\_e/spno27\\_e.htm](http://www.wto.org/english/news_e/spno_e/spno27_e.htm)>, last accessed on 17 June 2022.
- 15 Amar Breckenridge, ‘Miraculous catch or struggling to stay afloat? Early thoughts on the WTO’s 12th Ministerial Conference’ (17 June 2022), available at <[www.trade-knowledge.net/commentary/](http://www.trade-knowledge.net/commentary/)>

agreed,<sup>16</sup> meaning that further substantial action will be required of the WTO Members for the 12MC negotiations not to be in vain. In this latter regard it has been noted<sup>17</sup> that this clause is a double-edged sword: the last few times such expiry clause was used, it was: (1) either designed to make the Agreement on Textiles and Clothing disappear, or: (2) it made certain non-actionable subsidies disappear which Members now have come to regret.

#### **iv E-commerce**

Delegates also agreed to maintain the 24-year old moratorium on tariffs on digitally traded goods, services and other forms of e-commerce transmissions.<sup>18</sup> Since it was agreed in 1998, the extension of the moratorium caused little controversies at each ministerial conference. However, this year, India, Indonesia, Sri Lanka, Pakistan and South Africa threatened to block the renewal. Developing countries increasingly see the ban as a source of lost revenue, but 108 tech company associations urged the WTO to renew the moratorium on the grounds that failure to do so would undermine the global recovery and constitute a serious setback for a body that prides itself in reducing trade barriers. Some have argued that the threat was just a tactic used by developing countries to obtain concessions in other areas. On the other hand, one may wonder whether such countries should be allowed to impose tariffs on data flows if that is where their competitive advantage lies, in much the same way as everything else that works in the trade arena. For now, WTO Members agreed that the ban will remain in place at least until the next ministerial conference or until 31 March 2024, whichever comes first. In any event, the debate raises questions as to whether custom duties on data flows, such as movie and music streaming, will be imposed in the near future.

#### **v WTO reform**

Finally, the Members pledged to undertake a, by now, long-overdue major reform of the WTO encompassing all aspects of its operations.<sup>19</sup> No promise to restore the Appellate Body was made. However, all Members, including the US, acknowledged the challenges relating to the dispute settlement gridlock and committed to addressing them by no later than 2024. This is significant, as it shows that the restoration of the dispute settlement system has been recognised by the entire membership as a priority. While we wait to hear more about this major reform, the Multi-Party Interim Appeal Arbitration Arrangement (MPIA) is yet to be

---

miraculous-catch-or-struggling-to-staying-a-float-early-thoughts-on-the-wtos-12th-ministerial-conference/?utm\_source=rss&utm\_medium=rss&utm\_campaign=miraculous-catch-or-struggling-to-staying-a-float-early-thoughts-on-the-wtos-12th-ministerial-conference>, last accessed on 18 June 2022.

16 WTO, Draft Ministerial Decision on the Fisheries Subsidies of 17 June 2022, WT/MIN(22)/W/22, Article 12 available at <<https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/MIN22/W22.pdf&Open=True>>, last accessed on 17 June 2022.

17 Comments made during the webinar: SIEL Conversations: The Outcomes of MC12 and the Future of the Multilateral Trading System, held on 27 June 2022, accessible at <https://www.youtube.com/watch?v=hi9i7onD34k>; participants included Anabel González, Bernard Hoekman, Victor do Prado, Peter Ungphakorn and Iryna Polovets.

18 WTO, Work Programme on Electronic Commerce: Draft Ministerial Decision of 16 June 2022, WT/MIN(22)/W/23, available at <<https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/MIN22/W23.pdf&Open=True>>, last accessed on 17 June 2022.

19 WTO, MC12 Outcome Document - Draft of 16 June 2022, WT/MIN(22)/W/16/Rev.1, available at <<https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/MIN22/W16R1.pdf&Open=True>>, last accessed on 17 June 2022.

afforded the chance to take its first real test.<sup>20</sup> Interestingly, Turkey submitted a notification pursuant to Article 25 of the Dispute Settlement Understanding (DSU) in *Turkey – Pharmaceutical Products (EU)* (DS583) despite the fact that it is not a party to the MPIA. On the one hand, the label – whether this is MPIA or DSU Article 25 – should not make a big difference; what matters is that WTO Members are willing to restore trust and uphold the rule-based multilateral trade system by joining a rational means of dispute resolution.<sup>21</sup> On the other hand, one wonders whether Turkey’s decision not to join the MPIA has any geopolitical reason, such as Turkey being a US key strategic partner.

Overall, despite the unprecedented challenges, the WTO Members have secured a truly unrivalled package of agreements. We are, therefore, pleased to realise that, last year, we were right to feel ‘cautiously optimistic’ about the WTO.<sup>22</sup> On the other hand, now that priorities have been set out and rules have been laid down, it remains to be seen how, in practice, everything will work out. For the just-ended MC12 negotiations to be meaningful, WTO Members must be faithful to their commitments. While Director-General Ngozi Okonjo-Iweala deserves great credit for keeping the WTO alive, its future, health and vitality will depend on national governments – and in particular on whether the EU, the US and China, as major players in the international trade game, (continue to) see value in its existence.

### III NEW TRENDS IN THE OLD CONTINENT

In Europe, Brexit may be done, but its implementation is far from complete. In particular, some substantive issues concerning imports from Northern Ireland remain outstanding.<sup>23</sup> The UK has also set out a phased plan to enforce new regulatory standards and controls for EU goods entering Great Britain,<sup>24</sup> according to which the introduction of sanitary and

---

20 At the time of writing, the following disputes involve parties which have submitted notifications pursuant to Article 25 of the Dispute Settlement Understanding indicating their commitment to using the MPIA in case of appeal: DS589: *China – Canola Seed (Canada)*; DS591: *Colombia – Frozen Fries*; DS598: *China – AD/CVD on Barley (Australia)*; and DS602: *China – AD/CVD on Wine (Australia)*. Furthermore, the following disputes involve parties which are both parties to the MPIA and are therefore likely to submit their notifications at the panel stage: DS603: *Australia – AD/CVD on Certain Products (China)*; DS607: *EU – Poultry Meat Preparations (Brazil)*; DS610 *China – Goods and Services (EU)*; and DS611: *China – IPRs Enforcement (EU)*.

21 In connection to this, see Section III.i, where we submit that one of the strategies behind the new the EU Anti-Coercion instrument may be to incentivise WTO members to join the MPIA.

22 See: Folkert Graafsma and Joris Cornelis, *The International Trade Law Review* (7th edition, 2021).

23 Although an agreement to not require the relabelling and retesting of medicines entering into Northern Ireland from Great Britain was achieved in spite of continued supply of these products. See also: Sam Meredith, ‘The UK’s plan to rip up Brexit trade rules slammed for being in “clear breach” of international law’ (14 June 2022), CNBC, available at <[www.cnn.com/2022/06/14/uk-prompts-eu-backlash-over-plans-to-rip-up-northern-ireland-protocol.html](http://www.cnn.com/2022/06/14/uk-prompts-eu-backlash-over-plans-to-rip-up-northern-ireland-protocol.html)>, last accessed on 15 June 2022.

24 Checks on highest risk imports of animals, animal products, plants and plant products were introduced in January 2022 and will remain in place.

phytosanitary checks, which was due in July 2022, has been postponed until the end of 2023.<sup>25</sup> Furthermore, the UK's latest attempt to unilaterally change some terms of the divorce with the EU may trigger interesting legal actions in the near future.<sup>26</sup>

Amid the implementation of Brexit, the UK Trade Remedies Authority (TRA) took its first real steps by initiating four 'independent' (standalone) trade remedies investigations.<sup>27</sup> In the first of these investigations, which concerns Chinese aluminum extrusions, the TRA has already imposed provisional measures requiring importers to have bank guarantees in place from 16 June 2022. As regards the two most recent investigations, which concern allegedly dumped and subsidised optical fibre cables from China, these effectively mirror two investigations concluded a few months ago by the European Commission.<sup>28</sup> It will therefore be interesting to see whether (and to what extent) the TRA will follow the same path of the Commission or whether it will go its own way in conducting the investigations. Some consider the TRA 'weaker' than its counterparts in the EU and the US because its role is confined to investigating complaints and recommending trade defence measures to the government – recommendations that the government will not necessarily follow.<sup>29</sup> By contrast, neither the Commission nor the US International Trade Commission need political approval to adopt trade defence measures. As such, it will also be interesting to see whether it will reach the same or different conclusions.

Other noteworthy developments concerning the UK's strategy as an 'independent trade nation' include: (1) the conclusion of free trade agreements (FTAs) with New Zealand and Australia; (2) the ongoing upgrades of FTAs with Mexico, Canada, Israel and South Korea; (3) the finalisation of a new Digital Economic Agreement with Singapore; (4) the application to join the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP); and (5) the recent relaunch of the negotiations for an FTA with India. Interestingly, as regards the latter negotiations, the UK announced the ambitious plan to reach an agreement by the end of this year.<sup>30</sup> Yet, the UK will most likely have to concede on its immigration policy to persuade India to lower tariffs on the products which are of interest to the UK exporters (for example, whisky).<sup>31</sup>

- 
- 25 At the time of writing, this marks the fourth time the UK government has delayed the implementation of sanitary and phytosanitary checks on EU imports.
- 26 BBC News, 'EU set to take legal action against UK over post-Brexit deal changes' (15 June 2022), available at <[www.bbc.com/news/uk-politics-61795553](http://www.bbc.com/news/uk-politics-61795553)>, last accessed on 18 June 2022.
- 27 AD0012: Aluminium Extrusions from China; AD0020: Ironing Boards from Turkey; AD0021: Optical Fibres from China; and AS0022: Optical Fibres from China. For updates, see: UK TRA, 'Investigations currently in progress', available at <[www.trade-remedies.service.gov.uk/public/cases/](http://www.trade-remedies.service.gov.uk/public/cases/)>, last accessed on 15 June 2022.
- 28 See: Commission Implementing Regulation (EU) 2022/72 of 18 January 2022 imposing definitive countervailing duties on imports of optical fibre cables originating in the People's Republic of China and amending Implementing Regulation (EU) 2021/2011 imposing a definitive anti-dumping duty on imports of optical fibre cables originating in the People's Republic of China [2022] OJ L12/34.
- 29 Emilio Casalicchio, 'Meet the Trade Remedies Authority, the UK watchdog in a political storm' (9 June 2022), available at <[www.politico.eu/author/emilio-casalicchio/](http://www.politico.eu/author/emilio-casalicchio/)>, last accessed on 18 June 2022.
- 30 UK Department for International Trade, 'UK-India Free Trade Agreement: the UK's strategy', available at <[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1046839/uk-india-free-trade-agreement-the-uks-strategic-approach.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1046839/uk-india-free-trade-agreement-the-uks-strategic-approach.pdf)>, last accessed on 13 June 2022.
- 31 See: Dharshini David, 'Whisky and visas could be part of a UK-India trade deal' (22 April 2022), available at <[www.bbc.com/news/business-61180390](http://www.bbc.com/news/business-61180390)>, last accessed on 15 June 2022, who writes: 'No other nation

In some respects, in the context of international relations, the EU appears to be following the UK, as it renewed its efforts to conclude an FTA with Australia and started the negotiations to reach a comprehensive Digital Partnership with Singapore.<sup>32</sup> The latter is of particular importance in that, even though the world of trade is still dominated by paper forms, there is scope to improve the current state of play through digitalisation. For example, the initiatives led by the International Chamber of Commerce (such as the digitalisation of bills of lading) could have striking effects in terms of costs and efficiency, provided that the necessary data protection measures are in place.<sup>33</sup>

In addition, over the past few months, the EU institutions have been working on several pieces of EU legislation aimed at defending the EU's interests and values more fiercely. Moreover, the Commission has published several reports to illustrate and quantify how it is putting its trade policy into practice.<sup>34</sup> Following last year's edition, the most noteworthy developments which show this new EU trend are summarised below and will be addressed in more detail in the chapter on the EU.

### **i Draft regulation on foreign subsidies**

The Commission, the European Parliament and the European Council have started discussions to agree on the final text of a new Regulation on Foreign Subsidies, which could potentially be adopted as early as the end of this year.<sup>35</sup> The Proposed Regulation is extremely

---

drinks as much whisky as India - which should have Scotland's world-famous industry celebrating. But each bottle of Scotch sold in India comes with a hefty price tag attached, thanks to tariffs of 150% on imported liquor. So currently the majority of whisky drunk in India is made within its borders.'

32 According to the European Commission, the partnership between the EU and Singapore is aimed at advancing cooperation 'on the full spectrum of digital issues, including digital economy and trade, as well as key enablers for the successful digital transformation of our societies and economies'. See: European Commission, 'Joint Statement: EU and Singapore agree to accelerate steps towards a comprehensive Digital Partnership' (14 February 2022), available at <[https://ec.europa.eu/commission/presscorner/detail/en/STATEMENT\\_22\\_1024](https://ec.europa.eu/commission/presscorner/detail/en/STATEMENT_22_1024)>, last accessed on 13 June 2022.

33 See: International Chamber of Commerce, 'ICC digital initiatives for the next century of global trade', available at <<https://iccwbo.org/media-wall/news-speeches/icc-digital-initiatives-that-will-equip-business-for-the-next-century-of-global-trade/>>, last accessed on 13 June 2022.

34 See, for example: European Commission, 'First Annual Report on the screening of foreign direct investments into the Union' (2022), available at <[https://trade.ec.europa.eu/doclib/docs/2021/november/tradoc\\_159935.pdf](https://trade.ec.europa.eu/doclib/docs/2021/november/tradoc_159935.pdf)>, last accessed on 13 June 2022; 'Report on the implementation of Regulation (EU) 2021/821 setting up a Union regime for the control of exports, brokering, technical assistance, transit and transfer of dual-use items' (2022), available at <[https://trade.ec.europa.eu/doclib/docs/2021/november/tradoc\\_159936.pdf](https://trade.ec.europa.eu/doclib/docs/2021/november/tradoc_159936.pdf)>, last accessed on 13 June 2022; 'Report on Implementation and Enforcement of EU Trade Agreements' (2022), available at <[https://trade.ec.europa.eu/doclib/docs/2021/october/tradoc\\_159886.pdf](https://trade.ec.europa.eu/doclib/docs/2021/october/tradoc_159886.pdf)>, last accessed on 13 June 2022; and '39th Annual Report from the Commission to the European Parliament and the Council on the EU's Anti-Dumping, Anti-Subsidy and Safeguard activities and the Use of Trade Defence Instruments by Third Countries targeting the EU in 2020' (2022), available at <[https://trade.ec.europa.eu/doclib/docs/2021/august/tradoc\\_159782.PDF](https://trade.ec.europa.eu/doclib/docs/2021/august/tradoc_159782.PDF)>, last accessed on 13 June 2022.

35 For a comparison of the amendments proposed by the European Parliament and the European Council, see: Council of the European Union, '8993/22 - Subject: Proposal for a Regulation of the European Parliament and of the Council on foreign subsidies distorting the internal market' (11 May 2022), available at <<https://data.consilium.europa.eu/doc/document/ST-8993-2022-INIT/en/pdf>>, last accessed on 28 May 2022.

far-reaching, particularly because it: (1) aims at tackling subsidies affecting both goods and services within the EU internal market; (2) targets any company that benefits from foreign subsidies and that operates in the EU, regardless of the country providing the subsidy and the country in which the company is established; and (3) empowers the European Commission to commence investigations and impose redressive measures on its own motion.

Questions arise as to the compatibility of this instrument with the WTO rules, as the definition of ‘subsidy’ under the draft regulation on foreign subsidies arguably covers a larger number of potential subsidies compared to the definition provided by the WTO Agreement on Subsidies and Countervailing Measures (e.g., subsidies granted to non-EU parent companies of subsidiaries established in the EU; subsidies granted by a third country to an entity established in a different country; financial contributions in the form of special rights or tax exemptions; measures ‘economically equivalent’ to a financial contribution; and transfer pricing). Moreover, if adopted, the draft regulation on foreign subsidies will have a strong impact on countries with large economies, which are those granting the subsidies (i.e., the US, the UK, Russia and, above all, China). If such countries start following the same logic as the EU, they may well retaliate by restricting their own markets to EU companies.

## **ii Revised enforcement regulation**

Last year, the EU published its amendments to the Enforcement Regulation. The Revised Enforcement Regulation now (1) covers trade in services and IPR; and (2) empowers the EU to take retaliatory action where the adjudication of a trade dispute is hampered by the ‘non-cooperation’ of a trading party.<sup>36</sup> On the one hand, if the EU exploits this instrument to obviate the DSB’s authorisation to impose countermeasures (in the event of non-compliance), questions arise as to its compatibility with the WTO legal framework. On the other hand, the Revised Enforcement Regulation seems to promote the use of the MPIA by preventing parties from appealing into ‘the void’. Ultimately, should this instrument incentivise other WTO Members to join a rational and alternative means of dispute resolution (i.e., the MPIA or other arbitration mechanism), it may be welcomed.

## **iii Anti-coercion instrument**

On 8 December 2021, the Commission published its proposal for a new instrument that would significantly enhance its trade defence instruments.<sup>37</sup> As the name suggests, the purpose of the proposed Anti-Coercion Instrument is to ‘deter countries from restricting or threatening to restrict trade or investment to bring about a change of policy in the EU in areas such as climate change, taxation or food safety’. An obvious example of a situation that could trigger the countermeasures prescribed by this instrument is the WTO challenge recently brought by the EU against China concerning alleged restrictions on imports, exports,

---

36 Regulation (EU) 2021/167 of the European Parliament and of the Council of 10 February 2021 amending Regulation (EU) No 654/2014 of the European Parliament and of the Council concerning the exercise of the Union’s rights for the application and enforcement of international trade rules [2021] OJ L49/1.

37 European Commission, ‘Proposal for a Regulation of the European Parliament and of the Council on the protection of the Union and its Member States from economic coercion by third countries’ (8 December 2021), COM (2021) 775 final. For the amendments proposed by the European Parliament, see: European Parliament, ‘Amendments 58-280’ (30 May 2022), 2021/0402(COD).

and supply of services from and to Lithuania.<sup>38</sup> Yet, some ambiguities remain as to: (1) who will make decisions about imposing new defensive policies (i.e., the Commission or the EU Member States); (2) the definition of ‘economic coercion’; and (3) the types of remedy available under the instrument could cause legal complications as well as frictions with the third countries targeted by the instrument (i.e., mostly, but not only, China).<sup>39</sup>

#### **iv Carbon border adjustment mechanism**

The Commission’s proposal regarding the carbon border adjustment mechanism (CBAM) still needs to be finally enacted by concluding its legislative procedure. Debates concerning technical and practical issues (e.g., questions as to whether the EU should reserve to maintain free allocations under the EU’s emission trading scheme in order to prevent carbon leakage) seem to be slowing down its enactment.<sup>40</sup> Should the CBAM be adopted, the EU should be ready to deal with WTO complaints by other countries. For example, affected WTO members could argue that the CBAM equates to a discriminating tax or charge on imports or that the CBAM is inconsistent with the WTO ‘national treatment’ principle. Furthermore, some countries may not even wait for complaints to be processed by the DSB and take measures to counteract the new instrument (e.g., retaliatory measures may target like-for-like products or different products important to the EU’s economy).<sup>41</sup> Either way, the result might be a decline in total trade and total EU exports. Therefore, one might wonder whether this initiative will go the way of some of its precedents, such as the Emission Trading System Aviation Scheme, which was suspended before being fully implemented.<sup>42</sup>

---

38 DS610: China – Goods, and Services (EU), facts and status available at <[www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds610\\_e.htm](http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds610_e.htm)>, last accessed on 15 June 2022. It is also worth noting that, unsurprisingly, this EU challenge is being backed up by the US, Australia and the UK.

39 See, for example, Article 2 of the Commission’s proposal (n. 32 above), according to which the draft regulation ‘applies where a third country interferes in the legitimate sovereign choices of the Union or a Member State by seeking to prevent or obtain the cessation, modification or adoption of a particular act by the Union or a Member State, by applying measures affecting trade and investment.’ The legal text does not specify what actions may amount to ‘interference’, does not explain what ‘seeking to prevent or obtain’ means and does not even define ‘sovereignty’. This raises questions, for example, as to whether the remedies available under the instrument may be triggered by a third country’ policies which affects EU actors but whose integrity is challenged by another third country instead of the EU (e.g., US sanctions on Iran affecting EU traders).

40 Kira Taylor, ‘Lawmakers criticise plan for ‘CBAM reserve’ in EU carbon market reform’ (2022), available at <[www.euractiv.com/section/energy-environment/news/lawmakers-criticise-plan-for-cbam-reserve-in-eu-carbon-market-reform/](http://www.euractiv.com/section/energy-environment/news/lawmakers-criticise-plan-for-cbam-reserve-in-eu-carbon-market-reform/)>, last accessed on 13 June 2022; and Borderlex, ‘In brief: CBAM vote in plenary postponed’ (8 June 2022), available at <<https://borderlex.net/2022/06/08/in-brief-cbam-fails-in-plenary/>>.

41 Frederik Erixon, Oscar Guinea, Vanika Sharma and Renata Zilli Montero, ‘The new wave of defensive trade policy measures in the European Union: design, structure and trade effects’ (2022), p. 50, available at <[https://ecipe.org/publications/new-wave-of-defensive-trade-policy-measures-in-eu?mc\\_cid=f536eccd53&mc\\_eid=eae92434a4](https://ecipe.org/publications/new-wave-of-defensive-trade-policy-measures-in-eu?mc_cid=f536eccd53&mc_eid=eae92434a4)>, last accessed on 14 June 2022.

42 For information about the ETS Aviation Scheme, see: Lorand Bartels, ‘The WTO Legality of the Application of the EU’s Emission Trading System to Aviation’ (2012), 3(2) Eur. J. Int. Law 429, available at <<https://academic.oup.com/ejil/article/23/2/429/487254>>, last accessed on 15 June 2022.

v **Continued bilateral dispute settlement activity**

On the day of finalising this preface, an important panel report on the third bilateral dispute settlement instigated by the EU was released.<sup>43</sup> This bilateral dispute between the EU and SACU, the first to involve international organisations on both sides, has been a testament to the enduring power of peaceful dispute settlement in international relations. Substantively, the case is interesting as well since it is the first time a safeguards regime has been subject to this type of adjudication. While we will discuss this case in detail next year, the panel ruled in favour of the EU and held that the safeguard measure was not proportionate and went beyond what was needed to remedy or prevent any serious injury or disturbances. Moreover, the delay between the investigation and the adoption of the safeguard measure was excessive and not in line with the EU–SADC EPA.<sup>44</sup>

**IV IS THE UNITED STATES CHANGING ITS ATTITUDE TOO?**

This year more than ever, it is impossible to talk about the EU's trade position without talking about the US. Indeed, following the suspension of the long-standing *Boeing/Airbus* dispute, the EU and the US decided to 'hit the pause button on [their] steel and aluminium trade dispute, while hitting the start button on cooperating on a new Global Arrangement on Sustainable Steel and Aluminium'.<sup>45</sup> As proof of their 'renewed trust', the US agreed not to apply Section 232 duties, and the EU agreed to suspend related tariffs on US products.<sup>46</sup> Against this background, they also established the EU–US Trade and Technology Council, which has the aim 'to deepen transatlantic trade and economic relations based on these shared values'.<sup>47</sup> Considering that, together, the EU and the US economies account for nearly a third of world trade flows, the parties' efforts to strengthen their trade relations could have a major impact on the global economic governance.

This is even more so if we ask ourselves what role, if any, this renewed alliance will have in the context of the Indo-Pacific Economic Framework (IPEF), which was officially launched by US President Joe Biden in May 2022.<sup>48</sup> The IPEF is a clear attempt to restore the US' leadership role in the Indo-Pacific and, at the same time, to limit China's leverage in

---

43 The first cases were litigated under the EU–Korea FTA and the EU–Ukraine FTA, see [https://policy.trade.ec.europa.eu/enforcement-and-protection/dispute-settlement/bilateral-disputes\\_en](https://policy.trade.ec.europa.eu/enforcement-and-protection/dispute-settlement/bilateral-disputes_en).

44 More details can be found on [https://policy.trade.ec.europa.eu/news/panel-rules-favour-eu-southern-african-customs-unions-safeguard-eu-poultry-cuts-2022-08-03\\_en](https://policy.trade.ec.europa.eu/news/panel-rules-favour-eu-southern-african-customs-unions-safeguard-eu-poultry-cuts-2022-08-03_en).

45 European Commission, 'EU and US agree to start discussions on a Global Arrangement on Sustainable Steel and Aluminium and suspend steel and aluminium trade disputes' (31 October 2021), available at [https://ec.europa.eu/commission/presscorner/detail/en/IP\\_21\\_5721](https://ec.europa.eu/commission/presscorner/detail/en/IP_21_5721), last accessed on 15 June 2022.

46 European Commission, 'Joint EU-US Statement on a Global Arrangement on Sustainable Steel and Aluminium' (31 October 2021), available at [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_21\\_5724](https://ec.europa.eu/commission/presscorner/detail/en/ip_21_5724), last accessed on 15 June 2022.

47 European Commission, 'EU-US Trade and Technology Council', available at [https://ec.europa.eu/info/strategy/priorities-2019-2024/stronger-europe-world/eu-us-trade-and-technology-council\\_en](https://ec.europa.eu/info/strategy/priorities-2019-2024/stronger-europe-world/eu-us-trade-and-technology-council_en), last accessed on 15 June 2022.

48 For further information about the IPEF, see: Su-Lin Tan 'The Indo-Pacific Economic Framework: what it is – and why it matters' (25 May 2022), available at [www.cnbc.com/2022/05/26/ipef-what-is-the-indo-pacific-framework-whos-in-it-why-it-matters.html](https://www.cnbc.com/2022/05/26/ipef-what-is-the-indo-pacific-framework-whos-in-it-why-it-matters.html), last accessed on 15 June 2022.



the region.<sup>49</sup> Thus, although unlikely to become a formal FTA, the IPEF will not only bolster trade efforts through the Asia-Pacific Economic Cooperation, but it also has the potential to substantially influence the current global geopolitical order. As such, the EU will have to pay careful attention to the forthcoming negotiations.

It is fair to assume that the recent appointment of Katherine Tai as the new US Trade Representative is playing an important role in reshaping the US' international relations. Tai's nomination received significant worldwide support, and her attitude seems to be in sharp contrast with that of her predecessor, Robert Lighthizer. Most importantly, while it is clear that the US is trying to move 'away from a traditional dispute settlement mechanism',<sup>50</sup> some of Tai's statements lead us to believe that the US is now more willing 'to engage on dispute settlement as part of [a] larger vision for reinvigorating the WTO'.<sup>51</sup> Yet, will Katherine Tai's negotiation skills and political acumen be sufficient to navigate the US' complex relationship with China?

## V AND WHAT ABOUT CHINA?

In China, new lockdowns are (again) disrupting maritime trade just as supply chain constraints seemed to be easing. Nevertheless, nothing, let alone covid-19, seems to be getting in the way of China's gradual approach to trade deals.

Amid the cheering of the new US' IPEF strategy, China kept a relatively low profile in hosting discussions for the largest trade agreement ever concluded outside the WTO. The Regional Comprehensive Economic Partnership (RCEP) has now come into force for 11 signatories.<sup>52</sup> At the national level, one of the most interesting implications of China signing the RCEP, is that the Chinese government committed to binding prohibitions against the localisation of data, which constitutes a departure from its long-standing hard sovereignty stance on this matter. At the international level, the RCEP may make it more difficult for US President Joe Biden to reverse the course of its predecessor's unilateralist actions. China is likely to continue sponsoring the huge market access offered by the RCEP, which the IPEF – at least currently – lacks.<sup>53</sup> Consistent with its adherence to multilateralism, China is also likely to focus its efforts on the on-going negotiations to join the CPTPP and the Digital Economy Partnership Agreement.

Ultimately, as evidenced by the last two decades of China's trade history, it has been consistent in supporting multilateralism. Meanwhile, the US (supported by the EU) is

---

49 Frederic Grare, 'Ambitions and access: the new economic framework for the Indo-Pacific' (7 June 2022), available at <<https://ecfr.eu/article/ambitions-and-access-the-new-economic-framework-for-the-indo-pacific/>>, last accessed on 15 June 2022.

50 International Economic Law and Policy Blog, 'Katherine Tai on IPEF Enforceability' (2022), available at <<https://ielp.worldtradelaw.net/2022/06/katherine-tai-on-ipef-enforceability.html>>, last accessed on 15 June 2022.

51 International Economic Law and Policy Blog, 'Katherine Tai on Fixing WTO Dispute Settlement' (2022), available at <<https://ielp.worldtradelaw.net/2022/06/katherine-tai-on-fixing-wto-dispute-settlement.html>>, last accessed on 15 June 2022.

52 The RCEP has come into force for Australia, Brunei Darussalam, Cambodia, China, Japan, Lao PDR, New Zealand, Singapore, Thailand, Vietnam and Korea.

53 See: Su-Lin Tan, 'Left out of the Indo-Pacific deal, China pushes toward the world's largest trade deal' (2022), available at <[www.cnbc.com/2022/06/06/left-out-of-the-indo-pacific-deal-china-pushes-toward-rcep-trade-deal.html](http://www.cnbc.com/2022/06/06/left-out-of-the-indo-pacific-deal-china-pushes-toward-rcep-trade-deal.html)>, last accessed on 18 June 2022.

pushing to terminate China's special and differential treatment under the WTO rules. This was also evidenced by the recent MC12 negotiations regarding the TRIPS, during which the US (unsurprisingly) demanded that China be exempted from the vaccine waiver. The resulting tensions were resolved by including a footnote in the draft to recognise China's statement that it would not use the waiver as a binding commitment.<sup>54</sup> According to the new US Trade Representative, Katherine Tai, this deal proved that 'we can work together to make the WTO more relevant to the needs of regular people'. Nevertheless, if the US and the EU persist in trying to change the rules of the WTO game,<sup>55</sup> there is a risk of China learning the new rules quickly to then retaliate against the West.<sup>56</sup>

## VI AFRICA: A NEW BIG TRADE PLAYER ON THE HORIZON

Speaking about large-scale trade deals, the African Continental Free Trade Area (AfCFTA) – the world's largest new free trade area since the establishment of the WTO in 1994 – came into force in January 2021.<sup>57</sup> The AfCFTA was referred to as a new 'very large elephant in the room'.<sup>58</sup> However, despite the enthusiasm, little progress has been made over the past year.<sup>59</sup> Sluggish negotiations on rules of origin and tariff schedules, concerns about the member countries' political commitment, lack of expertise at the national level as well as lack of coordination at the regional level appear to represent the main challenges to proper implementation. If these challenges are addressed, the AfCFTA is expected to lift 30 million people out of extreme poverty and significantly increase the income of 68 million people.<sup>60</sup>

The predictions cannot but increase the attractiveness of the AfCFTA's members as potential trade partners. While China has been strengthening its ties with the region by increasing imports of African agricultural goods and raw materials,<sup>61</sup> the US is considering

- 
- 54 WTO, Draft Ministerial Decision on the TRIPS Agreement of 17 June 2022, WT/MIN(22)/W/15/Rev.2, available at <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:WT/MIN22/W15R2.pdf&Open=True>, last accessed on 17 June 2022.
- 55 For example, by interpreting the WTO rules in 'creative' ways so as to target Chinese State-owned enterprises, as explained by Simon J. Evenett, Juhi Dion Sud and Edwin Vermulst in 'The European Union's New Move Against China: Countervailing Chinese Outward Foreign Direct Investment' (2020), 15(9) KLI BV 413.
- 56 Henry Gao, 'China's Changing Perspective on the WTO: From Aspiration, Assimilation to Alienation' (8 November 2021), available at <[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3958510#:~:text=The%20paper%20argues%20that%20the,the%20core%20values%20of%20WTO](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3958510#:~:text=The%20paper%20argues%20that%20the,the%20core%20values%20of%20WTO)>, last accessed on 18 June 2022.
- 57 As of June 2022, only 43 of the 54 signatories have ratified the AfCFTA and deposited their instruments of ratification of the Agreement with the AfCFTA Secretariat.
- 58 Webber Wentzel in alliance with Linklaters, 'AfCFTA Insights Series' (2020), p. 6, available at <[www.webberwentzel.com/News/Documents/2021/africa-legal-webber-wentzel-2020-review.pdf](http://www.webberwentzel.com/News/Documents/2021/africa-legal-webber-wentzel-2020-review.pdf)>, last accessed on 13 June 2022.
- 59 UN Economic Commission for Africa (UNECA), 'The AfCFTA Country Business Index (ACBI) Report' (2022), available at <<https://repository.uneca.org/bitstream/handle/10855/47595/b12003657.pdf?sequence=1&isAllowed=y>>, last accessed on 13 June 2022.
- 60 The World Bank, 'The African Continental Free Trade Area' (2020), available at <[www.worldbank.org/en/topic/trade/publication/the-african-continental-free-trade-area](http://www.worldbank.org/en/topic/trade/publication/the-african-continental-free-trade-area)>, last accessed on 13 June 2022.
- 61 Virusha Subban, 'China's trade ties with Africa continue to strengthen' (2022), Namibia Economist, available at <<https://economist.com.na/70954/special-focus/chinas-trade-ties-with-africa-continue-to-strengthen/>>, last accessed on 18 June 2022.

options as to how it can promote the AfCFTA's success.<sup>62</sup> On its part, the EU appears slow in responding to the African policy changes.<sup>63</sup> Thus, overall, China seems to be ahead of the game (compared to the West) in terms of international trade relationships with the African continent. Given the AfCFTA's potential, such relationships may well be another factor capable of impacting the global economic governance in the near future.

## VII LAST BUT NOT LEAST: TRADE REMEDIES

We live in the shadow of the pandemic, and many investigations continue to be conducted remotely. While this might help save some money in the short run, and reduce our carbon footprints, it also places heavy burdens on the companies being investigated by the relevant authorities. Investigations still take much longer than they used to, and the workload for respondents is not decreasing, on the contrary.

So what has changed in the trade remedies instruments (TDIs) context? The EU is carrying on with its ever-growing scrutiny of foreign subsidies, including in anti-dumping investigations. To remedy alleged distortions of the EU internal market, the Commission has been using TDIs to tackle new forms of subsidisation, for example, in the field of investment financing. Clearly, this needs to be considered in the wider context of the EU's increasingly defensive approach towards foreign trade actors. China remains the EU's main target, and the self-invented<sup>64</sup> methodology under Article 2(6a)(a) of the EU Basic Anti-Dumping Regulation continues to be applied unabated in anti-dumping investigations against China.<sup>65</sup> On its part, China has become more active in initiating both anti-dumping and anti-subsidy investigations.

The number of conducted investigations is increasing in Brazil, Turkey and India as well. In connection to this, it is interesting to note that the Indian Ministry of Finance seems to be following a peculiar trend by rejecting a significant number of recommendations by the

---

62 Landry Signé's testimony before the United States House Foreign Affairs Committee: Subcommittee on Africa, Global Health, and Global Human Rights. Hearing titled: 'Understanding the African Continental Free Trade Area and How the U.S. Can Promote its Success' (27 April 2022), recording available at <<https://foreignaffairs.house.gov/hearings?ID=990AD3E3-C705-4156-88F1-CFA6EDD6314A>>, last accessed on 18 June 2022.

63 Iza Lejarraaga, 'Trading aims: The value of Africa's deep integration trade agreement' (3 May 2022), available at <<https://ecfr.eu/publication/trading-aims-the-value-of-africas-deep-integration-trade-agreement/>>, last accessed on 18 June 2022; and Foundation for European Progressive Studies, 'The EU-AU Trade and Development Partnership: towards a new era?' (October 2021), <<https://feeps-europe.eu/wp-content/uploads/downloads/publications/211103%20policy%20brief%20aue%20relations%20on%20trade%20and%20development.pdf>>, last accessed on 18 June 2022.

64 Or some would say: copied from the US.

65 Regulation (EU) 2016/1036 of the European Parliament and of the Council of 8 June 2016 on protection against dumped imports from countries not members of the European Union [2016] OJ L176/21, Article 2(6)(a). For a recent application of the methodology under Article 2(6)(a), see: Commission Implementing Regulation (EU) 2022/469 of 23 March 2022 correcting Implementing Regulation (EU) 2022/72 imposing definitive countervailing duties on imports of optical fibre cables originating in the People's Republic of China and amending Implementing Regulation (EU) 2021/2011 imposing a definitive anti-dumping duty on imports of optical fibre cables originating in the People's Republic of China [2022] OJ L96/36, available at <<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32022R0469>>, last accessed on 19 June 2022.

Directorate General of Trade Remedies (DGTR) to impose anti-dumping and countervailing measures, without providing explanations as to its decisions.<sup>66</sup> The latest decision not to impose measures contrary to the DGTR's recommendations states that non-imposition has been decided 'considering the overall public interest'. However, except for this, the Ministry of Finance gave no further explanation for not following the DGTR's advice.<sup>67</sup> This, like the TRA's situation in the UK, may raise questions as to the 'strength' of the DGTR.

In the US, one of the latest developments concerns the highly debated tariffs on solar panels. As the war in Ukraine drove up energy prices worldwide, the US tariffs on solar panels received severe criticisms that, instead of punishing Chinese panel makers, they were 'crushing US companies and consumers'.<sup>68</sup> Therefore, President Joe Biden has recently announced the use of the Defence Production Act to promote domestic production and declared a two-year tariff exemption for solar panel products from Cambodia, Malaysia, Thailand and Vietnam. Unsurprisingly, China is not on this list. Nevertheless, the Chinese photovoltaic exporters may take advantage of this move, as they would not be responsible for tariffs eventually imposed as a result of an investigation into Chinese solar panel makers for alleged tariff circumvention.<sup>69</sup>

Interestingly, at the WTO level, China successfully obtained leave to retaliate up to US\$645 million in annual goods, ranging from solar panels to steel wire, against the US.<sup>70</sup> This is the second time that China has been granted a favourable retaliation ruling at the expense of the US.<sup>71</sup> This may likely add to the heated *US v. China* saga in that, while China's aim is not to raise tariffs but rather to push the US to lower them, the US is still refusing to correct its practices in accordance with the WTO rulings. Yet, the latest developments concerning solar panels make us wonder whether the US' approach is hampering its trade interests instead of furthering them. Without a doubt, it will be interesting to see how the US is going to resolve the dilemma.

Finally, other interesting WTO rulings handed down over the past year include, among others: *Turkey – Pharmaceutical Products (EU)* (DS583), which, as discussed above, is currently under appeal pursuant to Article 25 DSU; and *EU – Safeguard Measures on Certain*

---

66 For example, the Indian Ministry of Finance rejected the Directorate General of Trade Remedies' positive recommendations regarding imports of Caprolactam, Glass Fibre, Vitamin C, Rubber Chemical PX-13 and Melamine.

67 While imposition of duties is indeed discretionary, as clarified by the Indian Supreme Court in *Designated Authority v. Andhra Petrochemicals* (2020), the exercise of this discretion cannot be arbitrary. See on this point: *Jubilant Ingrevia v. Designated Authority* (2021) CESTAT Anti-Dumping Appeal No. 50461 of 2021.

68 T.J. Rodgers 'Tariffs on China Throw Shade on the U.S. Solar Industry' (24 May 2022), *Wall Street Journal*, available at <[www.wsj.com/articles/biden-solar-industry-tariff-china-philippines-climate-change-carbon-emissions-energy-prices-manufacturing-11653403852](http://www.wsj.com/articles/biden-solar-industry-tariff-china-philippines-climate-change-carbon-emissions-energy-prices-manufacturing-11653403852)>, last accessed on 19 June 2022.

69 Global Times, 'China's PV firms eye bright prospects under US' tariff exemption for solar panels' (6 June 2022), available at <[www.globaltimes.cn/page/202206/1267417.shtml](http://www.globaltimes.cn/page/202206/1267417.shtml)>, last accessed on 19 June 2022.

70 Arbitrator Decision, DS437: US – Countervailing Measures (China), WT/DS437/ARB, adopted on 26 January 2022.

71 See: Arbitrator Decision, DS471: US – Anti-Dumping Methodologies (China), WT/DS471/ARB, adopted on 1 November 2019, which authorised China to request the DSB to suspend concessions or other obligations up to US\$3,579.128 million per annum.

*Steel Products* (DS595). As for the future, we should keep an eye on the ongoing disputes in *China – AD/CVD on Wine (Australia)* (DS602) and *China – AD on Stainless Steel (Japan)* (DS601).

## VIII SUMMARY

Referring to the past year as ‘interesting and challenging’ sells it short. It was impossible to highlight all noteworthy developments in trade law within this preface. Fortunately, what makes this edition of *The International Trade Law Review* particularly insightful are the comprehensive analyses provided by our loyal contributors. We are therefore evermore grateful to: Tetyana Payosova and Joanna Redelbach for the chapter on World Trade Organization; Matthew Weiniger QC and Alex Fawke for the chapter on UK Customs and Trade; Alfredo A Bisero Paratz, Anabella L Lombardo and Anny E Reyes for the chapter on Argentina; Mauro Berenholc, René Medrado, Carol Sayeg and Cora Mendes for the chapter on Brazil; Peter Jarosz and Philip Kariam for the chapter on Canada; Ignacio García and Andrés Sotomayor for the chapter on Chile; David Tang, Jessica Cai, Yong Zhou and Jin Wang for the chapter on China; Juan David López for the chapter on Colombia; Nicolaj Kuplewatzky and Akhil Raina for the chapter on The European Union; Shiraz Rajiv Patodia and Mayank Singhal for the chapter on India; Kunio Miyaoka, Shunsuke Imura, Ryo Kiuchi and Yu Soh for the chapter on Japan; Lim Koon Huan and Manshan Singh for the chapter on Malaysia; Saifullah Khan for the chapter on Pakistan; Apisith John Sutham, Chalermwut Nilratsirikul and Pumirad Pingkarawat for the chapter on Thailand; M Fevzi Toksoy, Ertuğrul Can Canbolat and E Kutay Çelebi for the chapter on Turkey; Matthew R Nicely, Devin S Sikes, Julia K Eppard and Brandon J Custard for the chapter on United States; and Giang Le for the chapter on Vietnam. Finally, we would like to thank Camilla Nervegna at VVGB for her most kind and invaluable assistance.

We wish all our readers much enjoyment with this latest edition of *The International Trade Law Review*.

**Folkert Graafsma and Joris Cornelis**

VVGB Advocaten | Avocats

Brussels, August 2022

# PAKISTAN

*Saifullah Khan*<sup>1</sup>

## I OVERVIEW OF TRADE REMEDIES

As a member of the World Trade Organization (WTO) and a signatory to the General Agreement on Tariffs and Trade 1994 (GATT), Pakistan must ensure that its trade remedy framework complies with the WTO agreements. Its trade remedy mechanism is derived from internationally agreed rules and procedures under the auspices of the WTO. The National Tariff Commission (NTC), an autonomous government agency, is entrusted to conduct trade remedy investigations. The governing laws in Pakistan that deal with trade remedy measures came into force in 2001. The first anti-dumping investigation by the NTC was initiated in 2002 against the dumped imports of tinplate from South Africa and, since then, it has initiated 147<sup>2</sup> anti-dumping investigations and imposed 97 measures involving all the major industries, including iron and steel, chemicals, paper and paper board, textiles, petrochemicals, tiles and sanitary ware, packaging and automotive parts.

Pakistan has a growing semi-industrialised economy that relies on manufacturing, agriculture and remittances. Although since 2005 the GDP has been growing an average 5 per cent a year,<sup>3</sup> it is not enough to keep up with fast population growth. The economy has shown recovery from the pandemic (a 0.94 per cent drop in the fiscal year 2020) and maintained a V-shaped recovery by posting real GDP growth of 5.97 per cent in the fiscal year 2022, with the growth of the agricultural, industrial, and services sectors at 4.4 per cent, 7.19 per cent, and 6.19 per cent, respectively.

The economic growth of Pakistan is highly dependent on its exports as by earning foreign exchange it will be able to finance its imports, stabilise its currency devaluation, service its debts and resolve the issue of balance of payment deficit. However, the trade imbalance that has continued for decades cannot be reduced without having an effective import substitution strategy. According to data released by the Pakistan Bureau of Statistics (PBS),<sup>4</sup> during the first nine months of the current fiscal year 2021–2022, imports surged to US\$58.691 billion while exports remained at US\$23.298 billion. In the same period of the previous fiscal year, imports stood at US\$39.489 billion and exports at US\$18.687 billion. This depicts a 24.67 per cent growth in exports and a 48.63 per cent increase in imports. To discourage imports, the government has banned a wide range of non-essential luxury goods through

---

1 Saifullah Khan is the managing partner at S.U.Khan Associates, Corporate & Legal Consultants.

2 [https://www.wto.org/english/tratop\\_e/adp\\_e/adp\\_e.htm](https://www.wto.org/english/tratop_e/adp_e/adp_e.htm).

3 <https://tradingeconomics.com/pakistan/gdp-growth>.

4 <https://www.pbs.gov.pk/trade-summary>.

SRO No. 598(I)/2022.<sup>5</sup> Among the many imports listed in the SRO are products such as cellular phones, cars, cosmetics, home appliances, shoes, lighting, pet food, sanitary and bathroom ware, luxury leather apparel, shampoos, kitchenware and carpets except those from Afghanistan. The ban also covers confectionery, chocolates and ice cream, fish and frozen fish, jams and jelly, fruits and dry fruits except from Afghanistan, juices, pasta, travelling bags, suitcases and cigarettes.

As the industrial sector is still underdeveloped, the market is dominated by imports in various sectors. As a result, any new investment in an industrial product faces immense competition from imports that are mostly dumped. In such a case, the only remedy available to the new industry is filing an anti-dumping application. There are many success stories, with the new industry not only flourishing after the imposition of an anti-dumping duty but being able to expand its capacity further, resulting in fulfilment of domestic demand and creating exportable surplus. For example, the hydrogen peroxide industry was continuously incurring losses after its inception in 2008 because of dumped imports from multiple sources. The NTC conducted an investigation and levied anti-dumping duties, which levelled the playing field and allowed the industry to serve domestic demand and start exporting to other countries. With the expansion in domestic demand, local players also enhanced their capacity and new players entered the industry.

This was also the case with the flat steel industry. A major portion of this industry is made up of cold-rolled coils, galvanised coils and colour-coated coils. After the downfall of Pakistan Steel Mills, the private sector began setting up manufacturing units for flat steel products in Pakistan. The industry started its production in 2011 and was under severe pressure from dumped imports, which prompted it to file various anti-dumping applications against dumped imports of cold-rolled coils, galvanised coils and colour-coated coils. The NTC concluded anti-dumping investigations and imposed anti-dumping duties. After levying anti-dumping duties, the performance of the industry began to improve. Its capacity enhanced from 500,000 tonnes to 1.7 million tonnes per annum. Now, in addition to catering for domestic demand, Pakistan's steel industry is competing in export markets with quality products.

Industries are increasingly becoming aware of their rights under trade defence laws. The NTC has conducted awareness sessions in various cities to let people know what trade remedies are available to them and how the process works. Gradually, more cases and investigations are being opened concerning trade remedies, mostly related to anti-dumping. In the current year, most of the trade remedy investigations pertain to expiry/sunset reviews of anti-dumping duties imposed five years ago. The significance of trade remedy measures is demonstrated in the financial results of the industries during the period of levy of anti-dumping duties. The industries have undertaken capacity expansions, and their production, sales, capacity utilisation and profits have also increased manyfold. New players have also entered the domestic market to enjoy a level playing field. For example, the imposition of anti-dumping duties benefitted the sulphonic acid industry; the major producers who filed original anti-dumping application have increased their capacities and new capacities have also been installed during the period of levy of anti-dumping duty. Similarly, the polyvinyl chloride industry has also benefitted from the level playing field provided by the imposition of anti-dumping duty and increased its capacity from 195,000 tonnes to 295,000 tonnes.

---

5 [https://www.commerce.gov.pk/wp-content/uploads/2022/05/SRO-Ban-on-Import-of-Luxury-and-N\\_essential-Items.pdf](https://www.commerce.gov.pk/wp-content/uploads/2022/05/SRO-Ban-on-Import-of-Luxury-and-N_essential-Items.pdf).

To date, Pakistan has not initiated any safeguard investigations. Only one application was filed under the Safeguard Measures Ordinance 2002 in July 2015 by the producer of soap noodles, which was not initiated by the NTC because there was a lack of 'sufficient evidence of serious injury to the domestic industry' and no 'surge of imports'. Further, only two anti-subsidy and countervailing applications have been filed by domestic industries and initiated by the NTC, as outlined below.

The first was filed in October 2011 along with an anti-dumping application against alleged subsidised and dumped imports of certain writing and printing paper into Pakistan, which originated in and was exported from Indonesia and Thailand. After the investigation was initiated, certain legal and jurisdictional issues were raised in the judicial courts of Pakistan resulting in injunction orders that held the NTC's investigation proceedings in abeyance. Indonesia subsequently challenged the investigation under Article 5.10 of the WTO's Anti-Dumping Agreement (ADA) and Article 11.11 of the Agreement on Subsidies and Countervailing Measures (ASCM), claiming that these articles provide that any anti-dumping or countervailing duty investigation has to be terminated after 18 months from the date the investigation is initiated. In this case, Pakistan initiated the investigations in November 2011 and they were still pending in November 2013. After attempts to resolve the dispute failed, on 12 May 2014 Indonesia requested that the Dispute Settlement Body (DSB) establish a panel to examine the matter. However, Pakistan notified the DSB of its concerns over this request, stating that 'no provisional or definitive anti-dumping or countervailing duties had been imposed by Pakistan on the products in question' and Indonesia's share of the import market had grown since the initiation of the investigations by Pakistan, which meant the investigations did not have any economic impact on Indonesia. On 23 May 2014, pursuant to Pakistan's request, the DSB deferred the establishment of the panel. Pakistan terminated its countervailing investigation in June 2014.

The second countervailing application was filed in April 2016 against subsidised imports of fine cotton yarn from India. After a thorough investigation, the NTC determined subsidy margins and imposed provisional countervailing duties for four months. However, as the domestic industry filed both anti-dumping and countervailing applications simultaneously, the NTC decided to impose definitive anti-dumping duties in the final determination and countervailing duties were not imposed.

## **II LEGAL FRAMEWORK**

Pakistan is a signatory to the Uruguay Round agreements, thereby making it a founding member of the WTO. For the WTO trade defence agreements to have legal force in Pakistan it was necessary for laws to be enacted in Pakistan that mirrored the provisions of these agreements. Hence, to give effect in Pakistan to the provisions of Article VI of the GATT and to the Agreement on Implementation of the GATT, and to consolidate the laws relating to anti-dumping duties to offset dumping, to provide a framework for investigation and determination of dumping and injury in respect of goods imported into Pakistan and for matters ancillary thereto or connected therewith, the Anti-Dumping Duties Act 2015 (XIV of 2015), which reformed and repealed the Anti-Dumping Duties Ordinance 2000 (LXV of 2000) is in place.

Similarly, to give effect to the provisions of Articles VI and XVI of the GATT and to the ASCM, and to further strengthen the law relating to imposition of countervailing duties to offset such subsidies, to provide a framework for investigation and determination of such



subsidies and injury in respect of goods imported into Pakistan and for matters ancillary thereto or connected therewith, the Countervailing Duties Act 2015 (XIII of 2015), which reformed and repealed the Countervailing Duties Ordinance 2001 (I of 2001), is in place.

Finally, to give effect to the provisions of Article XIX of the GATT and to the Agreement on Safeguards to provide for the imposition of safeguard measures in accordance therewith, to provide a framework for investigation and determination of serious injury caused by products imported into Pakistan and for matters ancillary thereto or connected therewith, the Safeguard Measures Act 2015 (II of 2015), which repealed and replaced the Safeguard Ordinance 2002 (XXXI of 2002), is in place.

To enforce these laws, the government established the NTC through the National Tariff Commission Act 1990. This Act was revised through the National Tariff Commission Act 2015 (XII of 2015) on 10 September 2015.

In addition to the above-mentioned Acts and Ordinances, the following rules were promulgated to establish the process of investigations: the Anti-Dumping Duties Rules 2001, the Countervailing Duties Rules 2001 and the Safeguard Measures Rules 2001.

### III TREATY FRAMEWORK

Pakistan has a free trade agreement (FTA) with Sri Lanka (2005), preferential trade arrangements (PTAs) with Iran (2004), Mauritius (2007) and Indonesia (2012), and FTAs in goods and investments with China (2005) and Malaysia (2007). It is part of the Economic Cooperation Organization Trade Agreement and the South Asian Free Trade Agreement.

No new trade agreement has been signed in the past few years. However, Pakistan has taken initiatives, to negotiate FTAs and PTAs with certain countries, for example Afghanistan, the members of the Gulf Cooperation Council, Iran, Turkey, Thailand and Uzbekistan.

The government of Pakistan strongly believes in free trade regimes and has always supported efforts aimed at promoting free trade and open market policies. However, statistics in recent years have revealed that Pakistan has been unable to boost its international trade performance despite seeking to implement various trade liberalisation policies. The bilateral trade with its FTA partners has also been running into a continuous deficit, indicating that it has not been able to take advantage of the free trade agreements. However, the recent renegotiation of Pakistan's FTA with China is a step in the right direction by incorporating China's preferences when considering relevant exportable products in Pakistan. The renegotiated agreement reflects, to some extent, Pakistan's economic priorities. It adopts strong commitments in areas where the agreement obligations are in line with its growth strategy.

Pakistan has approved its first-ever National Tariff Policy 2019–2024 (NTP). The NTP recognises the importance of using import tariffs for industrial development and export growth. It is based on the principles of:

- a* employing tariffs as an instrument of trade policy rather than revenue generation;
- b* maintaining vertical consistency through cascading tariff structures (increasing tariff with stages of processing of a product);
- c* providing time-bound 'strategic protection' to the domestic industry during the infancy phase; and
- d* promoting competitive import substitution through time-bound protection, which will be phased out to make the industry eventually competitive for export-oriented production.

In accordance with these principles, any protection given to the domestic industry will be limited to a certain specified time and will be gradually withdrawn to promote free trade. These principles have also been considered while announcing the recent Finance Bill 2022 and the Finance Bill of 2021, and certain anomalies have been removed in cascading tariff structures, few targeting interventions to promote and protect domestic industries have been made and tariffs have been rationalised on industrial raw materials and intermediate goods. Continuing its commitment under the NTP, the government has exempted import duties from a large number of tariff lines of raw materials, and there are certain other tariff lines where import duties have been reduced.

To achieve trade facilitation in an automated environment, reduce clearance times for legitimate trade and improve compliance through increased access to regulatory information and functions, the Pakistan Single Window system has been launched. This ensures greater collaboration and coordination between Customs and other border regulatory agencies at the national and international level for coordination of border management and increases transparency in regulatory processes and decision-making.

All these initiatives demonstrate Pakistan's commitment to facilitate trade to and from Pakistan.

#### **IV RECENT CHANGES TO THE REGIME**

The NTC has faced certain limitations and problems in past years in relation to protecting the domestic industry after the WTO was established and using trade remedy measures. As a result, the government revised the NTC Act 1990 and the Anti-Dumping Duties Ordinance 2000, the Countervailing Duties Ordinance 2001 and the Safeguard Measures Ordinance 2002. New legislation was promulgated on 26 February 2015.

The revised National Tariff Commission Act 2015 is a more expansive piece of legislation compared with the repealed NTC Act 1990, with a few additional provisions and detailed explanation of old provisions. The absence of provisions relating to the quorum of the NTC in the previous legislation to take valid decisions was a major obstacle in the way of providing protection to the domestic industry from foreign exporters' unfair trade practices. This issue is addressed in the new legislation along with providing qualification and experience criteria for members of the NTC. The constitution of the NTC was revised and the number of members was raised from three to five to ensure that, with expanding trade ties, there are enough members to serve industries in a timely manner. A provision on the qualification and eligibility of members was added to make sure that members are capable of understanding the sensitive issues relating to tariff protection and trade defence laws, among other things.

Further, in the revised legislation, it was ensured that no act, proceeding or decision of the NTC can be held invalid by reason only of the existence of a vacancy or defect in the Constitution of the NTC. Under the previous legislation, many investigations were deemed invalid because of a defect in the quorum. This provision enables the decisions of the NTC to remain valid. The amended text extends the terms of the members to five years, because it takes significant time for members to become fully aware of the substantive and procedural mischiefs of the trade defence laws, including the need to fully apprehend the economic and cost accountancy issues. It also ensures that, in the absence of a notification by the government, automatic procedures will ensure that NTC members continue to perform their functions for another period of one year.

Major changes made to anti-dumping and countervailing laws are as follows.

- a* A new Subsection was added to the revised laws, which states that termination of an investigation or conclusion of an investigation without imposition of measures shall not be a bar to filing a *de novo* application for a new investigation immediately after the termination or conclusion of the investigation. The NTC shall treat the application in accordance with provisions of these laws.
- b* A lesser duty rule was introduced in the revised anti-dumping law, which was not present in the earlier laws. The lesser duty rule is not mandatory; the NTC has the discretion of whether to apply the rule in an investigation.
- c* A provision was added to strengthen export-oriented industries, which stated that anti-dumping duties, whether provisional or definitive, imposed under these laws shall not be levied on imports that are to be used as inputs in products destined solely for export.
- d* Clarification of what may constitute circumvention has been added to the provision relating to anti-circumvention measures to ensure conformity with the latest developments in anti-circumvention practices. The remedial measures applicable in the event that the NTC determines circumvention have also been clearly stated. Further, a Subsection was added concerning *suo moto* actions of the NTC, describing the timeline of anti-circumvention investigations.
- e* A Section has been added on monitoring, evaluation, qualification and disqualification criteria as well as clear and effective working procedures for the functioning of the Anti-Dumping Appellate Tribunal covering the matter of the quorum and discipline.

Certain additional amendments to anti-dumping and countervailing laws are currently being discussed. The domestic industry has made various proposals to remove the provisions relating to the lesser duty rule and the exemption of anti-dumping and countervailing duties for export-oriented industries and to reinstate earlier versions of the laws.

## V SIGNIFICANT LEGAL AND PRACTICAL DEVELOPMENTS

A major development in trade remedy measures in recent years was the change of circumstances review investigations initiated and concluded by the NTC. Until the end of 2019 (after a period of 18 years since trade remedy laws were promulgated), the domestic industry had never invoked the provision of a change of circumstances review (Article 11.2, ADA). The NTC had also never conducted a change of circumstances review investigation. When duties were levied, they remained applicable for the entire period for which they were levied initially and at the same rate determined in the final determination of the investigation.

During December 2019, the first-ever application for a change of circumstances review of anti-dumping duties was filed with the NTC. This application was filed by the domestic hydrogen peroxide industry against imports from Bangladesh. The industry alleged that the circumstances that were prevalent during the period of the investigation had changed significantly, leading to a situation where the existing anti-dumping duties were no longer effective and the quantum of the anti-dumping duty rates in force had to be increased. On 26 August 2020, the NTC concluded its review and definitive anti-dumping duties were imposed on dumped imports of hydrogen peroxide imported from Bangladesh. The original range of 10.67 per cent to 12.14 per cent was revised to 15.38 per cent to 16.1 per cent, effective from 26 August 2020.

Following this, the domestic industry producing sorbitol solution filed for a change of circumstances review along with a sunset review of anti-dumping duties levied on dumped imports of sorbitol 70 per cent solution (Sorbitol) into Pakistan originating in or exporting from India, or both. The industry alleged that the Indian exporters had absorbed the anti-dumping duties and, therefore, imports of Sorbitol from India had continued after the imposition of anti-dumping duties at dumped prices. The review investigation was concluded, and the Commission determined that the available data does not support the claims made by the applicant that circumstances for production and sales of Sorbitol in India have significantly changed. It has, therefore, concluded that redetermination of anti-dumping duty is not required.

The initiation of these reviews and positive outcome of one of the cases have laid the foundation for interim reviews for the domestic industry before the expiry of anti-dumping duties, and for increased anti-dumping duties in expiry reviews.

Another important issue is the filing of writ petitions before judicial courts (high courts) against the decisions and determinations of the NTC. The high courts used to grant stay or injunction orders that restricted the NTC from proceeding further in investigations, or made anti-dumping duties not applicable or prevented them from being collected for a certain period of time. Due to these stay orders, industries often did not experience the benefits of anti-dumping duties being levied. In *Tameer Steel Zone v. Government of Pakistan & Others*,<sup>6</sup> the NTC raised a preliminary objection about maintainability of the writ petitions on the ground that petitioners have an alternate remedy available under Section 70 of the Anti-Dumping Duties Act 2015 – the Anti-Dumping Appellate Tribunal – and therefore these Writ Petitions are not maintainable. In this case, the high court observed that:

*There is no dispute regarding the fact that an alternate remedy is now available to petitioners. We have been informed that the appellate tribunal stood fully constituted according to the composition provided in section 64 of the Act. The appellate tribunal is by now fully functional, having lawful authority to consider pleas of the petitioners and grant the appropriate relief, if the petitioners were found entitled thereto. The petitioners can therefore have recourse to the remedy provided by section 70 of the Act. A remedy of further appeal before the High Court has also been provided under sub-section (13) of section 70 of the Act. Thus a robust and full-fledged mechanism for dispute resolution has been provided under the Act.*

The high court relied upon many cases in this judgment, including *Collector of Customs Lahore and others v. University Gateway Trading Corporation* and another,<sup>7</sup> in which the Supreme Court observed the following:

*it hardly needs any elaboration that where a particular statute provides a self-contained mechanism for the determination of questions arising under the statute where law provides a remedy by appeal or revision to another Tribunal fully competent to give any relief, any indulgence to the contrary by*

---

6 In the matter of NTC Notices of Final Determination dated 19 January 2017, 8 February 2017 and 13 June 2018 in respect of cold-rolled coils, galvanised steel sheets and colour-coated steel sheets.

7 Reported as 2005 SCMR 37.

*the High Court is bound to produce a sense of distrust in-statutory Tribunals. Petitioner without exhausting his remedy provided by the statute filed Constitutional petition. Constitutional petition, in circumstances, was not maintainable.*

Accordingly, the court in *Tameer Steel Zone v. Government of Pakistan & Others* ordered that all the writ petitions should be converted into appeals and shall be deemed to have been filed before the Tribunal on the dates they are filed before the high court. All the records were directed to be transmitted to the Tribunal and the petitioners were directed to appear before the Tribunal on 28 December 2020.

The court further directed that consignments, already cleared on receipt of post-dated cheques or bank guarantees without payment of anti-dumping duties in pursuance of interim orders of the court, will be subject to a final determination of the Tribunal in the respective converted appeals. Until then, neither the post-dated cheques nor bank guarantees can be cashed.

Hence, it was established by this judgment that if an alternate remedy is available under the law, a direct writ petition before a high court is not maintainable.

In a recent judgement, the Antidumping Appellate Tribunal (the Tribunal) dismissed the ground taken by interested parties to exclude the domestic producer from the scope of domestic industry for the reason of its imports from the dumped sources. The Tribunal based its judgment on the facts that behaviour of the producer concerned has to be seen with reference to the application and exclusion of concerned domestic producer would unduly skew the data of the application. This has clarified the issue of standing of domestic industry where any of the domestic producer has also imported subject product.

In the past year, the previous practice of the National Tariff Commission not to change dumping margins during the sunset or expiry review has been reaffirmed. For any change in dumping margins, the interested party now has to file an application for a change of circumstances review. This was another development in practice of trade remedy laws.

## VI TRADE DISPUTES

Concerning trade remedies, Pakistan has been party to eight WTO disputes, five as complainant against the United States (two cases), the European Union, South Africa and Egypt, and three as respondent against Indonesia, the United Arab Emirates and the European Communities (EC). Four of these cases are summarised below.

### **i DS107: Pakistan — Export Measures Affecting Hides and Skins**

On 7 November 1997, the EC requested consultations with Pakistan in respect of a Notification enacted by the Ministry of Commerce of Pakistan prohibiting the export of, among other things, hides and skins, and wet blue leather made from cow hides and cow calf hides. The EC contended that this measure limited the access of EC industries to competitive sourcing of raw and semi-finished materials. The matter was resolved through a mutually agreed settlement between the EU and Pakistan.

**ii DS470: Pakistan — Anti-Dumping and Countervailing Duty Investigations on Certain Paper Products from Indonesia**

On 27 November 2013, Indonesia requested consultations with Pakistan relating to the continuation of, and failure to terminate in a timely manner, certain anti-dumping and countervailing duty investigations on certain paper products from Indonesia. In 2014, Indonesia requested the creation of a panel but it was deferred. The NTC subsequently terminated the investigations.

**iii DS500: South Africa — Provisional Anti-Dumping Duties on Portland Cement from Pakistan**

This case relates to the imposition of provisional anti-dumping measures by South Africa on the import of Portland cement products from Pakistan. On 10 November 2015, Pakistan requested consultations with South Africa but the dispute did not settle or move forward. South Africa imposed final anti-dumping duties, and an expiry review was initiated in December 2020. On 10 June 2022, the International Trade Administration Commission of South Africa issued a regulation extending the definitive duty imposed on imports of Portland cement from Pakistan following the conclusion of the sunset review. The rate of duty ranges from 25 per cent to 68.87 per cent.

**iv DS538: Pakistan — Anti-Dumping Measures on Biaxially Oriented Polypropylene Film from the United Arab Emirates**

On 24 January 2018, the UAE requested consultations with Pakistan concerning Pakistan's anti-dumping measures on imports of biaxially oriented polypropylene film from the UAE. A panel was established and composed on 7 May 2019. On 18 January 2021, the panel report was circulated to members. On 22 February 2021, Pakistan filed an appeal before the Appellate Body on certain issues of law and legal interpretations in the panel report.

## **VII OUTLOOK**

In fiscal year 2022, real GDP growth remained at 5.97 per cent. However, underlying macroeconomic imbalances and associated domestic and international risks have dampened celebrations. The economy of Pakistan rebounded from the pandemic (0.94 per cent contraction in fiscal year 2020) and continued to post a V-shaped economic recovery, which is higher than the 5.74 per cent recorded last year (fiscal year 2021).

This high growth is also accompanied by external and internal imbalances, as has been the case historically with Pakistan's economy. However, external circumstances also played a critical role this time. These circumstances have placed almost all economies of the world in shambles. A highly transmissible omicron variety of covid-19, changes in Afghanistan's government after the withdrawal of US troops and the Russia-Ukraine conflict, which started in February 2022, have all upended the global economic picture. Financial and commodity markets have felt shock waves. Thus, energy and food prices have surged rapidly and threaten to remain further elevated. The exceedingly uncertain outcome of the crisis is another challenge for developing economies, particularly for Pakistan.

The CPI inflation for the period July-May of fiscal year 2022 was recorded at 11.3 per cent as against 8.8 per cent during the same period for the previous year. The

pressure on headline inflation can fairly be attributed to adjustments in prices of electricity and gas, a significant increase in the perishable food prices and exchange rate depreciation along with a rapid increase in global fuel and commodity prices.

Many policy measures were initiated by the government to support export-oriented industries and facilitate businesses to increase exports. During July–April of fiscal year 2022, exports of goods grew by 27.6 per cent to US\$26.8 billion, whereas services exports grew by 18.2 per cent to US\$5.8 billion. Despite the encouraging export performance, the country's imports have also risen significantly. That is why a huge current account deficit is seen in fiscal year 2022.

Based on the recent macroeconomic adjustment measures and stronger inflation, real GDP growth is expected to slow to 4 per cent in fiscal year 2023. However thereafter, economic growth is projected to recover in fiscal year 2024, supported by the implementation of structural reforms to support macroeconomic stability and dissipating global inflationary pressures. Inflation is estimated to be moderate over the next year (fiscal year 2023). Macroeconomic adjustment measures and the weaker currency are expected to tame imports mostly in fiscal year 2023. The current account deficit is expected to narrow to 3 per cent of GDP in fiscal year 2024, as reforms to reduce import tariffs and the anti-export bias of trade policy gain traction.<sup>8</sup>

The government is vigilantly responding and trying to cope with the current uncertain situation. Recently, the government has approved the Strategic Trade Policy Framework (STPF) 2020–2025 to enhance the export competitiveness of Pakistan through a framework of interventions having an impact across the value chain. Furthermore, textile policy for 2020–2025 has also been approved to fully utilise the potential of home-grown cotton augmented by man-made fibres and filaments to boost value-added exports. It is expected that these policy initiatives will be helpful in the country's sustainable economic growth.

Further, Pakistan's economic recovery after the covid-19 crisis indicates that the country has enormous potential to overcome the challenging economic situation. This recovery was the result of well-coordinated fiscal and monetary policy responses to the pandemic that led to a remarkable expansion in the industry and services sectors of Pakistan. In the long run, we expect that right policy measures supported with structural reforms will lead Pakistan's economic recovery from the current difficult economic situation.

---

8 <https://thedocs.worldbank.org/en/doc/5d1783db09a0e09d15bbcea8ef0cec0b-0500052021/related/mpo-pak.pdf>.

## ABOUT THE AUTHORS

### **SAIFULLAH KHAN**

*S.U.Khan Associates, Corporate & Legal Consultants*

Mr Saifullah Khan is an international trade, technology and policy lawyer, having more than 20 years of diversified and multi-jurisdictional professional experience. His areas of interest include trade remedy laws of the World Trade Organization. He has advised numerous clients in this regard and has also represented clients before the executive and judicial forum. His work also includes advising government on trade policy issues and on trade remedy laws. With respect to the emerging discipline of data privacy, he advises clients from different jurisdictions about data privacy compliance, cross-border transfer of data and other matters. He has carried out training sessions for the officials of public sector organisations regarding the compliance framework under the upcoming personal data privacy law in Pakistan. He is a regular contributor of articles, on issues of international trade and data privacy, published by world-renowned publishers such as Global Legal Group, Chambers & Partners, The Legal 500, Law Business Research, Mondaq, OneTrust Data Guidance and Thomson Reuters.

Mr Khan did an Executive Education program on ‘Mastering Trade Policy’ from Harvard Kennedy School, Boston, US. Mr Khan has attended a certificate course on ‘Data: Law, Policy and Regulation’ from the London School of Economics and Political Science (LSE). He is member of the International Association of Privacy Professionals (IAPP). Mr Khan is a practicing lawyer (Advocate High Court) and member of Islamabad Bar Council, a member of the Chartered Institute of Arbitrators (CIArb), United Kingdom, a fellow member of the Institute of Cost & Management Accountants of Pakistan (ICMAP), a certified internal auditor (CIA) from the Institute of Internal Auditors, a fellow member of the Pakistan Institute of Public Finance Accountants (PIPFA) and a member of the Rawalpindi-Islamabad Tax Bar Association – Pakistan (RITBA).

### **S.U.KHAN ASSOCIATES, CORPORATE & LEGAL CONSULTANTS**

First Floor, 92-Razia Sharif Plaza  
Fazal-ul-Haq Road  
Blue Area, Islamabad 44000  
Pakistan  
Tel: +92 51 2344 741 / 742  
Fax: +92 51 2344 743  
saifullah.khan@sukhan.com.pk  
www.sukhan.com.pk



ISBN 978-1-80449-102-7