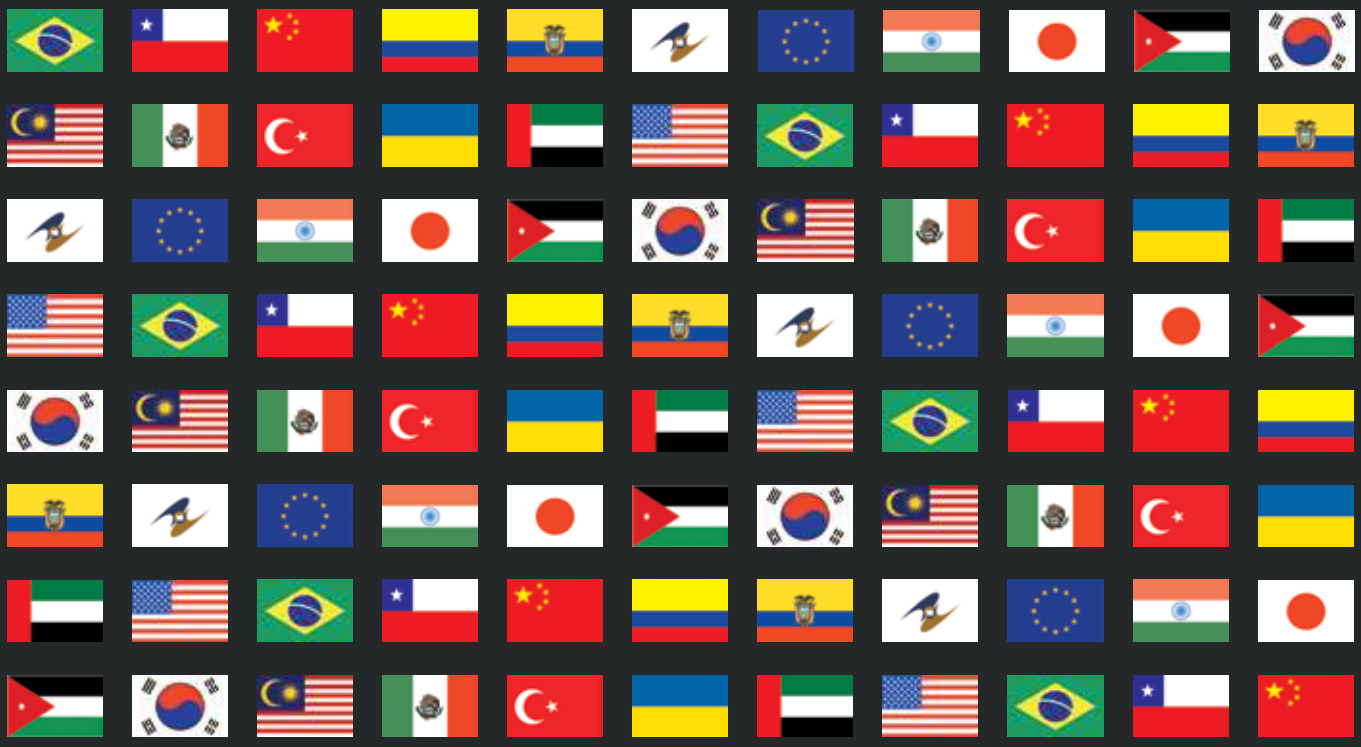
Trade & Customs

Contributing editor
Gary N Horlick



2019

GETTING THE DEAL THROUGH

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Trade & Customs 2019

Contributing editor

Gary N Horlick

Law Offices of Gary N Horlick

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For further information please contact editorial@gettingthedealthrough.com

Publisher
Tom Barnes
tom.barnes@lbresearch.com

Subscriptions
James Spearing
subscriptions@gettingthedealthrough.com

Senior business development managers
Adam Sargent
adam.sargent@gettingthedealthrough.com

Dan White
dan.white@gettingthedealthrough.com

Law Business Research

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Preface

Trade & Customs 2019

Seventh edition

Getting the Deal Through is delighted to publish the seventh edition of *Trade & Customs*, which is available in print, as an e-book, and online at www.gettingthedealthrough.com.

Getting the Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique **Getting the Deal Through** format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes a new chapter on Colombia and a new article on the World Trade Organization dispute against Russia.

Getting the Deal Through titles are published annually in print. Please ensure you are referring to the latest edition or to the online version at www.gettingthedealthrough.com.

Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Getting the Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editor, Gary N Horlick of Law Offices of Gary N Horlick, for his continued assistance with this volume.

GETTING THE DEAL THROUGH

London
July 2018

Overview

Gary N Horlick
Law Offices of Gary N Horlick

The headlines for the last year in trade focused on the newly elected President of the US, Donald Trump. On his first day of work he withdrew the US from the recently signed but not yet ratified Trans-Pacific Partnership (TPP); but a year later at Davos he mentioned in passing that the US might consider joining it, perhaps because someone had explained to him that the TPP was extremely beneficial to the farming and ranching states that had voted for him (although to date the US has done nothing constructive to do so). This reflected the new administration's position – partially elucidated in a series of speeches, tweets and offhand statements – that US trade policy would henceforth be strictly bilateral and reciprocal in the limited sense of eliminating through trade policy the US trade deficit (or perhaps just the deficit in goods trade, rather than the large surplus in services) which is a product of the gap between US investment and US savings. Meanwhile, a month after the Davos remarks, the other 11 TPP countries met in Santiago, Chile to sign a revised TPP without the US and made clear they would be open to new members, such as the US, Korea and Colombia – or possibly the UK after Brexit.

From this lawyer's point of view, much of the past year was damage control. 'Normal' damage control in the trade law sense is one lawyer or lawyers in a business or government bringing a defined case to the World Trade Organization (WTO) or national authorities such as anti-dumping or countervailing duty (anti-subsidy) cases, or proposing some regulatory or legislative change and other lawyers opposing or supporting for their clients. There was no lack of those. As an example of the 'normal', last year I had the honour of requesting a North American Free Trade Agreement (NAFTA) panel on behalf of the UK – a non-NAFTA country – in a countervaiing duty case brought by Boeing against Canada (a large Boeing customer) concerning large commercial aircraft, which the UK did not make. But most of the big fights of the past year were not brought by businesses or their lawyers, or even by trade lawyers in governments.

The decision by President Trump to terminate the TPP was driven by the perception that the TPP was a politically useful symbol of trade taking away US jobs, even though it was carefully negotiated by former US Trade Representative Froman to exclude the likely job losses related to the specific footwear and apparel products still made in the US (the US produces about 1 per cent of its footwear consumption and 2 per cent of its clothing). The main complaints on the business side were from pharmaceutical companies, which received five or eight years of extended protection instead of the 12 years sought, and even they would benefit from the reduction of barriers to exports. The main beneficiaries of the TPP were the farming and ranching states (Japan cut its tariff on US beef from 38.5 per cent to 9 per cent, for example), and they were not complaining.

That was even more the case with NAFTA. The Trump team perceived that their 2016 electoral victory was based on votes from steel and auto workers in five industrial states who say that their jobs are being taken or threatened by 'imports'. This reflected 30 years of criticism from non-governmental organisations and unions, which ironically may have elected Trump! The numbers do not support the complaint. In 1979, finished steel imports reached 19.9 per cent of the US market, while the big steel mills with blast furnaces had over 70 per cent of the market. In recent years finished steel imports were around 25–27 per cent of the market, while the unionised blast furnace mills had under 35 per cent of the market. Who took away the 35 per cent of the market? Imports accounted for 7–8 per cent, while almost 30 per cent of the US market was taken away from those unionised steel workers by newer, subsidised, non-union 'minimills', especially in the American South. The same was true for autos, where non-union subsidised plants sprung up throughout the South. It is much easier to blame foreigners, though.

Facts were not going to interfere with the administration's use of section 232 of the Trade Expansion Act of 1962, allowing action to protect national security, and to impose stiff tariffs on worldwide imports of steel and aluminium, notwithstanding a statement by the Department of Defense that only 3 per cent of US production would suffice for that purpose. Subsequent administration pronouncements clarified that the purposes of the tariffs were to pressure the EU to lower its tariffs on US cars, to pressure Korea to revise the US–Korea Free Trade Agreement, to impose quotas reducing imports from Korea, Brazil and others, or to impose quotas to increase imports 35 per cent from Argentina. As of this writing, Japan, Canada, Mexico, India, Turkey, Thailand and the EU were preparing to join China in imposing retaliatory tariffs, challenging the US tariffs in the WTO, and possibly imposing safeguards (likely to be challenged in the WTO) on steel imports to prevent diversion from the US market. One challenge to the tariffs is under way in US courts and more seem likely.

All of this illustrated the ability of these new trade initiatives to generate lots of work for trade lawyers in government, companies and the private bar. And other countries have done their part to help out.

The new Comprehensive and Progressive Trans-Pacific Partnership (CPTPP) suspended some provisions of the original TPP (mostly IP provisions sought by the US, to provide a reason for the US to rejoin once its exporters have lost enough sales and jobs). The CPTPP faces ratification procedures and then implementation processes in 11 member countries, and consequent commercial rearrangements by companies in those and competing countries. The new CPTPP may spur progress in the Regional Comprehensive Economic Partnership, the trade negotiations including China, India, Japan, Australia, New Zealand and the Association of Southeast Asian Nations countries, although India seems wary of tariff reductions if they are available to China. The Pacific Alliance (Chile, Colombia, Mexico, Peru) seems intent on extending its zero-tariff deals with other TPP countries and beyond. Perhaps most significantly, the EU is moving ahead to implement its recent deals with Canada, Vietnam and Japan, and a revised agreement with Mexico, and to start deals with Australia and New Zealand – in effect replacing the US for a lot of TPP trade.

Enough countries backed WTO Director-General Azevedo in the Ministerial Conference in Buenos Aires in December 2017 to permit the WTO to move forward with talks on fisheries subsidies, digital trade and (with luck) the fraught topic of agriculture. Important dispute settlement decisions were issued on trade remedies (especially as to allegedly 'non-market' economies) and sanitary and phytosanitary measures and are pending on the Tobacco Regulation cases. Important new cases have been filed against the protectionist 2015 amendments to US trade remedy law, and involving article XXI on national security in cases between Ukraine and Russia, Qatar and Saudi Arabia and the United Arab Emirates, and the US and a lot of steel exporting countries. Some of this was overshadowed by the Trump administration's war on the Appellate Body for not ruling in favour of the US in all cases. The resolution of that issue and the maintenance of a neutral

and effective dispute settlement system (and the WTO itself) remains to be seen.

Brexit remains the Rubik's Cube of trade law, with each question raising a host of other questions (eg, the Northern Irish border). The agreement on a transition period from 29 March 2018 to 31 December 2020 provides the necessary time for a massive legal effort to draft agreements, draft and pass domestic legislation, and redraft an enormous number of private legal documents which mention EU law in the UK (purchase orders, financings and arbitration agreements). While some of that can be done less rapidly, it will require a massive legal effort akin to Y2K in the buildup to 2000 to make sure that all the necessary changes are made and double checked for consistency and digital interoperability (eg, for goods clearing at least two customs authorities, with help from a logistical train of shippers, brokers, freight forwarders, letters of credit and so on). Still to come, once the political decisions have been made, is dealing with the EU's agreements with third countries (not just trade, but exchange of air passenger data, wine standards, easy transit of racehorses, and many more – estimates range from more than 500 to perhaps 12,000).

One should not expect the next year to be calmer!

Law Offices of Gary N Horlick

Gary N Horlick **info@ghorlick.com**

Suite 882
1330 Connecticut Avenue, NW
Washington
DC 20036
USA

Tel: +1 202-429-4790
Fax: +1 202-429-3902
www.ghorlick.com

Brexit

Gary N Horlick
Law Offices of Gary N Horlick

The formal beginning of Brexit was the notification by the UK to the EU on 29 March 2017 of its intention to leave the EU, effective at the end of the two-year period in article 50 of the Treaty of Lisbon. The two-year period is extendable with the unanimous consent of all the EU member states including the UK (which makes it one more thing to potentially bargain about).

The subsequent year and a few months have been spent on various parts of the four negotiations that, from this trade lawyer's point of view, make up Brexit (I hasten to note that the resulting UK legislation will have significant constitutional, political, economic, social and human rights impacts for a long time).

The negotiation between the UK and the EU of the terms of the UK's withdrawal

From the EU's point of view, the most important aspect of this negotiation is that the UK does not receive a deal so favourable to the UK that it leads other EU members to depart as well. At the same time, EU member states sell a lot of goods and services to the UK, so a massive loss of market access is not desirable. From a UK point of view, the goal, as distinctly stated by one of the pro-Brexit politicians, was 'to have our cake and eat it'. In some sense, this was early on thought to be the maintenance of access to EU markets and reciprocal access to UK markets, without freedom of movement of persons (which had been the political lever driving the Brexit campaign). This massive negotiation (one British lawyer called it 'the largest corporate de-merger in history'), still under way at the time of writing, has headlined three items:

- the size of the UK exit 'bill'. The UK as an EU member state has assumed certain financial obligations going into the future, most obviously the pensions of EU employees since the UK joined. In addition, there are budgetary commitments for the remainder of the budget cycle through 2021, and numerous other costs. The UK government has agreed to assume its fair share of those costs, and the negotiation is about what that amount should be – apparently in the range of £40–60 billion. This has become a highly emotive number in the UK, where the media have consistently measured the cost and benefit of UK membership in the EU by the amount the UK contributes on net to the EU budget (the German public, by contrast, seems to realise that the much larger German net contribution to the budget is insignificant compared to the commercial benefits Germany derives from selling throughout Europe);
- the reach of European judicial bodies, notably the Court of Justice of the European Union (CJEU), in the future. The underlying argument for many Britons voting for Brexit was that the UK should 'take back control', which meant that the CJEU would no longer have any sway over UK decisions. In practice, this has turned into a very difficult negotiation, as the UK desire of mutual recognition of numerous UK standards and practices in the EU once it leaves the EU requires some decision-makers to determine whether those rules and practices in fact are sufficiently comparable. Negotiations are ongoing for a standalone dispute settlement mechanism, but that is no easy matter. The current system of references from national courts to the CJEU presumably would no longer exist for the UK, so there is some question as to how equivalence with EU law and practices will be resolved in a way acceptable to the EU. In addition, many of these cases will require at least some degree of speed, and, linked to that, some form of retroactive relief for those injured; and
- even more difficult, and not solved as of this writing, is the issue of the border between Northern Ireland and the Republic of Ireland (note that there is one other land border involved, between Gibraltar and Spain, which will also have to be resolved, and for many decades that has been a sore point), with occasional delays and so on.

Simply put – and there is nothing simple about this issue – everyone agrees there should be no hard border between Northern Ireland and the Republic, both for reasons of the 1998 Good Friday Belfast Agreement ending the violence in Northern Ireland, and because the potential for renewal of the violence is quite clear (the chief law enforcement officer of Northern Ireland in early 2018 pointed out that any physical aspect of the border, even radio frequency identification readers, 'would be blown up'). While there are possibilities under article XXIV:3 of the General Agreement on Tariffs and Trade (GATT) for a 'frontier zone' where World Trade Organization (WTO) rules can be set aside, that does not solve the 'rule of origin problem' (and it is a safe bet that very few if any English voters voting to leave the EU gave any thought to rules of origin, if any of them knew what they were, much less their application to the border with Ireland). A great deal of Irish trade with Europe operates with the UK as a 'land bridge' of cargo carriers crossing over to the UK and then continuing on to Europe with a single carriage, rather than loading and unloading at several points. So the EU understandably seeks to make sure that whatever is coming through the UK from Ireland is in fact of Irish origin rather than from a third country subject to EU tariffs which would not be collected if they were treated as of Irish origin. Similarly, the UK (assuming it retains some form of free trade in goods with the EU) will not want non-EU goods subject to tariffs coming in from Ireland through Northern Ireland and being treated as duty-free Irish goods. There are numerous possible variations in the scheme, none of them completely hypothetical (even though Northern Ireland has 1.8 million inhabitants).

These three headlined items should not obscure the vast number of details that have to be worked out before the UK can exit. For example, the UK, along with all the other EU member states, supports a large infrastructure of regulatory bodies parallel to those found in many other countries. These tend to be spread around the EU for a variety of reasons (most appropriately, perhaps, the European Food Safety Agency is in Parma, Italy). All of these regulatory agencies have buildings and staff (often highly specialised), and so on. Several of these are in the UK, including the important agency for approving medicines. Obviously, those in the UK will move, leading to a bidding war for their numerous sites. More importantly, however, it makes little sense for the UK to replicate them. To take the medicines safety example, it takes more or less the same number of scientists to approve the safety of a new drug whether it is for the EU as a whole, or just for the UK. Obviously, the UK could maintain full control of the issue by establishing its own agency, but economies of scale suggest continuing to pay for the right to use the EU agency (and UK producers of pharmaceuticals need EU approval in any event to sell their products in the much larger European market). How much should the UK pay? Would there

be UK employees? Most importantly, what role would the CJEU have if there were challenges to the agency's decision? Would the CJEU decision also govern in the UK? And so on. This first, very large, negotiation covers literally thousands of such issues and the UK has set up a new government department, the Department for Exiting the EU, to deal with them.

In addition, this does not begin to cover the complexity of rewriting vast numbers of private legal documents in the UK that have previously been based in part or exclusively on EU law.

Needless to say, there is a similar negotiation going on within the more established procedures of the EU as the 27 remaining member states decide what their positions are.

One agreement which has been reached in principle, but itself is not yet completed, is an agreement to have a transition period, from 30 March 2019 (when the UK officially leaves the EU) to 31 December 2020, when the UK really leaves the EU (a unanimous agreement can extend that). During this 21-month period, the UK would not be a member of the EU, but would fully participate in all of the common commercial policies: it would charge the same external tariffs, it would not apply any tariffs or new customs formalities to trade with the EU member states, and so on. In theory, this should give enough time to better prepare for the inevitable shock when additional pieces of paper or electronic forms may be required (at present, for example, trade between the UK and EU involves no customs formalities or rules of origin once a product has been 'put into free circulation').

The future trading relationship of the EU and the UK

This has unleashed a passionate debate within the governing Conservative Party, whose majority is secured by the precarious support of the 10 Members of Parliament of the Northern Irish Democratic Union Party (which explains the importance of the Irish border question). There is no agreement at this point on whether the UK should remain in the single market, the Customs Union, a different type of customs union, the European Economic Area, a Swiss model with more than 100 separate treaties, or just a free trade agreement (FTA), or no agreement at all, presumably reverting to WTO rules.

Under the likely transition agreement – not yet concluded – the UK will remain subject to the common commercial policy of the EU until 1 January 2021. This means that the UK will charge the same tariffs as the EU, and will not put in effect any agreements to the contrary before that date (although it is understood that the UK will be allowed to negotiate (but not sign or put into effect) agreements before then with other countries). The EU has hundreds, possibly thousands, of agreements with other countries (the Rest of the World or ROW), ranging from FTAs (around 40 of them, depending on how you count them) through the agreements on exchange of passenger data that permit passenger flights to take off after security precautions. Logically, each agreement represents a compromise within the EU to protect the interests of the different member states, so an agreement between the UK alone and an ROW country would look very different. For example, the UK is a large net food importer and a large exporter of financial services, so its standalone FTA would be very different in both aspects from the EU one.

Renegotiation of all of them would be a daunting task, so the first priority is probably a rollover of existing agreements so that they apply identically between the UK and the ROW country as they did to the UK as an EU member state. It appears at present that a rollover of some sort must occur before 29 March 2019; on 30 March 2019, the UK, even if still subject to the common commercial policy of the EU, will not legally be a member of the EU. While that will not prevent the EU and UK by statute from treating the ROW countries' exports to the EU and UK identically after 29 March 2019, it will not guarantee that the legal regimes of the ROW countries can automatically treat the UK as having the same status as an EU member state once it no longer is. Each ROW country may well have its own legal mechanisms for doing so, and some of those might require legislative or complicated regulatory action. Hundreds of people, mainly in the UK Department of International Trade are even now hard at work at that exercise.

The UK's relationship with the World Trade Organization

The UK was a founding member of the GATT and then of the WTO in its own right (EU member states, governed by the EU Common Commercial Policy in the WTO, cannot take any initiatives without EU agreement, except in the Budget Committee).

It is widely thought – though not without some dissent – that the UK upon leaving the EU conditionally maintains the same schedules as the EU. This is not without problems. First, the EU's schedules have never been formally certified in their current form, which could lead to some procedural issues. More important, the WTO and GATT schedules on services often will not work very well with the UK as a separate entity, and that will take some sorting out. More dauntingly, existing EU quotas (mainly in agriculture), tariff rate quotas and permitted subsidy limits under the WTO Agreement on Agriculture must now be divided up in a way that achieves consensus of the 160-plus WTO members so that it preserves the balance of concessions negotiated by the EU and signed in 1994. For example, assume that the EU negotiated a 1,000 ton quota of permitted imports each year into the European Union of Vegemite (if you have to look it up, don't try to taste it!). Probably 999 of the 1,000 tons were intended to be sold to the expatriate Australian community in the UK. When the UK leaves, even if it maintains the same schedule, that schedule now has to have a separate quota for the UK. Does that mean that both the UK and the EU each have a 1,000 ton quota of Vegemite (in effect, doubling the quota, which may not matter for Vegemite, but would certainly matter for beef, cheese, butter and other 'conflictive' imports for supply into the EU and UK)? Negotiations are already under way on that issue and an answer is nowhere in sight, but will eventually be reached – perhaps aided by horse trading by the UK and the EU as they redo their agreements with the ROW countries (which in practice could solve a lot of the issues). That does not begin to match the complexity of figuring out what exchange rate to deploy for the permitted UK subsidies (currently denominated in ECU, the notional European currency in effect at the time of the Uruguay Round signing of 1994 – there is an administrative rate decided by the EU for current British use of ECU, but there is no reason why ROW countries would necessarily agree that it maintains the balance of concessions negotiated back then).

Conclusion

Lawyers will be kept busy in the UK and elsewhere as Brexit is worked out, as it must be in some form – if only a transition agreement – by 29 March 2019. Beyond the legal challenges, lawyers should be aware of the need to alert their clients (companies, governments, universities, port authorities) to the massive logistical challenges of Brexit (hint: consider importing through Teesport the first few days after Brexit), not least updating thousands of lines of computer code.

(CP)Trans-Pacific Partnership

Gary N Horlick
Law Offices of Gary N Horlick

Introduction

The Comprehensive and Progressive Trans-Pacific Partnership (CPTPP), is a trade agreement signed on 8 March 2018 involving 11 countries – Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore and Vietnam – with nearly 400 million people and 13 per cent of world GDP.

The importance of the CPTPP is that it is specifically designed for rapid expansion, has a clear goal of the US rejoining, and in the meanwhile is widely expected soon to add Colombia, South Korea and perhaps Thailand, the Philippines and even Taiwan – and possibly the game-changer: a post-Brexit UK.

TPP

The CPTPP was preceded by the Trans-Pacific Partnership (TPP), signed on 4 February 2016 by the same 11 countries plus the US. The US, under the new Trump administration, formally withdrew its signature (so there would be no lingering legal obligations as a signatory) in late January 2017. What happened in between? Electoral politics in the US, not dissimilar from what the US complained of that moved India to kill the World Trade Organization (WTO) Doha Round in 2008. President Trump, despite his early 1970s protectionist views, had no real problem with TPP. His leading economic adviser during the campaign, Wilbur Ross, an investment banker who had fought for protection for uncompetitive steel mills he owned and was vice chairman of the Russian oligarch-controlled Bank of Cyprus, had publicly endorsed the TPP soon before joining the campaign. But Trump saw a bloc of voters who had been convinced by labour unions and left-of-centre think tanks and academics that trade agreements had cost the US net jobs and income. Those voters suspected that Secretary Hillary Clinton would permit the TPP to be passed by a lame-duck Republican Congress just after the 2016 election, despite her stated opposition to the TPP. The TPP publicly opposed by both Trump and Clinton was a very well-negotiated agreement among the 12 countries. Each one got enough to be happy. The complaints from Trump and his advisers were not very clear. The labour provisions and the provisions on investor-state dispute settlement (ISDS) were modified to meet labour objections, and even had an exclusion from ISDS challenges for regulation of tobacco products, a first in trade agreements (now found in the CPTPP and the revised Australia–Singapore free trade agreement (FTA)). Obviously, the TPP (along with the North American Free Trade Agreement (NAFTA)) had become a symbol – a punching bag – for all the ills of an economy that was only just recovering from the 2008 financial crash. The big US winners in TPP were agricultural exports (because of market access gains in Japan), concentrated in states that Trump won, while the potential losers were especially the few remaining producers of clothing (about 2 per cent of US consumption) and shoes (about 1 per cent of consumption), which were mollified by carefully negotiated carveouts from the market access gains for Vietnam, which had opened to many US goods and services (the TPP negotiations by US Trade Representative Michsel Froman and his team are a useful case study for future US trade negotiators).

Background

The origins of the TPP began with the P4 formed in the middle of the last decade by Brunei, Chile, New Zealand and Singapore. By 2008, Australia and Peru had joined, and Vietnam was in the process of joining. Ambassador Susan Schwab, then US Trade Representative for the Bush administration, took the US into the negotiation that year in a way that did not lead the Obama administration to drop it as a Bush initiative.

Even before the 2008 election, the Obama administration had wanted to focus on Asia, at least in part to match increasing Chinese influence. China initially reacted with caution, but seemed to have reached the view that the TPP, including the US, was a possible negotiating partner in the future. A CPTPP, especially with the UK, could be equally interesting to China.

There were two key aspects of the TPP agreement.

Size

The original P4 was an extraordinarily successful lobbying exercise in which, by setting up a high-quality FTA, the four countries created an attractive target to which others then signed up. The P4 itself comprised fewer than 30 million people, but the 12 countries formed a market of more than 600 million people. With Vietnam in the TPP negotiation, Malaysia had to join, because otherwise many of Malaysia's key exports of consumer electronics and, to some extent, garments would be placed at a decided disadvantage. That was likely to mean that the Philippines, Indonesia, Korea and eventually Taiwan and Thailand, and so on, would join. Colombia had indicated an interest in joining, which logically would pressure Central American countries to join as well. If the US rejoins, the CPTPP could include more than 40 per cent of world GDP. That by itself inevitably means a great deal of impact on international trade. Not least, it would force other WTO members to think about what, if anything, they would want to multi-lateralise from the TPP. It has already affected the EU talks with Japan and other TPP countries, and looks likely to contribute to a renegotiated NAFTA.

If the CPTPP reaches its ambitious goals, however, it seems unlikely in the shorter to medium term to include as full members China, India, the EU, the Middle East or Africa. So it would probably accelerate the pace of bilateral and plurilateral deals among the countries in those regions and around the world. It will be interesting to see whether this leads to greater trade liberalisation, or whether the added complexity of the resulting 'spaghetti bowl' creates too much paperwork (at present, a huge percentage of the trade preferences negotiated on paper are never in fact used, as economic actors prefer to go with the simplicity of the alternative, though higher, WTO-negotiated most-favoured nation rates to avoid the added costs of qualifying for lower FTA rates).

Market liberalisation

The US approach after NAFTA had been for full liberalisation on goods, meaning the removal of all tariffs, tariff-rate quotas and so on, although often with very long phase-outs (as much as 20 years).

The CPTPP retains the nearly full market liberalisation in the TPP, in part to bring the US back into the deal. There were some notable exceptions to the complete elimination of tariffs in the TPP, in particular, agricultural products in Japan (although the reductions are substantial, for example, from 38.5 per cent to 9 per cent on beef). This in effect provides an incentive for the US to rejoin. For example, the Japanese tariff on US beef under the CPTPP will remain at 38.5 per cent while it drops to 9 per cent for competitors Australia, Canada and New Zealand.

Services
Because progress in the WTO on services has been so slow, there was considerable pent-up demand within the TPP countries for further liberalisation, which led to useful openings through detailed item-by-item 'schedules', although complete liberalisation remains far away. The services area is buttressed by a more general (and not very binding) chapter on regulatory coherence.

Agriculture
With Japan added, there was more than enough market access available to sort out most of the necessary deals. That may continue without the US. For example, the initial headlines included 'US dairy Industry resistance to Imports from New Zealand', but the US dairy industry is now a major exporter and the opening of markets in Vietnam, Malaysia, Canada and Japan made the original TPP deal well worthwhile for it, even with greater access by New Zealand to US (and other) markets. US dairy exporters will now lose out to their CPTPP competitors in Japan. As noted, there were large cuts in Japanese agricultural tariffs, down to single digits (and possibly some exotic tariff-rate quotas), but not the zero tariffs demanded for all other products.

Just as important in the agricultural area is the SPS area (sanitary and phytosanitary measures taken by governments in the name of food and animal safety, but often disguised forms of protectionism). Progress was made in the SPS area beyond the WTO rules, which have proven to be quite weak in their enforceability, as countries take advantage of the slowness of WTO dispute resolution to impose barriers that are blatantly unjustified, such as the notable ban by 80 WTO members on imports of pork from Mexico, Canada and the US during the swine flu episode, even though it is completely certain that no one can get swine flu from eating pork. Agricultural exporting interests in the US, Australia, Canada, Chile and New Zealand pressed successfully for at least an improved and much faster dispute resolution or 'rapid response' to go with the relatively limited but enforceable improvements and interpretations of WTO terminology, which is all that seemed to be within the ambition of the negotiators (perhaps because of resistance by each country's local regulators). The CPTPP will provide useful experience with that mechanism (which is also currently included in the NAFTA 2.0 under negotiation between Canada, Mexico and the US).

The supply chain
As with SPS, the business community's ambition may have exceeded the willingness of governments to change in this area. Major improvements in trade facilitation and other obstacles will be made, but, as one senior business executive pointed out, 'If you don't fix all the links in the chain, the (supply) chain won't work'.

Trade remedy law and state owned enterprises
The US has taken such a hard line in its FTAs since NAFTA that no important discussion occurred on anti-dumping or countervailing duty rules (and decreasingly limited) changes to safeguard law. The US, Canada and Australia are all in very protectionist modes in the trade remedy area, both publicly aimed at China but in practice hitting imports from all sources, so no binding change could occur (although some push to use US 'best practices'), despite pressures from other TPP countries generally. The US successfully pushed a complex mix of strict and lax rules on 'state-owned enterprises' (with disciplines on companies majority-owned by central governments – but excluding some US government-owned companies and all sub-central government state-owned enterprises). All of those remain in the CPTPP (except, of course, all of the US participation in the rules it sought).

Internet
The TPP is billed as a '21st Century Trade Agreement', but surprisingly little thought was given to the internet at the outset of the negotiations, beyond the usual list of proposals by IP holders to further limit the internet in favour of protecting rights holders. The political debacle of proposed legislation with similar ideas in the US (the Stop Online Piracy Act (SOPA) and the Protect IP Act (PIPA)) and the similar popular revolt against the Anti-Counterfeiting Trade Agreement (ACTA) in Europe, Mexico and Australia, created the scary possibility that a similar rebellion could occur against the TPP, with the claim that the TPP, in effect, is SOPA or ACTA, and the whole agreement be dragged down. As a result, some progress was made on improving the free flow of data, banning data localisation (except for financial services) and encouraging limitations and exceptions to copyrights. All of those remain in the CPTPP.

Intellectual property
The US pushed hard for improved protection, in particular for pharmaceuticals. But this is political dynamite in most TPP countries and a huge cash cost for the many countries with government healthcare systems. The US got some increased protection, notably a smaller than requested increase in protection for biologics (eight years, not 12, although the pharmaceutical industry is still fighting). The CPTPP members very publicly suspended the parts the US wanted most, to try to bring the US back in.

The suspended IP provisions include the following:

- patentable subject matter: that patents be made available for new uses of a known product, for new methods of using a known product or new processes of using a known product, and for inventions derived from plants;
- patent term adjustments: to adjust, upon request, a patent's term of protection if there are unreasonable delays by a patent office, or as a result of delays in national regulatory approval for a patented pharmaceutical product;
- data protection: for the protection of test or other data submitted to a regulatory authority for the purposes of obtaining regulatory approval to market pharmaceutical products (five years) or biological pharmaceutical products (eight years, or five years plus 'other measures');
- term of copyright: for a copyright term of life of the author plus 70 years; and
- internet service provider liability: for a legal liability and 'safe harbour' framework incentivising online service providers to cooperate with rights holders in deterring online copyright infringement.

US businesses reliant on IP rights will be denied the benefits associated with strengthened and harmonised IP rights across CPTPP countries.

Dispute settlement
Perhaps the greatest challenge for the TPP negotiators was the creation of a dispute settlement system with enough credibility that private sector actors would push governments to use it. Astoundingly, there have been zero disputes raised under any of the trade provisions of any US FTA signed after NAFTA (and no such disputes within NAFTA since 2001, with the exception of a few International Centre for the Settlement of Investment Disputes cases and a few challenges to trade remedy cases under Chapter 19 of NAFTA, which was not replicated in the TPP or CPTPP). There has been one dispute between non-US parties in the Dominican Republic-Central America FTA. All other disputes among parties to those agreements instead go to the WTO – even though the WTO can only enforce WTO obligations and no other obligations under the relevant FTAs, and in any event this WTO dispute settlement process is under attack by the Trump administration. A major effort was made by the very high-quality government lawyers working on the TPP to fix the problems in prior FTAs. It will be a major test of the CPTPP to see whether the CPTPP governments make the efforts necessary to make the new dispute system work.

There are also possible disputes under the investor-state mechanisms in the investment chapters. One interesting aspect of this negotiation was the adoption of a proposal by several countries to preclude investor–state dispute settlement cases against regulation of the sale of tobacco products, in the wake of the US loss of a WTO case (*Clove Cigarettes*); and the pending 'rent-a-plaintiff' WTO case against Australia by (the prior government of) Ukraine, and the 'rent-a-forum' investor–state cases against tobacco regulation in Australia and Uruguay. No politician (or CEO, for that matter) is willing to admit to being in favour of teenage smoking, of course, but powerful economic interests linked to tobacco mobilised major business lobbies and their allies against such proposals until the very end, when those groups decided to take their gains from the TPP and leave the tobacco lobby out in the rain. This exclusion remains in the CPTPP.

Ratification
There are several theoretical paths to final completion of the agreement now that the US has pulled out. The CPTPP ratification process

is well under way in all 11 countries. After entry into force (probably in 2019), the US will need to move towards the CPTPP because the EU FTAs with Vietnam, Singapore, Chile, Peru, Canada and Mexico, and soon Japan, Australia and New Zealand, and the recent Australian FTA with Japan, mean that US exporters are already losing sales at an alarming rate (the US lost $100 million in beef exports in Japan to Australia in January 2016 alone).

Conclusion

The world is awash with trade deals. The CPTPP will provide new ideas in at least some areas, and will provide a trade agreement covering initially 13 per cent of the world economy. Either of those facts would have the effect of increasing interest in other deals, and, with luck, a multilateral agreement within the WTO that could replace some or all of the current patchwork of bilateral and regional deals. One way or another, there is an enormous amount of work to be done by lawyers, governments, companies, law firms, universities, public interest groups and any number of other bodies.

Trade restrictions and WTO disputes in Ukraine–Russia trade relations

Nataliia Isakhanova and Olesia Kryvetska
Sergii Koziakov & Partners

In the trade wars of recent years, Ukraine and Russia have accumulated a critical mass of controversial issues. Since 2014, the tensions in bilateral trade have been exacerbated by the political breakdown triggered by Russian military aggression against Ukraine – the occupation of the Crimean Peninsula and the war in the eastern territory of Ukraine. This situation has led both states to international dispute settlement forums, including the World Trade Organization (WTO).

Ukraine and Russia are parties to the Commonwealth of Independent States (CIS) Free Trade Agreement of 2011 (which replaced the CIS FTA of 1994). This FTA also provides for a dispute settlement mechanism under Annex 4 to the FTA. However, this clause has never been used in the last two decades.

Based on Annex 6 to the FTA of 2011, Russia suspended the FTA with Ukraine on 1 January 2016 as a response to the EU–Ukraine Deep and Comprehensive FTA that started to apply provisionally on the same date. In January 2016, Russia also added Ukraine to its blacklist of countries subject to an import ban on certain food and agricultural products under Resolution of the Government of the Russian Federation No. 778 of 7 August 2014 (hereinafter Resolution No. 778). Resolution No. 778 bans imports to Russia of certain products originating in Canada, the EU, the European Free Trade Association states (except for Switzerland), Albania, Montenegro, the United States and Ukraine. It covers, inter alia, bovine meat, fresh pork, live fish, fish and crustaceans, milk and dairy products, vegetables, fruit and nuts, sausages and similar products, food or prepared food, salt and plant products. In May 2018, the President of Ukraine signed a decree to withdraw all the envoys of Ukraine from the CIS's statutory bodies.

Ukraine has also been applying import bans for certain products from the Russian Federation, starting from 1 January 2016 until the end of 2018. Notably, Decree of the Cabinet of Ministers of Ukraine No. 1147 of 30 December 2015 provides for a list of products originating from Russia that are prohibited from importing to Ukraine. The products range from confectionery to small grain crops, soya sauce, tomato sauce, fresh and preserved fish and fish roe. The Ukrainian version of the list (last amended on 1 March 2018) is available at http://zakon3.rada.gov.ua/laws/show/1147-2015-%D0%BF/paran10#n10.

Moreover, given the Russian military actions against Ukraine and the occupation of Crimea, the National Security and Defence Council of Ukraine, in a decision of 27 August 2014, prohibited exports to the Russian Federation of military and dual-use products.

Trade defence instruments in Ukraine–Russia bilateral trade

Ukraine has always been an important market for Russia, and vice versa. Thus, it is no surprise that the two states have been actively utilising trade defence instruments in their bilateral trade. When it comes to political conflict, a trade protectionism policy particularly hurts.

Trade remedies in force in Ukraine against Russian imports

Out of 16 anti-dumping measures currently applied by Ukraine, nine of them target products from Russia. The main group of products targeted by the anti-dumping measures are the following: pointworks; fibreboard; ammonium nitrate; glass containers for medical purposes up to 0.15 litres (a sunset review pending); caustic soda; ceramic grinding wheels; certain types of chocolate and other processed food products containing cocoa; chemical (nitrogen) fertilisers; rebar and wire rod.

Ukraine has also imposed countervailing measures concerning imports of motor cars originating in Russia, as well as safeguard measures on flexible porous plates, blocks and sheets (although the safeguard measures are applied irrespective the country of origin, they primarily affect Russian producers).

Ukraine has a two-level system of competent trade authorities: the Ministry of Economic Development and Trade of Ukraine and the Interdepartmental Commission on International Trade. The Ministry is entitled to conduct trade investigations, but not to adopt preliminary or final determinations. Based on the Ministry's report, the Commission makes decisions regarding the substantive results of the trade investigations.

The complexity of international trade relations between both economies can be exemplified by the situation concerning Ukraine's anti-dumping duties against the imports of certain chemical fertilisers from Russia.

In late 2016, the Interdepartmental Commission on International Trade adopted a decision on the application of definitive anti-dumping duties in respect of imports to Ukraine of certain chemical fertilisers (carbamide and carbamide-ammonium mixture) from Russia. The application of the duties was suspended, however, until May 2017 (the end of the sowing season in Ukraine). This decision was followed by tense debates in the media and within the government. Before it was published, the Ministry of Economic Development and Trade of Ukraine had released a statement with the following message. According to the Ministry, on the one hand, both dumping and injury were found to exist, but on the other hand, the Ukrainian agricultural sector depended strongly on Russian imports of chemical fertilisers. The Ministry further said that if the anti-dumping duties were to block Russian exports to Ukraine, it would paralyse Ukrainian agriculture, so in order to handle the problem the Ministry promised to submit to the government a draft law on imports diversification. The draft law would prescribe tariff liberalisation for imports of chemical fertilisers originating from third countries. Currently this draft law is being considered by the Ukrainian Parliament.

There is a combination of both imports and domestic production in the Ukrainian market for chemical fertilisers. Eighty per cent of imports come from Russia. Ukrainian agrarians, however, voiced concerns that the anti-dumping duties on imports of chemical fertilisers would make Ukraine's agricultural industry dependent on domestic Ukrainian producers.

Interestingly, the decision to impose the anti-dumping duties was separately challenged by all the interested parties in the administrative court of Ukraine.

The domestic fertiliser producers challenged the cost-adjustment methodology applied by the Ministry when calculating the normal value of the product. The case is that the Ministry took into account a Russian natural gas prices applied at the Ukrainian border. According to the claimants, such prices were not representative and the calculation should have been based on the gas prices applied at the Russian border with Germany. The domestic chemical industry insisted that the Ministry had to re-calculate the dumping margin based on the market price plus the 30 per cent export duty applied to Russian natural gas. The first instance court obliged the Ministry to re-calculate normal value and dumping margin, but dismissed the other claims raised. This decision, being unsatisfactory to both the domestic industry and

consumers (agricultural producers), was contested in the appeals court. At the time of writing, the appeals court has appointed an economic expert for analysis and has suspended the legal proceedings until the expert opinion is issued.

In turn, the Russian producers challenged the decision, claiming that the duties should be cancelled. As of June 2018, the case is pending in the Supreme Court of Ukraine. Finally, the Ukrainian agricultural producers (represented by the All-Ukrainian Agrarian Council) partially challenged the decision of the Commission AD-376/2017/4411/-05 as of 18 May 2017 in respect of renewal of application of the duties.

This case is a prominent example of the delicate balance between the interests of domestic producers (the chemical industry) on the one hand, and those of consumers (the agricultural sector) on the other. Moreover, the situation becomes even more sensitive given the significance of both industries to the economy of Ukraine and the high tensions in bilateral trade between Ukraine and Russia.

Trade remedies in force in Russia against Ukrainian imports

Ukrainian products are subject to seven anti-dumping measures currently applied in Russia. The targeted product groups include pipe products (a pending review); seamless stainless steel pipes; ferrosilicon manganese; steel forged rolling rolls; steel wheels; rods made of iron and steel with a round or profile section (fittings); and hot-rolled steel coils. All of these products belong to the export-oriented steel sector of Ukraine's economy.

It is important to highlight that Russia is a party to the Eurasian Economic Customs Union (EEU). The EEU was created in 2014 on the basis of an economic intergration system established by the Customs Union, and currently comprises five member states: Armenia, Belarus, Kazakhstan, Kyrgyzstan and Russia. The EEU's competent trade investigating authority is a supra-national body – the Eurasian Economic Commission. Hence, the scope of application of the trade remedy measures applied upon a decision of the Collegium of the Eurasian Economic Commission extends not only to Russia's territory but also to the territories of all the EEU member states.

Forged steel rolls and steel pipes have been subject to anti-dumping measures in Russia since before the Customs Union and the EEU were created.

Anti-dumping measures against imports of forged steel rolls from Ukraine

In May 2011, the Russian government issued Regulation No. 406 on the imposition of an anti-dumping duty at the rate of 26 per cent on imports of forged steel rolls originating in Ukraine. The competent investigating authority was the Ministry of Industry and Trade of Russia.

In July 2011, following the integration process of Russia with Belarus and Kazakhstan, Russia's Ministry of Industry and Trade unilaterally expanded the scope of application of the measures to the territory of all three member states of the Customs Union. The Commission of the Customs Union, in its turn, initiated an interim review of the anti-dumping duties and prolonged their application until 24 June 2014 (decision dated 9 December 2011).

Neither unilateral expansion of the geographical scope of application of the duties nor the Commission's interim review complied with the WTO Agreement on Implementation of article VI of the General Agreement on Tariffs and Trade 1994 (the Anti-Dumping Agreement). However, these measures were taken slightly before Russia acceded to the WTO, so they fell outside the WTO law's scope of application.

In April 2013, Ukrainian producers affected by the measures challenged the decision of the Customs Union in the Court of the Eurasian Economic Community. The claim was dismissed. The Court, when dismissing the claim, stated that international treaties concluded within the Customs Union are lex specialis that prevail over those concluded by Russia within the WTO. The Appeals Chamber of the Court uphold this finding.

Moreover, in February 2015, the Eurasian Economic Commission, following the sunset review process, prolonged the application of the anti-dumping duties until 25 June 2019. Contrary to article 11.3 of the Anti-Dumping Agreement, the Commission did not take into account the factor of market enlargement when assessing whether the continued imposition of the measures was necessary (in 2015 Kyrgyzstan and Armenia joined the EEU).

Anti-dumping measures against imports of steel pipes from Ukraine

Imports of Ukrainian steel pipes to Russia represent another example of a long-standing stumbling block in Russia's trade defence policy. Ultimately, it brought Ukraine and Kazakhstan to the WTO dispute settlement forum.

In 2006, Russia imposed anti-dumping duties against certain types of Ukrainian steel pipes. In July 2011, the application of duties was expanded to the territory of the Customs Union, with the duty rates being substantially increased. Before July 2013, certain Ukrainian producers were temporarily released from the anti-dumping duties to the extent that steel pipe exports from certain Ukrainian producers to Russia were subject to import quotas pursuant to the bilateral agreement signed by the economy ministries of both states in January 2005 (Belarus and Kazakhstan respectively entered the treaty in 2011).

Following an expiry review, the Collegium of the Eurasian Economic Commission adopted Decision No. 48 of 2 June 2016 on the extension of the application of the anti-dumping duties until 1 June 2021 following the sunset review.

In September 2017, Ukraine brought a WTO case against Kazakhstan (DS530: Kazakhstan — Anti-dumping Measures on Steel Pipes). Ukraine claims that the Decision of the Collegium of the Eurasian Economic Commission No. 48 of 2 June 2016 was based on findings of the report that were 'erroneous and based on deficient rulings, procedures and provisions pertaining to the Anti-Dumping Agreement'. The request covers not only Decision No. 48, but also any other measures amending, replacing, supplementing or implementing Decision No. 48 or otherwise related to it. Ukraine claims the measures are inconsistent with Kazakhstan's WTO commitments under articles 5.2, 5.3, 6.1, 6.2, 6.8, 11.1, 11.3 and 12.2 of the Anti-Dumping Agreement and article VI of the General Agreement on Tariffs and Trade (GATT) 1994.

Currently, the disputing parties are in consultation. Remarkably, Russia tried to join the consultation, but faced strong opposition from Ukraine, saying that the request to join the consultation was submitted by Russia after the 10-day deadline provided in article 4.11 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU).

WTO disputes initiated by Ukraine against Russia

Currently, the WTO DSB accounts for five pending disputes between Ukraine and Russia.

DS 499: Russia – Measures Affecting Importation of Railway Equipment

Ukraine filed its first WTO case against Russia on 21 October 2015 by requesting consultations pursuant to articles 1 and 4 of the DSU, article XXII of the GATT 1994, and article 14 of the Agreement on Technical Barriers to Trade 1994 (TBT Agreement) concerning certain measures imposed by the Russian Federation on importation of railway rolling stock, railroad switches, other railroad equipment and parts thereof (hereinafter railway products) from Ukraine.

Pursuant to the request for consultation, Ukrainian producers of railway products resulted in being effectively banned from exporting to the Russian Federation. Consequently, exports of railway products from Ukraine to the Russian Federation, which reached US$1.7 billion in 2013, decreased significantly in 2014 (US$600 million) and continued to decrease further: the value of exports amounted to only US$51 million during the first half of 2015.

Prior to submitting the request for consultation, Ukraine had raised concerns about the alleged trade restrictions at the WTO Committee of Technical Barriers to Trade.

Measures at issue

The measures at issue encompass the prevention of Ukrainian producers from exporting their railway products to Russia by way of:

- suspension of valid conformity assessment certificates;
- rejection of new applications for conformity assessment certificates; and
- non-recognition of conformity assessment certificates issued by the competent authorities in the other Customs Union Member States – Belarus and Kazakhstan.

On 15 July 2011, the Commission of the Customs Union adopted Decision No. 710 concerning a series of new technical regulations that set forth safety and technical requirements for placing into the Customs Union market of certain railway products. According to Decision No. 710, starting from 2 August 2014 all conformity assessment certificates for railway products would have to be registered with the Federal Budgetary Organization's Register of Certification on the Federal Railway Transport (FBO RCFRT) in accordance with the new procedures set forth in the Technical Regulations.

Further amended, Decision No. 710 provided for a transitional period that allowed until 1 August 2016 for the importation of railway products subject to the conformity assessment certificates issued prior to entry into force of the above-mentioned technical Regulation, and importation of those railway products which were not previously subject to mandatory conformity assessment procedures.

In late 2013, the Russian Federation started suspending the conformity assessment certificates previously registered with the FBO RCFRT to Ukrainian producers of railway products. Ukraine claims in the request for consultation that Russia failed to provide a reasonable explanation for the unwarranted suspensions of the certificates to Ukrainian exporters and to the Ukrainian authorities.

Moreover, the authorities of the Russian Federation denied recognition of the certificates issued to Ukrainian producers by conformity assessment bodies located in Belarus and in Kazakhstan pursuant to the respective newly adopted technical regulation of the Customs Union.

Finally, in February 2015, the Russian authorities rejected applications for the new conformity assessment certificates submitted under the new procedures by Ukrainian producers previously affected by the suspension of their conformity assessment. Ukraine claims that Russia failed to provide any reasonable explanation for the rejection.

Current status of the dispute

The first Panel meeting regarding the case took place in Geneva on 10–11 June 2017, where Ukraine's primary target was to prove the systemic nature of the alleged violations of the GATT 1994 and the TBT Agreement, being a part of the Russian trade aggression against Ukraine (according to Nataliya Mykolska, the Trade Representative of Ukraine). According to the most recent communication from the Panel, dated 25 April 2018, the dispute had 'a complex procedural and factual nature' and the Panel expected to issue the final report to the parties in May 2018. The report is not publicly available at the time of writing.

DS512: Russia – Measures Concerning Traffic in Transit

In September 2016, Ukraine challenged a set of measures imposed by Russia that resulted in a breach of freedom of transit enshrined in article V of the GATT 1994. To be more precise, on 14 September 2016, Ukraine requested consultations with the Russian government pursuant to articles 1 and 4 of the DSU and article XXII of the GATT 1994, concerning multiple restrictions on traffic in transit from the territory of Ukraine through the territory of the Russian Federation to third countries.

Measures at issue

The alleged violations concern goods in transit from Ukraine to other countries through the territory of the Russian Federation. Ukraine's Request for Panel Establishment encompassed a range of claims, including denying freedom of transit through its territory via the routes most convenient for international transit; unnecessary delays and restrictions; and most favoured nation-based discrimination with regard to charges, regulations and formalities that resulted in an import ban of Ukrainian products destined for Central and Eastern Asia and Caucasus, prohibited by article XI:1 of the GATT1994.

First group of measures at issue

In January 2016, Russia banned international cargo transit through its territory from Ukraine to Kazakhstan by road and rail networks. As a result, Russia restricted such traffic in transit to be carried out exclusively through the territory of Belarus (pursuant to Decree of the President of the Russian Federation No. 1 and Resolution of the Government of the Russian Federation No. 1).

Moreover, after having suspended the FTA with Ukraine, in July 2016 the Russian government even increased the transit-related restriction by imposing a ban on all road and rail transit destined for Kazakhstan and Kyrgyzstan of goods which are subject to non-zero import duties according to the Common Customs Tariff of the Eurasian Economic Union, as well as goods falling under the import ban pursuant to Resolution No. 778.

Ukraine claims, however, that these trade restrictions are applied by Russia in a manner that results in de facto restriction of transit to other countries in Central and Eastern Asia and Caucasus apart from Kazakhstan and Kyrgyzstan.

Second group of measures at issue

These specified in the instructions of the Federal Service for Veterinary and Phytosanitary Surveillance of the Ministry of Agriculture of the Russian Federation (Rosselkhoznadzor) dated November 2014. The instructions targeted cargo transit of goods covered by Resolution No. 778 that were destined for Kazakhstan and other third countries. Russia prohibited transit through checkpoints in Belarus and allowed such entry exclusively through checkpoints located at the Russian part of the external border of the Customs Union. Moreover, the Rosselkhoznadzor instruction imposes burdensome requirements of veterinary and phytotosanitary control and surveillance.

Current status of the dispute

On 9 February 2017, Ukraine requested the establishment of a Panel, which the DSB established at its meeting on 21 March 2017.

On 22 May 2017, Ukraine requested the Director-General to compose the Panel. This was done in June 2017, and the Panel expects to issue its final report to the parties at the end of 2018.

Seventeen WTO members have reserved their third-party rights, including Australia, Brazil, Canada, China, the EU, India, Singapore, Japan and the US.

Ukraine has repeatedly claimed that Russia was delaying the settlement process at the stage of composition of the Panel in disputes filed by Ukraine using procedural tools. Such a delay is particularly tangible in Case DS512, as the transit restrictions through Russia's territory hurt Ukrainian industries with traditional export markets in Kazakhstan and other Central Asian states.

DS532: Russia – Measures Concerning the Importation and Transit of Certain Ukrainian Products

In October 2017, Ukraine filed a request for consultations concerning measures imposed by the Russian Federation pursuant to article 4 of the DSU, article XXIII of the GATT 1994, article 24.8 of the Agreement on Trade Facilitation (TFA), article 14.1 of the TBT Agreement and article 11.1 of the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement), concerning certain measures affecting trade in four product groups which are allegedly inconsistent with the Russian Federation's obligations under several of the WTO-covered agreements. For the purpose of these proceedings, Ukraine relies on article XXIII of the GATT 1994 with regard to all of its claims.

There are four main product groups affected by the restrictions: juice products; beer, beer-based beverages and other alcoholic beverages; confectionery products; and wallpaper and similar wall coverings originating in Ukraine.

As Ukraine highlighted in the request for consultations, measures affecting trade in the above-mentioned products were imposed by Russia in response to Ukraine's decision not to become a party to the Treaty on the Establishment of the Eurasian Economic Union. Ukraine further claims that the measures are also part of Russia's efforts to deter Ukraine from entering into an Association Agreement with the European Union.

The products of Ukrainian origin targeted by the measures at issue may no longer be imported into Russian territory. Furthermore, Russia prohibits traffic in transit through its territory from Ukraine to third countries of certain of those products. The measures are applied in a non-transparent and unpredictable manner, and appear not to have been published and administered in a manner that is consistent with Russian's obligations under several WTO-covered agreements.

Factual background of the dispute

During the period from the end of 2013 until 2016, the Russian Federal Service for Surveillance on Consumer Rights Protection and Human Wellbeing (Rospotrebnadzor) adopted a number of letters and notices,

in the titles of which appeared such words as 'limitation', 'prohibition' or 'ban' of imports.

For instance, on 28 July 2014, an import ban was imposed on vegetable products from Ukraine, including those carried in hand luggage, passengers' luggage and parcel post. Furthermore, canned vegetables, fruits and fish from certain Ukrainian producers have been subject to the same restriction starting from 29 July 2014. Rospotrebnadzor adopted similar decisions, asserting that the products at issue failed to comply with labelling requirements, as well as with the mandatory information on energy density, and content of protein, carbon, iron and other elements to be indicated on packages. In addition, Russia invoked the violation of labelling requirements as a legal ground for the imposition of an import ban on juice as well as on alcoholic spirits, beer and beer-based beverages from certain Ukrainian producers. The relevant decisions were adopted in late July and mid-August 2014, respectively. Finally, in September 2014 Russia imposed a complete import ban on Ukrainian confectionery products after having imposed certain preliminary restrictions in 2013 on the products of certain Ukrainian companies.

Ukraine claims that the measures have not been published and administered properly, and information on these measures is not easily accessible and often unavailable. Moreover Ukraine considers these measures as a violation of Russia's obligations under certain articles of the GATT 1994, the TFA, the Accession Protocol of Russia and the TBT Agreement, to the extent that they discriminate between, on the one hand, (suppliers of) Ukrainian products and, on the other, (suppliers of) similar products of national origin and (suppliers of) similar products originating in any other country; and that they create unnecessary obstacles to international trade.

In addition, Ukraine stated that Russian actions had political background and motivation. Consequently, the issues raised in this dispute have great significance for the legal grounds of the WTO. At the moment the parties are in consultations.

Measures at issue

Ukraine's complaint can be divided into four main sections, depending on the product group. There are discrepancies not only in the names of product groups, but also in the legal basis and measures at issue, so we consider that it is viable to discuss this point in more detail.

Confectionery products were the first to be subject to a ban. On 31 July, Rospotrebnadzor issued the Notice 'On ban on imports of confectionery goods produced at the factories of [a Ukrainian producer]'. The main basis for the restrictions was the inspections carried out after the imposition of the ban, pursuant to which Rospotrebnadzor announced that the confectionery products did not meet the requirements for microbiological safety and product quality indicators. However, the Ukrainian party alleges that these inspections were conducted with significant violations, namely:

- a representative of the main Russian competitor of the Ukrainian confectionery producer participated in the inspections;
- the inspectors refused to sign the final inspection report;
- the legal basis was not specified under Russian law; and
- there was a fundamental lack of transparency on the part of the Russian Federation.

Ukraine states that these measures infringe the fundamental rules of the WTO because they discriminate between Ukrainian products and similar domestic products as well as similar products from third countries. Hence, Ukraine considers that those measures are inconsistent with several provisions of the GATT 1994, the TBT Agreement, the SPS Agreement, the TFA and the Accession Protocol of the Russian Federation.

Moreover, there is a second set of questions concerning the transit ban on Ukrainian confectionery products. Ukraine again insists that the Russian Federation did not identify the reasons justifying the measures. The only ground invoked for imposing the transit ban is that the importation of Ukrainian confectionery products has been prohibited.

Ukraine claims that through these measures the Russian Federation has violated articles V and X of the GATT 1994 because it has denied freedom of transit through its territory to traffic in transit of Ukrainian products and has discriminated among traffic in transit. Hence, Ukraine has invoked certain provisions of articles 1, 2 and 11 of the FTA and paragraph 2 of Part I of the Accession Protocol of Russia.

Concerning the claims under the SPS Agreement, Ukraine asserts that the measures were applied beyond the extent necessary to protect human life and health, are not based on an appropriate risk assessment and are maintained without sufficient scientific evidence. Ukraine also alleges that Russia failed to undertake and complete the procedure in order to check the fulfilment of the sanitary and phytosanitary measures in a fair and timely manner and failed to transmit the results of any such procedure to the applicants. On these grounds Ukraine invokes articles 2.2, 2.3, 5.1, 5.2, 5.3, 5.4, 5.5, 5.6, 7 and 8 of the SPS Agreement.

The second group of measures challenged by Ukraine encompasses the measures affecting trade in juice products originating in Ukraine. In the period from 31 July until 28 November, Rospotrebnadzor adopted a series of letters and notices prescribing the ban of imports and transit of these products. It is worth noting that the arguments of the Ukrainian party concerning this measure resemble those above in regard to confectionery products, except for some differences concerning the legal basis. Notably, the legal claim under this measure does not include the alleged violation of the SPS Agreement.

Claims concerning the third and fourth groups of products (beer, beer-based beverages and other alcoholic beverages and wallpaper and similar coverings, respectively) have the same legal basis under the provisions of the GATT 1994, the TFA, the TBT Agreement and the Accession Protocol of the Russian Federation. Moreover the differences between them and the previous ones lies in the absence of transit ban.

In conclusion, Ukraine has stated that all of these measures are based on non-transparent investigations which infringe WTO rules and should be cancelled.

WTO disputes initiated by Russia against Ukraine

DS493: Ukraine – Anti-Dumping Measures on Ammonium Nitrate

In November 2015, Russia challenged anti-dumping duties imposed by the Interdepartmental Commission on International Trade (a public body authorised to adopt trade remedy measures) against imports of ammonium nitrate originating in Russia. The dispute implies complex (alleged) omissions taking place in the course of an anti-dumping investigation that was carried out by the Ministry of Economic Development and Trade of Ukraine. The claims concern, inter alia, both substantive and procedural matters, such as construction of normal value, dumping margin calculation, determination of injury and causation, failure to provide non-confidential summaries to the parties, failure to provide access to non-confidential materials, lack of transparency concerning the report publication of the Ministry's report and disclosure of the essential facts underlying the relevant determinations.

Ukraine has applied anti-dumping measures against imports of Russian ammonium nitrate since May 2008 at a duty rate of 36.03 per cent (specific rate of 20.51 per cent applied to Public Joint Stock Company 'Dorogobuzh'). Following the sunset review, anti-dumping measures were extended until July 2019. In March 2017, the Ministry of Agrarian Policy and Food of Ukraine insisted on an interim review of the measures, claiming that Ukrainian domestic production and shipment of chemical fertilisers would not meet the demand for nitrate ammonium in the Ukrainian market. In their turn, domestic ammonium nitrate producers also advocated an interim review, claiming that the anti-dumping duties as applied did not suffice to prevent the damage caused to the domestic industry by dumped imports from Russia.

Taking into account both positions, on 13 April 2017 the Interdepartmental Commission on International Trade of Ukraine initiated an interim review that resulted in an extension of application and an increase in the anti-dumping duty rate to 42.96 per cent (an individual rate of 29.25 per cent applied to Public Joint Stock Company 'Dorogobuzh') (Decision No. AD-383/2018/4411-05 as of 26 March 2018).

Meanwhile, the WTO final report, which was expected to be issued to the parties in the first quarter of 2018, is not yet publicly available.

DS525: Ukraine – Measures relating to Trade in Goods and Services

On 19 May 2017, Russia initiated a WTO dispute against Ukraine over certain measures (challenged both *as such* and *as applied*) imposed by Ukraine to protect the national security interest. Russia's request for consultations covers, inter alia, an import ban on certain Russian products as well as economic sanctions against Russian individuals and companies. If Ukraine invokes the security exception clause as

justification before the Panel, this case will be a landmark that sheds light on a legal test under article XXI of the GATT 1994.

Since 1 January 2016, Ukraine has applied an import ban on certain products originating from Russia. The list of products that are prohibited from importing into Ukraine includes, inter alia, confectionery, small grains, soy sauce, tomato sauce, fresh and preserved fish and fish roe. The import ban was introduced under the fast-track procedure prescribed in article 37 of the Foreign Economic Activities Act of Ukraine. This procedure enabled the Cabinet of Ministers of Ukraine to take unilateral counter-measures against Russia as an aggressor or occupant in the absence of any preliminary investigation. Ukraine had recognised Russia as an aggressor state by Resolution No. 129-VIII as of 27 January 2015.

Other trade-restrictive measures challenged by Russia were predominantly imposed on the basis and in light of Ukraine's Sanctions Act, dated 14 August 2014. This group of claims encompasses blocking trade operations; asset freezing; partial restriction or full suspension of transit, flights and shipment of goods through Ukrainian territory; cancellation or suspension of licences; a ban on the use of radio frequencies and telecommunication services; additional ecological, sanitary and phytosanitary, and veterinary requirements; a ban on participation in government procurement procedures, privatisation procedures and leasehold of public property etc.

It is noteworthy, however, that some claims raised by Russia reflect its own trade policy measures: for instance, a trade embargo on food and agricultural products from other WTO members under Resolution No. 778, or arbitrary TBT and SPS restrictions on certain products from Ukraine and EU members. Russia seems to be testing the waters in order to develop a litigation strategy before being challenged for the same actions in future by other WTO members. On the other hand, the final outcome of this dispute will have tangible implications not only for Ukraine, but also for other major trade players that have been applying economic sanctions against Russia.

One of the key issues of interest in the dispute is whether Ukraine will raise article XXI of the GATT 1994 as a justification. Nataliya Mykolska, the Trade Representative of Ukraine, in one of her interviews admitted that the WTO is not an appropriate forum to resolve 'the security issues' (www.eurointegration.com.ua/interview/2017/12/28/7075557/). This is in line with a statement of WTO Director General Roberto Azevedo: 'National security is something that is not technical... It is not something that will be solved by a dispute in the WTO' (www.bloomberg.com/news/articles/2018-04-11/five-big-threats-to-the-global-trade-cop-trump-deems-unfair). The process of dispute settlement is confidential, but the above-mentioned statement may indicate that Ukraine will not raise security issues as justification, but rather claim that the measures adopted against the aggressor state go beyond the jurisdiction of the WTO legal system as such.

To sum up, the current WTO disputes between Ukraine and Russia deal with different types of trade-restrictive measures that range from, on the one hand, specific bilateral trade issues such as trade remedies and technical barriers to trade to, on the other hand, restriction of freedom of transit, trade embargoes and economic sanctions affecting trade in goods and services that have a far-reaching impact on the multilateral trade system.

SERGII KOZIAKOV & PARTNERS
ATTORNEYS & COUNSELLORS AT LAW

Nataliia Isakhanova **n.isakhanova@kievbarrister.com**
Olesia Kryvetska **o.kryvetska@kievbarrister.com**

5/24 Irynynska Street
Kiev 01001
Ukraine

Tel: +380 44 590 4828
Fax: +380 44 590 4830
www.kievbarrister.com

Brazil

Renê Guilherme Medrado and Luiz Fernando Dalle Luche Machado
Pinheiro Neto Advogados

Overview

1 What is the main domestic legislation as regards trade remedies?

The Brazilian legislation regarding trade remedies comprises the following laws and statutes:

- Decree No. 1,355/1994: enacts the Final Act that incorporates the results of the Uruguay Round of the Multilateral Trade Negotiations of the General Agreement on Tariffs and Trade (GATT 1994);
- Law No. 9,019/1995: regulates the application of the measures specified in the Agreement on Implementation of Article VI of GATT 1994 (Anti-Dumping Agreement) and in the Agreement on Subsidies and Countervailing Measures;
- Decree No. 1,488/1995: regulates the administrative proceeding concerning the application of safeguards;
- Decree No. 1,751/1995: regulates the administrative proceeding concerning the application of countervailing measures;
- Decree No. 8,058/2013: regulates the administrative proceeding concerning the application of anti-dumping duties;
- Decree No. 8,807/2016: regulates the Brazilian Chamber of Foreign Trade (CAMEX);
- CAMEX Resolution No. 13/2012: creates the Technical Group of Public Interest Evaluation (GTIP). Compounded by representatives of the Ministries that take part in CAMEX, GTIP has the objective of analysing the suspension or alteration of anti-dumping duties and countervailing measures, due to public interest reasons;
- CAMEX Resolution No. 29/2017: regulates the administrative proceeding relative to the public interest analysis conducted by GTIP; and
- Ordinance No. 21/2010 of the Ministry of Industry, Foreign Trade and Services' (MDIC) Secretariat of Foreign Trade (SECEX): regulates anti-circumvention proceedings applicable to antidumping measures.

Currently under discussion is the draft of a new statute to regulate the application of safeguards. This draft was open for public consultation from 20 December 2017 to 19 February 2018.

The Ministry of Industry, Foreign Trade and Services' (MDIC's) website provides the abovementioned list of relevant legislation: www.mdic.gov.br/index.php/english.

2 In general terms what is your country's attitude to international trade?

In the last decade, the focus of Brazilian trade policy has been on expanding the Southern Common Market (Mercosur) and strengthening its influence at the multilateral level.

In force since 1994, Mercosur is a regional customs union and trade bloc that currently includes Brazil, Argentina, Paraguay and Uruguay. The main objectives of Mercosur are:

- promoting the free transit of goods and services between participating countries, by means of eliminating customs duties and non-tariff restrictions, among others;
- establishing common external tariffs to be adopted before third countries; and
- coordinating macroeconomic and sectorial policies (eg, international trade, agricultural, monetary and exchange rates) with a view to ensuring proper competition conditions between the participating countries.

Venezuela became a member in 2012, but it was subsequently suspended in 2016 after not complying with its Mercosur membership obligations. On the other hand, Bolivia's protocol of accession was signed in 2015 and the country is now awaiting the conclusion of its membership process. There are also countries associated with Mercosur (Chile, Colombia, Ecuador, Guiana, Peru and Suriname) that, even though they do not receive the benefits of member countries, are allowed to participate in summits of common interest.

Mercosur is under the purview of the Latin American Integration Association (ALADI), which is a broader agreement that aims to promote integration between Latin American countries. As a result of the participation of Mercosur in ALADI, Brazil has been involved in several trade agreements with ALADI members. Mercosur has free trade agreements currently in force with:

- Chile (Economic Complementation Agreement – ACE No. 35/1996);
- Bolivia (ACE No. 36/1997);
- Mexico (ACE No. 54/2002);
- Peru (ACE No. 58/2005);
- Colombia, Ecuador and Venezuela (ACE No. 59/2005);
- Cuba (ACE No. 62/2007);
- India (Preferential Trade Agreement – ACP, 2009);
- Israel (Free Trade Agreement – FTA, 2010); and
- South Africa, Namibia, Botswana, Lesotho and Swaziland (ACP, 2016).

The above-mentioned list of agreements (in Portuguese) can be found on MDIC's website at www.mdic.gov.br/index.php/comercio-exterior/negociacoes-internacionais/796-negociacoes-internacionais-2.

It is worth noting that in 2017 Mercosul entered into FTAs with Egypt (FTA, 2017) and Colombia (ACE No. 72/2017). There is also an FTA signed between Mercosur and Palestine, which is not in force yet, due to pending ratification. In addition, Mercosur is currently involved in ongoing negotiations for the establishment of FTAs with the European Union and Canada.

In additional, Brazil has engaged in the negotiation and adoption of other types of international agreements, especially on the investment facilitation front. Deviating from a traditional bilateral investment agreement, Brazil has entered into agreements on cooperation and facilitation of investments with the following countries: Mozambique, Angola, Malawi, Mexico, Colombia, Chile and Peru.

Moreover, Brazil also plays a significant role in the multilateral trading system by actively participating and fostering discussions in the World Trade Organization (WTO) and other international fora. Furthermore, Brazil's rapprochement with the other BRICS countries (Russia, India, China and South Africa) also aims to maintain policy coordination with developing and emerging countries in topics relevant to international trade.

With respect to compliance with the WTO Agreements, Brazil has been a respondent in 16 disputes before the WTO to date. Brazil has been a complainant in 31 cases, and has acted as a third party in 116

cases. There are currently four ongoing cases involving Brazil as a complainant (DS506, DS507, DS514 and DS522), and two as a respondent (DS472 and 497).

There is a great deal of discussion inside the trade community in Brazil on whether Brazil should resort to more bilateral and plurilateral agreements. Whether Brazil will follow this path is yet unknown, and will largely depend on the trade policy to be adopted by the winning candidate of the 2018 general election.

Trade defence investigations

3 Which authority or authorities conduct trade defence investigations and impose trade remedies in your jurisdiction?

The Department of Trade Defence (DECOM) of SECEX is responsible for conducting investigations regarding trade remedies in Brazil. After concluding the investigation process, DECOM issues its final determination, recommending (or not) the application of trade remedies to CAMEX.

CAMEX, in its turn, is the ultimate authority in charge of the decision to impose trade remedies, based on DECOM's recommendations. CAMEX is subordinated to the Presidency of the Republic and is composed of the following authorities:

- the Presidency's Chief of Staff;
- the MDIC;
- the Ministry of Foreign Affairs (MRE);
- the Ministry of Finance;
- the Ministry of Transportation, Ports and Civil Aviation;
- the Ministry of Agriculture, Livestock and Supply (MAPA);
- the Ministry of Planning, Budget and Management; and
- the Presidency's General-Secretariat.

More information (available only in Portuguese) about DECOM and CAMEX can be obtained at www.mdic.gov.br/index.php/comercio-exterior/defesa-comercial and www.camex.gov.br/.

4 What is the procedure for domestic industry to start a trade remedies case in your jurisdiction? Can the regulator start an investigation ex officio?

Trade remedies cases are initiated in Brazil by means of a written and formal request presented by the domestic industry before DECOM. According to the applicable legislation (Decree No. 1,488/1995, concerning safeguards; Decree No. 1,751/1995 concerning countervailing measures; and Decree No. 8,058/2013 concerning anti-dumping duties), a trade remedies claim will be accepted by DECOM only if (i) it is formally submitted by domestic producers responsible for at least 25 per cent of the total production of the similar product and (ii) once consulted by DECOM, the domestic producers of the similar product that expressed their support for the claim represent at least 50 per cent of the total production in Brazil.

To trigger the initiation of an investigation, the domestic industry must demonstrate, through positive evidence, the existence of:

- subsidised or dumped imports;
- alleged injury to the domestic industry; and
- a respective causal link between the subsidised or dumped imports and the injury suffered by the domestic industry during the period of investigation.

As regards the application of safeguards, according to Decree No. 1,488/1995, the authorities will consider:

- the volume and rate of increase of the imports (in both absolute and relative terms);
- the share of the national market captured by such imports;
- the prices of the imports, and especially whether such imports were under-priced in comparison to the similar product produced in Brazil;
- the consequent impact of the imports on the domestic industry, including analysis of relevant economic factors (eg, production level, inventories or sales); and
- the impact of other factors not related to the analysed imports on the domestic industry.

In exceptional circumstances, SECEX may initiate an investigation ex officio, provided that it disposes of significant evidence regarding the existence of the requirements that justify opening the proceeding.

With regard to anti-dumping investigations, Decree No. 8,058/2013 states that the authorities shall examine the petition within 15 days after its filing. Within five days, DECOM may request the presentation of additional information, which shall be examined within 10 days. If DECOM considers that no further information is required, the decision on whether to initiate the investigation shall be published within 15 days.

5 What is the procedure for foreign exporters to defend a trade remedies case in your jurisdiction?

Once DECOM decides to initiate an investigation, a public notice from SECEX is published in Brazil's Official Gazette with a summary of all the relevant information of the proceeding, including a list of the known interested parties. All known interested parties involved in the proceeding (including foreign governments, foreign exporters and producers, importers and domestic producers) will receive an official letter informing them about the initiation of the investigation.

Such interested parties (except foreign governments) will receive a questionnaire asking them to submit relevant information on the product, the market and internal economic indicators (eg, sales and costs) to DECOM. The time frame to respond to the questionnaire is 30 days from acknowledgement of the issuance of the questionnaire (presumed to be on the next business day after the issuance of the questionnaire), which can be extended by an additional 30 days (in anti-dumping investigations). During the course of the administrative proceeding, DECOM may also request additional information or clarifications. The interested parties can be represented by themselves or by legal representatives with adequate powers of representation.

In the case of anti-dumping investigations, the deadline for the parties to submit new information and evidence (the evidentiary stage) in the case files is 120 days from the date of publication of the preliminary determination by DECOM. After that, the parties will have the opportunity to submit their arguments based only on information already available in the case records. Brazilian regulations state that DECOM must finish the investigation within 10 months from its initiation, although it allows this time frame to be extended up to 18 months, according to WTO rules. Nevertheless, the final decision on the imposition of commercial remedies lies with CAMEX, after receiving DECOM's recommendation.

6 Are the WTO rules on trade remedies applied in national law?

The WTO rules currently in force are considered part of Brazilian legislation through Decree No. 1,355/1994 (which implemented the WTO Marrakesh Agreement). In addition, the specific Brazilian legislation concerning the application of anti-dumping duties, countervailing measures and safeguards is consistent with the WTO rules. It is not uncommon for interested parties in a trade remedies investigation to resort to the language of the WTO Appellate Body or Panel reports in support of the their arguments in the proceeding. The Brazilian authorities are mindful of Brazil's obligations to the WTO and generally give weight to such reports in their determinations.

7 What is the appeal procedure for an unfavourable trade remedies decision? Is appeal available for all decisions? How likely is an appeal to succeed?

Upon completion of the investigation, Brazilian legislation allows interested parties to file an administrative appeal against a CAMEX decision imposing trade remedy measures, seeking reconsideration of the decision.

Furthermore, although it is not precisely an appeal procedure, interested parties may request the initiation of a public interest evaluation proceeding to be examined by GTIP. Such a proceeding may result in the suspension or alteration of the anti-dumping duties or countervailing measures for public interest reasons (eg, risk of shortage of the product in the Brazilian market or contradiction of another public policy). In short, GTIP shall conduct a cost-benefit assessment, whereby it considers whether the benefits of the application of the trade remedies would outweigh potential losses to Brazilian society.

Unfavourable trade remedies decisions may also be challenged via judiciary appeals. Because trade remedies are imposed by Ministers (as part of CAMEX), CAMEX Resolutions need to be challenged at the

Superior Court of Justice. Although Brazilian Courts can re-examine both formal and procedural issues and issues on the merits, they can be more deferential to specialised decisions from specialist governmental bodies. With this in mind, it is common for many interested parties to avoid bringing merit-related matters regarding trade remedies into discussion before the courts.

Considering all of the above-mentioned possible appeals, case law indicates that appeals to date have rarely succeeded. In this sense, actively participating in the proceeding and cooperating with DECOM is extremely important when trying to ensure the best possible outcome.

8 How and when can an affected party seek a review of the duty or quota? What is the procedure and time frame for obtaining a refund of overcharged duties? Can interest be claimed?

Affected parties may request, by means of a written petition, review of either existing anti-dumping duties or quotas, although the measures will remain in force during the course of the review proceeding.

In cases of anti-dumping duties, the measures can be reviewed in the following situations:

- *change in circumstances*: by proving that the circumstances that justified the imposition of measures in the past have changed, any interested party that participated in the anti-dumping investigation or in the sunset review proceeding may request the review of the duties (this type of proceeding shall be concluded within 10 months, extendable for an additional two months in exceptional cases);
- *sunset review*: provided that an application is filed at least four months before the end of its term, anti-dumping duties can be extended for an additional five years if the domestic industry demonstrates that the termination of the measure shall lead to a continuation or recurrence of dumping and injury to the domestic industry (the proceeding shall take no longer than 10 months, extendable for an additional two months in exceptional cases). The measure will remain in effect while the sunset review proceeding is ongoing;
- *review for new producers or exporters (new shippers review)*: this is a request available to foreign producers or exporters that did not export to Brazil during the investigated period of an anti-dumping proceeding to obtain an individual margin (such review proceeding shall last up to seven months);
- *anti-circumvention review*: this involves the alteration of the scope of an anti-dumping measure with a view to including imports from other origins that are being used by foreign producers and exporters to circumvent the application of the duties (proceeding to be concluded within six months, extendable in exceptional circumstances for an additional three months); and
- *reimbursement review*: this is a request by importers of the product subject to anti-dumping duties to obtain reimbursement of anti-dumping duties previously paid, applicable if the dumping margin calculated during the review proceeding ends up being lower than the duty in force (review proceeding to be concluded within 10 months).

Furthermore, it is possible for interested parties to promote the request for a partial or complete review of the application of countervailing measures if:

- the measures are no longer necessary to offset the actionable subsidy;
- it is unlikely that there will be injury to the domestic industry if the measures are suspended; or
- the trade remedy is no longer sufficient to offset the injury caused by the subsidy. Such review proceedings for countervailing measures shall be concluded within 12 months.

9 What are the practical strategies for complying with an anti-dumping/countervailing/safeguard duty or quota?

Foreign exporters and producers should fully respect decisions issued by the Brazilian authorities regarding trade remedies, since Brazil has been continually strengthening its control over compliance with trade remedies, including rigid regulations on non-preferential rules and anti-circumvention measures.

Furthermore, it is worth noting that in the case of anti-dumping investigations, foreign exporters and producers may negotiate a price undertaking commitment with DECOM during the course of the proceeding. Through such a commitment, the respective exporter or producer commits to exporting the product to Brazil at a minimum price in exchange for not having duties levied on its exports. Price undertaking commitments may only be proposed in the period from the issuance of the preliminary determination until the end of the evidentiary stage.

A similar instrument may be adopted with regard to countervailing measures investigations. The proceedings can be suspended, without the application of measures (i) for countries whose government agrees to eliminate or reduce the subsidy; or (ii) for exporters who voluntarily agree to price commitments for the export of the product to Brazil, so that the Brazilian authorities become convinced that the adverse effect on the domestic industry resulting from the subsidy is eliminated.

Customs duties

10 Where are normal customs duty rates for your jurisdiction listed? Is there an exemption for low-value shipments? If so, at what level? Is there a binding tariff information system or similar in place? Are there prior notification requirements for imports?

Brazil's customs duty rates are defined by the Mercosur Common Tariff (TEC), which is applied uniformly by all Mercosur members to extra-zone imports.

Considering that under certain circumstances there may be a need to modify the applicable customs duties on certain goods, exceptions are provided for Mercosur members to unilaterally alter the applicable duties. Currently, Brazil may temporarily alter the applicable customs duties on the following terms:

- in accordance with Resolution GMC 08/2008, Brazil may reduce the applicable tariffs in cases of supply and demand discrepancy, such as a shortage of products available regionally;
- in accordance with Decision CMC 26/2015, Brazil may establish a List of Exception, with 100 products with tariffs that are higher or lower than those applicable in the TEC (extended by the Mercosur countries until the end of 2021); and
- in accordance with Decision CMC 25/15, Brazil may reduce to 2 per cent or 0 per cent the applicable tariffs under a tariff exception to capital and computing goods that are not produced locally.

The current TEC and its temporary alterations may be accessed on the MDIC website at www.mdic.gov.br/index.php/comercio-exterior/estatisticas-de-comercio-exterior-9/arquivos-atuais.

Low-value shipments (imports valued up to US$3,000 by international postal or courier companies) may be subject to simplified import procedures and to a simple tax rate as a substitute for the taxes usually due upon importation. The only tax exemption regarding low values is for shipments sent by natural persons to natural persons of up to 50 reais, which are characterised as gifts.

Brazilian companies may ask the Federal Revenue Service (RFB) to assess the tariff classification of products they intend to import. The tariff classification informed by the RFB is binding, and the importer is exempted from penalties arising from incorrect tariff classification for the purposes of customs clearance of the assessed imports.

Depending on their tariff code, certain products may be subject to an import licence to be issued by the competent authorities – usually prior to shipment of the goods abroad. The administrative handling table indicating the goods that require such licensing as well as the corresponding governmental body may be accessed at www.mdic.gov.br/comercio-exterior/importacao/tratamento-administrativo-de-importacao.

11 Where are special tariff rates, such as under free trade agreements or preferential tariffs, and countries that are given preference listed?

The preferential tariffs deriving from FTAs and exceptions to the Mercosur Common Tariff can be accessed on the MDIC website at http://capta.mdic.gov.br/preferencia-tarifaria/index.

Other special tariff rates may be accessed at www.mdic.gov.br/index.php/comercio-exterior/estatisticas-de-comercio-exterior-9/arquivos-atuais.

12 How can GSP treatment for a product be obtained or removed?

In Brazil, the authority responsible for the GSP is MDIC's Department of International Negotiations (DEINT). In order to obtain GSP treatment for a product, the following requirements must be complied with:

- the product must be included in the GSP list of the grantor country;
- the product must originate from the exporter beneficiary country;
- the product must be transported directly from the beneficiary exporter country to the grantor importing country; and
- a proof of origin adequate to the Customs Authority, usually the Certificate of Origin Form A, must be presented.

To be considered as originating in a country, the product must be entirely manufactured in the country, or must suffer a 'substantial transformation', according to the Rules of Origin of the grantor country. In Brazil, according to MDIC Ordinance No. 43 of 22 November 2012, Banco do Brasil is the only institution allowed to issue the Certificate of Origin Form A, which is the necessary document in order for the export to be afforded preferential treatment granted under the GSP.

The countries and bodies currently granting GSP treatment to Brazilian products are:

- Australia;
- Japan;
- Norway;
- New Zealand;
- Switzerland;
- the United States; and
- the Eurasian Economic Community.

Further information may be found at www.mdic.gov.br/comercio-exterior/negociacoes-internacionais/807-sgp-sistema-geral-de-preferencias.

13 Is there a duty suspension regime in place? How can duty suspension be obtained?

Yes. The Brazilian customs regulations provide for certain customs regimes designed to suspend the duties due upon importation. The RFB is the body responsible for granting and scrutinising the use of such regimes, which are listed below:

- temporary admission, which allows for total suspension for goods that are only temporarily staying in Brazil (eg, for testing and experiments, or for events) or partial suspension for goods that are to be used economically for a certain period;
- free trade zones , such as the Manaus Free Trade Zone, which are areas with full exemption from the taxes due upon importation, including import tax and the tax on manufactured products, for most products imported into the free trade zone;
- drawback, which suspends, exempts or reimburses the applicable taxes for imported inputs and raw materials that are used in the manufacturing of products in Brazil that will be exported;
- bonded warehouses, in which goods may be imported and stored with full suspension of taxes for a certain period before being nationalised or returned abroad;
- temporary exportation, which allows for exportation with full suspension of taxes for a certain period, including import taxes during the return of the products to Brazil. When the product exported temporarily is subject to manufacturing operations, only the aggregated value will be subject to taxation during the product's return to Brazil; and
- special customs regimes for suspension of taxes on the importation of machines and inputs designed to improve and boost the expansion of specific sectors in Brazil, such as the mining, natural gas and crude oil exploration sectors (eg, REPETRO, RECOM and REPEX).

14 Where can customs decisions be challenged in your jurisdiction? What are the procedures?

In general terms, customs decisions can be challenged at judicial and administrative levels.

Interested parties may challenge the decision and such challenges will then be examined by a first-instance administrative body of judgment. After that, it is possible to present an appeal to the Administrative Council of Tax Appeal at the administrative level to review unfavourable customs decisions.

If a final and unfavourable decision is rendered at the administrative level, the taxpayer may still refer the matter to the Judiciary Power. Although it is almost always advisable to pursue administrative litigation before resorting to the Judiciary Power (due to the possibility of a more technical approach), it is not mandatory to do so.

Trade barriers

15 What government office handles complaints from domestic exporters against foreign trade barriers at the WTO or under other agreements?

The main government offices responsible for assessing and handling complaints of foreign trade barriers to Brazilian exports are DECOM and DEINT, all under SECEX. Domestic exporters also receive relevant support and assistance in this respect from the MRE's Trade Litigation Division.

Additionally, in November 2017 Brazil instituted a centralised online system tasked with monitoring and quantifying trade barriers, SEM Barreiras, which is jointly controlled by the MDIC, the MRE and MAPA, and may count on the participation and input of other governmental bodies whose functions relate to international trade. The purpose of such system is to serve as a channel through which companies, associations and individuals may report trade barriers to Brazilian exports, as well as to monitor actions taken by the Brazilian government to remove or mitigate barriers. SEM Barreiras' website is www.sembarreiras.gov.br/painel.

Finally, the National Institute of Metrology, Standardization and Industrial Quality also provides assistance to domestic exporters with respect to technical barriers as the focal point for Brazil's notifications to the WTO Technical Barriers to Trade Committee under the Technical Barriers to Trade Agreement.

16 What is the procedure for filing a complaint against a foreign trade barrier?

Formal complaints concerning trade barriers must be made before DEINT through the filing of specific forms. All complaints are submitted to public consultation, through publication in the Official Gazette. Interested parties may also report the existence of trade barriers to SEM Barreiras (question 15).

Once complaints and notifications have been filed and registered, they are dealt with by the MDIC and the MRE on a diplomatic level, through different diplomatic procedures directly with the country imposing the barriers, or in international fora, which may ultimately include requesting information about the measure at a WTO Committee or even consultations before the WTO Dispute Settlement Body (DSB), with a view to removing the trade barrier.

17 What will the authority consider when deciding whether to begin an investigation?

The authority will consider the sufficiency and accuracy of the information and data presented by the domestic exporter, as well as the economic and political impact (perceived and expected) of the trade barrier to Brazil. Brazilian regulations do not specify a process that may lead to a formal investigation or proceeding seeking to tackle foreign trade barriers. There have been discussions about the implementation of a trade barrier proceeding, but such discussions have not yet progressed to a final result.

18 What measures outside the WTO may the authority unilaterally take against a foreign trade barrier?

Brazil traditionally adopts a diplomatic stance and cooperative approach with respect to trade barriers imposed by third countries, in line with its overall foreign trade policy. In this respect, it is the general approach of the Brazilian authorities that potential countermeasures seeking to induce the dismantling of a foreign trade barrier will follow the WTO Dispute Settlement rules, which will only allow for the imposition of countermeasures after positive rulings from a WTO Panel and the Appellate Body have been issued and after an arbitrator's decision authorising the countermeasures.

19 What support does the government expect from the private sector to bring a WTO case?

Only the MRE may officially represent Brazil before the WTO's DSB. The MRE may also resort to private law firms to assist in such representation, which is carried out through public tender. Nonetheless, the affected private sector is unofficially expected to actively assist in the conduct of disputes, both in the context of building a case and of preparing a defence. Such engagement takes place during every stage of a WTO dispute, from the mustering of evidence and drafting of submissions to meetings with the WTO Panels and the Appellate Body.

20 What notable trade barriers other than retaliatory measures does your country impose on imports?

See question 18.

Export controls

21 What general controls are imposed on exports?

As a general rule, exports are not subject to taxation. In order to be able to export, a company must be enrolled with the RFB. Such enrolment, known as RADAR, provides access to the integrated foreign trade system (SISCOMEX), through which all Brazilian foreign trade transactions are processed.

A commercial invoice should be issued by the Brazilian exporter and it must contain, at least:

- name and address of the exporter;
- full name and address of the importer, buyer or predetermined orderer;
- characteristics of the goods;
- marking;
- numbering and number of reference to the different volumes;
- quantity and type;
- gross weight;
- net weight;
- country of origin;
- country of acquisition;
- country of departure;
- total price and price per unit of each type of goods and the value and nature of any given discounts;
- transportation cost;
- conditions and currency of payment; and
- condition of sale.

The packing list is essential for customs clearance for export. Normally, it contains information about the goods, such as net weight, gross weight, the packaging setting, value per unit, volume and specific contents. However, the exporter should contact the importer so as to check the requirements of the importing country.

The Export Registry (RE), filed by the exporter through SISCOMEX, is the set of commercial, financial, foreign exchange and tax information that characterises an export transaction and defines its treatment.

Before submitting the RE to SISCOMEX, the exporter must check if the goods to be exported require prior approval, since several authorities may be competent to examine and approve the export of goods, depending on their tariff code. See question 22 for more details.

The exporter (most commonly through its customs broker) registers the RE directly with SISCOMEX, indicating the tariff code of the exported goods. A tax invoice or bill of sale must also be issued to accompany the goods throughout the operation, from its exit from the Brazilian exporter's facility to the actual exportation and customs clearance.

The transporter hired by the parties must then issue a bill of lading or airway bill, a document that will specify the type, quantity and destination of the goods and attest to their shipment to the place of destination (indicated in the commercial invoice).

The RE and the other export documents must be prepared before the registration of the export declaration (DE) and the respective shipping of the goods. The DE formally initiates the exportation customs clearance to be processed at SISCOMEX. Every RE must be registered with a respective DE, although a DE may contain more than one RE. The DE must indicate the number of the registered RE; the identification of the facilities of the exporter involved in the exportation process; the number of the bill of sale; quantity, volume, net and gross weight of the exports; total value of the operation; and the route negotiated with the foreign importer, as well as other information.

With the registration of the DE at SISCOMEX and the presentation of the export documents (invoice, packing list etc) to the RFB, the exportation customs clearance is processed. It is not uncommon for RFB to request further information before approving the transaction.

Brazil has a set of export controls based on the use and classification of goods. Such controls must be reviewed before any operation so as to obtain the necessary authorisation. In particular, products considered as 'sensitive goods' are subject to stricter controls.

The list of products subject to prior consent in exports and the consenting authorities are available at https://siscomex.desenvolvimento.gov.br/SimuladorMircWeb/ and also at www.mdic.gov.br/index.php/comercio-exterior/exportacao/tratamento-administrativo-de-exportacao.

22 Which authorities handle the controls?

The bodies and agencies are listed below, based on their area of expertise related to the controlled goods:

- the Brazilian Electricity Regulatory Agency: www.aneel.gov.br;
- the National Petroleum Agency: www.anp.gov.br;
- the National Sanitary Surveillance Agency: portal.anvisa.gov.br;
- the National Nuclear Energy Commission: www.cnen.gov.br;
- army command: www.eb.mil.br;
- the Department of Operations for Foreign Trade: www.mdic.gov.br/index.php/comercio-exterior/despachos-de-comercio-exterior;
- the National Department of Mineral Production: www.dnpm.gov.br;
- the Federal Police: www.dpf.gov.br;
- the Brazilian Institute of Environment and Renewable Natural Resources: www.ibama.gov.br;
- the Ministry of Science and Technology: www.mcti.gov.br; and
- the Ministry of Defence: www.defesa.gov.br.

A particular case is the exportation of sensitive goods. The Interministerial Commission on Controlling Exports of Sensitive Goods (composed of representatives from the MRE, the Ministry of Defence, the Ministry of Development, Industry and Foreign Trade, the Ministry of Science and Technology, and the Ministry of Economy) was established with the responsibility for drafting regulations implementing Law 9112/95 and applying penalties for non-compliance with and violation of export controls.

Update and trends

Even though Brazil is not directly affected by Brexit, the withdrawal of the US from the TPP, the slowdown of the negotiations of the Transatlantic Trade and Investment Partnership and the Regional Comprehensive Economic Partnership, or the negotiation of other FTAs (eg, EU–Japan FTA), such developments in the international spectrum nonetheless pose both challenges and opportunities for the country.

In particular, while Brazil is a significant advocate of the multilateral trading system and the WTO, as this organisation faces major challenges and speculations about its future role, Brazil may find itself in a difficult position going forward if it does not take part in negotiations regarding comprehensive mega-regional trade and investment agreements, such as the TPP (which has been signed by 11 countries of the Pacific region despite the withdrawal of the US). As an important exporting economy, Brazil may also, on the one hand, be adversely affected by the recent announcement of unilateral measures by countries such as the US and China and by the EU, which may increase the risks of more countries adopting protectionist measures in the future. On the other hand, Brazil's exports may well benefit from the same measures if they open up markets in the countries imposing such measures on third countries.

What road to take is a question that will only be answered after the new President takes office in January 2019 (presidential elections will be held in October 2018), when a new government's trade policy is expected to be revealed.

23 Are separate controls imposed on specific products? Is a licence required to export such products?

The list of products subject to special controls and to export duty is set out in Annex XVII of SECEX Ordinance No. 23 of 14 July 2011, available at http://portal.siscomex.gov.br/legislacao/biblioteca-de-arquivos/secex/portaria-no-23-de-14-de-julho-de-2011.

Special attention should be paid to the regulation of the export of goods and services with potential military applications and, consequently, to the export of goods or related services with potential application in the development of weapons of mass destruction, whether nuclear, chemical or biological, and their delivery vehicles, such as missiles.

Brazilian export controls comprise:

- sensitive goods: goods relevant for the production of weapons, dual-use goods and goods used in the nuclear, chemical or biological areas;
- dual-use goods: products that can be used for purposes of war, even if they have been developed for civil applications; and
- services related to sensitive goods: services related to the supply of information or technology for the development of sensitive goods.

These sensitive goods and services are directly linked and classified as to their nature in four major areas: nuclear, chemical, biological and projectile, according to the specific treatment internationally provided.

Therefore, producers must receive authorisation prior to starting preliminary negotiations on exports, and they must comply with legal requirements, including when participating in international bids and international exhibits.

The exportation of sensitive goods and services related to sensitive goods is subject to prior approval by the competent authorities, as listed in question 22, which includes the presentation of documents evidencing their final use, such as the end use certificate.

The administrative procedure for the approval of export authorisation is confidential. The competent authority in charge of approving such authorisation depends on the product in question.

The Brazilian authorities adopt political and strategic considerations in taking the final decision on exports. Presentation of contracts related to the export operation and other related documents may be required. Such export authorisation is normally valid for two years.

After receiving the proper authorisation, the company must follow general exportation procedures. Thus, copies of contracts and other documents may be required to approve the RE, and, consequently, the exportation.

24 Has your jurisdiction implemented the WCO's SAFE Framework of Standards? Does it have an AEO programme or similar?

According to the WCO, Brazil has expressed its intention to implement the WCO Framework of Standards to Secure and Facilitate Global Trade. Furthermore, the RFB fully implemented the AEO programme in 2017, which is regulated by RFB Normative Instruction 1598/2015. Eligible companies may request AEO status through a process of recognition before the RFB.

25 Where is information on countries subject to export controls listed?

See question 29.

26 Does your jurisdiction have a scheme restricting or banning exports to named persons and institutions abroad?

Brazil does not have a scheme imposing controls for exports to named persons and institutions.

27 What are the possible penalties for violation of export controls?

The non-fulfilment of export controls by exporters may trigger several penalties depending on the facts under scrutiny. The possible penalties can be summarised as follows:

- warnings;
- fines that vary according to the value of the transaction;
- forfeiture of the goods;
- suspension of the right to export; and
- prohibition to perform foreign trade transactions.

As a general rule, responsibility for violation does not depend on intent or on the nature and extent of the effects of the violation. Depending on the nature of the violation, it may also trigger criminal liabilities for the employees of the companies or individuals liable for the non-compliance.

Financial and other sanctions and trade embargoes

28 What government offices impose sanctions and embargoes?

MDIC is responsible for the imposition of sanctions, embargoes and commercial remedies, based on the guidelines adopted by the Ministry of Foreign Affairs, in accordance with the decisions of the United Nations (UN). Brazil does not impose sanctions and embargoes unilaterally.

29 What countries are currently the subject of sanctions or embargoes by your country?

All decisions related to the imposition of sanctions or economic embargoes made by Brazil are in accordance with the guidelines adopted by the UN and with Ordinance No. 23/2011) (www.mdic.gov.br/comercio-exterior/legislacao/862-portaria-secex-consolidada). In the case of imports into Brazil, the countries with restrictions are North Korea, Eritrea, Libya and Somalia, mainly regarding manufacture of weapons and related materials. In the case of exports from Brazil, the countries with restrictions are Sierra Leone, Iraq, Somalia, Democratic Republic of the Congo, North Korea, Sudan, Libya and Eritrea, also related to weapons manufacturing, military equipment, combat vehicles and parts replacement.

PINHEIRONETO
ADVOGADOS

Renê Guilherme Medrado **rmedrado@pn.com.br**
Luiz Fernando Dalle Luche Machado **lmachado@pn.com.br**

Rua Hungria, 1100
01455-906 São Paulo, SP
Brazil

Tel: +55 (11) 3247-8797/+55 (11) 3247-6270
Fax: +55 (11) 3247-8400
www.pn.com.br

30 Are individuals or specific companies subject to financial sanctions?

There are no individuals or specific companies subject to financial sanctions in Brazil.

Miscellaneous

31 Describe any trade remedy measures, import or export controls not covered above that are particular to your jurisdiction.

There are no particular trade measures applied in the Brazilian jurisdiction.

Chile

Ignacio García and Andrés Sotomayor
Porzio Rios Garcia

Overview

1 What is the main domestic legislation as regards trade remedies?

- DFL No. 31/2004, which establishes the revised and updated text of Law 18525/86, found at www.leychile.cl/Navegar?idNorma=29924;
- Finance Ministry Decree No. 1314/2013: www.leychile.cl/Navegar?idNorma=1049587&idParte=&idVersion=;
- Free trade agreements (FTAs) executed by Chile with its trade partners, at www.direcon.gob.cl/acuerdos-comerciales/; and
- the World Trade Organization (WTO) Agreements.

2 In general terms what is your country's attitude to international trade?

Chile has been widely recognised as one of the global leaders in economic freedom (see www.heritage.org/index/country/chile). Its strong commitment to trade liberalisation led Chile to unilaterally reduce its tariffs to a flat 6 per cent, and to the signature of numerous trade agreements with most of its trade partners, which has lowered the average tariff to 1.8 per cent; it expects to reduce it even more over the next decade. Chile has recently joined the Pacific Alliance and is part of the negotiation of the Trans-Pacific Partnership (TPP). It was the first South American country to join the Organisation for Economic Co-operation and Development (OECD). Chile's strict compliance with the rule of law and respect for international agreements is well known, which accounts for the country's impeccable track record on compliance with WTO decisions; see www.wto.org/english/thewto_e/countries_e/chile_e.htm.

Trade defence investigations

3 Which authority or authorities conduct trade defence investigations and impose trade remedies in your jurisdiction?

The National Commission for Investigation of Price Distortions in Imported Merchandise (Commission of Price Distortions): www.cndp.cl.

4 What is the procedure for domestic industry to start a trade remedies case in your jurisdiction? Can the regulator start an investigation ex officio?

The procedure can be initiated by complaint for those affected by dumping or subsidies, or by request for those affected by safeguards.

Complaints about dumping or subsidies should be submitted by the industry of domestic production, whose collective production represents more than 50 per cent of the total production of the similar product.

Requests for safeguard should be submitted by the industry of domestic production affected by serious injury or threat thereof; that is, all producers of similar or directly competitive products in the country, or those whose collective production of similar or directly competitive products constitutes a major proportion of the total domestic production.

Ex officio initiation of the investigation by the Commission takes place only in exceptional cases, when it has the background to justify it. In practice, this is very rare.

Any complaint or request must be submitted to the Technical Secretariat of the Commission in writing, addressed to the President of the Commission and accompanied by the form provided by the Technical Secretariat. On this form should be included the background and evidence showing that there is:

- a distortion of prices (in case of dumping and subsidies) and how it causes significant damage to the domestic industry affected; and
- an increase of imports (in case of safeguards) and how it causes or threatens to cause damage to the similar or directly competitive domestic production.

The Commission reviews the evidence and determines whether there is sufficient merit to initiate an investigation.

If declared admissible, the resolution is published in abstract in the Official Gazette. If declared inadmissible, the decision is notified by registered letter to the complainant. Initiation of the investigation starts when the resolution is published in the Official Gazette.

Investigations of dumping and subsidies must be concluded within one year, and in any event within 18 months, except in exceptional circumstances.

For investigations of safeguard, the Commission must decide within 90 days.

Once decided, the initiation of an investigation should be notified:

- in the case of dumping:
  - to the government of the country involved; and
  - to the accused companies;
- in the case of subsidies:
  - to the government of the country involved;
- in the case of safeguard:
  - to the Safeguards Committee of the WTO; and
  - to the countries with which Chile has signed trade agreements.

Once notified of the initiation of the investigation, the Commission makes available the text of the complaint to all interested parties involved.

During the course of the investigation, the Commission may require additional information from the complainant or petitioner, and other interested parties. The Commission also sends questionnaires to interested parties for comment on the case.

Any information that is confidential is protected by the Commission if there is sufficient justification. Such information is not disclosed without the specific permission of the party that has provided it.

Interested parties have the right to present information orally, for which public hearings are held where they present their arguments, offer their opinions and pronounce on the information provided by the other parties involved in the investigation. However, any information given orally must be submitted in writing and made available to other interested parties.

As regards on-site visits, during investigations of dumping or subsidies the Commission may carry out investigations in a foreign territory to verify information provided or to obtain further details.

The Secretariat prepares a technical report based on the information collected, which is confidential and which provides the necessary elements for the Commission's decision regarding the existence of price distortions or increased imports and how they affect domestic production.

During the investigation, the Commission can recommend to the President of the Republic, through the Minister of Finance, the application of provisional measures. These measures are implemented through the enactment of a Presidential Decree.

Anti-dumping and countervailing duties must be implemented 60 days from the date of initiation of the investigation, and they cannot exceed four months, or six months in qualified cases.

Safeguard measures must be implemented within the first 30 days from the start of the investigation and they cannot exceed 200 days.

On the conclusion of the investigation the Commission may recommend:

- not to apply a measure: the Commission issues a resolution ending the investigation which is published in the Official Gazette; or
- the application of a definitive measure: the recommendation and its background are sent to the President of the Republic, through the Minister of Finance, for a decision. The President enacts a presidential decree instructing the implementation of the recommended measure.

Duration of the measures

Anti-dumping and countervailing duties cannot exceed one year from the publication of the presidential decree in the Official Gazette. Furthermore, the recommended measure cannot exceed the margin of distortion.

Safeguard measures cannot exceed two years from the publication of the presidential decree in the Official Gazette, if there were no provisional measures. If provisional measures were applied during the investigation, the period of two years is counted from the date of publication of the decree. It is renewable for a maximum of two years.

5 What is the procedure for foreign exporters to defend a trade remedies case in your jurisdiction?

The same procedure described above applies to foreign exporters. Investigations considered admissible are published in the Official Gazette and normally the Commission notifies exporters that have been identified.

6 Are the WTO rules on trade remedies applied in national law?

Yes. WTO rules on trade remedies are applied in national law, as Chile is an active WTO member. Chilean trade remedy legislation makes express reference to WTO legislation and makes it applicable in the cases and under the conditions established in such domestic legislation.

7 What is the appeal procedure for an unfavourable trade remedies decision? Is appeal available for all decisions? How likely is an appeal to succeed?

There is no specific appeal procedure against trade remedy decisions, so the general regulation applies, according to which the affected party has the following options.

Administrative actions

Administrative appeal is a claim before the same agency (Commission of Price Distortions) within five days following its publication. The agency has 30 days to resolve it. The action may consider legal or policy issues.

Hierarchic appeal is a similar claim, but it is submitted before the head of the agency. In this particular case, it would be the Minister of Economy.

Presentation to the Comptroller General of the Republic can be made by anyone before the controller entity in order to discuss the legality of a resolution. It is a short procedure in which the Comptroller requests information of the affected agencies and makes a decision.

Jurisdictional actions

Appeal for nullity of public law is an action before a civil judge (ordinary courts of justice). The trial will follow the rules of the general procedure; therefore, it is a long process that could take years. However, the plaintiffs may ask for precautionary measures in order to avoid the effects of the contended act.

The argument for the claim in this case would be an administrative act against the Constitution; therefore, it is just a legal claim and not a policy issue. Even though, theoretically, there is no statute of limitation for this action, the courts have said that the general rules should be applicable; hence, there is a five-year statute of limitation.

Protection appeal is a claim before a Court of Appeals for a breach of some of the constitutional rights established in article 19 of the Constitution. The claim must be filed within 30 days of the announcement of the administrative act. This a simple and short procedure where the court decides after receiving the report of the affected agency.

All of the above-mentioned actions (except for that before the Comptroller General) require an affected right or a legitimate interest of the plaintiff (usually steered and represented by Members of Parliament, but in fact anyone could file these actions).

8 How and when can an affected party seek a review of the duty or quota? What is the procedure and time frame for obtaining a refund of overcharged duties? Can interest be claimed?

If, after an investigation, the authority does not recommend the application of definitive measures, the affected party may seek reimbursement of any provisional measures paid, with interest.

9 What are the practical strategies for complying with an anti-dumping/countervailing/safeguard duty or quota?

The strategy will depend on each case, but generally, seeking reviews and refunds of overcharged duties is a path that should be considered, as Chilean courts apply the rule of law and will decide in favour of whoever can support a case in sufficient fashion, even if the decision goes against the Chilean state.

Customs duties

10 Where are normal customs duty rates for your jurisdiction listed? Is there an exemption for low-value shipments? If so, at what level? Is there a binding tariff information system or similar in place? Are there prior notification requirements for imports?

Customs duty rates are listed in the Customs Tariff (www.aduana.cl/arancel-aduanero-vigente/aduana/2016-12-30/090118.html), which constitutes a binding tariff information system. There are no exemptions for low-value shipments except for non-commercial goods purchased in duty-free shops (up to US$500) and travellers' luggage.

There are no requirements of prior notice. However, qualified goods such as chemicals, weapons, animals and others require prior control for their importation: www.aduana.cl/importaciones-de-productos/aduana/2007-02-28/161116.html.

11 Where are special tariff rates, such as under free trade agreements or preferential tariffs, and countries that are given preference listed?

Special tariff rates are listed in the Customs Tariff and in free trade or other commercial agreements signed by Chile: www.direcon.gob.cl/acuerdos-comerciales/.

Additionally, in 2013, the Chilean Congress passed a law for the elimination of duties for the Least Developed Countries: www.aduana.cl/ley-20-690-eliminacion-aranceles-a-los-pma/aduana/2014-03-07/092144.html.

12 How can GSP treatment for a product be obtained or removed?

There is no generalised system of preferences. Preferential treatment is granted based on the product and its origin, following the trade agreements to which Chile is a party.

13 Is there a duty suspension regime in place? How can duty suspension be obtained?

There is a specific regime of admission under which goods may be kept in special facilities, upon prior authorisation by Customs Authority, for up to 90 days. No duties are paid until goods are taken out of the facility. An interest rate is charged in addition to the duties if the goods are kept for more than 30 days.

On the other hand, regulation allows for temporary admission in which no customs duties or reduced rate duties are paid during a specific period. After that period, if the goods have not been re-exported, full duties shall be paid.

Update and trends

Chile has recently executed the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), which includes Australia, Brunei Darussalam, Canada, Chile, Malaysia, Mexico, Japan, New Zealand, Peru, Singapore and Vietnam. This important agreement needs to be approved by the Congress to enter into effect.

The CPTPP is the result of the negotiations between the parties of the Trans-Pacific Partnership (TPP) after the withdrawal of the US. Therefore, the CPTPP has the same goals of integration and modernisation, but nonetheless 20 sections were suspended (most of them related to the intellectual property chapter, pushed by the US).

The CPTPP addresses several topics, such as trade facilitation, trade defences, trade of goods and services, public procurement, competition, environmental commitments, transparency and anti-corruption rules, and dispute resolution clauses, among others.

Brexit should not affect Chile severely, because exports from Chile to the UK represent only 1 per cent of Chile's exports. However, it may have a limited impact on some sensitive industries, such as the wine industry. Nevertheless, Brexit processes should give enough time for the industry to adapt to the new scenario, considering that it may take more than two years.

Finally, Chile and the UK initiated conversations last year in order to foresee possible scenarios to maintain or improve trade conditions between them.

Additionally, importers who obtain AEO certification by the Customs Authority, and medium and small companies (ie, S corporations) who import goods that have not previously been subject to suspensive regimes provided for by law, and that meet certain legal requirements may withdraw foreign goods that are kept in customs storage facilities for their import, without prior payment of duties, taxes, fees and other charges they may cause, except for the payment of storage and mobilisation services. However, such importers must provide an immediate execution bank cheque or insurance policy or an equivalent as a guarantee, in order to ensure the payment of duties, taxes and other charges, and any eventual adjustments and interest that may be accrued. In case the payment is not made within the legal term, said guarantee will be made effective until full payment of the duties, taxes and other charges due, including any adjustments and interests.

Also, foreign goods may be subject to customs deposit destination, for a period of one year, without prior payment of duties and other charges caused by their import, and must be subject to minor processes such as assembling, packaging, finishing, ironing, bagging, packaging or labelling. The requirements and guarantees that the interested parties must fulfil in order to authorise the referred destination will be established by supreme decree.

14 Where can customs decisions be challenged in your jurisdiction? What are the procedures?

There are two main options to challenge customs decisions in Chile.

The first is to submit a claim before the same authority within 15 days of its decision. The authority has 30 days to decide the claim.

The second option is to file a lawsuit before the Tax and Customs courts within 90 days of the customs decision. The procedure is similar to a trial, in which the authority has to present its defences and there will be a period to present and discuss evidence (including witnesses), and the final decision of the court may be challenged before a court of appeal and then, if applicable, before the Supreme Court.

Trade barriers

15 What government office handles complaints from domestic exporters against foreign trade barriers at the WTO or under other agreements?

The Directorate General of International Economic Relations (Direcon) (www.direcon.gob.cl/la-institucion/), which is under the Ministry of Foreign Affairs.

16 What is the procedure for filing a complaint against a foreign trade barrier?

There is no formal investigation process for such complaints.

17 What will the authority consider when deciding whether to begin an investigation?

The authority addressing a complaint will likely take into consideration the complaint's merits and the evidence presented to substantiate it, the interests of other Chilean importers or exporters, the broader political relationship between Chile and the country or territory in question, and the remedies available to address the barrier.

18 What measures outside the WTO may the authority unilaterally take against a foreign trade barrier?

In the event of acts, policies or practices of the government of a country that adversely affect, or lead directly or indirectly to adverse effects on, trade in goods or services of Chile, the government may take measures including suspension or withdrawal of statutory rights or privileges granted to that country or imposition of a surtax on its goods. In the event that it is not possible to agree on proper compensation with a country that has applied a safeguard measure, Law 18,525 authorises the President of the Republic to apply additional duties applicable to goods exported from the other country.

19 What support does the government expect from the private sector to bring a WTO case?

Any assistance that reduces the government's cost in proceeding with the case is likely to be welcome. The government will expect affected domestic private sector interests to provide relevant economic data and other evidentiary material that will substantiate the complaint. Assistance from qualified private sector counsel and experts in preparing and reviewing arguments and obtaining and reviewing evidence may have a bearing on whether the government proceeds with the case.

20 What notable trade barriers other than retaliatory measures does your country impose on imports?

Chile imposes strict sanitary and phytosanitary controls, mainly to protect Chilean agriculture. Chile maintains a price band system for wheat, wheat flour and sugar that, under several FTAs and following a WTO panel loss against Argentina, will be phased out for imports. Mixtures containing more than 65 per cent sugar content, such as high fructose corn syrup, are subject to the sugar price band system. The price band system guarantees a minimum and maximum import price for the affected products, adding a special tax to the tariff rate to raise the price to the minimum price. The government sets a minimum import price that is normally higher than both international and Chilean domestic prices. Since 2008, the minimum price has been adjusted downward by 2 per cent per year. The export or import process requires every company operating in the country to contract the services of a customs agent. The customs agent is the link between the exporter or importer and the National Customs Service. The customs agent's mission is to facilitate foreign trade operations and to act as the official representative of the exporter or importer in the country. Customs agents' fees are not standardised. This is an extra cost borne by non-Chilean companies operating in the country. However, companies established in any of the Chilean duty-free zones are exempt from the obligation to use a customs agent when importing or exporting goods.

Export controls

21 What general controls are imposed on exports?

The documentation required for exporting from Chile is the single export document (DUS), the bill of lading (or airway bill) and the commercial invoice (unless the export is not for commercial purposes and the value of the goods is less than US$2,000 free on board; or unless a pro forma is applicable).

Specific goods, such as food, fruit and minerals, have specific certifications and requirements related to weight.

Exports are not subject to duties or taxes.

22 Which authorities handle the controls?

The Customs Service is the main authority. Moreover, the customs agent (the equivalent to the customs broker) is an auxiliary of the authority, and therefore has some faculties to control.

Furthermore, there are goods that require a licence and their exportation is controlled by the following public agencies: the Agricultural

and Livestock Service (www.sag.cl), the Public Health Institute (www.ispch.cl) and the National Fisheries Service (www.sernapesca.cl).

Additionally, the Customs National Director, at the request of interested parties, may certify persons as authorised economic operators (AEOs) who may act in the foreign trade logistics chain in order to access the benefits related to the control and simplification of customs processes, according to their role in the chain. A regulation will establish the activities that can be considered for the referred certification.

In the case of import and export destinations, the Customs Authority may certify persons for the purpose of assisting in the determination of weight and moisture content, sample collection, preparation of representative samples, measurement, calibration, chemical analysis and others factors to be determined by resolution of the Customs National Director.

In both of the cases mentioned above, a regulation will establish the requirements and obligations of the people who access said certifications.

23 Are separate controls imposed on specific products? Is a licence required to export such products?

Weapons, related goods and 'dual-use' equipment are subject to a special regime controlled by the General Directorate for National Mobilisation. Anyone interested in exporting must be previously registered in a Registry of Exporters and exports shall be authorised by the General Directorate for National Mobilisation.

24 Has your jurisdiction implemented the WCO's SAFE Framework of Standards? Does it have an AEO programme or similar?

Chile is part of the WCO's SAFE Framework of Standards. An amendment to the Chilean Customs Ordinance that came into force in March 2017 incorporates the AEO programme into the Chilean legal system as a definitive measure, and Decree No. 1140 of the Ministry of Finance has regulated the programme in detail. The AEO programme will allow companies to prove that their processes are safe and that their controls and procedures guarantee compliance with customs regulations, leading to improvements in the efficiency of clearance processes, reduction of times, costs and losses in production, and predictability of the supply chain.

25 Where is information on countries subject to export controls listed?

There is no list of countries subject to export controls.

There is a list of countries considered as tax havens or harmful preferential tax regimes (www.leychile.cl/Navegar?idNorma=218210), but this is only for tax purposes.

26 Does your jurisdiction have a scheme restricting or banning exports to named persons and institutions abroad?

There are no restrictions or bans on exports based on the person or institution abroad.

27 What are the possible penalties for violation of export controls?

The export of banned products, tax evasion or exporting through illegally authorised facilities or not through the Customs Service are punishable under smuggling or fraud legislation. Sanctions will depend on the value of goods. If it is more than approximately US$1,650, sanctions range from one to five times the goods' value or from 60 days to three years of prison. If the value is less than approximately US$1,650, sanctions range from one to five times the goods' value.

There are other sanctions established for offences or infringements corresponding to penalties from approximately US$65 or a determined percentage of the imported goods' value.

Financial and other sanctions and trade embargoes

28 What government offices impose sanctions and embargoes?

There are no sanctions or embargoes in place, but the President of the Republic would be enabled to impose such measures.

29 What countries are currently the subject of sanctions or embargoes by your country?

There are no countries subject to sanctions or embargoes.

30 Are individuals or specific companies subject to financial sanctions?

There are no individuals or companies subject to financial sanctions.

Miscellaneous

31 Describe any trade remedy measures, import or export controls not covered above that are particular to your jurisdiction.

There are none.

Ignacio García **igarcia@porzio.cl**
Andrés Sotomayor **asotomayor@porzio.cl**

Cerro El Plomo 5680
Piso 19
Las Condes, Santiago
Chile

Tel: +56 2 27290 600
www.porzio.cl

China

Steven Yu
Hiways Law Firm

Overview

1 What is the main domestic legislation as regards trade remedies?

China introduced trade remedies into its legislative system in 1994, when its first Foreign Trade Law was announced. Along with that, China set out a series of interim regulations on anti-dumping, countervailing and safeguarding, and initiated investigations against imported products. As a commitment to joining the World Trade Organization (WTO), China amended its Foreign Trade Law (effective as of 1 July 2004) and rewrote a dozen regulations on anti-dumping, countervailing and safeguarding before or after its WTO accession at the end of 2001. In April 2018, the Ministry of Commerce (MOFCOM) published its newly approved Regulations for Anti-dumping and Countervailing Hearings, Rules for Anti-dumping Questionnaire Response, and Regulations on Interim Review on Anti-dumping and Margins. Most laws and regulations (in Chinese with English translation) are compiled by the government body and are accessible on MOFCOM's website at gpj.mofcom.gov.cn/article/bi/bj/bk/201204/20120408096549.shtml.

2 In general terms what is your country's attitude to international trade?

China is a great advocate of free trade, as it has benefited from foreign trade in the last few decades. As the world's second-largest economy, China has a positive attitude towards international trade. China's exports are vigorously supported by the government and China has developed a large part of its current manufacturing capability for this purpose.

Despite the Trump administration's unsupportive attitude towards free trade, China has taken substantial steps to prove that it is a significant supporter of global trade. In June 2018, China lowered its customs duty for certain vehicles and commodities, and it has announced enhanced protection for intellectual property.

As a member of the WTO, China has been in favour of or supporting free trade and views free trade agreements (FTAs) as platforms for further opening up to the outside world and speeding up domestic reforms, as an effective approach to integrate into the global economy and strengthen economic cooperation with other economies, and as a particularly important supplement to the multilateral trading system. At the time of writing, China has 16 FTAs in force, 11 under negotiation and 11 under consideration. A list of all of China's FTAs can be found at fta.mofcom.gov.cn.

China has made great efforts to comply with the WTO Agreement and is involved in several WTO trade disputes as a petitioner, defendant and intervening third party. Nevertheless, so far no ruling has been issued by the WTO Dispute Settlement Body (DSB) against China concerning the implementation of WTO decisions.

Trade defence investigations

3 Which authority or authorities conduct trade defence investigations and impose trade remedies in your jurisdiction?

MOFCOM is responsible for anti-dumping and countervailing duty investigations. In particular, the Trade Remedy and Investigation Bureau (TRB) (trb.mofcom.gov.cn) conducts investigations and proposes the final measures to take. For cases concerning agricultural products, the Ministry of Agriculture (english.agri.gov.cn) may also be involved. The imposition of remedial duties or any likewise definite measures on imports is determined by the Customs Tariff Commission of the State Council upon recommendation by MOFCOM, and enforced by the General Administration of Customs (GAC) (english.customs.gov.cn).

4 What is the procedure for domestic industry to start a trade remedies case in your jurisdiction? Can the regulator start an investigation ex officio?

Trade remedy proceedings are typically initiated based on a petition filed on behalf of the domestic industry. MOFCOM ex officio can also self-initiate an investigation, but this rarely happens.

The law requires that the petition shall be supported by those domestic producers whose collective output constitutes more than 50 per cent of the total production of the like product produced by that portion of the domestic industry expressing either support for or opposition to the application. Moreover, no investigation shall be initiated when the output of those domestic producers expressly supporting the application accounts for less than 25 per cent of total production of the like domestic product.

As required, a petition must include the following information:

- general information of the petitioner (name, address, etc);
- information about the product concerned;
- information about like products in the domestic market;
- the quantity and value of similar domestic products;
- how the imported product has affected the quantity and price of domestic products; and
- evidence of:
  - dumping or subsidies, or both;
  - injury to the domestic industry; and
  - a causal link between the two.

After receiving the petition, MOFCOM shall make a decision on whether the petition has been duly made with sufficient support from the domestic industry within 60 days. Ex officio investigations may be initiated if MOFCOM has sufficient evidence of:

- dumping or subsidies;
- injury to the domestic industry; and
- causation between the two.

5 What is the procedure for foreign exporters to defend a trade remedies case in your jurisdiction?

MOFCOM shall publish the decision to initiate an investigation and notify the applicants, any known exporters and importers, the governments of the exporting countries (regions) and other interested organisations and parties (hereinafter collectively referred to as 'the interested parties'). As soon as the decision to initiate an investigation is published, MOFCOM shall provide the full text of the application to the known exporters and the governments of the exporting countries (regions).

Any interested party, including foreign producers, intending to participate in the investigation must register with the TRB within 20 days after the publication date of the initiation notice through filling in and submitting the registration form as required by TRB. Foreign producers are required to submit the following information:

- general information about the company (company name, legal domicile, contact number, etc);
- power of attorney if the producer is being represented by counsel;
- information on exports of the product concerned; and
- information on any affiliated company that is involved in the production or sale of the product concerned.

A foreign producer who fails to register within the tight deadline may not be accepted to participate in the investigation and will quite possibly be subject to higher duty than cooperating producers. In the event that MOFCOM limits the number of respondents for individual examination, MOFCOM will select the respondents for individual examination through a sampling method. After the investigation is initiated, anti-dumping or countervailing duty questionnaires, or both, will be issued and any respondents will then have a 37-day deadline to respond, subject to a one to two-week extension upon request. The TRB often issues supplemental questionnaires when necessary. In addition, the TRB will conduct on-site verifications of questionnaire responses, before or after the preliminary determination (if any). Respondents may voluntarily submit additional information to the TRB for clarification, and may request a hearing or attend a hearing if granted.

China does not set a deadline for preliminary determinations. In most cases preliminary determinations are made within six to nine months after the start of the investigation. If the preliminary result is affirmative, MOFCOM will request importers to post a cash deposit for importation of the subject goods to GAC. Final determinations should be made within a year from the publication date of the initiation notice, which is extendable for six months. If the result of an investigation is affirmative, importers of the subject products will have to follow measures specified in the final determination. However, if the final result is negative, the cash deposit shall be refunded.

6 Are the WTO rules on trade remedies applied in national law?

China became a member of the WTO on 11 December 2001. The WTO Agreements are not Chinese law, under which international treaties do not automatically convert into domestic law. In compliance, China has promulgated and amended various laws and regulations to fulfil its WTO obligations. In instances where the WTO DSB has ruled that Chinese laws or practice have violated WTO provisions, China has been constantly seeking to change Chinese law or agency practice to bring it into conformity. China, as the main target in trade remedies by most trading partners (partially because it is labelled as a non-market economy), does not trade with other countries as non-market economies.

7 What is the appeal procedure for an unfavourable trade remedies decision? Is appeal available for all decisions? How likely is an appeal to succeed?

During a trade remedy investigation, interested parties may appeal unfavourable trade remedy decisions through administrative review and judicial review.

Administrative review
Interested parties may file for an administrative review against a MOFCOM decision within 60 days of becoming aware of the decision. MOFCOM (the Department of Treaty and Law, rather than the TRB) will review the case, and issue a review decision within 60 days upon acceptance of the review request, which is subject to a 30-day extension. MOFCOM may make a decision to sustain, repeal or amend its determination on the basis of the administrative review. If a party is not satisfied with the result of the review, it can either file judicial review (ie, administrative litigation, described below) or appeal to the State Council for a further review. The results of further review made by the State Council are final, and not subject to judicial review.

Judicial review
A party may choose to file a petition for judicial review with the Beijing Second Intermediate People's Court against a MOFCOM decision or MOFCOM review decision, each with a different deadline (90 or 15 days respectively), upon receipt of the decision. The court will review and make a decision within a prescribed deadline (within 90 days upon acceptance of the petition by law, but may be subject to extension), which is extendable pending the complexity of the case. If a party is not satisfied with the verdict of the lower court, it may appeal to the appellate court (Beijing Supreme Court) within 15 days. The final decision made by the appellate court (within 60 days upon acceptance of the petition by law, but may be subject to extension) is effectively binding and not subject to appeal.

8 How and when can an affected party seek a review of the duty or quota? What is the procedure and time frame for obtaining a refund of overcharged duties? Can interest be claimed?

Like many other countries, China has established several different types of reviews in its trade remedy regime.

Interim review
Foreign producers and exporters or domestic industry and importers may submit a request for interim review within 30 days as of the one-year anniversary of the final determination. The requesting party should provide a supportable explanation of the new circumstances that warrant a recalculation of the anti-dumping or countervailing margin. MOFCOM will review and decide whether to initiate such a review, and revise the margin if so demonstrated.

New shipper review
Foreign producers who are required to pay an anti-dumping duty but who did not export the products to China during the period of investigation (and, as such, could not participate in the investigation) may file for a new shipper review order to calculate their own anti-dumping margin. If the new shipper begins exporting after the period of investigation but before the final determination, it shall file the request within three months of the final determination. If the new shipper begins to export after the final determination, it shall file the request for review within three months of the actual export.

Sunset review
MOFCOM publishes a notice on its website about six months before the ending date of five years after any anti-dumping or countervailing duties are imposed. Upon that, any interested parties may submit comments to MOFCOM, request a hearing and likewise engage in such proceedings. If the dumping or subsidy will recur after revocation of the order, MOFCOM will determine to continue the measure and duties, or other measures will be extended by another five years.

Duty refunds
Regarding refunds of over-collected duties, parties may apply to MOFCOM for refunds. However, such request should be timely. In particular, (i) for imports after the investigation but before the final determination, the request shall be filed within three months after the final determination; and (ii) for imports after the final determination, it must be filed within three months of payment.

9 What are the practical strategies for complying with an anti-dumping/countervailing/safeguard duty or quota?

The general strategy for complying with an anti-dumping duty, a countervailing or safeguard duty or quota is to seek review of the existing duty or quota. However, in China, anti-dumping or countervailing duty orders are in fact very unlikely to be amended or cancelled through reviews.

Customs duties

10 Where are normal customs duty rates for your jurisdiction listed? Is there an exemption for low-value shipments? If so, at what level? Is there a binding tariff information system or similar in place? Are there prior notification requirements for imports?

There is an import and export tariff inquiry system on the GAC official website (www.customs.gov.cn/publish/portal0/tab67735/). Normal customs duty rates, most-favoured nation (MFN) rates and relevant requirements for imports are listed there.

As for the low-value exemption level, a regulation of 8 April 2016 provides that one cross-border e-commerce retail transaction with a value below 2,000 yuan may be exempted from custom duty, and the annual exempted value for one customer shall be limited to 20,000 yuan. For more details, please refer to gss.mof.gov.cn/zhengwuxinxi/zhengcefabu/201603/t20160324_1922968.html.

11 Where are special tariff rates, such as under free trade agreements or preferential tariffs, and countries that are given preference listed?

China's current implementation of the import tariff rates are MFN rates, the agreement tariff rate, the preferential tariff rate and the general tariff rate. Preferential tariff rates and general tariff legislation are listed within the Customs Tariff. In GAC Announcement No. 65 2017, GAC publishes special tariff rates and lists of countries and regions, which is available at www.customs.gov.cn/customs/302249/302266/302267/799770/index.html.

12 How can GSP treatment for a product be obtained or removed?

There is no formal GSP in China. However, the Chinese government grants preferential treatment to some least-developed countries that have good diplomatic relations with China. Ninety-five per cent of imported goods are within the scope of the preferential treatment. China imposes zero tariff on 97 per cent of imported goods from the least-developed countries, including Gambia, Sao Tome and Principe, the Comorian Union, Mauritania, Togo, Liberia, Niger, Rwanda, Angola, Zambia and Nepal. For a full list of such goods, refer to http://gss.mof.gov.cn/zhengwuxinxi/zhengcefabu/201612/t20161223_2498029.html.

13 Is there a duty suspension regime in place? How can duty suspension be obtained?

According to Chinese law, duty suspension may be granted by GAC to the following merchandise:

- goods displayed or used in exhibitions, trade fairs, meetings or other similar activities;
- articles for performances or competitions in cultural or sports exchange activities;
- devices, equipment or articles used in news reporting, or the shooting of films or television programmes;
- devices, equipment or articles used in scientific research, education or medical activities;
- transportation and special types of vehicles used in activities listed above;
- samples of goods;
- instruments and tools used in installation, debugging and testing equipment;
- containers for holding goods; and
- other goods not used for commercial purposes.

To qualify for duty suspension, goods are required to meet the following criteria:

- being re-exported within six months of importing into China (or filing an extension at least 30 days prior to the original deadline);
- a security deposit paid by the importer; and
- approval by GAC.

14 Where can customs decisions be challenged in your jurisdiction? What are the procedures?

Customs decisions can be challenged by administrative reconsideration or administrative litigation in China. Interested parties may submit a petition for administrative reconsideration within 60 days of learning that the customs action was taken, file a lawsuit within 15 days of receipt of the written administrative reconsideration decision, or file a complaint within six months from the date that they learned that the customs action was taken. The time periods described in question 7 shall apply.

For more details of GAC administrative reconsideration, refer to www.customs.gov.cn/publish/portal0/tab514/info83560.htm.

Trade barriers

15 What government office handles complaints from domestic exporters against foreign trade barriers at the WTO or under other agreements?

Complaints from domestic exporters about foreign trade barriers and other issues concerned are handled by the TRB under MOFCOM. Dispute settlement under the WTO DSB framework or other bilateral or multilateral agreements is handled by the Department of Treaty and Law of MOFCOM (see tfs.mofcom.gov.cn).

16 What is the procedure for filing a complaint against a foreign trade barrier?

A complaint against a foreign trade barrier may be filed by an interested party or may be self-initiated by MOFCOM. Petitions on behalf of the domestic industry must be presented to MOFCOM in writing, by natural or legal persons or organisations representing the domestic industry. MOFCOM must decide within 60 days of the date of receipt of a petition whether there are valid grounds to initiate an investigation.

The information to be included in the petition differs according to the trade barrier concerned in each case. Generally, basic information about the petitioner and the domestic industry of the products or services affected and evidence of negative effects are required.

17 What will the authority consider when deciding whether to begin an investigation?

After receiving a petition and the relevant materials (see question 16), MOFCOM will review all the information contained in the petition through questionnaires and on-site verifications as necessary. If the information and evidence provided by the petition are accurate and sufficient, then MOFCOM will initiate an investigation.

18 What measures outside the WTO may the authority unilaterally take against a foreign trade barrier?

China only takes measures against a foreign trade barrier within the framework of the WTO or under other bilateral and multilateral agreements, and holds bilateral consultations with the government of the importing country to solve the trade barrier. In April 2018, the Customs Tariff Commission of the State Council of China announced the cessation of a tariff concession and imposed a tariff of 15 per cent on 120 items of products including fruits from the US and a tariff of 25 per cent on eight items, including pork, from the US, in response to the new US tariffs on steel and aluminium, as a result of 232 investigations, which took effect on 8 March.

19 What support does the government expect from the private sector to bring a WTO case?

The government expects no financial support from the private sector in bringing a WTO case. However, when bringing a case to the WTO, relevant domestic enterprises, industries, organisations or legal persons are expected to cooperate and provide necessary trade data and information in order to support the case.

20 What notable trade barriers other than retaliatory measures does your country impose on imports?

Import prohibitions, restrictions and non-automatic licensing are maintained in China to safeguard national security, public morality, human, animal and plant health, and the environment and exhaustible natural resources; to comply with China's obligations under international agreements; and for balance of payments reasons. There is an import licensing regime, under which there are three types of licences:

- automatic licences, which are in place to monitor trade volumes of imports that are not restricted, for statistical purposes. Goods subject to automatic import licensing are listed in the Catalogue of Goods subject to Automatic Licensing (see www.mofcom.gov.cn/article/b/c/201712/20171202690183.shtml);
- non-automatic licences. Certain products (such as key old mechanical and electrical products and ozonosphere-consuming products) require import licences in China (see www.mofcom.gov.cn/article/b/c/201801/20180102693327.shtml); and
- tariff-rate quota certificates. Only eight types of products are restricted by the tariff-rate quota, which are listed in the Catalogue of Goods subject to Tariff-rate Quota (see http://gss.mof.gov.cn/zhengwuxinxi/zhengcefabu/201712/P020171215531850286810.pdf).

Export controls

21 What general controls are imposed on exports?

In July 2017, MOFCOM published the draft of the Export Control Law of People's Republic of China to collect suggestions from society. There are some trends indicated in this draft: reunification of the

previous related export control systems; clarifying the authority of the competent authorities and the authority of law enforcement; and increasing the punishments for violation of the law. However, the final version is still unpublished.

Under the current regime, the Registration Regulation of Foreign Trade Operators, which took effect on 1 July 2014, enterprises that are willing to export shall register themselves with the administrative offices. However, such registration is mainly for statistical purposes, and does not impose limitations or controls on exports.

Meanwhile, pursuant to Article 16 of the Foreign Trade Law, the Chinese authorities are allowed to restrict or forbid relevant imports or exports based on the following purposes:

- state security, social welfare or public morality;
- protection of human health or security, the life or health of any animal or plant, or the environment;
- the import or export administration of gold or silver;
- conserving exhaustible natural resources that are in short supply or subject to effective protection;
- limited market capacity of the destination country or region;
- occurrence of severe disorder in export activities; and
- other circumstances as provided for in those international treaties or agreements to which China has acceded.

Article 17 of the same law authorises the Chinese government to take necessary measures regarding fissile material or any materials used in the production thereof, as well as other military supplies such as weapons and ammunitions. China may take any necessary measures relating to export activities in wartime or for the purpose of maintaining worldwide peace and safety.

22 Which authorities handle the controls?

Multiple authorities are equipped to exercise export control when necessary.

For restricted goods, MOFCOM, specifically the Bureau of Industry, Security and Export Control (BJSEC), the Quota & Licence Administrative Bureau (QLAB) of MOFCOM, and the National Development and Reform Commission (en.ndrc.gov.cn) are in charge of determining the quantity of export limitation, and GAC shall enforce the restriction on export of these goods.

For forbidden goods, MOFCOM and GAC take charge of surveillance.

Additionally, the State Council (english.gov.cn) and the Ministry of National Defence (eng.mod.gov.cn) oversee the export of military materials; and the China Atomic Energy Authority (www.caea.gov.cn/n360680/index.html) is responsible for the restrictions on nuclear materials and related items.

23 Are separate controls imposed on specific products? Is a licence required to export such products?

MOFCOM and GAC have recently revised the Managing List of Dual-Use Items and Technologies Importing and Exporting Approval, which came into effect on 1 January 2018.

Other regulations setting controls on specific products are listed as follows:

Regulation	Issuing body	Products regulated	Licence required?
Nuclear Export Controlling Regulation	State Council	Nuclear material, equipment, items used for nuclear reactors, and relevant technologies	Yes
Dual-use Nuclear Product and Relevant Technologies Export Controlling Regulation	State Council	Dual-use Nuclear Equipment and Related Technologies (Listed by MOFCOM and China Atomic Energy Authority)	Yes
Dual-Use Biological Products and Related Equipment and Technologies Export Controlling Regulation	State Council	Dual-Use Biological Products and Related Equipment and Technologies (Listed by MOFCOM)	Yes

Update and trends

China, though slowing down compared with some years ago, is still a key element in world trade and economic growth. On the other hand, China is encountering a more complex international and domestic environment. The uncertainty of Brexit and the unpredictability of the Trump administration have brought challenges to China while it explores international markets more aggressively, such as taking the Belt and Road Initiative. In domestic markets China is undergoing an uneasy change from an export and investment-driven economy to a consumption-oriented one. A housing price bubble is seen everywhere, from big cities such as Shanghai and Beijing to some third or even forth-tier cities.

On 11 December 2016 China marked the 15th anniversary of its accession to the WTO. However, the United States, the EU and other countries have refused to recognise China's market economy status and continue to calculate a dumping margin for Chinese products using a non-market economy approach. China requested consultations with the United States and EU respectively one day after the deadline, which has triggered a legal battle with its key trading partners.

MOFCOM is working to improve its trade remedy and other trade and customs regime. In April 2018, MOFCOM published its newly approved Regulations for Anti-dumping and Countervailing Hearings, Rules for Anti-dumping Questionnaire Response, and Regulations on Interim Review on Anti-dumping and Margins.

We are hopeful of a better performance for the Chinese economy, and of a fairer, more transparent and internationally engaging trade regime in China.

Regulation	Issuing body	Products regulated	Licence required?
Guided Missiles and Related Items and Technologies Export Controlling Regulation	State Council	Guided Missiles and Related Items and Technologies (Listed by The State Council)	Yes
Chemical Products and Related Equipment and Technologies Export Controlling Regulation	State Council	Chemical Products and Related Equipment and Technologies (Listed by MOFCOM and GAC)	Yes

24 Has your jurisdiction implemented the WCO's SAFE Framework of Standards? Does it have an AEO programme or similar?

China signed the letter of intent regarding the SAFE Standards in 2005, and has since then been dedicated to enforcement of the WCO's SAFE Framework of Standards.

Pursuant to Order No. 237 of GAC, the Regulation on PRC Custom Enterprise Credit Management took effect on 1 May 2018; meanwhile, the interim regulation pursuant to Order No. 225 of GAC was officially revoked.

25 Where is information on countries subject to export controls listed?

No general list is available of the countries subject to export control by China.

MOFCOM, as well as other governmental agencies, may issue regulations (or orders) on export restriction or controls on some specific country to implement a UN sanctions resolution. Generally, the regulations (or orders) can be found on the websites of MOFCOM and GAC.

26 Does your jurisdiction have a scheme restricting or banning exports to named persons and institutions abroad?

China has no restrictions on exports to named persons and institutions.

27 What are the possible penalties for violation of export controls?

Pursuant to article 82 of the revised Customs Law effected on 5 November 2017, transporting, carrying and posting goods and items whose import or export are forbidden or restricted to shall be deemed as a smuggling activity. For those activities that are not subject to criminal penalty, GAC may confiscate the goods, items and unjustified income, and confiscate or destroy the instruments used for smuggling.

For smuggling that does not constitute a crime, GAC shall confiscate the smuggled goods, articles and illegal gains and a fine may be imposed; smuggling that constitutes a crime would be subject to criminal penalties under the Criminal Law.

Pursuant to article 46 of the Regulations on Technology Import and Export Administration of the PRC, which took effect on 1 January 2012, where a technology whose import and export are prohibited or restricted is imported or exported without approval, the person concerned shall be prosecuted for criminal liability according to the provisions for the crimes of smuggling, illegal business operation or divulging national secrets or other crimes under the Criminal Law. Where such imports or exports are not so serious as to be prosecuted for criminal liability, a penalty shall be imposed according to the circumstances pursuant to the relevant provisions of the Customs Law, or the competent foreign trade department under the State Council may issue a warning, confiscate illegal income or impose a fine of from one to five times the illegal income. The competent foreign trade department under the State Council may revoke the foreign trade business licence.

According to article 151 of the Criminal Law, smuggling of prohibited products would be punished with fixed-term imprisonment of not more than five years or criminal detention, and fined separately or together; if the circumstances are serious, the sentence would be fixed-term imprisonment for more than five years and a fine.

Financial and other sanctions and trade embargoes

28 What government offices impose sanctions and embargoes?

Economic sanctions or trade embargoes (in compliance with the UN's sanction resolution) are administered by several Chinese governmental agencies, including:

- MOFCOM (http://english.mofcom.gov.cn);
- BJSEC (http://cys.mofcom.gov.cn/);
- QLAB (www.licence.org.cn/);
- GAC (english.customs.gov.cn);
- the Ministry of Industry and Information Technology of the PRC (www.miit.gov.cn);
- the State Administration of Science, Technology and Industry for National Defence (www.sastind.gov.cn); and
- the China Atomic Energy Authority (www.caea.gov.cn/n6443414/index.html).

29 What countries are currently the subject of sanctions or embargoes by your country?

In compliance with the UN's resolution, the Chinese government has implemented several embargoes against North Korea, pursuant to several notices and lists made by MOFCOM, GAC, the Department of Information and Industrialisation and the China Atomic Energy Authority. The items subject to the embargo include iron ores, coals, military weapons, and some dual-use materials and technologies. For example, on 8 April 2018, MOFCOM and GAC issued a forbidden notice on the export of certain dual-use items, technologies and conventional weapons related to weapons of mass destruction and their means of delivery to North Korea according to UN Resolution No. 2375 (see http://cys.mofcom.gov.cn/article/zcgz/201804/20180402729387.shtml).

30 Are individuals or specific companies subject to financial sanctions?

No individuals or specific companies are subject to financial sanctions from China.

Miscellaneous

31 Describe any trade remedy measures, import or export controls not covered above that are particular to your jurisdiction.

All trade remedy measures and import and export controls are detailed as above.

HIWAYS® LAW FIRM 海华永泰律师事务所

Steven Yu **yushengxing@hiwayslaw.com**

69 Dongfang Road
Tower A, 15th Floor
Eton Place
Pudong
Shanghai 200120
China

Tel: +86 21 5877 3177
Fax: +86 21 5877 3268
www.hiwayslaw.com

Colombia

Olga Lucía Salamanca, Luis Ricardo López, Yenny Palacios and Julián Serrano
Araújo Ibarra International Trade Consultants

Overview

1 What is the main domestic legislation as regards trade remedies?

The main Colombian trade remedies laws and regulations are:

- Law 07/199 – General Law of Foreign Trade, which provides protective measures against unfair practices in favour of domestic production. This sets the requirements, procedures and criteria for the imposition of duties;
- Law 170/1994, which promulgates the Final Act of the Uruguay Round and incorporates the results of the Multilateral Trade Negotiations of the General Agreement on Tariffs and Trade;
- Decree 1750/2015, which details the administrative procedures of the investigation and application of anti-dumping measures;
- Decree 299/1995, which details the administrative procedures of the investigation and application of countervailing measures;
- Decree 152/1998, which details the administrative procedures of the investigation and application of safeguard measures;
- Decree 1407/1998, which details the administrative procedures of the investigation and application of safeguard measures with those countries where no free trade agreements (FTAs) have been established;
- Decree 1820/2010, which details the administrative procedures of the investigation and application of bilateral safeguards;
- Decision 456/1999, which details the administrative procedures of the investigation and application of anti-dumping measures within the framework of the Andean Community of Nations (CAN);
- Decision 457/1999, which details the administrative procedures of the investigation and application of countervailing measures within the framework of the CAN; and
- Decision 452/1999, which details the administrative procedures of the investigation and application of safeguard measures within the framework of the CAN.

Colombian trade remedies legislation may be accessed on the Ministry of Commerce, Industry and Tourism (MCIT) website at www.mincit.gov.co/mincomercioexterior/publicaciones/39163/defensa_comercial.

2 In general terms what is your country's attitude to international trade?

Colombia's trade policy has been continuously oriented towards a further opening to other nations by seeking closer integration with countries in the region and also with the rest of the world through the negotiation of preferential agreements in order to increase foreign trade and investment flow. In this regard, Colombia has taken part in various negotiations to strengthen existing bilateral and regional agreements, and has signed and negotiated new agreements to ensure preferential access to strategic markets. The latter does not disregard the particular importance granted to Colombia's participation in the WTO within its trade policy strategy. Therefore, for Colombia, maintaining an open trade regime within a transparent multilateral system, complemented by regional and bilateral efforts, is of great importance.

Colombia has a fundamentally open trade regime with average tariffs that have been decreasing throughout the years. Although its general orientation has been guided towards greater openness and reduction of international trade barriers, some non-tariff restrictions still persist, mainly related to technical requirements and sanitary and phytosanitary (SPS) measures. The country's trade regime also shows certain complexities due to the amount of existing legal regulation.

Trade defence investigations

3 Which authority or authorities conduct trade defence investigations and impose trade remedies in your jurisdiction?

The MCIT, and specifically the Directorate of Foreign Trade through the Subdirectorate of Commercial Practices (SPC), is in charge of investigating the existence of unfair trade practices and injuries to the domestic industry, as well as determining and imposing the corresponding remedies, such as safeguard measures and anti-dumping and countervailing duties.

The Directorate of National Taxes and Customs (DIAN) is in charge of the collection of the applicable anti-dumping and countervailing duties.

For more information see http://www.mincit.gov.co/mincomercioexterior/loader.php?lServicio=Publicaciones&id=39163.

4 What is the procedure for domestic industry to start a trade remedies case in your jurisdiction? Can the regulator start an investigation ex officio?

To initiate dumping, countervailing or safeguard investigations, the interested party must request it on behalf of the affected domestic industry. It is necessary for the request to be supported by producers of a similar product or like product who represent more than 50 per cent of the affected domestic industry.

The affected domestic industry in whose name the request is submitted should be identified by means of a list containing all known domestic producers or the producer associations of the similar product. A description of the volume and value of the like product's domestic production must also be submitted.

Some substantive conditions must be certified to justify or support the implementation of measures of a nature that will require the collection and consolidation of sensitive information from the petitioners, as is the case when demonstrating the similarity or competitive relation between the domestic product and the imported product.

In general, most of the documents and information are of an economic and countable nature, and thus must be duly analysed and prepared in order to reflect legal concepts regarding unfair practices, injury and threat of material injury.

It should also be noted that a considerable amount of this information and documentation may be confidential.

Once the request is formally filed, the SPC will proceed as follows:

- merit assessment to open the investigation: the Directorate of Foreign Trade, through the SPC, will have a period of 20 business days, counted from the day following the date of submission of the request, to make this assessment. If the investigating authority finds it necessary to request missing information for this assessment, such information will be requested from the petitioner. This requirement will interrupt the 20-day period, which will start again when the petitioner duly provides the requested information. This period may only be extended once for up to 10 additional days. If, when assessing the request, the investigating authority deems

there is merit in opening the investigation, it must do so by means of a resolution published in the Official Journal;
- preliminary determination: through a reasoned decision, the investigating authority will decide on the preliminary results of the investigation and, if necessary, order the imposition of provisional duties. The investigating authority has two months, counted from the day following the publication date of the opening resolution, for this stage of the investigation. This period may be extended ex officio or at the request of an interested party by up to 20 days;
- final report presentation: within a period of three months, counted from the day following the publication date of the preliminary determination, the SPC will summon the Trade Practices Committee to present the final results of the investigation and to provide its opinion of the matter. This period may be extended by up to 15 days when special circumstances justify it.
- essential facts: three days after the Trade Practices Committee provides its opinion on the results of the investigation, the SPC will send a document to the interested parties relating the essential facts on which the decision to impose or not impose definitive measures is based. The parties have 10 days to express their comments to the investigating authority. On the other hand, the investigating authority has 10 days to submit these comments to the Trade Practices Committee in order for it to assess them and present a final recommendation to the Directorate of Foreign Trade for it to impose or not definitive duties; and
- investigation conclusion: the Directorate of Foreign Trade will decide on the matter through a reasoned resolution within 10 days following the recommendation submitted by the Trade Practices Committee. This resolution will be published in the Official Journal.

During these kinds of proceedings, the following administrative procedures are carried out:
- evidence: the investigating authority will examine, ex officio or at the request of an interested party, the evidence that is considered necessary. The period to examine evidence expires after one month following the publication date of the preliminary determination. Without limiting the foregoing, the investigating authority may accept ex officio evidence from the beginning of the investigation to the final recommendation of the Trade Practices Committee;
- arguments: interested parties have the opportunity, within 15 days after the expiration of the period, to examine evidence, to present their arguments or opinions regarding the investigation and to contest provided and accepted evidence; and
- hearings: within 10 days following the publication date of the preliminary determination, interested parties to the investigation may request a hearing to present and refute arguments. This hearing will be conducted within 15 days from the day it is convened.

Unlike anti-dumping and countervailing, in the case of safeguards, the authority must issue a compliance receipt within five business days from the day following the filing of the request and must check whether it complies with all requirements established in legal regulations. Next, it will proceed to assess the case's merit for the opening of the investigation.

The authority in charge of providing a concept on the relevance of the imposition of a safeguard measure is the Customs, Tariffs, and Foreign Trade Committee. Subsequently, the Superior Council of Foreign Trade finally decides whether or not to impose the measure.

Duration of the measures

Anti-dumping and countervailing duties cannot exceed five years, which are counted from the resolution's date of publication in the Official Journal. Anti-dumping duties may be less than the dumping margin if a lower amount is sufficient to eliminate the inflicted injury on the affected domestic industry.

Safeguard measures shall only be imposed for the period that is necessary to prevent or remedy the inflicted injury or the serious threat of it and facilitate a readjustment of the affected domestic industry. This period shall not exceed four years, including the time during which a provisional measure was in effect.

Ex officio initiation of the investigation by the Directorate of Foreign Trade will only take place in exceptional cases when special circumstances justify it. In practice, ex officio initiation is very rare.

5 What is the procedure for foreign exporters to defend a trade remedies case in your jurisdiction?

Within five business days after the publication date of the resolution opening the investigation, a copy of the same and the questionnaires are sent to interested parties and to diplomatic or consular representatives of the country or countries of origin or where the export origins from. Other interested parties are summoned during the same period by published notice in the Official Journal, for them to express their opinions or to request the examination of relevant evidence.

Finally, within the period mentioned above, the investigating authority will make available to foreign producers, exporters, authorities of the exporting country and other interested parties that request it the text of the submitted request, taking into account reservation of confidential information.

Exporters may take part as an interested party in all stages throughout the process, as explained previously.

6 Are the WTO rules on trade remedies applied in national law?

Colombia has been a member of the WTO since 1995.

WTO rules on trade remedies are applied in domestic law. Colombian trade remedy legislation references WTO legislation and makes it applicable in the cases and under the conditions established in such domestic legislation.

Additionally, WTO legal provisions are considered 'international treaties' and thus are considered hierarchically superior to domestic law.

Colombia has not recognised China as a market economy and uses the concept of 'Meaningful State Intervention', as established in 2017.

7 What is the appeal procedure for an unfavourable trade remedies decision? Is appeal available for all decisions? How likely is an appeal to succeed?

There is no appeal against a decision imposing unfavourable measures by the Directorate of Foreign Trade of the MCIT. An appeal can be made before the administrative courts, filing for the restoration of rights and nullity action.

The interested party has a period of four months, counted from the decision's notification, to present the claim. The judicial decision is impartial and will depend on what has been examined and proven in the process.

However, the Directorate of Foreign Trade has the power to revoke the adopted decision before the claim is admitted in court if, ex officio or at the request of a party, it is demonstrated that its decision is demonstrably against the constitution or the law, or it causes an unjustified grievance to a person and is contrary to the public or social interest.

The success rate of revocation processes and their claims before the courts is low.

8 How and when can an affected party seek a review of the duty or quota? What is the procedure and time frame for obtaining a refund of overcharged duties? Can interest be claimed?

The SPC is in charge of reviewing, ex officio or at the request of an interested party, duties or quotas, provided that at least one year has elapsed since their imposition. A review process may be initiated in order to determine whether there have been changes in the circumstances leading to its imposition.

This process shall be conducted when a producer or exporter that is subject to a definitive duty reduces the export price in a way that annuls the imposed corrective duty.

In any case, the interested party requesting the review must prove whether there has been a change in the circumstances that justifies its request.

However, the authority may also initiate a review ex officio, no later than two months before the fifth year of the imposition of a definitive duty, or at the request of the affected domestic industry at least four months before the expiration of the definitive duty.

In cases where provisional duties are imposed, importers may, upon submitting their import declaration, opt to cancel the duties or provide a guarantee before DIAN to secure their payment.

There will be a refund of paid provisional duties, cancellation or reduced charge of the provided guarantee for such purposes, when the definitive duties are lower than the provisional duties that have been effectively paid or guaranteed in an amount equivalent to the difference

between them. If definitive duties are not imposed, the cancellation and return of the guarantee or of the total paid amount as provisional duties will be ordered. There is no clear procedure on such reimbursement of provisional duties.

9 What are the practical strategies for complying with an anti-dumping/countervailing/safeguard duty or quota?

In Colombia, no reviews or refunds are provided for in legal regulation.

There have been cases where domestic manufacturers have promoted circumvention proceedings against jurisdictions used as alternative suppliers of goods subject to dumping duties. Likewise, they have requested authorities to verify the origin and customs value of these kinds of goods imported into the country.

Customs duties

10 Where are normal customs duty rates for your jurisdiction listed? Is there an exemption for low-value shipments? If so, at what level? Is there a binding tariff information system or similar in place? Are there prior notification requirements for imports?

Custom duty rates upon import and export of goods are set forth within the executive decree that contains the Colombian Harmonised Tariff Schedule. If the shipments are equal to or less than US$200, they are exempt from customs duties.

The rates were set by Decree 2153/2016, which can be consulted on the website at https://importacionescarga.dian.gov.co/WebArancel/DefMenuConsultas.faces

There is an obligation to submit an Anticipated Import Declaration for some products deemed sensitive, such as garments, footwear, steel and aluminium.

11 Where are special tariff rates, such as under free trade agreements or preferential tariffs, and countries that are given preference listed?

Special tariff rates and countries that may be given preference can be accessed through the DIAN website: https://muisca.dian.gov.co/WebArancel/DefMenuConsultas.faces.

A list of trade agreements subscribed to by Colombia can be consulted at www.tlc.gov.co.

12 How can GSP treatment for a product be obtained or removed?

There is no generalised system of preferences. Preferential treatment is granted based on the product and its origin, following trade agreements to which Colombia is a party.

13 Is there a duty suspension regime in place? How can duty suspension be obtained?

There is a duty suspension regime in place called Temporal Import for Re-Exportation in Current State, which is applied to capital goods, merchandise destined for sport events, for technical tests, for participation in fairs and exhibits etc.

These imports are authorised for six months, which can be extended for six additional months. They are guaranteed through an insurance policy of 150 per cent of import duties.

There are also mechanisms such as free trade zones, which are geographically enclosed extra-territorial areas for import–export duties. While those foreign goods stay in the free trade zones, import duties are suspended. Such duties will only be generated when they exit the free zone into the rest of the country.

Other systems are applied, such as the Special Import–Export System, which allows the importation of raw materials with the respective import duties suspended as long as all of these materials are used to produce exportable goods. This mechanism is authorised and managed by the MCIT, which grants a number of annual import quotas to producers and exporters.

14 Where can customs decisions be challenged in your jurisdiction? What are the procedures?

There is an array of legal remedies that can be presented to different Customs Authority units besides that which adopts the initial decision. This is what is called the 'administrative route'. Generally, the challenge is filed within 15 days after the initial decision is notified.

The final decision of the Customs Authority can be contested before the contentious administrative jurisdiction. Generally, the interested party has four months to present the claim. Depending on the case's magnitude, the judicial decision can also be appealed, being in the last judicial instance the Council of State.

Update and trends

Current emerging trends in trade and customs law include the inclusion and application of risk management systems to focus control activities on high-risk goods and businesses or persons. On the other hand, the same system provides for faster proceedings and permits for low-risk goods.

For the same purpose, new institutions have been introduced, such as the AEO, trusted users and risk qualification for logistic and supply brokers.

Currently, Colombia has not used its negotiated and ratified trade agreements to their full extent. Regarding its relationship with Asia, the country has negotiated and ratified an FTA with South Korea which was signed on 21 February 2013; in 2014, negotiations started for an agreement with Japan.

On 6 June 2012 the Pacific Alliance agreement was signed between Mexico, Colombia, Chile and Peru. This alliance is considered as a swivel mechanism for political and economic integration and cooperation in order to promote higher growth and competitiveness within the four economies comprising the alliance.

Likewise, the Pacific Alliance was born from a clear intention to consolidate trade relations with the Asia-Pacific region. Without a doubt, this agreement will allow Colombia to engage in these markets through global value chains.

Colombia is the only Pacific Alliance member that is not a part of the TPP.

Although there are dynamic trade relations with the UK, this country is not considered to be a main trading partner. Nonetheless, Colombia holds an FTA with the EU that, following the UK's exit from it, should be reconsidered in order to maintain current preferences.

Trade barriers

15 What government office handles complaints from domestic exporters against foreign trade barriers at the WTO or under other agreements?

The Permanent Mission representing the Colombian government at the WTO and the MCIT: www.mincit.gov.co/mincomercioexterior/loader.php?lServicio=Publicaciones&id=15660.

16 What is the procedure for filing a complaint against a foreign trade barrier?

There is no formal investigation process for such complaints.

17 What will the authority consider when deciding whether to begin an investigation?

The authority addressing a complaint will likely take into consideration the complaint's merits and the evidence presented to support it, the interest of other Colombian importers or exporters, the broader political relationship between Colombia and the country or territory in question, and the available remedies to address the barrier.

18 What measures outside the WTO may the authority unilaterally take against a foreign trade barrier?

Colombia, as a member of the WTO, is obliged to followed its dispute settlement procedure in order to impose any global measure against trade barriers. However, the government is entitled to determine and impose certain measures in the event that international trade causes harm to any sector of the Colombian economy.

19 What support does the government expect from the private sector to bring a WTO case?

In principle, the private sector may not provide support for the specific cost of a WTO case. However, the government will expect domestic

private sector interest in providing relevant economic data and other evidentiary material that will support the complaint.

20 What notable trade barriers other than retaliatory measures does your country impose on imports?

As a general rule, all goods are authorised to be freely imported. Some of them require registration or approval at the time of importation for SPS reasons. Exceptionally, some goods require prior licensing, such as used goods or goods that are used in the production of narcotics. It is not mandatory for the goods to be deposited in a warehouse prior to carrying out the import process, but importers can pursue this deposit if they wish while they obtain all the documents for importation.

Export controls

21 What general controls are imposed on exports?

As a general rule, exports are not subject to tax payments except for gold, emeralds and coffee. Goods are exported through Export Declarations. Prior approvals must be requested when dealing with food, medicines, cosmetics and live animals for SPS reasons. For all other goods, the invoice, commercial supporting documents and transportation documents are required.

22 Which authorities handle the controls?

DIAN authorises and controls exports of goods from Colombia. Other authorities (eg, the National Food and Drug Surveillance Institute, the Colombian Agricultural Institute and ministries) may intervene in controls when the product requires a prior approval for export: www.invima.gov.co/index.php; www.ica.gov.co.

23 Are separate controls imposed on specific products? Is a licence required to export such products?

In Colombia, there are strict regulations and controls for the imports and exports of weapons, munitions, explosives and dual-use goods. This special legal regime is controlled by the Ministry of Defence and the Colombian Military Industry. Dual-use goods are also included within this regime.

Additionally, Colombia imposes export restrictions on wild animals, and goods that are considered of cultural heritage (unless they are destined for exhibitions, in which case a permit from the Culture Ministry is required).

24 Has your jurisdiction implemented the WCO's SAFE Framework of Standards? Does it have an AEO programme or similar?

Colombia is part of the WCO SAFE Standards Framework. An Executive Decree that came into effect in September 2011 incorporates the figure of the AEO into the Colombian legal system. Initially, AEOs were only allowed for exporters, but in 2017 they were also extended to importers.

Currently, Colombian Customs are preparing new regulations for other actors also to be considered AEOs (eg, ports, carriers and customs brokers).

25 Where is information on countries subject to export controls listed?

There is no list of countries subject to export controls.

There is a list of countries considered as tax havens or harmful preferential tax regimes, but only regarding tax purposes (www.minhacienda.gov.co/HomeMinhacienda; Unique Regulatory Decree 1625/16).

26 Does your jurisdiction have a scheme restricting or banning exports to named persons and institutions abroad?

There are no restrictions or bans on exports to persons or institutions abroad.

27 What are the possible penalties for violation of export controls?

Violations of export controls are generally penalised through the imposition of fines. If exports are used to smuggle merchandise, there will be additional criminal penalties and merchandise confiscation.

Financial and other sanctions and trade embargoes

28 What government offices impose sanctions and embargoes?

DIAN is the legally authorised entity to impose sanctions and confiscate merchandise regarding the import and export of goods.

29 What countries are currently the subject of sanctions or embargoes by your country?

There are no countries subject to sanctions or embargoes.

30 Are individuals or specific companies subject to financial sanctions?

There are no individuals or specific companies subject to financial sanctions.

Miscellaneous

31 Describe any trade remedy measures, import or export controls not covered above that are particular to your jurisdiction.

Not applicable.

ARAÚJO IBARRA
INTERNATIONAL TRADE CONSULTANTS

Olga Lucía Salamanca **osalamanca@araujoibarra.com**
Luis Ricardo López **llopez@araujoibarra.com**
Yenny Palacios **ypalacios@araujoibarra.com**
Julián Serrano **jserrano@araujoibarra.com**

Calle 98 # 22 – 64
Of. 910
Bogotá
Colombia

Tel: +57 651 1511
Fax: +57 623 4160
www.araujoibarra.com

Ecuador

Francisco A Gottifredi and Fabian T Pozo
Gottifredi Pozo Law Firm

Overview

1 What is the main domestic legislation as regards trade remedies?

In Ecuador, the main domestic legislation on trade remedies and international trade is the Organic Code for Production, Trade and Investment, enacted in 2010 (www.proecuador.gob.ec/pubs/organic-code-of-production-trade-and-investment/).

This Code includes a specific chapter on international trade (Book IV) that includes trade remedies, specific regulations and procedures. Executive Decree 733 contains the 'Regulations to Implement Book IV of the Organic Code of Production, Trade and Investment, Regarding Trade Policy, its Supervisory Bodies and Instruments' (Decree 733) (inversion.produccion.gob.ec/wp-content/uploads/2016/04/3.-Reglamento-del-Codigo-Organico-de-la-Produccion-Comercio-e-Inversiones-COPCI.pdf).

2 In general terms what is your country's attitude to international trade?

Ecuador is a fairly open dollarised economy, with specific regulations and restrictions on certain industries and products. During the last decade, the government has expanded its presence within the economy, establishing specific regulations on strategic sectors that include oil, mining, energy, telecommunications and transportation. Some import quotas and quality requirements have also been implemented on specific products as part of a plan for promoting local production.

Between 2015 and 2017, the trade regime became more restrictive as Ecuador imposed a balance of payments safeguard consisting of import tariffs of between 5 and 45 per cent on approximately 32 per cent of products. This measure ended in June 2017. However, the new government of President Lenin Moreno took office in May 2017 and has changed this approach, reintroducing several import quotas, quality restrictions and safeguards.

As an economic slowdown is expected due to the impact of falling oil prices, a process to open up the Ecuadorian economy is expected, mainly in mines and agribusiness areas.

Ecuador has been a member of the World Trade Organization (WTO) since 1996 and has also been a member of the Andean Community Treaty and Customs Union since 1969. Ecuador is also a member of preferential trade agreements with Mercosur countries and others such as Mexico, Chile, Brazil, Guatemala, Cuba, Venezuela, Turkey and Panama (www.comercioexterior.gob.ec/acuerdos-comerciales/).

Recently, Ecuador joined the Colombia/Peru Multilateral Trade Agreement with the EU (trade.ec.europa.eu/doclib/press/index.cfm?id=1261). This agreement ensures that the majority of products from Ecuador and the EU, respectively, will benefit from free access to each other's market from the coming into force of the agreement. Some products will gradually also start to benefit from free access, and only a small number of products will not be added until several years later. Some agricultural products have been excluded from the agreement on each side.

By the end of May 2018, the new Ecuadorian government had expressed publicly its interest in becoming a member of the Pacific Alliance, a pro-trade organisation formed by Peru, Mexico, Colombia and Chile. This would mean a significant and progressive reduction in import tariff rates.

Trade defence investigations

3 Which authority or authorities conduct trade defence investigations and impose trade remedies in your jurisdiction?

According to Executive Decree 733, the authority in charge of conducting trade defence investigations is the Directorate of Trade Defence/Technical Under Secretariat for Foreign Trade in the Ministry of Foreign Affairs, Trade and Integration (www.comercioexterior.gob.ec/wp-content/uploads/downloads/2014/06/organigrama.pdf).

According to Book IV of the Organic Code for Production, Trade and Investment, the authority in charge of international trade policy is the Foreign Trade Committee (COMEX), whose members are designated by the President and government ministers (comex.comercioexterior.gob.ec/). COMEX is also in charge of establishing, eliminating or modifying trade tariffs and classifications.

4 What is the procedure for domestic industry to start a trade remedies case in your jurisdiction? Can the regulator start an investigation ex officio?

In cases of dumping, investigations can be started ex officio or at the request of an interested party pursuant to section 69 of Executive Decree 733. Specific requisites and applicable procedural rules are regulated by Resolution 42 of the Foreign Trade Committee 'Requirements and procedures for dumping investigations and the application of anti-dumping measures'.

In cases of safeguards, investigations are subject to WTO regulations. However, COMEX can impose safeguards ex officio or at the request of an interested party after conducting an investigation according to section 82 of Executive Decree 733. Specific requisites and procedural rules applicable to the petition to impose safeguards are regulated by Resolution 43 of the Foreign Trade Committee, 'Requirements and Procedures for the Application of Safeguard Measures'. Also, in cases involving other countries in the Andean Community of Nations (CAN),, articles 78, 79, 79A, 80 and 81 of the Cartagena Agreement are applicable.

Cases regarding subsidies and countervailing duties are subject to section 109 of the Executive Decree 733. Investigations can be initiated ex officio or at the request of an interested party. Procedural rules are established in Executive Decree 733, section III article III.

5 What is the procedure for foreign exporters to defend a trade remedies case in your jurisdiction?

Foreign exporters can be heard before a decision is made in a trade remedies case, following the procedural rules established by Executive Decree 733 and COMEX Resolutions 42 and 43.

Resolutions 42 and 43 both establish quite similar procedures and requirements. In cases regarding dumping and anti-dumping measures, Resolution 42 applies. In cases regarding safeguards, Resolution 43 applies.

In cases of dumping and safeguards, applications shall be submitted to the investigating authority by the domestic industry or on its behalf, using a specific form. The investigation authority can also initiate investigations ex officio.

The application shall have the required level of support and endorsement of domestic producers. Evidence shall be also submitted.

Simple assertions unsubstantiated by relevant evidence do not entitle the investigating authority to initiate an investigation.

If the application is deemed complete and is accepted, the investigating authority has a period of 30 days in which to analyse it. In cases regarding safeguards, the investigating authority will also require an opinion of the competent sectoral ministry.

After expiry of this period, if the investigating authority finds that there are grounds for accepting the application, in cases regarding dumping it shall notify the government of the exporting country concerned within a period of 30 days that it has received a properly documented application to initiate an anti-dumping investigation.

In cases regarding safeguards, if the investigating authority finds that there are grounds for accepting the application, it shall issue the decision to initiate the investigation. In the said decision, it will also communicate to the interested parties the sectoral ministry in charge of determining the existence of serious injury or threat of serious injury, which ministry shall be responsible for dealing with requests for information, verification visits and other activities necessary to reaching the said determination.

If an investigation is initiated, the decision will be published in the Official Journal. Also, the investigating authority shall notify the WTO. Publication and notification shall take place within 30 days of the date of the resolution initiating the investigation.

In cases regarding dumping practices, before the final report is issued all interested parties shall be informed of the essential facts taken into account and used as the basis for preparing the final report so that they can defend their interests. Within 30 days following receipt of the essential facts, interested parties may transmit their comments to the investigating authority. After that period, the final Report including the conclusions of the investigation shall be submitted to COMEX.

In cases related to safeguards, Resolution 43 establishes that the investigating authority shall invite interested parties to a public hearing that should take place at least 15 days after the invitation, and in any case a minimum of 60 days prior to the submission of the final report to COMEX. All parties shall be given the opportunity to submit evidence, to express its opinions or provide explanations, to reply to the statements of the other parties and to give their views on whether or not the proposed safeguard measure is in the public interest.

After the referred periods are finished, COMEX must issue a reasoned decision. Interested parties may request a hearing before COMEX members.

6 Are the WTO rules on trade remedies applied in national law?

Ecuador has been a member of the WTO since 1996.

According to section 425 of the Ecuadorian Constitution, international treaties take precedence over national law.

WTO rules are applied in Ecuador, especially when it comes to tariff classification and customs valuation. Also, Ecuadorian trade remedies legislation makes express reference to WTO rules.

However, during the past two years Ecuador has been questioned by several WTO members regarding the application of a balance of payments safeguard (now ended) mentioned in question 2. The new administration has manifested its opposition to new restrictive measures.

7 What is the appeal procedure for an unfavourable trade remedies decision? Is appeal available for all decisions? How likely is an appeal to succeed?

There is no specific appeal procedure against trade remedy decisions. An affected party shall seek a review before COMEX, pursuant to section 118 of Executive Decree 733 in the case of countervailing duties, section 98 of Executive Decree 733 in the case of safeguard measures and section 78 in the case of anti-dumping measures.

For anti-dumping measures and countervailing duties, a petition for review can be filed only after a year of implementation of the decision. For safeguard measures, a petition for review can be filed at any time.

Also, as there are no specific appeal procedures, the general administrative regulation applies, according to which an affected party can file jurisdictional actions before Administrative Disputes Courts. Jurisdictional actions are subject to the ordinary proceeding established in the Organic Code of Procedures (COGEP).

If provisional measures are established during the investigation and no definitive measures are recommended, the affected party may seek reimbursement.

In the case of countervailing measures and anti-dumping duties, an affected party may seek reimbursement if the margin of provisional duties is superior to the margin of the definitive ones.

There is no specific provision for reimbursement in the case of safeguards.

8 How and when can an affected party seek a review of the duty or quota? What is the procedure and time frame for obtaining a refund of overcharged duties? Can interest be claimed?

In cases where a party is affected by an administrative decision that increases duties, it is possible to file an administrative claim before the National Customs Service of Ecuador (SENAE) within 20 days from the decision. SENAE has up to 60 days to decide the claim. Its decision can be challenged before the Tax Courts within 60 days, according to COGEP.

In cases of imposition of quotas by COMEX, affecting a whole tariff heading or description, a review may be requested directly to COMEX. Its decision can be challenged before the Administrative Disputes Courts within 90 days from its issuance, according to COGEP.

Recently, some international corporations with a presence in other CAN countries have opted for international litigation before the Secretary General of the Andean Community and the Andean Community Court of Justice.

9 What are the practical strategies for complying with an anti-dumping/countervailing/safeguard duty or quota?

Strategies will depend on each individual case. Seeking refunds may be a good option in cases of countervailing duties and anti-dumping measures, but in the case of safeguards re-sourcing may be a better option.

During the period when the last balance of payments safeguards were in place, many importers opted to apply special customs regimes in order to make modifications to products (such as local packaging and assembling) to obtain an increased percentage of national added value that might allow them to avoid surcharges.

A new special additional control tariff paid to the Customs Authority was implemented in December 2017. This tariff is calculated taking into account the price and gross weight of each product. The legality of this tariff has been questioned by the Guayaquil Chamber of Commerce and by exporters from Peru and Colombia; currently the issue is pending at the Andean Community Court of Justice.

Customs duties

10 Where are normal customs duty rates for your jurisdiction listed? Is there an exemption for low-value shipments? If so, at what level? Is there a binding tariff information system or similar in place? Are there prior notification requirements for imports?

Customs duty rates are listed in the Customs Tariff, available on the Customs Authority website: ecuapass.aduana.gob.ec/ipt_server/ipt_flex/ipt_arancel.jsp.

As a member of the WTO, Ecuador limits most of its tariff rates to 30 per cent or less.

In addition to duties, all imports are subject to a 12 per cent value-added tax and an additional 0.5 per cent tax for the Children's Development Fund applied to the CIF value of the merchandise. Some specific products deemed to be luxuries might be subject to an additional tax on special consumption (ICE) that varies from product to product.

As part of the Andean Community, Ecuador maintains the Andean Price Band System (APBS) on 153 agricultural products – 13 'marker' and 140 'linked' products – imported from outside the Andean Community. The 13 marker products are wheat, rice, sugar, barley, white corn, yellow corn, soybeans, soybean meal, African palm oil, soy oil, chicken meat, pork meat and powdered milk. This system works as an internal price stabilisation mechanism among CAN countries.

All importers must register with SENAE and obtain a company tax number (RUC) issued by the Ecuadorian Internal Revenue Service. There are no requirements of prior notice, but certain goods, such

as chemicals, weapons and animals, require prior control for their importation.

Documents required to import are: a commercial invoice, the original or a copy of the bill of lading or airway bill, an insurance policy in accordance with the insurance law, the RUC, certificate of origin where applicable (to qualify for tariff preferences when available) and a certificate of compliance with quality standards (INEN) where applicable.

Special care must be taken in relation to certificates of compliance with quality standards, as requirements may vary from product to product. In some cases, special labelling requirements may apply. Ecuador requires mandatory labelling of food and beverage products containing more than 0.9 per cent transgenic content.

Imports of psychotropic medicines and certain precursor chemicals used in narcotics processing require prior authorisation from the National Drug Council (www.prevenciondrogas.gob.ec).

There are expedited regimes of admission for imports via courier and international postal traffic. However, these regimes are strictly regulated and limited by weight and value of transaction in order to limit their use for commercial purposes that could harm local industries, such as textile industries.

11 Where are special tariff rates, such as under free trade agreements or preferential tariffs, and countries that are given preference listed?

Special tariff rates and countries that may be given preference can be accessed through the Ecuadorian National Customs Service webpage: ecuapass.aduana.gob.ec/ipt_server/ipt_flex/ipt_arancel.jsp.

A list of trade agreements subscribed to by Ecuador can be found at www.comercioexterior.gob.ec/acuerdos-comerciales/.

12 How can GSP treatment for a product be obtained or removed?

There is no generalised system of preferences. Preferential treatment is granted based on the product and its origin, following the trade agreements to which Ecuador is a member.

13 Is there a duty suspension regime in place? How can duty suspension be obtained?

Ecuadorian regulations allow several special customs regimes of admission for imports that grant duty suspensions, such as: temporary admission for re-export in same condition, temporary admission for active improvement, transformation under customs control, replacement of merchandise with tariffs, customs depository, re-import in same condition and clearance under financial guarantee.

Some specific regimes of admission allow goods to be kept in special facilities – including some properties owned by the importer – upon prior authorisation by the Customs Authority, for up to one year. No duties are paid until the goods are taken out of the facility.

Clearance under financial guarantees also allows qualified importers to clear customs with tariff suspension of up to one month upon prior authorisation and qualification by the Customs Authority and presentation of a general guarantee.

Other regimes for temporary admission allow importers to intern goods in specific facilities for a specific period in which no customs duties are paid. After that period, if the goods have not been re-exported, full duties shall be paid.

14 Where can customs decisions be challenged in your jurisdiction? What are the procedures?

Customs decisions can be challenged through administrative and jurisdictional claims.

Administrative claims are filed before SENAE within 20 days of the decision. The authority has up to 60 days to decide the claim.

Jurisdictional claims are made before the Tax Courts within 60 days of the issuance of the decision. Ordinary trial procedural regulations are applied under the Organic Code of Procedures. In some cases, a payment or collateral of 10 per cent of the total amount of the claim is required to suspend the effects of the customs decision during trial.

Update and trends

The new government appointed several new ministers at the end of May 2018, in a major ministerial change. Among the newly appointed cabinet members is Richard Martinez, former President of the Ecuadorian Business Committee, which strongly opposed former President Rafael Correa's taxation policies.

Martinez is seen as business-friendly, indicative of the government's further shift to a more trade-friendly policy. One of his first actions was to submit an urgent economic law by 28 May, including a tax amnesty proposal that would condone interest and penalties over taxes if the principal is paid immediately, an eight to 10-year income tax exemption for new investments, and a tax exemption to corporate taxes paid by a corporation to foreign corporations.

Trade barriers

15 What government office handles complaints from domestic exporters against foreign trade barriers at the WTO or under other agreements?

According to Executive Decree 733, the authority in charge of conducting trade defence investigations is the Directorate of Trade Defence/Technical Under Secretariat for Foreign Trade in the Ministry of Foreign Affairs, Trade and Integration.

Claims against other members of the Andean Community can be initiated by private persons or corporations directly to the CAN Secretary General, and later, to the Andean Community Court of Justice.

16 What is the procedure for filing a complaint against a foreign trade barrier?

Procedures for complaining against foreign trade barriers are regulated by COMEX Resolutions 42 and 43.

The authority in charge of conducting investigations is the Directorate of Trade Defence/Technical Under Secretariat for Foreign Trade in the Ministry of Foreign Affairs, Trade and Integration. As mentioned above, Resolutions 42 and 43 establish procedural rules applicable in cases of dumping, safeguards and countervailing duties.

Applications shall be submitted to the investigating authority by the domestic industry or on its behalf, using a specific form. The investigation authority can also initiate investigations ex officio. The application shall have the required level of support and endorsement of domestic producers. Evidence must also submitted, as simple assertion, unsubstantiated by relevant evidence, does not entitle the investigating authority to initiate an investigation.

If the application is deemed complete and is accepted, the investigating authority has a period of 30 days to analyse it.

If an investigation is initiated, the decision will be published in the Official Journal. Also, the investigating authority shall notify the WTO. Publication and notification shall take place within 30 days of the date of the resolution initiating the investigation.

In cases regarding dumping practices, before the final report is issued, all interested parties shall be informed of the essential facts taken into account and used as the basis for preparing the final report, so that they can defend their interests. Within 30 days following receipt of the essential facts, interested parties may transmit their comments to the investigating authority. After that period, the final report including the conclusions of the investigation shall be submitted to COMEX.

Ecuadorian Permanent Representatives before the WTO in Geneva can file requests for consultations before the WTO.

17 What will the authority consider when deciding whether to begin an investigation?

The authority addressing a complaint will take into consideration the complaint's merits and the evidence presented with it, the interests of other Ecuadorian importers or exporters, the broader political relationship between Ecuador and the country in question and the remedies available to address the barrier.

18 What measures outside the WTO may the authority unilaterally take against a foreign trade barrier?

According to the Organic Code for Production, Trade and Investments, the Foreign Trade Committee can limit imports or exports of products because of social needs, stability of internal prices or protection of national production and national consumers. It may also restrict imports of products to protect the balance of trade payments.

19 What support does the government expect from the private sector to bring a WTO case?

Any assistance that reduces the government's costs related to the case is likely to be welcome.

The affected domestic private sector is welcome to provide relevant economic data, expert opinions and other evidentiary materials.

20 What notable trade barriers other than retaliatory measures does your country impose on imports?

The Organic Code for Production, Trade and Investment allows for the imposition of non-custom measures for imports or exports of merchandise. In recent years, quality regulations and requirements of certificates of compliance with quality standards (INEN regulations) have been the most important regulatory barrier to trade. Import licences and import quotas have been previously implemented, but are limited to specific industries, such as chemicals and some products of animal origin.

Transgenic seeds are subject to specific regulations and require special authorisation to be imported.

The Ministry of Health must also grant prior authorisation (sanitary registration or notification) for imports of processed foods, food ingredients, beverages, cosmetics, pharmaceutical products, reagents, natural products and pesticides.

Agricultural imports are also subject to specific regulations.

A small number of products, such as cell phones and automobiles, are subject to import quotas. These restrictions will be dismantled progressively according to the Multilateral Trade Agreement signed with the European Union.

In December 2017, the government implemented a special additional control tariff paid to the Customs Authority, calculated on the price and gross weight of each imported product. The legality of this tariff has been questioned by the Guayaquil Chamber of Commerce and by exporters from Peru and Colombia; the issue is pending to be heard by the Andean Community Court of Justice.

Export controls

21 What general controls are imposed on exports?

Exports are not subject to duties or taxes.

Besides an RUC, it is required to be registered in the online customs system, ECUAPASS (www.ecuapass.aduana.gob.ec). Once registered in ECUAPASS, the export process is as follows:

- a single Customs Declaration of Exportation shall be transmitted including information of the exporter, a detailed description of merchandise to be exported, consignee information, destination, amounts and weights; and
- the system will also require the following documentation in digital format: commercial invoice (unless a pro-forma is applicable), certificate of origin and prior authorisations (if applicable).

An additional registration before the Ministry of Industries and Productivity is required for exporting leather or fur merchandise, and also for exporting ferrous scraps.

22 Which authorities handle the controls?

Controls are handled by SENAE (www.aduana.gob.ec).

If a sanitary certificate is required in the country of destination (for example, the EU requires such certificates for fresh fish products, fruits and vegetables), this certificate shall be obtained from AGROCALIDAD (www.agrocalidad.gob.ec/).

If a certificate of compliance with quality standards is required in the country of destination, it shall be obtained from the National Institute of Normalization (INEN; www.normalizacion.gob.ec/).

23 Are separate controls imposed on specific products? Is a licence required to export such products?

Weapons and other related goods are subject to a special regime controlled by the Ministry of Defence. As possession and trade of firearms in Ecuador is strictly regulated, import and export of firearms is only possible with the specific authorisation of the Ministry of Defence.

24 Has your jurisdiction implemented the WCO's SAFE Framework of Standards? Does it have an AEO programme or similar?

Ecuador signed a letter of intent to implement the WCO's SAFE Framework of Standards in June 2005; however, to date, the programme has not been fully implemented.

25 Where is information on countries subject to export controls listed?

There is no list of countries subject to export controls. There is a list of countries considered as tax havens or harmful preferential tax regimes, but only for tax purposes (www.sri.gob.ec/de/10238).

26 Does your jurisdiction have a scheme restricting or banning exports to named persons and institutions abroad?

There are no restrictions or bans on exports to persons or institutions abroad.

GOTTIFREDI | GP
POZO

Francisco A Gottifredi **fgottifredi@gottifredipozo.com**
Fabian T Pozo **fpozo@gottifredipozo.com**

Circunvalación Sur S/N
CARDECA Business Center
Offices 401–403
Cuenca
Ecuador

Tel: +593 7 2888815/+593 9 98886643
Fax: +593 9 98886643
www.gottifredipozo.com

27 What are the possible penalties for violation of export controls?

Customs fraud and contraband are criminal offences according to the Ecuadorian Criminal Code and may be punished with a maximum of five years of imprisonment or a fine up to three times the value of the goods that are the object of the crime.

Also, administrative infractions such as incorrect declaration of the amount of merchandise, simulation of transactions, imports or exports with false or adulterated documents, and sub- or supra-valuation of goods, among others, are subject to fines.

Fines for administrative infractions and contraventions can range from one half of the minimum wage up to 300 per cent of the value of goods.

Financial and other sanctions and trade embargoes

28 What government offices impose sanctions and embargoes?

SENAE.

29 What countries are currently the subject of sanctions or embargoes by your country?

There are no countries subject to sanctions or embargoes.

30 Are individuals or specific companies subject to financial sanctions?

There are no individuals or companies subject to financial sanctions.

Miscellaneous

31 Describe any trade remedy measures, import or export controls not covered above that are particular to your jurisdiction.

Imports of some used goods are forbidden, such as used clothing, tyres, shoes and vehicles.

Imports of cell phones are restricted to certain pre-qualified importers through a pre-assigned import quota.

Also, importing of goods through postal mail is subject to several restrictions (price caps, volume caps and quality certifications, among others).

Eurasian Economic Union

Edward Borovikov, Bogdan Evtimov, Igor Danilov and Taras Povorozniuk

Dentons

Overview

1 What is the main domestic legislation as regards trade remedies?

The legal basis for trade defence instruments (TDI) (ie, anti-dumping (AD), countervailing (CV) and safeguards (SG)) is the founding Treaty on the Eurasian Economic Union of 29 May 2014 between the Republic of Belarus, the Republic of Kazakhstan and the Russian Federation as amended upon accessions of the Republic of Armenia and the Kyrgyz Republic (EAEU Treaty) and, specifically, Annex 8 thereof, which contains Protocol No. 8 on Application of Safeguards, Anti-dumping and Countervailing Measures in Respect of Third Countries (TDI Protocol). A number of secondary acts of the Eurasian Economic Commission (EEC) regulate specific aspects of TDIs, including confidentiality matters, cooperation among the EAEU and member states' authorities, internal decision-making procedures and methodological materials for domestic producers aimed at facilitating the preparation of complaints. The EAEU Treaty and the secondary acts are available at the EAEU Law Portal (all materials are in Russian, while selected acts are also translated into Armenian, Belarusian, Kazakh and Kyrgyz languages) at https://docs.eaeunion.org/en-us/.

TDIs of the Eurasian Economic Union (EAEU) are imposed on imports into the single customs territory of the EAEU. For the purposes of the legal framework of TDIs, the domestic industry of the EAEU is defined by reference to producers in all EAEU member states.

2 In general terms what is your country's attitude to international trade?

The primary external trade policy objectives of the EAEU members have been to liberalise regional trade and promote deeper economic integration among the Commonwealth of Independent States (CIS) countries. Those goals were pursued with the Customs Union (CU) of Russia, Kazakhstan and Belarus, which was formed in 2010; and more recently, the CU was complemented and overtaken by the more comprehensive regime of economic integration within the EAEU as of 1 January 2015. The new EAEU has the legal status of an international organisation vested with legal personality, which was not the case of the CU.

The EAEU is open to accessions by other countries. Armenia and Kyrgyzstan became new member states of the EAEU on 2 January 2015 and 12 August 2015, respectively. There are certain transitional arrangements in the areas of import tariffs and foreign trade regulation that apply to these newly acceded member states. No other EAEU accession negotiations are currently ongoing.

On 22 August 2012, Russia acceded to the World Trade Organization (WTO). This is considered to be the beginning of a process of gradual liberalisation, particularly with regard to import tariffs, of the CU/EAEU's trade with the rest of the world in accordance with WTO rules. In joining the WTO as a member of the CU, Russia committed to ensure compliance of the CU (and its successor, the EAEU) TDI regimes with Russia's WTO obligations and commitments. A number of Russian industries have regularly expressed concerns regarding the potential negative effects of Russia's WTO accession and have asked for increased protection of their trade interests.

Since accession to the WTO, Russia has been involved in a number of disputes, including six cases as complainant and eight cases as respondent. In three disputes – Measures on the Importation of Live Pigs, Pork and Other Pig Products from the European Union (DS475), Tariff Treatment of Certain Agricultural and Manufacturing Products (DS485) and Anti-Dumping Duties on Light Commercial Vehicles from Germany and Italy (DS479) – Russian policies and measures were found partially inconsistent with the WTO Agreements. While tariffs on certain agricultural and manufacturing products had already been brought into conformity in accordance with the Panel's findings, the implementation of recommendations in two other disputes is still ongoing, with a risk of retaliatory actions against Russia.

For the moment, none of the complaints that Russia has brought to the WTO have reached the stage of WTO Panel report.

In September 2016, for the first time since its accession, Russia went through the WTO Trade Policy Review Mechanism; other WTO members had an opportunity to examine in detail Russia's trade and trade-related policies and pose their questions and express views.

Russia received over 700 questions and comments from over 50 WTO members. Many welcomed the tremendous liberalisation efforts and remarkable improvements in Russia's trade policy, while others noted that there is still much for Russia to do to improve. Many WTO members demonstrated great interest in Russia's investment regime and EAEU developments, and raised new concerns in the areas of sanitary and phytosanitary and technical barriers to trade (TBT), local content requirements, customs control, and import restrictions, as well as the transparency of certain policies.

Kazakhstan, a member of the EAEU, also became a member of the WTO on 30 November 2015. According to Kazakhstan's WTO tariff concessions, one-third of its import tariff lines for goods are bound at rates lower than those provided under Russia's bound tariff rates in the WTO or in the EAEU's common customs tariff. In response to this issue, as a transitional solution Kazakhstan undertook not to allow the re-export of goods imported into Kazakhstan at lower tariffs to other EAEU member states. Accordingly, to qualify for free circulation status within the EAEU, goods imported into Kazakhstan at lower rates should become subject to the higher EAEU import tariff. For this purpose, a special control system was introduced to monitor the movement of such goods, based on electronic customs declarations, invoicing and instant information exchange between the competent authorities of the EAEU member states. Kazakhstan is a respondent in one WTO dispute brought by Ukraine in September 2017 – Anti-Dumping Measures on Steel Pipes (DS530). At the time of writing, the dispute is at the consultation stage.

Newly acceded EAEU member states Armenia and Kyrgyzstan have been WTO members since 2003 and 1998, respectively. Their accession to the EAEU has triggered similar issues concerning tariff differences of their WTO tariff bindings with the EAEU common customs tariff. As a result, these countries also agreed temporary derogations (ie, lower tariffs) from the EAEU common customs tariff for certain goods imported for internal consumption. Such tariff derogations from the EAEU are only temporary; both new EAEU member states have announced their intention to enter into their respective tariff renegotiations in the WTO with the affected WTO members, while the actual renegotiations have not yet started.

WTO accession negotiations for Belarus formally started in 1993, but were suspended for decades until the accession process was resumed on 24 January 2017. Belarus has been invited to submit written replies to members' questions, an updated Legislative Action Plan,

copies of relevant draft and adopted legislation, and additional documentation such as updated information on domestic support to agriculture, state-trading enterprises and subsidies. The Working Party on accession remains active in 2018; however, no deadlines for completion of negotiations have been announced.

Trade defence investigations

3 Which authority or authorities conduct trade defence investigations and impose trade remedies in your jurisdiction?

Since 1 July 2012, the authority for trade defence investigations in the CU/EAEU is the EEC and the administrative service directly in charge of conducting trade defence investigations is the EEC's Department for Internal Market Defence. The webpage of the Department for Internal Market Defence is available in the English language at www.eurasiancommission.org/en/act/trade/podm/Pages/default.aspx.

Final decisions to impose measures following investigations are made by the Board of the EEC, consisting of the EEC Ministers representing all the EAEU member states (www.eurasiancommission.org/ru/Pages/structure.aspx).

4 What is the procedure for domestic industry to start a trade remedies case in your jurisdiction? Can the regulator start an investigation ex officio?

According to paragraph 186 of the TDI Protocol, an investigation can be initiated by the EEC on its own initiative or on the basis of a complaint lodged by the domestic industry manufacturing like products (relevant for AD and CV investigations) or like or directly competitive products (in the case of SG). In practice, so far all investigations have been initiated following domestic industry complaints.

A complaint can be lodged either by individual domestic producers or by a group or association of domestic producers manufacturing a major share of like products (for AD and CV) or like or directly competitive (for SG) products. The EAEU applies thresholds for domestic industry that are similar to those in other jurisdictions. In particular, the complainant must demonstrate that its complaint is expressly supported by at least 25 per cent of the total EAEU production, and moreover, it must be supported by over 50 per cent of the volume of the like (or directly competitive) products manufactured by those producers which have expressed an opinion on the complaint.

The EEC will decide whether to open an investigation within 30 calendar days from the date when the complaint is deemed to have been submitted. This deadline may be extended where the EEC decides to request additional information or evidence; however, any such extension will not exceed 60 calendar days from the date of submission of the complaint.

The requirements for the preparation of a complaint are also similar to those in other jurisdictions: namely the complainants must provide a detailed description of the product concerned and the like or directly competitive products; detailed data on domestic capacity and production; an estimate of domestic consumption; trade data; data on the indicators relevant for injury analysis; available data on dumping by the imports from or specific subsidies in the targeted third country; and evidence on trends in imports and factors that may interfere with the analysis of a causal link with material or serious injury or threat thereof. The complaint must also contain a proposal on the form, amount and duration of the measures, and adjustment plans (if relevant, usually in the case of SG). Normally, all the data should cover a period of three calendar years preceding the year of submission of the complaint as well as data on further periods where representative statistics are available. All written submissions must be accompanied by non-confidential and relatively detailed summaries.

5 What is the procedure for foreign exporters to defend a trade remedies case in your jurisdiction?

The notice of initiation of a specific TDI investigation is published on the website of the EEC (www.eurasiancommission.org). The date of publication on the website is the first day of the new investigation.

Notifications are also sent to interested parties identified in the complaint and reasonably known to the investigating authorities. Notifications are also usually sent through diplomatic channels to the respective foreign governments of the affected countries. In recent practice, written notifications have occasionally reached their addressees with delays, causing difficulties for interested parties to comply with further procedural deadlines.

Interested parties (exporting producers, importers, consumer associations and authorities of exporting countries) can participate in the investigation in person or can appoint legal representatives. There are currently no restrictions on foreign attorneys acting as representatives of interested parties before the EEC. All investigations are, however, conducted in Russian and all documents must be submitted in Russian or accompanied by a Russian translation.

Within 25 days from the publication on the EEC's website, interested parties must submit a letter to the EEC to be registered as participants in the investigation. Only registered interested parties (namely, participants) may obtain access to the non-confidential files, including a copy of the complaint. Participants must also request public hearings within 45 days and then subsequently submit their memorandum with defensive arguments and data relevant to the investigation within 60 calendar days from the date of initiation. The same deadlines apply to all types of TDI investigations in the EAEU.

Questionnaires must be answered within 30 days from their receipt (extensions are possible). The same deadline applies to all information requests in the course of the investigation.

Public hearings are normally scheduled within six to seven months after initiation. Within 15 days after the hearings interested parties are entitled to submit information in writing as provided orally in the course of the public hearings.

Safeguard investigations are normally concluded within nine months, with a possible extension of no more than three months. The respective periods for AD and anti-subsidy investigations are 12 months for conclusion and six months for extension.

Upon completion of the investigation and before the final decision, the EEC will send to the participants for comments a draft report on the main findings and conclusions of the investigation. The EEC Board will decide on the imposition of measures usually within 30 to 45 days from receipt of the report on the investigation and of a draft decision from the investigating authority.

6 Are the WTO rules on trade remedies applied in national law?

The EAEU is not in itself a WTO member; Russia has been a WTO member since 2012, Kazakhstan since 2015, Armenia since 2003 and Kyrgyzstan since 1998. Belarus is still negotiating its terms of accession.

According to the terms of accession of Armenia and Kyrgyzstan to the EAEU, their individual WTO accession commitments do not extend to other EAEU member states or to the EAEU as a whole.

All definitions of terms, procedural requirements and time limits that apply pursuant to the TDI Protocol and that are actually applied by the EEC in TDI investigations aim to follow the respective WTO rules on TDIs.

According to the generally accepted understanding, specific provisions in the WTO Agreements and the respective WTO accession commitments of the EAEU member states that have been implemented by the EAEU as part of the international agreements among its member states become an integral part of the EAEU's legal order and should prevail over other laws that conflict with it. This position follows from the Treaty on the Functioning of the Customs Union in the Context of the Multilateral Trading System of 19 May 2011, which remains in force upon creation of the EAEU (Annex 31 of the EAEU Treaty). However, the WTO Agreements on TDIs do not have direct effect with respect to legal entities and individuals in the EAEU, and the latter cannot directly invoke the provisions of these WTO Agreements before the Court of the Eurasian Economic Union (EAEU Court). Arguably, such legal claims can be done by reference to the provisions of the EAEU Treaty and other international agreements within the EAEU that implement the respective WTO provisions.

Under the TDI Protocol all third countries are treated as market economy countries.

7 What is the appeal procedure for an unfavourable trade remedies decision? Is appeal available for all decisions? How likely is an appeal to succeed?

As of 1 January 2015, the EAEU Court is the sole competent institution for judicial review of TDI measures adopted by the EEC Board. All acts and actions (inactions) that allegedly violate provisions of the EAEU

Agreements and individual rights provided under those Agreements can be challenged before the EAEU Court. Since its establishment, the EAEU Court has issued only one judgment dismissing claims submitted by an exporting producer from Ukraine in relation to AD measures on steel rebar. Notably, this was the first proceeding under the enhanced rules of procedure, which required a report from a specially appointed expert group.

In 2012–2014, the EurAsEC Court (the predecessor of the EAEU Court, but limited to CU matters only) had considered three TDI cases (all three concerned AD measures). In its practice, the EurAsEC Court demonstrated a reasoned approach and willingness to interpret the rules of the CU in light of specific WTO provisions and, particularly, with due regard to the judicial practice of the Court of Justice of the European Union, including, to a certain extent, the applicability of the relevant WTO rules in the domestic legal order. However, the EurAsEC Court did not uphold any of the above three legal actions lodged against TDI measures.

8 How and when can an affected party seek a review of the duty or quota? What is the procedure and time frame for obtaining a refund of overcharged duties? Can interest be claimed?

The EAEU respects all relevant WTO disciplines on reviews and refunds, and there is a legal possibility to request minimum price undertakings and interim/administrative, newcomer and expiry/sunset reviews, as well as refunds of AD or CV duties paid, in accordance with the TDI Protocol. In 2016, the EEC initiated a number of review proceedings, including interim reviews, expiry reviews and an anti-circumvention inquiry.

In 2015, the EEC accepted the very first minimum price undertaking from several cooperating exporting producers in the AD investigation on oil country tubular goods from China. In the following years, one Chinese producer failed to comply with the conditions of the price undertaking, which was consequently withdrawn with respect to this company. In 2018, the EEC also accepted price undertakings from two cooperating exporting producers in the AD investigation on herbicides from the European Union.

Under the TDI Protocol, reviews may be initiated upon the request of an interested party (an exporting producer, complainants). The EEC may also initiate an ex officio interim review, for example, as a result of an amicable out-of-court settlement or implementation of the EAEU Court's rulings. In particular, a similar development took place in the course of one judicial proceeding within the EAEU Court, where, as a result of an agreement with the complainant, the judicial proceeding was suspended, and the EEC agreed to initiate an interim review limited to the determination of dumping. The review resulted in a minor revision of the AD duties imposed. After reopening of the judicial case on the complainant's initiative, the EAEU Court found the revised duties to be consistent with the CU legal order and dismissed the action.

Therefore, interested parties are encouraged to request reviews and refunds where this is warranted by evidence.

9 What are the practical strategies for complying with an anti-dumping/countervailing/safeguard duty or quota?

The CU/EAEU and the EEC's practice in this respect remains rather limited. Parties have the right to request minimum-price undertakings, reviews and refunds as discussed under question 8. While it has already happened in practice, in general, the EEC is often reluctant to accept price undertakings. Where a measure or decision of the EEC in this respect is deemed unlawful, it may be challenged before the EAEU Court.

It is noted that the TDI Protocol provides for anti-circumvention investigations and measures. In 2017, the EEC completed an anti-circumvention proceeding regarding original measures on seamless tubes and pipes of stainless steel originating from China, which were extended to products originating from Malaysia.

Customs duties

10 Where are normal customs duty rates for your jurisdiction listed? Is there an exemption for low-value shipments? If so, at what level? Is there a binding tariff information system or similar in place? Are there prior notification requirements for imports?

The normal (most-favoured nation – MFN) customs duty rates on import of goods into the common customs territory of the EAEU are listed in the Unified Customs Tariff of the Eurasian Economic Union (ETT). The ETT is revised annually in accordance with the Eurasian Economic Union's Single Commodity Nomenclature of Foreign Economic Activities (TN VED EAEU), which in turn is based on the Harmonized System of the World Customs Organization. The authority empowered to adopt and amend the ETT and the TN VED EAEU is the EEC Board.

Information on import duty rates is available in Russian on the EEC website (www.eurasiancommission.org/ru/act/trade/catr/ett/Pages/default.aspx). This section of the website is updated regularly and contains generally correct information on duty rates; however, it is made available for information purposes only and is not legally binding.

However, certain tariff lines for goods destined solely for domestic consumption in Kazakhstan, Armenia and Kyrgyzstan are temporarily exempt from the common ETT tariff rates (see question 2), while Russia and Belarus apply ETT rates to all imported goods. If the exempt goods are to be released for free circulation within the EAEU, they become subject to the common ETT rates.

On 1 January 2018, the Customs Code of the Eurasian Economic Union (CC EAEU) replaced the previously applied Customs Code of the Customs Union.

The EAEU member states have concluded a separate accord concerning export duties. According to this accord, each member state of the EAEU establishes its own list of certain goods in respect of which export duties may apply, which is communicated to the EEC. On that basis, the EEC maintains a consolidated list of products subject to export duties for all member states of the EAEU. Member states retain the power to adopt and amend the export duty rates applied on export of goods, contained in the consolidated list and originating in their territories. Similar rules are reflected in the CC EAEU. Export duty rates are subject to periodic amendments by decisions of governments of the member states. There is no single official public database at the EAEU level where up-to-date export duty rates can be consulted.

Customs authorities of EAEU member states have a system of issuing preliminary customs classification decisions that may affect the customs duty rate applicable to a product for which such a decision has been requested (similar to the systems of issuing binding tariff information practised in other jurisdictions). Preliminary decisions taken at the national level are reported to the EEC and listed in a special database, which is available in Russian at the website of the EEC at www.eurasiancommission.org/ru/docs/Lists/List/AllItems.aspx.

According to Article 22 of the CC EAEU, the EEC may also adopt decisions and clarifications on customs classification of certain goods upon respective proposals/requests from customs authorities of EAEU member states. There is no unified database of such decisions or clarifications.

According to the CC EAEU, all imported goods are subject to a prior notification procedure; however, only part of the information, which relates to risk assessment and choice of customs control form, is mandatory for prior submission, while other information remains optional, aimed at facilitating customs clearance. Prior notification may be done electronically at the websites of national customs authorities of the EAEU member states.

EAEU member states maintain a duty-exemption regime for low-value shipments, including for e-commerce, in accordance with Decision of the EEC Council N107 of 20 December 2017. The authorities decided to proceed with the gradual reduction of the maximum value and weight thresholds applied to duty exemptions. Therefore, from 1 January 2018 the duty exemption threshold is established at €1,000 or 31 kg during one calendar month. From 1 January 2019 this threshold will be lowered to €500 or 31 kg, while from 1 January 2020 it will be €200 or 31 kg per month. No further reductions are envisaged by the current EAEU legislation.

Note that while EAEU legislation defines the maximum threshold for duty exemptions, the CC EAEU allows each EAEU member state to introduce even lower limits as provided above.

Currently, in Kazakhstan, Kyrgyzstan and Russia, the threshold for duty-exempted import is set at €1,000, in Armenia at 200,000 drams (about €350) and in Belarus at €22.

11 Where are special tariff rates, such as under free trade agreements or preferential tariffs, and countries that are given preference listed?

There is no single database at the EAEU level that lists duty rates applicable under preferential arrangements or preferential trade agreements.

The EAEU applies a Unified System of Tariff Preferences (USTP, analogous to the EU Generalised Scheme of Preferences) to promote economic growth and welfare in developing and least developed countries. Articles 36 and 37 of the EAEU Treaty specify tariff preferences granted to developing countries (75 per cent and zero per cent of the MFN rate, for developing and least developed countries, respectively) and refers to preferential rules of origin applied to such imports.

The USTP preferences apply to goods included in a special list of goods and a list of countries eligible for such preferences. These lists are established by the EEC. The respective lists as well as the relevant legislation are available on the EEC's website (www.eurasiancommission.org/ru/act/trade/dotp/commonSytem/Pages/normatBaza.aspx).

There is no official list or unified database for the existing preferential trade agreements of the EAEU member states with third countries. The agreements are numerous; however, the most noteworthy is the multilateral Agreement on a Free Trade Area of the CIS Countries (FTA CIS), which has been in force among the majority of the CIS countries since 2012. The FTA CIS has been suspended between Russia and Ukraine since 1 January 2016 due to exceptional national security reasons.

Traditionally, most CIS countries continue to maintain a network of bilateral free trade agreements (FTAs) between themselves.

In addition to the above multilateral FTA CIS, Russia currently maintains bilateral preferential trade agreements with Azerbaijan, Georgia, Serbia, Tajikistan, Turkmenistan and Uzbekistan. Kazakhstan has bilateral preferential trade agreements with Azerbaijan, Georgia, Serbia and Tajikistan. Belarus maintains preferential trade agreements with Azerbaijan, Serbia, Tajikistan, Turkmenistan and Uzbekistan; and Armenia with Georgia, Tajikistan and Turkmenistan. Kyrgyzstan has a bilateral preferential trade agreement with Uzbekistan.

Many of these agreements have specific product exclusions. The EEC is currently taking steps to encourage the EAEU member states to renegotiate existing bilateral trade agreements and conclude new ones so that the EAEU may become a party to them.

Notably, in its capacity of an international organisation vested with legal personality, the EAEU signed an FTA with the Socialist Republic of Vietnam, including a protocol on investment facilitation. This is the first ever FTA established between the EAEU and a third country, and it entered into force on 5 October 2016. The EAEU is currently considering FTAs with Israel, Iran, India and some other trade jurisdictions.

12 How can GSP treatment for a product be obtained or removed?

According to articles 36 and 45 of the EAEU Treaty, the EEC administers the USTP and is responsible for maintaining and updating the following lists:

- a list of eligible developing countries entitled to the general tariff preference (currently 102 countries);
- a list of eligible least developed countries entitled to the special tariff preference (currently 49 countries); and
- a list of eligible goods originating from developing countries and least developed countries that fall within the scope of the USTP.

The eligibility criteria for the inclusion of countries in the above lists are set out in the Regulation on Conditions and Procedure for the Application of EAEU Unified System of Tariff Preferences adopted on 6 April 2016. This Regulation specifies the country-related criteria, which are complex and include not only relative volume of import and level of country income criteria, but also a number of other requirements, some of which can be regarded as policy or discretionary criteria. The EEC adopts a list of eligible goods at its own discretion unless the products are considered to be sensitive for domestic industry or subject to the tariff quotas.

13 Is there a duty suspension regime in place? How can duty suspension be obtained?

The EEC is empowered to adopt decisions on tariff suspensions upon requests from the EAEU member states.

Given the recent delegation of respective powers from the EAEU member states to the EEC, there is not yet an established formal procedure for requesting tariff suspensions. Therefore, economic operators may be advised to address substantiated requests for tariff suspensions to their national competent ministries, which in turn can refer the request to the EEC.

The possibility for EAEU member states to provide unilaterally customs privileges in the form of partial or complete reduction of normal customs duty rates for specific tariff lines or end uses is provided for in article 43 and Annex 6 of the EAEU Treaty (ie, Protocol on Common Customs Tariff Regulation). These customs privileges may not benefit individual companies and shall not depend on the origin of the goods.

14 Where can customs decisions be challenged in your jurisdiction? What are the procedures?

Acts or omissions of the EEC that affect the individual rights and interests of economic operators provided under the EAEU agreements, including customs tariff policy matters, may be challenged directly by affected economic operators before the EAEU Court. EAEU/EurAsEC Court litigation practice on customs matters is limited to a number of cases related to the customs classification of certain vehicles, paper, feed additives and other industrial goods, as well as export customs clearance procedures for coal. In two of those cases the court upheld the complainants' claims.

Decisions of the customs authorities of the EAEU member states can be challenged according to procedures provided in each national jurisdiction. Customs decisions of the Russian authorities can be challenged via an administrative appeal before the higher customs authority and via a judicial challenge before the Russian civil and arbitration courts in accordance with Chapter 3 of the Federal Law on Customs Regulation in the Russian Federation (No. 311-FZ of 27 November 2010). Customs decisions in Kazakhstan are challenged in accordance with several procedures, depending on the type of customs decision being challenged. The challenge involves higher administrative authorities and the national courts. These procedures are provided for in the Code of the Republic of Kazakhstan on Customs Affairs (No. 123-VI ZRK of 26 December 2017) and other legal acts. Customs decisions in Belarus are challenged by a complaint to the customs authorities or to the court (Law on Customs Regulation in the Republic of Belarus No. 129-Z of 10 January 2014). Similar possibilities for challenging customs decisions through higher-level customs authorities or national courts are also available in Armenia and Kyrgyzstan.

Trade barriers

15 What government office handles complaints from domestic exporters against foreign trade barriers at the WTO or under other agreements?

The EEC has not yet received a mandate from the EAEU member states for handling complaints against trade barriers in third countries, and the fundamental reason is that not all member states are WTO members yet. The member states of the EAEU that are WTO members (Armenia, Kazakhstan, Kyrgyzstan and Russia) can use WTO mechanisms to tackle trade barriers affecting their exported goods. However, under article 39 of the EAEU Treaty the EEC shall monitor trade barriers in third countries and undertake respective consultations with the latter countries together with the EAEU member states.

Complaints against trade barriers are handled by the competent ministries responsible for the economy and trade of each member state. Russia represents a particular interest in the light of its leading experience as a WTO member and the volume of its export trade. In Russia, the competent authority for handling trade barrier complaints is the Ministry of Economic Development (MED), which has an experienced team of foreign trade experts who regularly deal with complaints about trade barriers in third countries. The comprehensive and up-to-date list of trade barriers on foreign markets identified by the Russian authorities is published on the MED's Information Portal for Foreign Trade at www.ved.gov.ru/rus_export/torg_exp/ (in Russian).

16 What is the procedure for filing a complaint against a foreign trade barrier?

The national laws of the EAEU member states do not provide for a specific procedure for the filing of complaints against trade barriers in third countries. However, the competent authorities are generally open to hearing the concerns of domestic businesses. There are no specific time limits. In Russia complaints are submitted in free written form and are considered by the MED.

Economic operators in Armenia, Kazakhstan, Kyrgyzstan and Russia may submit a complaint based on arguments in line with WTO rules and challenging effective trade barriers against exports of Armenian, Kazakh, Kyrgyz and Russian-originating goods and services. Such complaints are handled by the Ministry of Economy in Armenia, the Ministry of National Economy of Kazakhstan, the Ministry of Economy in Kyrgyzstan and the Ministry of Economic Development in Russia, and may be used as a basis for possible consultations or dispute settlement proceedings under WTO rules.

17 What will the authority consider when deciding whether to begin an investigation?

The authorities as a rule recommend interested parties to collect available relevant data, such as legislative or administrative acts of the third country's authorities that are believed to be the reason for the trade barrier, statistical information on trade flows that have decreased or are expected to decrease as a result of the imposition of the trade barrier, and data on the negative impact of the trade barrier on the business of the complaining company or effect on the economy of the EAEU member states.

As of 2013, the EEC undertakes monitoring and reporting of foreign trade barriers for goods exported by the EAEU members. The respective reports and lists of foreign trade barriers are published on the EEC's website (www.eurasiancommission.org/ru/act/trade/dotp/Pages/dostup.aspx).

18 What measures outside the WTO may the authority unilaterally take against a foreign trade barrier?

Following the accession of EAEU members to the WTO, their actions must comply with WTO rules. Only Belarus is still a non-WTO member; however, the obligations of Belarus under the EAEU Treaty (which seek to ensure, where possible, compliance with WTO rules) may have a restrictive effect on the ability of Belarus to take unilateral actions against foreign trade barriers.

Under the EAEU Treaty, the EAEU as an international organisation with legal personality may undertake retaliatory measures in accordance with the bilateral or multilateral agreements of the EAEU. In this regard, the EAEU member states have working procedures in place to take parallel coordinated action in case a third country imposes a trade barrier or other trade-restrictive measures on one of them. The relevant member state will report the case to the EEC. In consultation with the EEC, member states may then agree upon taking parallel unilateral or multilateral retaliatory measures. Such parallel actions on behalf of the EAEU might become particularly relevant if Armenia, Kazakhstan, Kyrgyzstan or Russia were to be authorised by the WTO to impose retaliatory measures as a result of successful WTO dispute settlement proceedings following non-compliance.

However, there are notable exceptions from the above EAEU rules. According to article 47 and section X of Annex No. 7 (Protocol on Measures of Non-Tariff Regulation Applicable to Third Countries) of the EAEU Treaty, in exceptional circumstances, the EAEU members may unilaterally impose bans and quantitative limitations on imports as well as licensing, exclusive rights and authorisation requirements in regard to imports from third countries. Normally, the duration of such restrictive measures should not exceed six months. In cases where a specific foreign trade barrier might be qualified as relating to exceptional circumstances, such unilateral retaliatory measures would be justified under EAEU law (see also question 29).

19 What support does the government expect from the private sector to bring a WTO case?

As yet there are no specific rules in the EAEU member states concerning the establishment of procedures and requirements for the preparation of WTO dispute settlement complaints. The practical support for the preparation of a WTO case – such as the initiative for relevant research, evidence, translations and expert advice – is largely a task for the business community. The competent authorities, such as Russia's Ministry of Economic Development, can step in when the business has prepared the groundwork, including reliable WTO legal argumentation, and can then ensure effective support.

20 What notable trade barriers other than retaliatory measures does your country impose on imports?

The EAEU Treaty provides for a harmonised system of non-tariff trade regulation on the basis of Annex No. 7 of the EAEU Treaty (Protocol on Measures of Non-Tariff Regulation Applicable to Third Countries), as well as on the basis of other EAEU Treaty provisions and Annexes relating to specific types of non-tariff measures (eg, technical regulations, sanitary and hygienic measures, veterinary and phytosanitary surveillance and export control measures).

The above Protocol stipulates general rules and principles for the adoption, imposition and use of specific types of non-tariff measures. While the adoption of each non-tariff measure and management of the respective unified lists of the measures are done by the EEC, administration and enforcement of the measures remain within the competence of the EAEU member states and are governed by their national laws. According to the Protocol, the EAEU may introduce the following non-tariff measures on imports and exports:

- bans and quantitative restrictions;
- exclusive rights;
- automatic licensing; and
- authorisations (non-automatic licensing; see also Rules on Issuance of Licences and Authorisations on Exports and Imports of Goods, in the Addendum to Annex No 7 of the EAEU Treaty).

The unified regularly updated lists of goods and respective non-tariff measures of the EAEU are available on the EEC website at www.eurasiancommission.org/ru/act/trade/catr/nontariff/Pages/ed-perechen_title.aspx.

Other non-tariff measures, such as for export controls, technical regulations and SPS measures, including plant quarantine measures, are routinely applied by the EAEU and its member states. They are subject to Chapter XI and Annexes 9–12 of the EAEU Treaty as well as national implementing legislation. The most notable trade restrictions in Russia and the EAEU are traditionally of an SPS nature, including bans on the import of poultry and meat from the US owing to a bird flu epidemic or because of a zero-tolerance policy on residues of antibiotics and steroids (such as ractopamine, which is banned in Russia and also in other jurisdictions, such as the European Union and China). Other goods subject to extensive safety controls and requirements in Russia and the EAEU include pork and other meat products from the EU due to the alleged African swine fever outbreaks (the latter restrictions were found to be inconsistent with Russia's obligations and subject to possible retaliatory measures from the EU unless Russia were to effectively lift the ban), cheese, certain detergents and confectionery from Ukraine, and other items. Parallel to this, all EAEU members make extensive use of stringent import licensing regimes for alcohol and pharmaceuticals.

Export controls

21 What general controls are imposed on exports?

The majority of goods exported from the customs territory of the EAEU are free from export controls and export taxes and duties. There are, however, exceptions, which often affect certain natural resources, hydrocarbons and energy goods, raw materials (including a number of metals), certain agricultural and forestry products, dual-use goods, etc. The matter of customs duties on export in the context of the EAEU has been addressed in question 10; therefore, this section deals with other export controls. Exceptions for similar primary goods may also apply in internal trade among the EAEU member states.

The rules on export controls in the external trade of member states are provided in the Agreement on Unified Rules of Export Control of Member States of the Eurasian Economic Community (the Agreement) of 28 October 2003. The Agreement has been in force for the EAEU members since 1 January 2010 and is relevant also for internal trade among them. However, on 16 May 2014 Kazakhstan denounced the

Agreement and currently applies its own national rules. Further, Kazakhstan has requested the exclusion of the provisions on export control from the scope of the EAEU Treaty.

The Agreement contains a set of common harmonised rules and procedures with regard to trade in specific raw materials; dual-use goods and equipment; technology and services that might be used in weapons of mass destruction and missile delivery systems; and military goods and equipment. The Agreement establishes a common list of goods and technology subject to export control.

Under the Agreement, the participants are called on to communicate and cooperate among themselves, and coordinate in the enforcement of export controls on goods included in the common list.

However, the member states retain certain powers and remain responsible for the establishment and management of national competent authorities in charge of administering export controls and issuing export licences for the listed goods. Procedures involving customs declarations, controls and, where relevant, payments of export taxes and duties apply to exports of goods and technologies on the common list outside the territory of the EAEU.

22 Which authorities handle the controls?

The following authorities handle export controls in the EAEU member states.

In Russia, the Federal Service for Technical and Export Control (FSTEC (fstec.ru)) is in charge of all matters on export control. It acts pursuant to the Federal Law on Export Control No. 183-FZ, of 18 July 1999.

In Kazakhstan, the Committee of Industry Development and Safety of the Ministry for Investments and Development of the Republic of Kazakhstan is responsible for export controls. It acts on the basis of the Law of Republic of Kazakhstan on Export Control No. 300 III of 21 August 2007.

In Belarus, the State Military-Industrial Committee of the Republic of Belarus (www.vpk.gov.by) is in charge of export controls under the Law of the Republic of Belarus on Export Control No. 363-3 of 11 May 2016.

In Armenia, the Ministry of Economic Development and Investments grants authorisation for the export of dual-use goods and technologies (www.mineconomy.am/en/81) under the Law of the Republic of Armenia on export control of dual-use items and technologies and their transit across the territory of the Republic of Armenia of 27 April 2010.

In Kyrgyzstan, the Commission on Military and Technical Cooperation and Export Control is responsible for the maintenance and enforcement of the National Control List of items subject to export control in the Kyrgyz Republic (Law of the Kyrgyz Republic on Export Control, No. 30, of 23 January 2003).

23 Are separate controls imposed on specific products? Is a licence required to export such products?

On 21 September 2004, the participants of the EurAsEC – including Russia, Kazakhstan (withdrew on 16 May 2014), Belarus, Armenia and Kyrgyzstan – adopted common lists of goods and technologies subject to export control (Decision of the EurAsEC Interstate Council No. 190 of 21 September 2004). This decision remains in force and operational under the new EAEU regime, excluding Kazakhstan.

Those lists contain six model sub-lists for goods and technology items subject to export controls. The titles of the sub-lists include pathogenic microorganisms and substances and genetically modified organisms; special chemicals suitable for use in chemical weapons; and nuclear materials and non-nuclear materials and respective technologies, dual-use technologies and equipment, including but not limited to those applicable for nuclear uses, for use in military weapons, and for missiles. The specific contents of each sub-list are developed in the national legislation of each participant.

Exports of listed items are subject to non-automatic licences or permissions (an authorisation with attached conditions) issued by the national export control authorities indicated under question 22 above. There are individual (transaction-specific) and general (long-term) licences. At the EAEU level, the responsible national authorities are required to regularly exchange information on issued licences or permissions and on the conditions attached to such permissions.

Debates between the member states of the EAEU on the future of export control regulation in the EAEU are ongoing. At this stage it is difficult to foresee the potential outcomes for the future of common export control regulations.

24 Has your jurisdiction implemented the WCO's SAFE Framework of Standards? Does it have an AEO programme or similar?

The CC EAEU and other agreements concerning the EAEU have made efforts to take into account the World Customs Organization's (WCO) SAFE Framework of Standards to facilitate global trade, as well as the related concept of authorised economic operators (AEO). Some provisions of the WCO's SAFE Framework of Standards are also implemented directly into the national legislation of EAEU member states.

Under Chapter 61, the CC EAEU establishes an AEO programme and provides for the legal status of AEOs and the scope of their rights and responsibilities.

Since the AEO programme was fully implemented at the EAEU level only upon adoption of the CC EAEU, AEOs registered during previous years under the CC CU and national legislation of EAEU member states are subject to transitional arrangements – their status under the national legislation is confirmed for two years from the date of entry into force of the CC EAEU.

25 Where is information on countries subject to export controls listed?

The administration of export controls in the EAEU and its member states (except Kazakhstan) is based on the sub-lists of goods subject to export control (see question 23) rather than on lists of countries of destination. However, the country of destination is relevant for the imposition of economic sanctions with respect to specific countries, persons and entities. For information on economic sanctions, see question 28.

26 Does your jurisdiction have a scheme restricting or banning exports to named persons and institutions abroad?

As stated above, export controls with regard to the destination of the goods and technologies, including with respect to persons and institutions in third countries, are relevant in the context of economic sanctions. See question 30.

27 What are the possible penalties for violation of export controls?

Penalties for violation of export controls are imposed according to the national legislation of the member states of the EAEU. All countries provide for administrative and criminal liability for individuals found to have violated export control rules. Their actions can also be subject to civil damage claims. Legal entities may be subject to financial penalties or may be prohibited from running foreign economic activities for up to three years, or both. The gravity of the penalties is similar in all EAEU member states.

In Russia, criminal offences related to export controls are subject to financial penalties up of to 500,000 roubles, imprisonment for up to three years and a prohibition on engaging in certain activities for up to five years or forced labour for up to three years. However, for violations committed by an organised group of persons or in connection with weapons of mass destruction, the imprisonment period is up to seven years and the financial penalty is up to 1 million roubles.

Administrative liability is limited to penalties of up to 20,000 roubles for legal entities and 2,000 roubles for individuals, with or without confiscation of the goods or property subject to the offence.

Financial and other sanctions and trade embargoes

28 What government offices impose sanctions and embargoes?

The EEC may introduce measures on foreign trade to implement economic sanctions against specific third countries due to the international obligations of EAEU member states, such as sanctions approved by the United Nations Security Council. The measures should be adopted unanimously by all member states. The legal basis for imposition of economic sanctions is contained in the Protocol on Measures of Non-Tariff Regulation Applicable to Third Countries (Annex No. 7 of the EAEU Treaty).

Update and trends

Since its creation in 2015 the EAEU has significantly enhanced its legislative, administrative and intra-EAEU cooperation pillars. Although the above developments are relevant for both internal and foreign trade regimes, this has not led to significant liberalisation of the EAEU external trade regime, and some EAEU member states continue to focus on the import substitution agenda.

Under the above Protocol, the EAEU member states may also adopt sanctions and embargoes at the national level for the protection of national security interests, in cases of balance of payments difficulties and for other reasons similar to general exceptions of the WTO Agreements as well as in exceptional situations, which are not clarified further in the EAEU Treaty. Such measures can be introduced pursuant to the respective domestic legislation (eg, article 13 of the Federal Law of the Russian Federation on Fundamentals of the State Regulation of Foreign Trade, No. 164-FZ, of 8 December 2003). Normally, the duration of such unilateral measures should not exceed six months. Other countries within the EAEU are called upon to respect and tolerate the unilateral measures adopted by an EAEU member state and affecting foreign trade with third states.

On 4 June 2018, the new Federal Law on Measures to Mitigate (Counteract) Unfriendly Actions of the United States of America and Other Foreign States entered into force. The law aims to facilitate the adoption and introduction by the President and government of potential retaliatory measures against the US's sanctions imposed on certain Russian companies and individuals in April and May 2018, as well as against further unfriendly acts (sanctions) of the US and other countries, including those which decided to pursue the US's measures. Potential retaliatory measures could be of a political (eg, seizure of international cooperation) or economic nature (trade embargoes, limitations on trade in services, participation in the governmental contracts and privatisation etc), as well as other measures. The language of the new law grants wide discretion to the authorities in terms of qualifications of unfriendly acts and specifc individuals, as well as legal or public entities targeted by potential retaliatory measures, and regarding the choice and extent of the countermeasures. At the same time, trade restrictions must not apply to imports into Russia of vital goods that are not produced domestically and to goods imported for personal use. The new law also obliges all individuals and organisations within the Russian jurisdiction to implement the above countermeasures strictly.

In May 2018, the Russian Parliament also considered introducing criminal and administrative penalties for individuals and companies that facilitated the introduction of or implemented sanctions against the Russian Federation, including by means of extraterritorial application of the US sanctions. However, the respective legislation was highly negatively perceived at all levels of the society and its prospects are uncertain.

29 What countries are currently the subject of sanctions or embargoes by your country?

The member states of the EAEU introduce and maintain sanctions and trade embargoes on the basis of the respective United Nations Security Council resolutions. However, the exact scope and conditions may vary from one member state to another. For that reason, there is no single source of information on trade embargoes or economic sanctions maintained in the EAEU by its member states. Individual measures are provided for in various governmental decrees, or resolutions of the member states.

In 2018, the EAEU member states maintained trade embargoes and sanctions with respect to the following countries:

- Afghanistan;
- Angola;
- Democratic Republic of the Congo;
- Iran;
- Ivory Coast;
- Liberia;
- Libya;
- North Korea;
- Somalia;
- Sudan/Darfur; and
- various individuals and organisations suspected of participation in terrorist networks or activities and residing in various third countries, including but not limited to the above (see question 30).

On 6 August 2014, Russia banned imports of certain agricultural products, raw materials and foodstuffs from the US, the EU, Canada, Australia, Norway, Ukraine (effective from 1 January 2016), Albania, Montenegro, Iceland and Liechtenstein in response to the economic sanctions in connection with events in Ukraine in 2014. The list of banned imports covers all kinds of meat and meat products (including sausages and similar products, and offal, fish and other seafood), milk and dairy products (cheeses, cottage cheese, etc), vegetables, fruits and nuts, but excluding Atlantic salmon and trout juveniles, lactose-free milk, seed potatoes and onion, hybrid sweetcorn and seed peas, food supplements, vitamin mineral complexes, food flavourings or additives and protein concentrates. Baby food was explicitly excluded from the above prohibitions. Initially, the measures were imposed for a one-year period subject to prolongation or amendments in scope. On 27 May 2016, the Russian government relaxed import restrictions on beef, poultry meat and vegetables intended for the production of baby food in Russia. By June 2018, Russia had not introduced new countersanctions or trade embargoes against the EU or changed the existing ones .

Later in 2018, Russia may introduce additional countersanctions against the United States, the EU and other countries, including measures that aim to retaliate against current and any future sanctions against Russian interests.

In addition, in response to the incident with a Russian military aircraft on 24 November 2015, Russia introduced a package of economic sanctions against Turkey taking full effect as of 1 January 2016. Most of the restrictive measures were lifted in 2017 and 2018.

Other EAEU member states did not join the restrictive measures imposed by Russia. Although EAEU members formally respect and comply with the above Russian restrictions, there are numerous media reports on circumvention cases.

30 Are individuals or specific companies subject to financial sanctions?

Individuals, specific organisations and companies are already subject to financial sanctions by the member states of the EAEU. The measures applied to individuals and entities include freezing financial and economic assets.

Sanctions against persons and entities take place at the national level. The authorities of each member state maintain and publish lists of organisations and persons, in particular those suspected of terrorist activities (eg, Russia's FSTEC website and Decision of the Council of Ministers of the Republic of Belarus No. 336 of 11 March 2006). The national authorities of EAEU member states regularly exchange information relating to sanctioned persons and entities.

The names of newly affected legal entities and individuals subject to financial sanctions are as a rule annexed to the national legal act of the member state implementing new sanctions.

According to the Russian Federal Law 272-FZ of 28 December 2012 on Measures Impacting Individuals Involved in Violations of Fundamental Human Rights and Freedoms and of Rights and Freedoms of Citizens of the Russian Federation, the Russian authorities can prohibit entry and seize the property and assets of listed foreign individuals considered to have been involved in violations of fundamental rights and freedoms and in offences against Russian citizens. This federal law is widely seen as a retaliatory measure by Russia against legislation in the US known as the Sergei Magnitsky Rule of Law Accountability Act of 2012, which imposes individual sanctions on persons involved in violations of human rights and the rule of law in Russia. Some individuals subject to sanctions under Federal Law 272-FZ of 28 December 2012 are listed at www.mid.ru/ru/maps/us/-/asset_publisher/unVXBbj4Z6e8/content/id/2047929. In March 2014, nine officials from the US and 13 Canadian officials became subject to a ban on entering Russia in response to the sanctions against Russia related to the crisis in Ukraine.

These lists are subject to continuous amendments for the purpose of expansion or annulment at any time without prior notice.

Miscellaneous

31 Describe any trade remedy measures, import or export controls not covered above that are particular to your jurisdiction.

Traditionally, the EAEU member states have relied on export taxes or export duties, mostly on raw materials and hydrocarbons. The rationale for export taxes has been to secure significant income for national budgets as well as to redistribute income from large businesses to the state and eventually to contribute to more equal distribution of the nations' wealth from natural endowments. Export taxes may also potentially affect precious metals and minerals and rare earths; however, this area is now regulated by WTO rules and commitments – at least as far as the largest member state, Russia, is concerned.

Member states also have recourse to non-tariff measures on imports and exports of goods (see question 20).

In addition, the EEC maintains a list of strategic goods that can be subject to temporary export restrictions in case of shortages and other critical situations (see Decision of the Commission of the Customs Union of 27 January 2010 No. 168, and notably its Annex 1, as amended).

Unilateral measures by the member states of the EAEU restricting imports or exports of goods from their national territories remain exceptional, but are still possible. In particular, Russia's import ban of 6 August 2014 (see question 29) on certain food products from the US, the EU and other countries can be regarded as a unilateral measure. If the latter jurisdictions continue to prolong and intensify economic sanctions affecting Russia in the future, new Russian unilateral measures should not be excluded.

Additional tariffs imposed by the United States, allegedly on national security grounds, in January 2018 on imports of a wide range of steel and aluminium products could ignite and escalate many trade conflicts around the globe. The consequences of the above and further potential unilateral protectionist actions on the world trade are difficult to predict. However, it is certain that they may significantly change the trade regimens of many countries and territories in the near future.

大成 DENTONS

Edward Borovikov **edward.borovikov@dentons.com**
Bogdan Evtimov **bogdan.evtimov@dentons.com**
Igor Danilov **igor.danilov@dentons.com**
Taras Povorozniuk **taras.povorozniuk@dentons.com**

Rue de la Régence 58
1000 Brussels
Belgium

Tel: +32 2 552 29 00
Fax: +32 2 552 29 10
www.dentons.com

European Union

Laurent Ruessmann and Jochen Beck
Fieldfisher

Overview

1 What is the main domestic legislation as regards trade remedies?

The EU's anti-dumping rules are set out in Council Regulation (EU) 2016/1036 on the protection against dumped imports from countries not members of the European Union (https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02016R1036-20180608).

The EU's anti-subsidy rules are set out in Council Regulation (EU) 2016/1037 on the protection against subsidised imports from countries not members of the European Community (https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02016R1037-20180608).

The EU safeguard rules with regard to imports from other members of the WTO are set out in Council Regulation (EU) 2015/478 on the common rules for imports (related to imports from WTO members) (https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1470399764467&uri=CELEX:32015R0478).

The safeguard rules for imports from countries that are not members of the WTO are set out in Council Regulation (EU) 2015/755 on common rules for imports from certain third countries (related to imports from non-WTO members) (https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02015R0755-20170519).

2 In general terms what is your country's attitude to international trade?

The EU is a WTO member and comprises 28 member states. Among the founding principles are the four freedoms of movement, namely the free movement of goods, free movement of people, free movement of capital and free movement of services. Within the EU, most trade is therefore free. Exceptions exist for certain types of goods, such as military items, certain dual-use items, waste, pesticides and biocides, and for reasons of national security and health.

As regards third countries, the EU forms a customs union with common import and export rules, and customs duties and trade defence measures apply uniformly among member states. Specific restrictions and requirements, such as licensing, registration, classification, labelling and packaging requirements exist, at both EU and member state level, for the import and export of several products such as military items, certain dual-use items, endangered species, waste and biocides, and other chemicals, for public policy reasons.

Overall, in 2017 and 2018, and in light of international developments, the EU has partially moved away from the rather liberal approach towards international trade it has had in the past. Commission President Jean-Claude Juncker clarified the new position in September 2017 as follows: 'Let me say once and for all: we are not naïve free traders. Europe must always defend its strategic interests'. Accordingly, the EU and certain member states have become more focused on ensuring that international trade is fair, undistorted and balanced. For instance, in response to the US's unilateral imposition of higher customs tariffs on certain steel and aluminium products, the EU brought WTO challenges, used a mechanism under the WTO Safeguards Agreement to increase customs tariffs on imports of certain US products and initiated its own safeguard investigation on imports of certain steel products. The EU has also challenged China's policy on technology transfer before the WTO and is preparing a framework programme, for public policy and security reasons, to better screen foreign investments in strategic industries.

The EU has entered into various bilateral and multilateral trade and partnership agreements with third countries. In January 2016, the Deep and Comprehensive Free Trade Agreement between the EU and Ukraine entered into force. In December 2016, the negotiations of the EU–Vietnam FTA were completed and now procedures are under way to allow its adoption; entry into force is expected in 2019. The EU–Canada Comprehensive Trade and Economic Agreement was signed in 2016 and approved by the European Parliament in February 2017. In September 2017, the agreement entered into force provisionally. It is presently with the EU member states for ratification. On 8 December 2017, the negotiations between the EU and Japan were finalised. The EU–Japan Economic Partnership Agreement is awaiting approval from the Council and the European Parliament.

Currently, the EU is negotiating several free trade and partnership agreements, including ones with Australia and New Zealand, India, Indonesia, Chile, Mercosur and Malaysia, and is negotiating an update to the FTA with Mexico and the partnership agreement with the African-Caribbean-Pacific (ACP) countries. The EU is also in discussions with Turkey to update the EU–Turkey Customs Union arrangements. Trade negotiations with the US remain suspended.

Special trade regimes are in place for developing and least-developed countries under the General System of Preferences (GSP), the ACP partnership agreement (see above) and the OCT preference, which relates to certain overseas countries and territories. A complete list of the current bilateral and multilateral trade agreements to which the EU is party, as well as unilateral preference arrangements, is available at https://ec.europa.eu/trade/policy/countries-and-regions/. In addition, the EU is part of the Trade in Services Agreement negotiations and the negotiations of the Agreement on Environmental Goods.

Trade defence investigations

3 Which authority or authorities conduct trade defence investigations and impose trade remedies in your jurisdiction?

The European Commission – Directorate General for Trade (DG Trade) (https://ec.europa.eu/trade/) conducts EU trade remedy investigations. Trade defence measures are imposed by the Commission after consultation of the EU member states in the context of the Council. Member states can veto the imposition of trade defence measures with a qualified majority, weighted by member state population. The Commission is also responsible for the review, adaptation and extension of trade defence measures.

The collection of duties and the enforcement of compliance upon importation lie with the customs authorities of the EU member states. National customs authorities are also competent to investigate potential infringements.

The European Commission's anti-fraud office (OLAF) (https://ec.europa.eu/anti_fraud/index_en.htm) can conduct investigations into potential avoidance of payment of conventional customs duties or trade defence measures, and provide the results of those investigations to national authorities for enforcement and other follow-ups.

4 What is the procedure for domestic industry to start a trade remedies case in your jurisdiction? Can the regulator start an investigation ex officio?

Trade remedy investigations are normally initiated upon request by an EU industry. Since the Trade Defence Instruments (TDI) Modernisation entered into force in June 2018 (see below), natural or legal persons and associations not having legal personality, including trade unions, can also file a request on behalf of the EU industry. For new cases, expiry reviews and full interim reviews, the request must be supported by EU producers that account for at least 25 per cent of EU production of the product subject to the request (and EU producers representing more than 50 per cent of EU production which express a position must not oppose the request). For SMEs the TDI Modernisation provisions introduced further assistance.

The Commission can also open investigations ex officio, which it has so far done mostly in the context of the review of long-standing anti-dumping measures and the review of the scope, form or amount of the measures.

Anti-dumping and anti-subsidy complaints must include prima facie evidence of dumping and subsidies respectively, material injury and the existence of a causal link between the allegedly dumped or subsidised imports and the alleged injury. In new investigations, the complaint should also demonstrate that the imposition of trade defence measures would not conflict with the overall interest in the good functioning of the EU's economy. In expiry reviews, the complaint must demonstrate that there is a likelihood of continuation or recurrence of dumping or subsidisation and material injury should the existing measures be allowed to lapse. An anti-circumvention application must demonstrate prima facie a change in pattern of trade caused by a practice for which there is no other justification than the imposition of trade defence measures.

Requests for the imposition, extension or modification of trade defence measures must be made in writing and accompanied by supporting evidence on dumping or subsidisation, injury, causation and the EU interest. Complainants are required to submit a version of the complaint for inspection by interested parties containing non-confidential summaries of all confidential data and information.

Upon receipt of a request for the initiation of a new investigation or an anti-circumvention investigation, the Commission has 45 days to formally initiate the proceedings. Expiry review requests must be lodged with the Commission at least three months before the expiry of the measures, and the Commission must initiate the expiry review no later than the date of expiry. There is no statutory time limit within which the Commission must decide upon the initiation of an investigation based on an interim review request.

Before formally initiating a trade defence investigation, the Commission consults the EU member states. In anti-subsidy investigations, the Commission also sends a note verbale to the government of the country or countries involved in the investigation.

Trade defence investigations are formally initiated by a publication in the EU's Official Journal (OJ).

5 What is the procedure for foreign exporters to defend a trade remedies case in your jurisdiction?

Applications for the imposition, extension or modification of trade defence measures must contain lists of known concerned parties, that is, exporting producers in the subject countries, importers, users and other EU producers.

Upon initiation, the Commission invites all known parties to declare their interest to participate in the investigation. In addition, the publication of the initiation of a trade remedy case in the OJ contains an invitation to everyone that considers itself concerned to come forward to register as interested parties within 10 days. In subsidy cases, the EU will also send a note verbale to the government of the subject country, which will then inform the national exporting producers. An executive summary of the applications, including the product definition of the goods subject to the investigation and the names of the known interested parties, is published on the Commission's website.

Parties that make themselves known to the Commission within the prescribed deadline (and are selected in the sample where sampling is applied) receive a questionnaire that must normally be filled in and returned to the Commission within 37 days. In the questionnaire response, exporting producers must provide detailed information, in particular with regard to their domestic and export sales and production costs. In addition, all parties are entitled to make additional written submissions on topics of relevance to the investigation and have a hearing in person with the case handlers and the hearing officer.

New anti-dumping investigations must be completed within 14 months, and new anti-subsidy investigations within 13 months. No earlier than 60 days and no later than eight or nine months after initiation, the Commission can impose provisional anti-dumping or anti-subsidy measures. Final measures are imposed by the Commission if the investigation shows that dumped or subsidised imports caused material injury to the EU industry and the imposition of trade defence measures is in the overall EU interest.

Trade remedy measures normally remain in place for five years. During that period, the EU industry, exporting producers and other interested parties (eg, users) can request an interim review in the case of changed circumstances of a lasting nature that justify a review of the measures in place. After five years, the EU industry can request an expiry review, whereby the Commission analyses whether there is a risk of continuation or recurrence of dumping or subsidisation and material injury if the measures were allowed to lapse.

6 Are the WTO rules on trade remedies applied in national law?

The EU (as well as its member states) is a WTO member and WTO law forms an integral part of EU law. As such, the EU generally recognises and complies with WTO obligations, including in the area of trade defence.

The EU has been involved in numerous disputes before the WTO Dispute Settlement Body (DSB), as both complainant and defendant, as well as as an intervening third party. Most recently, the EU has requested consultations with China and the US regarding various issues (see below).

Overall, the EU has been quite careful to comply with WTO rulings. In the area of anti-dumping and anti-subsidy rules, the EU has passed specific legislation to facilitate bringing EU law into compliance with WTO rulings (see Regulation (EU) 2015/476 of the European Parliament and of the Council of 11 March 2015 on the measures that the Union may take following a report adopted by the WTO Dispute Settlement Body concerning anti-dumping and anti-subsidy matters).

However, WTO law does not generally have direct effect in the EU and it can be directly invoked before the EU courts only where the EU intended to implement a particular WTO obligation, or where an EU act refers explicitly to specific WTO provisions (see in particular ECJ Cases 70/78 *Fediol* and C-69/89 *Nakajima*).

7 What is the appeal procedure for an unfavourable trade remedies decision? Is appeal available for all decisions? How likely is an appeal to succeed?

The Commission imposes provisional and definitive trade remedy measures by way of regulations (secondary EU acts). Final measures can be appealed under Article 263 of the Treaty on the Functioning of the European Union (TFEU) before the EU's General Court within two months from the publication of the regulation. Provisional measures can be appealed only with regard to any autonomous or independent effects capable of being attributed solely to them (ie, not also dealt with by the regulation imposing the definitive measures).

Exporting producers and the EU producers that cooperated in the Commission investigation, as well as their representative industry associations, have standing to bring direct challenges under article 263 TFEU of trade remedy measures. Importers have standing only in limited situations, but can bring a challenge of trade remedy measures before national courts and then ask the national court to seek a preliminary ruling from the EU Court of Justice (ECJ) under article 267 TFEU.

On the substance, an appeal will be successful if the Commission committed a severe procedural breach, a manifest error of assessment, a violation of the law or a misuse of powers. In most cases brought to date, the appeal has not been successful, but there are many examples of successful appeals.

8 How and when can an affected party seek a review of the duty or quota? What is the procedure and time frame for obtaining a refund of overcharged duties? Can interest be claimed?

Importers can make requests for refunds of anti-dumping or countervailing duties paid within six months from importation of the subject

goods. A request must be filed with the Commission via the member state where the goods were released for free circulation, and must demonstrate that the amount of dumping or subsidisation decreased as compared to the duties imposed by the definitive measures. Therefore, while the requests for duty refunds can only be filed by the importing party paying the duties, they require the full cooperation of the relevant exporting producer or producers. Since June 2018, there is also the possibility for exporters to request the refund of anti-dumping or countervailing duties paid after the opening of an expiry review which is terminated without the continuation of the measures in question.

Exporting producers can also request that the Commission initiate an interim review with a view to lowering an anti-dumping or countervailing duty applicable if there are changes of a lasting nature – as compared to the initial investigation – that affect the dumping or countervailing margin. The Commission will generally not grant an interim review request until at least one year after the imposition of the definitive measures. The result of an interim review could be an increase, as well as a decrease, of the initial measures.

9 What are the practical strategies for complying with an anti-dumping/countervailing/safeguard duty or quota?

For cost, insurance and freight (CIF) sales, importers are usually the parties liable for the payment of customs duties. They therefore have a strong interest and should work with the exporter in the subject country to ensure that all exports and imports are made in compliance with applicable trade defence measures. Illegal avoidance of trade remedy duties, for example, by circumvention or the issuance of false origin certificates, are customs fraud and can lead to criminal prosecution, the retroactive imposition of duties and high fines. The Commission, customs authorities of member states and OLAF have frequently and systematically investigated circumvention practices and customs fraud in relation to the importation of products subject to anti-dumping or anti-subsidy duties, including aluminium foil, bicycles, citric acid, hand pallet trucks, molybdenum wire, solar modules and seamless pipes and tubes of stainless steel.

Exporting producers and importers therefore often rely on the options provided under the EU trade laws, for example, refund and review proceedings, as discussed under question 8, when seeking ways to lower or eliminate the payment of anti-dumping or anti-subsidy duties.

Customs duties

10 Where are normal customs duty rates for your jurisdiction listed? Is there an exemption for low-value shipments? If so, at what level? Is there a binding tariff information system or similar in place? Are there prior notification requirements for imports?

Imports must comply with the customs formalities set out in the Union Customs Code (UCC) (Council Regulation 952/2013), and the relevant implementing regulations (ie, the UCC Delegated Act (Commission Delegated Regulation 2015/2446) and the UCC Implementing Act (Commission Implementing Regulation 2015/2447)). These acts are supported by the UCC Transitional Delegated Act (Commission Delegated Regulation 2016/341) and the UCC Work Programme (Commission Implementing Decision No. 2016/578).

Certain goods, such as military items, endangered species, waste, biocides and other chemicals are subject to special licensing, registration, classification, labelling and packaging requirements before they can be placed into free circulation.

The EU customs duties payable upon importation are set out in the Combined Nomenclature. A link to the current version is available on the website of the European Commission's Directorate General for Tax and Customs (DG TAXUD) at https://ec.europa.eu/taxation_customs/business/calculation-customs-duties/what-is-common-customs-tariff/combined-nomenclature_en.

Goods whose value does not exceed the amount of €150 are exempted from the payment of customs duties when they are provided directly to the buyer (https://ec.europa.eu/taxation_customs/individuals/buying-goods-services-online-personal-use/buying-goods/buying-goods-online-coming-from-a-noneu-union-country_en).

National customs authorities issue binding tariff informations (BTIs) and binding origin informations (BOIs) upon a written request by an economic operator. The BTIs and BOIs are valid for imports of the applicant (only) throughout the EU, but other operators often base their own requests on existing rulings. A list of BTIs currently in place can be accessed via the website of the Commission's DG TAXUD at https://ec.europa.eu/taxation_customs/business/calculation-customs-duties/what-is-common-customs-tariff/binding-tariff-information-bti_en.

11 Where are special tariff rates, such as under free trade agreements or preferential tariffs, and countries that are given preference listed?

The EU acts implementing international agreements into EU law specify the special tariff rates applicable under those agreements. A list of the EU's current international agreements with links to the respective implementing laws can be found at https://ec.europa.eu/trade/policy/countries-and-regions/.

Further rules can be found in the UCC (Council Regulation 952/2013), the UCC Delegated Act (Commission Delegated Regulation 2015/2446) and the UCC Implementing Act (Commission Implementing Regulation 2015/2447), respectively.

Regulation (EU) No. 978/2012 sets out the EU's scheme of generalised tariff preferences (GSP) (https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02012R0978-20180307). It establishes:

- a general preference arrangement for developing countries;
- a special incentive arrangement for sustainable development and good governance (GSP+); and
- a special arrangement for the least-developed countries (Everything But Arms (EBA)).

Under the GSP, import duties for non-sensitive goods are reduced to zero and for sensitive goods by 3.5 per cent (and 20 per cent for sections S-11a and S-11b of Annex V). Countries that apply for, and to which the EU grants, GSP+ status benefit from additional duty suspensions. For least-developed countries that comply with the EBA conditions, all tariff duties except for Combined Nomenclature Chapter 93 (arms) are suspended.

12 How can GSP treatment for a product be obtained or removed?

Overall, the Commission can add and remove countries from the list of GSP beneficiaries according to the international status and classification of a country. The GSP benefits for a developing country (except for least-developed countries) can be removed if a country has been classified by the World Bank as a high-income or an upper-middle-income country during three consecutive years or if that country benefits from a preferential market access arrangement that provides the same tariff preferences as the GSP or better. The removal takes effect one (in the first instance) and two (in the second instance) years, respectively, after the entry into force of the decision or preferential agreement.

In addition to the entire withdrawal of GSP benefits, the GSP also provides for the suspension of the duty reductions for imports of specific products if they exceed a certain value threshold over three consecutive years.

The EU can also withdraw the GSP preferences temporarily in respect of all or of certain products originating in a beneficiary country, for any of the following reasons:

- serious and systematic violation of human and labour rights and environment and governance principles;
- export of goods made by prison labour;
- serious shortcomings in customs controls on the export or transit of drugs (illicit substances or precursors), or failure to comply with international conventions on anti-terrorism and money laundering;
- serious and systematic unfair trading practices, including those affecting the supply of raw materials, which have an adverse effect on the EU industry and which have not been addressed by the beneficiary country;
- serious and systematic infringement of the objectives adopted by Regional Fishery Organisations or any international arrangements to which the EU is a party concerning the conservation and management of fishery resources; and
- in cases of fraud, irregularities or systematic failure to comply with or to ensure compliance with the rules concerning the origin of the

products and with the procedures related thereto, or failure to provide administrative cooperation as required for the implementation and policing of the GSP.

13 Is there a duty suspension regime in place? How can duty suspension be obtained?

Economic operators can request a suspension of tariffs on all or a certain quota of imports of semi-finished products or raw materials if these products are not available or not available in sufficient quantities in the EU.

A suspension request must be filed with the European Commission via the member state where the economic operator is located, on the form attached as Annex I of Commission Communication 2011/C 363 (https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2011:363:0006:0017:EN:PDF).

Member states submit the requests they receive twice a year, in March and September, to the Economic Tariff Questions Group (ETQG). The ETQG consists of representatives of the Commission, the member states and Turkey, and examines the requests in three meetings (four if required). EU producers of a product for which duty suspension is requested can object to the request until the second meeting. Appeals against existing duty suspensions must be filed before the first ETQG meeting of a given DS cycle.

Approved duty suspensions enter into force nine months after the submission of the request (ie, for duty suspension requests submitted in March, in January of the following year, and for duty suspension requests submitted in September, in July of the following year). Duty suspensions are usually in place for five years and can be renewed.

14 Where can customs decisions be challenged in your jurisdiction? What are the procedures?

Customs decisions are taken by the national customs authorities of the EU member states. Accordingly they can be challenged at national level before the administrative or judicial courts of the member states. National courts can apply to the ECJ for a preliminary ruling (under article 267 TFEU) if the issue before them concerns a matter of interpretation of EU law.

Economic operators can also challenge certain decisions by the Commission, such as decisions on refund and remission requests, directly before the General Court under article 263 TFEU.

Trade barriers

15 What government office handles complaints from domestic exporters against foreign trade barriers at the WTO or under other agreements?

The EU Trade Barrier Regulation (EU) 2015/1843 provides a complaint mechanism for EU exporters that experience discriminatory trade practices in third countries.

EU exporters can contact the DG Trade of the European Commission (https://ec.europa.eu/trade/import-and-export-rules/export-from-eu/), and if DG Trade considers a complaint is adequately substantiated it will take measures to address the situation. Normally, the Commission will first seek an amicable solution with the importing country via bilateral talks. If this is not possible, the EU can request consultations at the WTO.

16 What is the procedure for filing a complaint against a foreign trade barrier?

Under Article 5 of Council Regulation (EC) No. 2015/1843, a complaint may be lodged with the Commission by an EU industry sector or individual enterprises. The complaint must detail the obstacles to trade and the injurious effect caused to the EU industry or business. Upon receipt, the Commission will decide within 45 days whether to initiate an examination procedure.

Member states can also request that the Commission initiate an examination procedure.

17 What will the authority consider when deciding whether to begin an investigation?

When making its decision, the Commission considers the evidence presented by the complainant, particularly the evidence of the existence of a trade barrier, the indication as to how this barrier breaches international trade rules and the evidence that the trade barrier results or threatens to result in adverse trade effects or injury. Regard will also be had to the interests of the EU as a whole, as well as to the wider implications that the decision may have for the EU's common commercial policy.

18 What measures outside the WTO may the authority unilaterally take against a foreign trade barrier?

Under Article 13(3) of Council Regulation (EC) No. 2015/1843, the EU may take unilateral commercial policy measures, such as a suspension or withdrawal of concessions, an imposition (or increase) of customs duties or the introduction of quantitative restrictions.

However, in relation to WTO members, Article 13(2) of Council Regulation (EC) No. 2015/1843 first obliges the EU to go through the WTO dispute settlement process. Regulation (EU) No. 654/2014 of the European Parliament and of the Council of 15 May 2014 lays down specific provisions for the exercise of the EU's rights for the application and enforcement of international trade rules, in particular those established under the auspices of the WTO.

In practice, for most trading partners, the measures the EU is able to take outside the WTO framework are limited to bilateral talks.

19 What support does the government expect from the private sector to bring a WTO case?

For the EU to bring a case to the WTO DSB, there must be a severe and clear enough infringement of the obligations of the third country that have a material impact on EU industry. Also, the EU considers the level of the infringement and the effects on the wider EU economy. In principle, the European Commission relies on industry to provide relevant market and industry facts and information, but does not expect any particular legal support from the private sector in order to bring a WTO action.

20 What notable trade barriers other than retaliatory measures does your country impose on imports?

Generally, the EU does not maintain non-tariff barriers on imports. There are, however, import requirements, such as customs clearance formalities, and for certain products licensing, registration, classification, labelling and packaging requirements, at EU and member state level, for reasons of public health or safety, including military items, certain dual-use items, endangered species, waste, biocides and other chemicals.

Import restrictions exist for instance at national level for certain military items.

At EU level, the following goods are among those subject to non-tariff import restrictions and possibly intra-EU transfer restrictions:

- endangered species: Council Regulation (EC) No. 338/97 of 9 December 1996 on the protection of species of wild fauna and flora by regulating trade therein (https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1431359714963&uri=CELEX:01997R0338-20141220);
- timber: Regulation (EU) No 995/2010 of the European Parliament and of the Council of 20 October 2010 laying down the obligations of operators who place timber and timber products on the market (https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32010R0995);
- waste: Regulation (EC) No. 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste (https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1431360214820&uri=CELEX:02006R1013-20140526); and
- certain chemical substances and mixtures: Regulation (EC) No. 1272/2008 of the European Parliament and of the Council of 16 December 2008 on classification, labelling and packaging of substances and mixtures, amending and repealing Directives 67/548/EEC and 1999/45/EC, and amending Regulation (EC) No. 1907/2006 (Text with EEA relevance) (https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02008R1272-20180301).

Update and trends

Reform of the EU trade defence system
In December 2017 and June 2018, the EU made fundamental changes to its anti-dumping and anti-subsidy laws (the basic laws are set out in Regulation (EU) 2016/1036 and Regulation (EU) 2016/1037, respectively).

Regulation 2017/2321 replaced the previous methodology for establishing dumping for countries that are not considered market economies (ME), so-called non market economies, or NMEs. The previous system, referred to as the 'analogue country methodology', allowed the EU institutions to disregard domestic prices in NMEs and instead use domestic prices or costs in an analogue ME country (which would be determined on a case-by-case basis with reference to the industry under investigation in a specific case). The new methodology allows the Commission to disregard domestic costs and prices (in any country) if significant distortions are found to exist in that country (ie, costs and prices are not the result of free market forces but affected by substantial government intervention). Instead, the Commission can construct prices based on production costs in an appropriate representative country or established by reference to international benchmarks.

Regulation 2018/825 modernised the trade defence system by introducing several substantive and procedural updates to the anti-dumping and anti-subsidy legislation to increase transparency, streamline procedures and enhance the effectiveness of the instruments. The most important changes are the following:

- updated definition of EU industry and of other interested parties, including a clarification that complaints may be brought by associations and trade unions (with or without legal personality) on behalf of the EU industry;
- introduction of an SMEs helpdesk;
- shortening of anti-dumping investigations from 15 months to a maximum of 14 months and of the period to impose provisional measures from nine months to seven months (exceptionally eight months);
- three-week pre-notification to the member states and interested parties, with opportunity to comment, before the imposition of provisional measures;
- withdrawal of the lesser-duty rule in anti-subsidy cases. The lesser-duty rule provides that the Commission must normally impose the lower of the subsidy margin (value of subsidies expressed as percentage of the CIF export value) or dumping margin (comparison of the home market price in and the export price from the country subject to the investigation) on the one hand, and the injury margin (comparison of the export price from the country subject to the investigation and the ex-works price of the EU industry) on the other;
- modulation of the lesser-duty rule in anti-dumping investigation in certain cases of distortions of raw materials, when the raw material is an important cost factor (minimum 17 per cent);
- expansion of the facts considered to establish the target profit: setting a minimum target profit for the EU industry of 6 per cent and including costs for compliance with environmental and social standards in the calculation of the target profit. The target profit is the profit that the EU industry should be able to obtain in the absence of injurious dumping or subsidisation;
- possibility for the Commission to increase the injury margin for stockpiling during the investigation; and
- possibility for the Commission to register imports ex officio.

Revival of the EU blocking statute in response to the US's Iran sanctions
Under the Joint Comprehensive Plan of Action (JCPOA), Iran agreed to stop its nuclear programme and submit to supervision and controls by the United Nations. The EU, US and other countries consequently lifted wide parts of their economic sanctions imposed on Iran. In May 2018, President Trump announced the US's withdrawal from the JCPOA and the step-by-step reintroduction of the US primary and secondary sanctions against Iran. In response to the US's unilateral withdrawal from the agreement, the other signatories made strong declarations that they would continue to recognise and abide by the JCPOA.

To protect EU companies that have re-established economic relationships with Iran, the EU has reactivated its Blocking Statue (Regulation (EC) No 2271/96 of 22 November 1996, protecting against the effects of the extra-territorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom). It shall counteract the effects of the extra-territorial application by the US of its Iran sanctions. Under the Blocking Statute, EU companies are essentially prohibited from complying with the US Iran sanctions and they must notify the Commission whenever the renewed US Iran sanctions directly or indirectly affect their economic or financial interests. The US Iran sanctions and juridical and administrative decisions based thereon must not be enforced in the EU. The US embargo regulations added to the Blocking Statute are:

- Iran Sanctions Act of 1996 (ISA);
- Iran Freedom and Counter-Proliferation Act of 2012 (IFCA);
- National Defence Authorization Act For Fiscal Year 2012 (NDAA);
- Iran Threat Reduction And Syria Human Rights Act of 2012 (TRA); and
- Iranian Transactions and Sanctions Regulations (ITSR).

The revived Blocking Statute is expected to enter into force in July 2018.

Safeguard investigation on certain steel products
In March 2018, the Commission launched a safeguard investigation into certain steel products. On 28 June the Commission widened the scope of the investigation to include certain bars and wires. The investigation is currently ongoing.

EU framework to control foreign investment in strategic sectors
In response to, in particular, China's increased investments in strategic industries in the framework of the Made in China 2025 Plan, the EU proposed to member states in autumn 2017 to introduce a new three-tier EU framework for investment screening, consisting of:

- a European framework for screening of foreign direct investments by member states on grounds of security or public order, including transparency obligations, the rule of equal treatment among foreign investment of different origin, and the obligation to ensure adequate redress possibilities with regard to decisions adopted under these review mechanisms;
- a cooperation mechanism between member states and the Commission. The mechanism can be activated when a specific foreign investment in one or several member states may affect the security or public order of another; and
- European Commission screening on grounds of security or public order for cases in which foreign direct investment in member states may affect projects or programmes of EU interest, in particular in the areas of research, space, transport, energy and telecommunications.

The Council and the European Parliament have proposed different amendments to the Commission proposal and trilogue discussions are expected to achieve a final legislative text before end of 2018.

WTO DSB requests
The EU requested WTO consultations in June 2018 with China with regard to certain measures imposed by China pertaining to the transfer of foreign technology into China, and with the US concerning the unilateral imposition of additional customs duties on certain steel and aluminium products.

Brexit
Negotiations between the EU and the UK are still ongoing and no definitive results have been reached so far (June 2018). There is tentative agreement that EU law will continue to apply during a provisional post-Brexit period unit 31 December 2020.

Export controls

21 What general controls are imposed on exports?

The main instruments setting out the import and export rules of the EU are the:

- Union Customs Code (Council Regulation 952/2013);
- UCC Delegated Act (Commission Delegated Regulation 2015/2446);
- UCC Implementing Act (Commission Implementing Regulation 2015/2447);
- UCC Transitional Delegated Act (Commission Delegated Regulation 2016/341);
- UCC Work Programme (Commission Implementing Decision No. 2016/578);
- EU Dual-Use Regulation 428/2009; and
- national regulations on export of military and dual-use items.

Under articles 263 and seq of the UCC, goods intended for export are subject to an export declaration. Furthermore, certain goods, such as military items listed in the national military lists, dual-use items listed in Annex I to Regulation 428/2009, waste and endangered species, require a licence prior to their export.

22 Which authorities handle the controls?

National customs authorities implement the EU customs rules, impose and collect import and export duties, oversee goods in transit and under special customs procedures, and pursue customs and export violations. A list of national customs authorities can be found here: https://ec.europa.eu/taxation_customs/common/online_services/index_en.htm. If the export of a good requires a licence, this must be obtained from the responsible authorities and included in the export documentation (see questions 23 and 28).

23 Are separate controls imposed on specific products? Is a licence required to export such products?

Certain goods, technology and software require prior authorisation for exports and intra-EU transfers (from one EU member state to another).

Particularly noteworthy are the export and intra-EU transfer restrictions with regard to military items and certain dual-use items. Military items listed on the military lists of the member states require a licence for export and intra-EU transfer. Dual-use items listed in Annex I to Regulation 428/2009 require a licence for export and dual-use items listed in Annex IV to Regulation 428/2009 also require a licence for intra-EU transfers. The licensing procedure is handled by the national export control authorities of the EU member states. Member states may also impose additional (stricter) export controls. Information on additional national rules and the national authorities responsible for export controls and sanctions is available at DG Trade's website at https://ec.europa.eu/trade/import-and-export-rules/export-from-eu/dual-use-controls/index_en.htm.

Additional restrictions on exports and intra-EU transfers exist, inter alia, for waste, endangered species, pesticides, biocides, food and chemicals.

24 Has your jurisdiction implemented the WCO's SAFE Framework of Standards? Does it have an AEO programme or similar?

Yes, the EU has implemented an authorised economic operator system. Further information on the EU's AEO system is available at https://ec.europa.eu/taxation_customs/dds2/eos/aeo_consultation.jsp?Lang=en.

25 Where is information on countries subject to export controls listed?

The EU export controls on military and dual-use items apply equally to all non-EU countries. For partner countries and countries considered safe destinations, simpler procedures are in place, but there is no system of licence exception as in the US. In addition, the EU and member states have imposed sanctions and embargoes against various third countries (see questions 26 and 29).

26 Does your jurisdiction have a scheme restricting or banning exports to named persons and institutions abroad?

The EU has imposed specific restrictions on natural and legal persons engaged in terrorism by Regulations 2580/2001 and 881/2002 (https://ec.europa.eu/dgs/fpi/what-we-do/sanctions_en.htm). In addition, country-specific embargoes also contain person-related sanctions (see question 30).

27 What are the possible penalties for violation of export controls?

Violations of export controls can be subject to administrative or criminal sanctions, or both, depending on the gravity of the violation and the specific law of the respective EU member state. Smaller violations can lead to revocation of export privileges (eg, global licences), warnings and fines. More severe violations will, in addition, entail higher fines, and can lead to prison sentences for the operators responsible.

Financial and other sanctions and trade embargoes

28 What government offices impose sanctions and embargoes?

In the EU, the competences to impose sanctions and embargoes are split between the Commission and the EU member states. This is because the EU member states have not delegated to the EU the competence to impose military embargoes and certain person-related sanctions, such as travel bans. These types of sanctions are, therefore, formally implemented at national level by each member state authority on the basis of a common decision taken by the EU member states in the framework of the Common Foreign and Security Policy. The imposition of economic sanctions, including the freezing of funds, is within the EU's competence. These sanctions are therefore implemented in the form of Regulations under the TFEU.

The export control and customs authorities of the member states are responsible for the handling of export licence applications and the prosecution of violations of sanctions and embargoes.

29 What countries are currently the subject of sanctions or embargoes by your country?

The EU and its member states have imposed various embargos and sanctions against third countries. Most notably, the EU has comprehensive embargo regimes that restrict trade with North Korea, Russia and Syria. The previously comprehensive Iran sanctions were largely lifted in January 2016.

A complete list with a summary of the restrictions together with links to the respective regulations is available at https://ec.europa.eu/dgs/fpi/what-we-do/sanctions_en.htm. In addition, there are specific sanctions targeting natural and legal persons to combat terrorism (see questions 26 and 30).

fieldfisher

Laurent Ruessmann **laurent.ruessmann@fieldfisher.com**
Jochen Beck **jochen.beck@fieldfisher.com**

Bld Louis Schmidt 29
1040 Brussels
Belgium

Tel: +32 2 742 7000
Fax: +32 2 742 7100
www.fieldfisher.com

30 Are individuals or specific companies subject to financial sanctions?

Yes, natural and legal persons can in particular be subject to asset freezes. Sanctions usually also contain a general prohibition to make funds or economic resources available to sanctioned legal and natural persons. An up-to-date list of persons and entities subject to EU sanctions can be accessed at https://ec.europa.eu/dgs/fpi/what-we-do/sanctions_en.htm. See also question 26.

Miscellaneous

31 Describe any trade remedy measures, import or export controls not covered above that are particular to your jurisdiction.

Not applicable.

India

Gunjan Mishra, Ashish Chandra, Saurabh Tiwari, Tarun Bhati and Tanvi Praveen

Luthra & Luthra Law Offices

Overview

1 What is the main domestic legislation as regards trade remedies?

Anti-dumping and countervailing duty investigations

The Customs Tariff Act 1975 (the Act) governs the conduct of anti-dumping (AD) (including anti-circumvention investigations), anti-subsidy and safeguard duty investigations, while the Foreign Trade (Development and Regulation) Act 1992 (the Foreign Trade Act) regulates safeguard measures in the nature of quantitative restrictions (QRs). See www.dgtr.gov.in.

The conduct and imposition of duty in AD and countervailing duty (CVD) investigations are governed by the Act and the specific rules promulgated respectively in this regard. Specifically, CVD investigations are regulated by section 9 of the Act read with the Customs Tariff (Identification, Assessment and Collection of Countervailing Duty on Subsidised Articles and for Determination of Injury) Rules 1995 (the CVD Rules) while AD investigations are regulated by section 9A of the Act read with the Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles for Determination of Injury) Rules 1995 (the AD Rules) and Trade Notices as issued by the Directorate General of Anti-Dumping and Allied Duties (DGAD) (now renamed the Directorate General of Trade Remedies (DGTR) vide Notification No. I-34(7)/2018-O&M dated 17 May 2018 issued by the Department of Commerce), which is the investigating authority functioning under the Department of Commerce, Government of India. Appeals against anti-dumping and countervailing duties are provided under section 9C of the Act and appeals in both cases are made before the Custom Excise and Service Tax Appellate Tribunal (CESTAT).

Safeguard duty investigations

In India, two types of safeguard investigations can be initiated: one that involves the levy of a duty and another that involves imposing QRs on imports. Further, safeguard duty investigations can either be in the nature of a general safeguard duty investigation, where the duties once imposed apply to imports from all countries (under section 8B of the Act), or a China-specific safeguard investigation (under section 8C of the Act) where duties are imposed on imports specifically from China. The latter is termed the Transitional Product-Specific Safeguard Investigation (China-specific safeguards).

The provisions under section 8B of the Act are implemented through the Customs Tariff (Identification and Assessment of Safeguard Duty) Rules, 1997 (Safeguard Rules), while the provisions under section 8C of the Act are implemented through Customs Tariff (Transitional Product Specific Safeguard Duty) Rules, 2002 (China Safeguard Rules).

Section 8C of the Act concerning China-specific safeguard investigations was enacted to give effect to article 16 of China's Accession Protocol. The Accession Protocol, which came into effect on 11 December 2001, provides under article 16(9) that the China-specific safeguard mechanism would be terminated 12 years after the date of accession, which put the date of termination at 10 December 2013. However, neither section 8C of the Act nor the China Safeguard Rules contain an explicit sunset clause for the termination of the China-specific safeguard investigations. Nonetheless, despite the absence of an explicit reference to a sunset period, no new China-specific safeguard investigation has been initiated since 2013, indicating that the investigating authority is likely to refrain from initiating new China-specific safeguard investigations. It must be noted that the authority to conduct safeguard investigations has now been conferred on the DGTR vide Notification No. I-34(7)/2018-O&M dated 17 May 2018 issued by Department of Commerce.

On the issue of injury determination, it is pertinent to mention here that the standard of injury suffered by the domestic industry also varies in the two types of safeguard duty cases. In a general safeguard investigation, a demonstration of 'serious injury' or threat of 'serious injury' is required, while in a China-specific safeguard investigation the standard is one of market disruption or threat of market disruption.

The authority to impose QRs is provided under section 9A of the Foreign Trade Act, which states that the central government may impose QRs if imports have taken place in such increased quantities and under such conditions as to cause or threaten to cause serious injury to the domestic industry. The provisions of section 9A of the Foreign Trade Act are implemented through the Safeguard Measures (Quantitative Restrictions) Rules 2012 (Quantitative Restrictions Rules) (see www.dgft.gov.in). The functions of the authority conducting safeguard QR investigations were earlier discharged by the Directorate General of Foreign Trade (DGFT), but have now been transferred to the DGTR.

2 In general terms what is your country's attitude to international trade?

India, as one of the founding members of the GATT in 1947 and subsequently the WTO, supports liberalisation of international trade and believes that increased market access is imperative for the growth of developing countries. India is also a firm supporter of capacity building among developing and least-developed countries and is of the view that capacity building is imperative if these countries are to reap the benefits of liberalised trade. In terms of trade flows, while the US and EU have traditionally been India's largest trading partners, in recent years India's engagement with other developing countries has ensured that south–south trade is furthered. It is no surprise then that since 2008–2009 the US has lost its top spot as India's largest trading partner and has fallen to the number two position, while China has gone from strength to strength to become India's largest trading partner.

India's engagement in regional-trading or free-trading blocs is recent even though the first regional trade agreement (RTA) entered into by India was in 1975, when India became a member of the Bangkok Agreement, which was renamed the Asia-Pacific Trade Agreement in 2005. The first free trade agreement (FTA) entered into by India was in 2000, when it entered into an FTA with Sri Lanka.

However, it is only in the past decade that India has entered into a significant number of FTAs, RTAs and comprehensive economic cooperation agreements (CECAs). As of April 2014, India has entered into 18 different agreements in the nature of FTAs, RTAs and CECAs. Prominent among them are the South Asian Free Trade Agreement; the India–Korea Comprehensive Economic Partnership Agreement (CEPA); the India–Singapore CECA; the India–ASEAN FTA; the India–Malaysia CECA; the India–Chile preferential trade agreement; and the India–Japan CEPA. India is currently negotiating FTAs with the European Free Trade Association, the EU and the South African

Customs Union (SACU). India is also engaged in negotiating a mega regional FTA, known as the Regional Comprehensive Economic Partnership (RCEP), with the 10 member states of the Association of Southeast Asian Nations (ASEAN) and Australia, China, Japan, South Korea and New Zealand, which is likely to be concluded by the end of 2018.

India has been a responsible member of the WTO and this is reflected in its record of compliance with the WTO decisions. India's laws have been under scrutiny in notable cases such as *India-Patents*, *India-Autos* and *India-Quantitative Restrictions*. In all three cases, India complied with the decisions of the WTO by bringing its regime into compliance with the recommendations of the Dispute Settlement Body. Currently, the United States has challenged India's compliance measure in *India-Agricultural Products* (DS430). The United States had requested retaliation under article 22.2 of the Dispute Settlement Understanding (DSU). India objected to the United States' claim of retaliation, pursuant to which the parties pursued arbitration proceedings under article 22.6 of the DSU. Additionally, India initiated compliance proceedings under article 21.5 of the DSU, wherein it claimed that its compliance measures are in conformity with the recommendations and rulings of the Dispute Settlement Body. At the time of writing, both proceedings are ongoing.

Trade defence investigations

3 Which authority or authorities conduct trade defence investigations and impose trade remedies in your jurisdiction?

In India, since May 2018, pursuant to a notification by the Government of India (Allocation of Business) 340th Amendment Rules, 2018, DGAD has been renamed the Directorate General of Trade Remedies (DGTR), vide Notification No. I-34(7)/2018-O&M dated 17 May 2018, which falls under the purview of the Department of Commerce. Consequently, the DGTR is now entrusted with conducting AD investigations (including anti-circumvention), CVD investigations and safeguard investigations.

The DGTR determines the injury and dumping or subsidisation in an AD or CVD investigation respectively. The findings of the DGTR (preliminary and final findings) are recommendatory in nature and are given effect by the Department of Revenue of the Ministry of Finance by means of a customs notification (see commerce.gov.in).

The Department of Revenue has the discretion to accept, modify or even refuse the recommendations for the imposition of duty, if it deems it necessary. Hence, it is not unusual to find that in some cases, despite the DGTR recommending preliminary or final duty, the Department of Revenue does not issue a customs notification. It should be noted that there is no formal hearing procedure or opportunity for making further representations before the Department of Revenue.

With respect to safeguard duty investigations, the DGTR determines both a finding on increased imports and serious injury, as the case may be. The findings, whether preliminary or final, are recommendatory in nature. To date, these findings have been subject to the approval of the Standing Board of Safeguards (BOS); however, as the DGTR has recently been entrusted with conducting safeguard investigations, it is not yet clear whether the preliminary or final findings will still be subjected to the approval process of the BOS or whether such findings will be sent directly before the Department of Revenue, as in the case of AD or CVD investigations. It is expected that this issue will be clarified shortly.

Safeguard quantitative restrictions were introduced to the Foreign Trade Act in 2010 followed by the Quantitative Restrictions Rules in May 2012. According to the Quantitative Restrictions Rules, the authorised officer (now the DGTR vide Notification No. I-34(7)/2018-O&M dated 17 May 2018 issued by the Department of Commerce) was entrusted with conducting the safeguard investigation and determining both the issues of increased imports and serious injury or threat of serious injury and recommending the extent and duration of QRs to be imposed. Since the notification transferring the functions of the authorised officer to the DGTR was issued only in May 2018, there is no clarity with respect to the authority which will effect the recommendation of the DGTR by accepting, refusing or modifying the recommendations on the level of quota suggested.

India is a prolific user of trade remedies and among all the WTO members had initiated the highest number of trade remedial investigations up to 2016. According to the WTO data, up to December 2016, India had initiated 839 AD investigations, out of which 199 investigations were initiated against China, 64 against the Republic of Korea, 62 against the European Union, 59 against Chinese Taipei, 46 against Thailand, 38 against Japan and 40 against the US. India is followed by the US, which had initiated 606 anti-dumping investigations up to December 2016.

Similarly, India had, up to June 2017, initiated 42 safeguard duty investigations, which is the highest number of safeguard investigations initiated by any member to date. In terms of CVD investigations, however, the picture is quite different, where up to December 2016, India had initiated three CVD investigations, all against China. In stark contrast, the US had initiated 195 CVD investigations up to December 2016, which is the highest number of CVD investigations initiated by any member.

4 What is the procedure for domestic industry to start a trade remedies case in your jurisdiction? Can the regulator start an investigation ex officio?

An AD or CVD investigation can be initiated either upon the receipt of an application requesting initiation of the investigation or suo moto by the DGTR based on the information received from the commissioner of customs or any other source that provides sufficient evidence of dumping or subsidisation, material injury and causal link. If the AD or CVD investigation is initiated based on an application, then the applicant must meet the criterion of 'domestic industry' as provided in the AD or CVD Rules, which state that an application should be expressly supported by domestic producers who account for at least 25 per cent of the total production of the 'like article' or by domestic producers whose collective output constitutes more than 50 per cent of the total production of the 'like article' produced by that segment of the domestic industry expressing either support or opposition to the application. Typically, a trade association representing the domestic industry files the application on behalf of the industry seeking the duty. The application must also contain information on whether any particular domestic producer is related to an exporter or importer of the allegedly dumped or subsidised article or is itself an importer, in which case such a producer may be excluded from the group of domestic producers seeking to qualify as the domestic industry.

The application must contain evidence of dumping or subsidisation, material injury or threat of material injury and causal link. The evidence with respect to dumping is in the form of price-related data pertaining to the normal value in the exporting country and prices of the product when imported into India.

With respect to a CVD investigation, the evidence of subsidisation could be in the form of laws or regulations in the exporting country providing tax benefits, duty rebates, preferential loans or grants to the producer or exporter. In AD investigations, the domestic industry is also required to provide a significant amount of costing data relating to the product in question, such as data on cost of production, raw material consumption, consumption of utilities and allocation of expenditure, etc. The evidence with respect to injury is in the form of data on capacity, production, sales, selling price, price undercutting, price underselling, profits and losses, capacity utilisation, exports and export sales realisation, etc.

The domestic industry submits confidential as well as non-confidential versions of the application to the DGTR, which then ensures that sufficient copies of the latter are kept in the public file to be made available to authorised interested parties upon inspection of the public file. The Act does not specify a time limit within which the DGTR has to initiate the AD or CVD investigation. However, the DGTR cannot initiate an investigation unless it is satisfied with the accuracy and adequacy of the evidence submitted as part of the application. Additionally, in the case of a CVD investigation, the DGTR cannot initiate the case unless it has held consultations with the government of the exporting country.

As stated above, India has introduced to the AD Rules provisions governing the conduct of anti-circumvention investigations. An applicant for an anti-circumvention investigation must establish the circumvention of existing AD duties, which can be said to occur in any of the following cases:

- if an unfinished or unassembled product is imported to be completed or assembled in India or a third country and the value of the item after assembly is less than 35 per cent of the cost of the finished product;

- if an article in altered form (either in description, name or composition) is imported from the country of export or origin; or
- if producers or exporters subject to AD duty change their patterns or channels of trade without economic reason and so as to avoid the duty.

The applicant is also required to provide evidence which establishes that imports circumventing the duty are being dumped. As in the case of AD investigations, the DGTR conducts the investigation and recommends the duty to the Ministry of Finance, which may levy the duty retrospectively from the date of initiation of the investigation. An investigation pertaining to anti-circumvention may also be initiated suo moto by the DGTR.

Requirements in safeguard investigations

As in the case of an AD or CVD investigation, a general safeguard duty investigation and a QR investigation can be initiated either suo moto by the authority or upon receipt of an application requesting initiation of a safeguard investigation. If the investigations are initiated on the basis of an application, then the applicant must fulfil the eligibility criteria of a domestic industry. In this respect, unlike AD or CVD Rules, which expressly provide the percentage of support required for qualifying as the domestic industry, the Safeguard Duty Rules and the QR Rules only mention that the application should be filed by producers whose collective output of the like or directly competitive articles constitute a major share of the total production of the said article in India. In practice, the DGTR requires that the production of the applicant producers constitutes at least 50 per cent of the total production of the like or directly competitive article. The aforesaid interpretation of the DGTR, with respect to the standing of the domestic industry, is yet to be tested in QR investigations.

The domestic industry is required to provide prima facie evidence of increased imports, and serious injury or threat of serious injury in a general safeguard duty investigation and QR investigation. The causal link needs to be established in all the cases. In all of the aforementioned investigations, the applicants are required to provide detailed import data (quantity and value) of the product under investigation for at least three years; factors attributable for increased imports and share of imports; and share of similar domestic products in the total domestic consumption or demand in India over a period of three years. The application must also provide the names and addresses of exporters or producers, importers, and any trade associations or user associations related to the product.

In general safeguard duty and QR investigations, the application must also provide a countrywide breakdown of the imports and their percentage of total imports and further provide an adjustment plan that details the efforts proposed to be taken by the domestic industry to make a positive adjustment to import competition.

Serious injury and threat thereof can be established by providing data on reduction in capacity or idling in capacity, sales volume, costs of production and impact of imports thereon, selling price, profits or losses, growing inventory and loss of employment. If the domestic industry has filed an application for AD or CVD duty or safeguard duty when petitioning for QRs, the same is required to be disclosed in the concerned application. Applicants are required to provide confidential and non-confidential versions of the application and access to the non-confidential version of the application is provided to all interested parties by placing it in the public file.

As in the case of AD or CVD investigations, the Safeguard Rules and the QR Rules also do not provide any time frame within which an investigation must be initiated. However, the concerned authority examines the accuracy and adequacy of the information provided in the petition and satisfies itself that there is sufficient evidence of increased imports, injury and causal link.

5 What is the procedure for foreign exporters to defend a trade remedies case in your jurisdiction?

In AD or CVD investigations, the domestic industry application expressly identifies the names and addresses of the exporters, importers and user industry that form the basis upon which the DGTR informs the known interested parties of the initiation. The DGTR informs such known individual exporters, importers, users and trade associations by sending a copy of the initiation notification and a copy of the non-confidential version of the application. The governments of the exporting country, through their embassies, are also provided with a copy of the initiation notification and the non-confidential version of the application.

All other parties not expressly identified in the petition are notified of the decision of initiation of the investigation by way of a public notice that contains information pertaining to the date of the initiation, the exporting countries and product involved, the basis of the allegation of dumping or subsidisation and summary of the injury factors, the time limits for submission of information, and the address to which the interested parties may direct their representations. Such interested parties are provided with the non-confidential version of the application upon a request in writing to the authority. Public notices are also published on the website of the DGTR (see www.dgtr.gov.in).

In the case of AD investigations, the DGTR stipulated in a Trade Notice in January 2012 that a party interested in participating in an investigation must notify its intent to participate within 15 days of publication of the notice of initiation. The known exporters to whom the DGTR sends a separate correspondence are typically given 40 days from the date of the correspondence to submit their response to the application of the domestic industry and submit the exporter/importer questionnaire. All other parties are required to submit their responses to the application and the relevant questionnaire within 40 days of the date of the initiation notice. The time period for response may also be extended upon an application to the DGTR.

Interested parties are required to submit confidential and non-confidential versions of their submissions or questionnaire responses to the DGTR. During the course of the investigation, a public hearing is held where all the interested parties are allowed to present their views. However, views presented at the hearing are not taken into account by the DGTR unless submitted in writing, generally within five days of the hearing. If the interested participating parties incorporate confidential information in the written submission pursuant to the public hearing, a non-confidential version of the same is required to be forwarded to all the other participating interested parties. Parties are allowed to rebut the written submissions of the other parties; however, the rebuttal submissions are not exchanged between the parties and are submitted to the DGTR for its record and examination.

An AD or CVD investigation must be concluded within 12 months from the date of initiation of the investigation unless extended by another six months by the central government. The DGTR may make preliminary findings during the course of the investigation that become effective once approved by the Department of Revenue by means of a custom notification. The law is silent on the time period within which the Department of Revenue is required to give notice of the custom notification imposing the duty. Once notice has been issued, an anti-dumping duty remains in force for a period not exceeding six months, which can be further extended to nine months by the central government. However, in no event can the preliminary duty be imposed before the expiry of 60 days from the date of the initiation notification. A countervailing duty, however, can only remain in force for four months and no extension can be granted.

The investigation concludes with the issuance of the final findings and the Department of Revenue has three months from the date of the final findings to issue the custom notification imposing the duty recommended by the DGTR in the final findings. As mentioned above, the Department of Revenue can confirm or modify the recommendations of the DGTR, if it deems necessary. If the custom notification is not issued within three months of the publication of the final findings, the recommendations lapse and the duty is not imposed. It should be noted that India follows the 'lesser duty rule' and imposes a duty which is the lesser of the margin of dumping and injury margin. Margin of injury is calculated as the difference between the non-injurious price (akin to a fair selling price) and the landed value of imports.

Safeguard investigations

As in the case of AD or CVD investigations, the authority in a safeguard investigation provides the known exporters, importers, users and the exporting country governments with a copy of the initiation notification and a copy of the non-confidential version of the application and usually requires these parties to respond to the allegations in the application and submit the respective questionnaires within 30 days of being intimated. This time can be extended upon an application to the

authority. Other parties are notified of the investigation by means of a public notice which details the date of the initiation, the exporting countries and product at issue, the volume of imports, the basis of the main allegation on increased imports and a summary of the injury factors, the time limits for submission of information and the address to which parties may direct their representations. Parties are expected to convey their intent to participate within 21 days of the initiation notification, upon which they are provided with a non-confidential version of the petition in order to submit a response to the allegations of injury and submit an exporter or importer questionnaire as the case may be. Extension may be provided upon an application made to the DGTR to that effect.

Safeguard investigations are mandated to be concluded within eight months from the date of initiation of the investigation unless extended by the central government. During this time, the authority holds a public hearing where views presented orally must be submitted in writing to be taken on record. Parties exchange post-hearing written submissions and are also provided with an opportunity to rebut the claims of the other parties. Rebuttal submissions, however, are not exchanged and are merely submitted to the DGTR.

Preliminary duties (QRs cannot be recommended on a provisional basis) may be recommended by the DGTR if 'critical circumstances' are established. Previously, these findings were subject to the approval of the BOS; however, as stated in question 3, since the DGTR has recently been entrusted with conducting safeguard investigations, it is not yet clear whether the preliminary or final findings will still be subjected to the approval process of the BOS or whether such findings will be sent directly before the Department of Revenue, as in the case of AD or CVD investigations. In all cases of safeguard investigations, if the final duty or QR is recommended for more than a year, it must be progressively liberalised. The duty or QR in any event ceases to have effect on the expiry of four years from the date of its imposition, unless the central government is of the opinion that the duty or QR must continue, in which case it may be extended. However, under no circumstance can the duties or QRs be imposed beyond a period of 10 years from the date of the initial imposition.

6 Are the WTO rules on trade remedies applied in national law?

India's trade remedy rules have been promulgated in accordance with the respective WTO-covered agreements. Under the Indian legal system, an international treaty does not take precedence over the domestic laws. However, in view of the fact that India is a member of the WTO and the Indian domestic trade remedy legislation is based on WTO agreements, the established jurisprudence in the form of WTO Panel and Appellate Body decisions is regularly cited by the Indian courts and holds a persuasive value in interpreting the rights and obligations of the interested parties in the investigations.

Furthermore, the AD Rules provide that a country will be treated as a non-market economy if it has been designated as such by the DGTR or by the competent authority of any other country during a three-year period preceding the initiation of the investigation.

7 What is the appeal procedure for an unfavourable trade remedies decision? Is appeal available for all decisions? How likely is an appeal to succeed?

India's trade remedy legislation contains provision for an appeal against an order regarding the existence, degree and effect of any subsidy or dumping. Section 9C of the Act provides that an appeal challenging the customs notification imposing AD, CVD or anti-circumvention duty and giving effect to the findings of the DGTR may be made to the CESTAT within 90 days from the date of issuance of the concerned notification.

Appeals against custom notifications levying general safeguard duty lie before a High Court in the form of a writ petition.

8 How and when can an affected party seek a review of the duty or quota? What is the procedure and time frame for obtaining a refund of overcharged duties? Can interest be claimed?

India's trade remedy laws enable parties to seek reviews of the existent duties or quota.

In this respect, the Act and the AD and CVD Rules provide for a mid-term review investigation which can be initiated on the basis of an application by an interested party one year after the date of imposition of the duty. A mid-term review investigation may be requested on the grounds that one or more of the circumstances relevant to the imposition of duty have changed, requiring modification of duty, or that withdrawal of the anti-dumping duties is warranted because the grounds that need to be present for the continued imposition of duties no longer exist. Some of the factors that may be considered as 'changed circumstances' for a review investigation are:

- change in non-injurious price of the domestic industry;
- change in normal value of the exports;
- change in export price of the exports;
- change in landed values;
- change in domestic production pattern;
- change in legal status of the domestic producer or exporter; and
- change in the condition of the domestic industry or producers.

Furthermore, the above-mentioned CVD Rules also provide for sunset review investigations that can be initiated either suo moto by the designated authority or upon an application by the domestic industry. A review investigation, once initiated, must be completed within 12 months from the date of initiation of the investigation.

In respect of safeguard duty and QR investigations, the law imposes an obligation upon the authority to review the continued need for imposition of the safeguard duty or QR. If the duty or QR has been imposed for over three years, the law requires the concerned authority to review the situation no later than the mid-term of such imposition. Upon review, the authority may recommend withdrawal of the duty or QR, or the increased liberalisation of the duty or QR. The period for conclusion of a review investigation is eight months, which may be extended by the central government.

Refunds

In the case of AD duty, the Act and the AD Rules provide for refund of AD duties in two different circumstances: first, when the importer has paid AD duty in excess of the margin of dumping, and second, where the final duty is lower than the provisional duty. In the latter case, the importer must file an application for refund of the excess AD duty in accordance with the Customs Act 1962. If the application for refund of duty is not adjudicated within three months from the date of filing, the importer is entitled to interest at the rate notified by the central government.

In the former case, the importer must file an application before the DGTR establishing the fact that excess AD duty has been paid on certain imported goods. If the DGTR agrees with the applicant, the recommendation for refund of the differential duty paid by the importer will be forwarded to the central government, which will notify the amount of differential duty refundable to the importer. Pursuant to the said notification, the importer will file an application for refund of duty before the customs authorities at the port of import within three months from the date of notification and the said application must be decided upon by the customs authorities within 90 days from the date of receipt of application. It is to be noted that unlike refund of excess duty paid in cases where the final duty is lower than the provisional duty, there is no provision for interest where the anti-dumping duty is refunded due to a difference in the dumping margin.

With regard to CVD, the Act provides for refund of CVD in cases where the final duty is lower than the provisional duty. In such cases, the importer must file an application for refund of excess CVD under the terms of the Customs Act, on which, if not adjudicated within three months from the date of filing, the importer is entitled to interest at the rate notified by the central government.

In respect of safeguard duty, the Safeguard Rules impose an obligation upon the DGTR to review the continued need for imposition of the safeguard duty. The said rules further provide for refund of safeguard duty where the final safeguard duty is lower than the provisional duty. In such cases, the importer must file an application for refund of excess duty paid in accordance with the Customs Act and if the refund application is not adjudicated within three months from the date of filing of the application, the importer shall be entitled to interest at the rate notified by the central government.

In respect of QRs, the Quantitative Restrictions Rules impose an obligation upon the DGTR to review the continued need for imposition of the QRs. Since the restriction is in the form of a quota, the issue of refund of duty and consequent interest liability does not arise.

9 What are the practical strategies for complying with an anti-dumping/countervailing/safeguard duty or quota?

The general strategy for complying with an AD, CVD, safeguard duty or QR is to seek review of the existing duty or quota or to challenge the duty or quota where necessary. Attempts are made frequently to re-source from other countries or to reformulate products. However, with the recently introduced provisions related to anti-circumvention investigations, any re-sourcing and reformulating could come under the purview of such investigations.

Customs duties

10 Where are normal customs duty rates for your jurisdiction listed? Is there an exemption for low-value shipments? If so, at what level? Is there a binding tariff information system or similar in place? Are there prior notification requirements for imports?

Normal customs duty rates are contained in the Customs Tariff Act, 1975 (the Act). The rate of duties published in the Act is the binding tariff and can be accessed at www.icegate.gov.in. Exports of goods through couriers or foreign post offices using e-commerce of FOB value up to 25,000 rupees per consignment shall be entitled for rewards under Merchandise Exports from India Scheme (MEIS). Such goods can be exported in manual mode through the Foreign Post Offices at New Delhi, Mumbai and Chennai. The objective of MEIS is to offset the infrastructural inefficiencies and associated costs involved in the export of goods and products that are produced and manufactured in India.

There are no prior notification requirements for imports in general.

11 Where are special tariff rates, such as under free trade agreements or preferential tariffs, and countries that are given preference listed?

India does not provide for preferential tariffs under the Generalised System of Preferences (GSP).

India has entered into trade agreements with various countries, including Nepal, Chile, Singapore, Malaysia, Japan, Korea and Afghanistan, and is also party to various other PTAs and FTAs. The special tariff rates applicable under these preferential agreements are provided in the Act. Though the special tariff rates are published in the Act, the same are notified under section 25 of the Customs Act 1962. Once notified, the special tariff rates form part of the Act, and are placed at the end of the chapter in which the particular good is classified. See commerce.nic.in.

12 How can GSP treatment for a product be obtained or removed?

India does not grant preferential tariff rates under the GSP.

13 Is there a duty suspension regime in place? How can duty suspension be obtained?

Duty exemptions are generally provided by the central government in the larger public interest and such exemptions are notified under section 25 of the Customs Act 1962. Post-notification, the exemption becomes part of the tariff, and the published rate is applied on the import of such goods.

To obtain a duty exemption, the applicant must approach the Department of Revenue of the Ministry of Finance, and is required to substantiate with reasons the need for claiming the duty exemption. Only if the government is satisfied with the claims is the duty exemption notified. The notification pertaining to such exemption is placed before both Houses of Parliament and is notified subsequent to approval from both Houses of Parliament.

14 Where can customs decisions be challenged in your jurisdiction? What are the procedures?

Customs decisions typically fall into the following categories, against which the challenge will be brought before the authorities mentioned in the respective category.

General customs matters

General customs matters are challenged before quasi-judicial authorities who have pecuniary jurisdiction over the subject matter of appeal. In matters involving customs duty up to 500,000 rupees, the Assistant Commissioner or Deputy Commissioner of Customs is the first adjudicating authority. Appeal against his or her decision lies to the commissioner of customs (appeals) and then to the CESTAT. If the decision of the CESTAT relates to issues involving valuation or determination of duty then appeal would lie to the Supreme Court; and in all other cases the appeal lies to the High Court of the state where the customs decision has been rendered. In the latter cases, where appeal has been filed before the High Court, the High Court's decision can be challenged before the Supreme Court.

In cases where the amount of duty involved is up to 5 million rupees, the decision can be challenged before the Additional Commissioner or Joint Commissioner of Customs. The said decision can be challenged before the Commissioner of Customs (Appeals). The order of the Commissioner of Customs (Appeals) can be challenged before the CESTAT and the CESTAT decision can be challenged before either the High Court or the Supreme Court based on the criteria mentioned above.

In cases where the duty amount involved is more than 5 million rupees, the decision can be challenged before the commissioner of customs (appeals). The said decision can be challenged directly before CESTAT, and the CESTAT decision can be challenged before either the High Court or the Supreme Court based on the criteria mentioned above.

Matters relating to levy of anti-dumping and countervailing duty

As mentioned above, under section 9C of the Act, an appeal against the existence, degree and effect of any subsidy or dumping will lie before CESTAT. The decision of CESTAT can be challenged directly before the Supreme Court. Typically, an appeal is filed before CESTAT against the government's notification levying an AD or anti-subsidy duty, which could either be against a provisional levy or the final levy. All other matters incidental to such notification, namely the recovery or refund of anti-dumping or anti-subsidy duty on imported goods, shall be considered as regular custom matters, and the appeal shall lie as in 'General customs matters' above.

Matters relating to levy of safeguard duty

The levy of a safeguard duty can be challenged directly before the High Court under a High Court's writ jurisdiction.

Trade barriers

15 What government office handles complaints from domestic exporters against foreign trade barriers at the WTO or under other agreements?

The Department of Commerce, which is part of Ministry of Commerce and Industry, handles complaints against trade barriers.

16 What is the procedure for filing a complaint against a foreign trade barrier?

No procedures have been laid down for filing a complaint against a foreign trade barrier. However, the government maintains a database of non-tariff trade barriers, typically in the nature of sanitary and phytosanitary measures and technical-barriers-to-trade measures in force in other countries against exports from India. If exporters are of the opinion that measures maintained by a member are adversely affecting India's trade interests, usually the trade association representing the exporters brings the matter to the notice of the Ministry of Commerce, which may then decide to investigate the issue further and engage in bilateral discussions with the concerned member. In other cases, depending on the severity of the problem, the government may decide to initiate WTO dispute proceedings against the concerned member.

17 What will the authority consider when deciding whether to begin an investigation?

See question 16.

Update and trends

The Indian government has recently produced a revised Foreign Trade Policy 2015–20 (FTP). This much-awaited mid-term review of the FTP focuses on resolving the issue of blocked working capital for exporters, increasing the export of goods and services, incentivising labour-intensive micro, small and medium enterprises (MSME) and the services sector, and generating employment in the country. The revised policy measures were announced following feedback from industry after the launch of the Goods and Services Tax. Overall, the revised FTP aligns with the government's initiatives of 'Ease of Doing Business' and 'Make in India'. These measures are expected to enhance the participation of India in world trade.

18 What measures outside the WTO may the authority unilaterally take against a foreign trade barrier?

As a responsible member of the WTO, India refrains from taking unilateral measures to seek compliance from members maintaining trade barriers.

19 What support does the government expect from the private sector to bring a WTO case?

Usually, WTO cases are supported by government funds and no formalised system exists for the private sector to support WTO litigation. Depending on the facts of the case, the private sector or trade association may make source studies and data available that may be required to support its case.

20 What notable trade barriers other than retaliatory measures does your country impose on imports?

Most imported goods fall under the open general licence category, which means that there is no requirement to obtain any kind of permit or licence to import such goods. However, where necessary, the government may require the obtaining of a permit or licence from the appropriate government authority before making imports. Examples of goods that require prior import licences are certain copper alloys, zinc waste and scrap, radio and television transmitters, communications jamming equipment, etc. There are certain products that require a prior no-objection certificate, subsequent to which an import permit is issued by the DGFT. As an example, in the case of the import of certain telecoms equipment, the DGFT issues an import permit only if the importer has obtained a no-objection certificate from the Department of Telecommunications.

Indian Customs does not impose any import trade deposit requirements.

Export controls

21 What general controls are imposed on exports?

The Foreign Trade (Development and Regulation) Act 1992 (FTDR Act) empowers the government of India to formulate the export policy and to issue orders prohibiting, restricting or otherwise regulating the export of goods. As per the Foreign Trade Policy of India 2015–2020 (FTP), exports and imports shall be 'free' except when regulated by way of 'prohibition', 'restriction' or 'exclusive trading through State Trading Enterprises (STEs)' as laid down in the Indian Trade Classification (Harmonized System) (ITC (HS)) of Exports and Imports. The import and export policies for all goods are indicated against each item in the ITC (HS). Schedule 2 of the ITC (HS) lays down the Export Policy regime.

Goods that are classified as prohibited are not permitted to be exported. On the other hand, restricted items can be permitted for export only in accordance with an authorisation/permission/licence granted by the DGFT or in accordance with the procedure prescribed in a Notification/Public Notice issued by the government. Further, there are some items that are 'free' for export, but subject to conditions stipulated in other Acts or in law for the time being in force (Paragraph 2.01(b) of the FTP). Export of items which do not require any licence/authorisation/permission from the DGFT has been denoted as 'Free' under the ITC (HS), subject to the policy conditions contained, if any, under the relevant chapter heading or sub-heading or conditions stipulated in other acts or in law for the time being in force. Further, restrictions and prohibitions are applicable on export of certain classes of goods to specified countries. In addition to the prohibitions and restrictions prescribed in the FTDR Act, the FTP and Export Policy (Schedule 2 of ITC (HS)), export of goods are also subject to conditions stipulated in other acts or in law for the time being in force.

While exporting, an exporter must file a shipping bill with the customs authorities at the port declaring the description, nature and quantity of the goods under export. The said shipping bill must be accompanied by a packing list and invoice. Once the said documents are verified by the customs authorities, the goods may be exported.

While most products are not subject to an export duty, there are a few exceptions, such as coffee, tea, black pepper, sugar, iron ore and its concentrates, raw cotton, raw wool, specific jute items, and certain goods of iron or steel (tubes and pipes, bars and rods).

22 Which authorities handle the controls?

Levy and collection of customs duties, including AD duty, CVD and safeguard duty is undertaken by the customs officers appointed under the provisions of the Customs Act 1962. Documentation requirements necessary for the import and export of goods are also regulated under the Customs Act 1962 and rules framed thereunder and are verified by the customs officers at the port of import or export.

It should be noted that requirements pertaining to import licences, conditions on import or export, notification of restricted goods or prohibited goods for import and export, etc, are all regulated by the DGFT under the provisions of the FTDR Act read together with the Foreign Trade Policy 2015–2020.

Thus, controls with respect to documentation pertaining to import or export are regulated by Customs, while controls in relation to licensing and corresponding related documents are regulated by the DGFT.

23 Are separate controls imposed on specific products? Is a licence required to export such products?

Separate controls are applicable to specific products, and exporters in such cases must obtain a permit in the form of an export licence from the DGFT before exporting these specific products. As an example, items falling into the category of special chemicals, organisms, materials, equipment and technologies (SCOMET) can be exported pursuant to the fulfilment of certain conditions. The conditions imposed on items falling under SCOMET require, among other things, that any export of SCOMET items shall be in compliance with the Weapons of Mass Destruction and their Delivery System (Prohibition of Unlawful Activities) Act 2005; units engaged in the export of SCOMET items need to obtain prior central government approval before foreign government representatives or foreign private parties make any site visits; and the application should be accompanied by an end-use certificate. Certain chemicals can be exported to countries that are party to the Chemical Weapons Convention and the DGFT may require a copy of the bill of entry evidencing shipment to the destination country within 30 days of delivery.

The controls for SCOMET items and the procedure for application are provided under the Foreign Trade Policy and the Handbook of Procedure (available at dgft.gov.in).

24 Has your jurisdiction implemented the WCO's SAFE Framework of Standards? Does it have an AEO programme or similar?

India has implemented WCO's SAFE Framework of Standards. The government of India notified the authorised economic operator (AEO) programme in India on 23 August 2011 (available at www.cbec.gov.in).

The said programme was implemented through Circular No. 37/2011-Cus dated 23 August 2011, wherein the procedure for securing AEO status is prescribed. Under the said circular, any importer or exporter can apply for AEO status provided the applicant has been financially solvent for three years prior to the year of application. The application must be accompanied by a process map, security plan, site plant and self-assessment form. Pursuant to the application, an AEO programme team will examine the applicant's record of compliance for the past four years to ensure adherence to customs, central excise and service tax laws, as well as allied laws. In addition, the applicant should also have a satisfactory system of managing commercial and transport records, a mechanism for ensuring the safety and security

of the business and supply chain and a proper mechanism for cargo, conveyance, premises and personnel safety. Once the application is considered to be valid on the above grounds, the application is sent to the AEO team for conducting a pre-certification audit at the applicant's premises. Satisfaction with the above requirements leads to the granting of AEO status.

25 Where is information on countries subject to export controls listed?

Restriction on exports to certain countries is provided under the Foreign Trade Policy 2015–2020 (available at dgft.gov.in), which is notified under section 5 of the Foreign Trade (Development and Regulation) Act 1992.

The notified countries are Iraq (prohibition on export of arms and related material), the Islamic State in Iraq and the Levant, also known as Daesh (trade in oil and refined oil products, modular refineries and related materials, besides items of cultural (including antiquities), scientific and religious importance is prohibited with the Islamic State in Iraq and the Levant), the Democratic People's Republic of Korea (direct or indirect export of all items, materials, equipment, goods and technology that could contribute to Korea's nuclear-related, ballistic missile-related or other weapons of mass destruction-related programmes, and luxury goods, including but not limited to items specified in Annex IV of UN Security Council Resolution 2094 (2013)), Iran (direct or indirect export to Iran or import from Iran of any items, materials, equipment, goods or technology mentioned in INFCIRC/254/Rev.9/Part I and INFCIRC/254/ Rev.7/Part 2 (IAEA Documents) as updated by the IAEA from time to time and S/2015/546 (UN Security Council document) as updated by the Security Council from time to time) and Somalia (direct or indirect import of charcoal is prohibited from Somalia).

26 Does your jurisdiction have a scheme restricting or banning exports to named persons and institutions abroad?

There is no scheme under which controls are imposed on named persons and institutions.

27 What are the possible penalties for violation of export controls?

The possible penalties include seizure and confiscation of goods, penalties on the exporter, and suspension or cancellation of the export licence.

Financial and other sanctions and trade embargoes

28 What government offices impose sanctions and embargoes?

India does not impose trade sanctions on any country, but regulates exports to certain countries as mentioned above.

29 What countries are currently the subject of sanctions or embargoes by your country?

India does not impose trade embargoes on any country, but regulates exports of certain products to identified countries (commerce.nic.in).

30 Are individuals or specific companies subject to financial sanctions?

No, individuals or specific companies are not subject to financial sanctions.

Miscellaneous

31 Describe any trade remedy measures, import or export controls not covered above that are particular to your jurisdiction.

All trade remedy measures are detailed above.

Luthra & Luthra Law Offices

Gunjan Mishra **gmishra@luthra.com**
Ashish Chandra **achandra@luthra.com**
Saurabh Tiwari **stiwari@luthra.com**
Tarun Bhati **tbhati@luthra.com**
Tanvi Praveen **tpraveen@luthra.com**

1st & 9th Floor, Ashoka Estate
Barakhamba Road
New Delhi 110 001
India

Tel: +91 11 4121 5100
Fax: +91 11 2372 3909
www.luthra.com

Japan

Yuko Nihonmatsu, Fumiko Oikawa and Mariko Sanno

Atsumi & Sakai

Overview

1 What is the main domestic legislation as regards trade remedies?

The main domestic legislation regarding trade remedies is:

- the Customs Tariff Act: http://law.e-gov.go.jp/htmldata/M43/M43HO054.html (Japanese only); and
- the Cabinet Order on Anti-Dumping Duties: http://law.e-gov.go.jp/htmldata/H06/H06SE416.html (Japanese only).

2 In general terms what is your country's attitude to international trade?

Japan became a signatory to the General Agreement on Tariffs and Trade (GATT) in September 1955. Under GATT, Japan gradually liberalised trade and reaped many benefits as a nation from trade liberalisation generally. This helped Japan achieve the transition from post-Second World War recovery to industrial development.

Since the 1990s, the network of free trade agreements (FTAs) around the world has grown significantly. Even in Japan, a nation that has been a staunch supporter of multilateral trade arrangements under GATT and WTO, calls for FTAs have increased, and in January 2001, Japan began negotiating an economic partnership agreement (EPA) with Singapore, which was concluded in November 2002, becoming Japan's first EPA. By June 2016, Japan had EPAs in place with 15 other countries.

Japan's EPAs tend to extend beyond customs duties and liberalisation of services to cover investment, government procurement, intellectual property rights, migration and the business environment, and are aimed at expanding both trade and investment between the countries, with the more comprehensive EPAs extending to topics not covered under WTO rules.

As of June 2016, Japan is negotiating EPA/FTAs with eight counterparties, including ASEAN, EU, South Korea and Canada, in addition to negotiating the TPP and RCEP multilateral agreements. As of June 2015, trade with countries with which Japan has a trade agreement in force or signed up made up 22.3 per cent of Japan's total trade; this rises to 84.6 per cent when including those countries with which Japan is currently negotiating EPAs.

Trade defence investigations

3 Which authority or authorities conduct trade defence investigations and impose trade remedies in your jurisdiction?

The Ministry of Finance (MoF) (www.mof.go.jp/english/index.htm) and the Ministry of Economy, Trade and Industry (METI) (www.meti.go.jp/english/index.html) are the authorities that conduct trade defence investigations and enforce the Customs Tariff Act in Japan.

4 What is the procedure for domestic industry to start a trade remedies case in your jurisdiction? Can the regulator start an investigation ex officio?

Those with interests in Japanese industry (a domestic producer of foreign goods in the same category as the goods under investigation, or a producer that produces at least 25 per cent of the total domestic production of those goods) can make a complaint to the Minister of Finance for anti-dumping duties upon submission of the necessary documents with adequate evidence to establish the following facts:

- name and address or residence of the applicant;
- name, brand, product type and characteristics of the goods that have been dumped;
- name of the supplier of the dumped goods and the country of origin;
- background to the complainant's interests in industry in Japan;
- outline of the facts regarding the import of the dumped goods, and the effective damage, etc, that the imports have caused to the industry in Japan;
- if requesting that any of the matters provided in the documents submitted, or all or part of the evidence submitted, be handled in confidence, a statement to this effect, and the reasons for requesting the same;
- the state of support for duties from related producers, etc, or related labour unions; and
- other relevant matters.

The authority responsible for investigating the request will confirm that the necessary documents have been submitted that adequately evidence the above matters; once they are satisfied of this, they will begin investigating whether or not to act on the request. The confirmation usually takes around two months, and once an investigation starts it will generally be completed within one year after commencing investigations (and no more than 18 months).

In May 2016, the MoF and METI published guidelines for preparing the documents required when requesting anti-dumping duties: www.meti.go.jp/policy/external_economy/trade_control/boeki-kanri/download/trade-remedy/adgl_tebiki2.pdf (Japanese only), as well as examples of the way in which to prepare the documents: www.customs.go.jp/kaisei/sonota/adgl_annex1.pdf (Japanese only).

5 What is the procedure for foreign exporters to defend a trade remedies case in your jurisdiction?

Once a decision has been made to commence an investigation, the Minister of Finance will promptly notify directly interested parties (the importers, etc, of the goods under investigation) and the party or parties that requested the investigation in writing, providing the name of the goods to be investigated and the estimated term of the investigation etc, and will also announce this publicly in the Official Gazette. For a period specified by the MoF after the investigation starts, interested parties may make written representations to the Minister of Finance giving their opinions regarding the investigation.

The Minister of Finance will also notify directly interested parties in writing of important facts that form the basis of a final decision on whether to impose duties or the tariff rate to apply etc (reasons for a duty, dumping margin etc). In response, directly interested parties may make counter-arguments in writing within a designated period.

6 Are the WTO rules on trade remedies applied in national law?

Japan is a member of the WTO.

The Customs Tariff Act incorporates into Japanese laws the provisions of article 6 of the General Agreement on Tariffs and Trade (GATT) Agreement on Implementation of article VI of the General Agreement on Tariffs and Trade 1994 (the Anti-dumping Agreement).

7 What is the appeal procedure for an unfavourable trade remedies decision? Is appeal available for all decisions? How likely is an appeal to succeed?

A party subject to a dumping duty (ie, the importer) may appeal to the Minister of Finance within three months from the day after becoming aware of the unfavourable trade remedies. If the Minister's decision on the appeal is also unfavourable, the party may then take the matter to court to seek to have the trade remedies annulled etc, which must be done within six months from the day after becoming aware of the Minister's decision. If there are valid reasons for doing so, the process of appeal to the Minister may be bypassed, instead going straight to an appeal to the court. However, generally speaking, it is highly unlikely that a trade remedy decision could be overturned by such appeal or court litigation process.

8 How and when can an affected party seek a review of the duty or quota? What is the procedure and time frame for obtaining a refund of overcharged duties? Can interest be claimed?

Extension of the duty period

Anti-dumping duties can be imposed for a maximum of five years, but this may be extended if an interested party can submit evidence to the Minister of Finance (no later than one year before the end of the duty period) that adequately shows that actual damage would continue to be incurred, or would be incurred again, as a result of the importation of the designated goods to which the dumping duty applies or to Japanese industry as a result; the Minister of Finance will then investigate the claim and may extend the dumping duty period for a further period of up to five years.

Revision, etc, of the duty as a result of changed circumstances

Interested parties may make a request for the revision or abolition of a dumping duty not less than one year from the start of the designated period of duties with regard to designated goods, if it is accepted, upon submitting adequate evidence, that the circumstances have changed regarding (i) dumping of the designated goods, or (ii) the facts of the actual damages, etc, caused to the Japanese industry as a result of the importation of the designated goods. A determination of whether or not to revise or abolish the dumping duty generally takes no more than one year.

Refund of anti-dumping duties

If the amount of the anti-dumping duty paid by the importer of designated goods can be shown to be more than the actual amount of difference that arose through dumping of the designated goods, then the importer may request a refund of the dumping duty from the Japanese government upon presenting adequate evidence to support the request. Instigation of the request may result in either refunding the dumping duty up to the amount requested, or a rejection if there is insufficient reason for doing so.

9 What are the practical strategies for complying with an anti-dumping/countervailing/safeguard duty or quota?

To date, the Japanese government has only conducted seven anti-dumping investigations, six of which led to anti-dumping duties being imposed. This includes two that are currently under provisional measures and those for which the duty period has already been completed. In the past, Japan had been reticent about using anti-dumping duty measures, which might have placed Japanese businesses in a difficult position.

In recent years, there has been an increase in concern over export dumping conduct globally, as economic growth in developing countries has slowed and industries find themselves with overcapacity, and Japanese companies have begun to take measures to fight dumping. The Japanese government has streamlined the process for companies to petition for an anti-dumping investigation, simplified the way in which the investigations themselves are conducted, and taken other measures to improve the domestic anti-dumping system.

Customs duties

10 Where are normal customs duty rates for your jurisdiction listed? Is there an exemption for low-value shipments? If so, at what level? Is there a binding tariff information system or similar in place? Are there prior notification requirements for imports?

Based on the principle of no taxation without law, there are specific laws or treaties that stipulate six main different customs duty rates:

- general rate (Customs Tariff Act): a rate that is set from a long-term perspective based on the state of domestic industry, etc;
- temporary rate (Act on Temporary Measures concerning Customs): a provisional, flexible rate applied in special circumstances;
- generalised system of preferences (GSP) rate (Act on Temporary Measures concerning Customs): a rate that is applied to imported goods for which the country of origin is a developing country that has requested preferential tariffs and Japan has accepted this request (generalised system of preferences beneficiary);
- LDC preferences rate (Act on Temporary Measures concerning Customs): this is a rate that applies specifically to imported goods for which the country of origin is a preferential beneficiary and that is also an LDC, in which case the tax rate is zero. The LDC preferences rate (zero tax) will also apply in the case of the importation of general preferential goods originating from an LDC;
- WTO treaty tariff rate: this is a rate that is agreed (binding rate) as the maximum duty applicable to imported goods originating from a WTO member country. It also applies to countries with beneficial customs duty treatment, or countries with most-favoured nation status under bilateral treaties; and
- EPA tariff rate: this is a rate that is set out in specific EPAs between Japan and certain other countries. Certain duties are reduced or eliminated for goods originating from such countries according to a schedule in the relevant EPA.

The rates described in the list above are set out in the Customs Tariff Act or other related laws and treaties based on the International Convention on the Harmonised Commodity Description and Coding System (HS Treaty), and the customs tariff schedule can be found on the Customs website: www.customs.go.jp/english/tariff/index.htm.

Goods with a total customs value of ¥10,000 or less per parcel or customs declaration are exempted from customs duty and consumption tax, save that:

- alcoholic beverages and tobacco (of whatever value) are subject both to consumption tax and to liquor tax and tobacco tax, respectively; and
- the exemptions do not apply to goods such as leather bags, leather shoes and knitted apparel, as they are considered inappropriate from the viewpoint of their impact on domestic industries or other circumstances.

General import freight and international parcels with a total customs value of not more than ¥200,000 are subject to simplified tariffs, which sometimes leads to the application of customs rates lower than the general customs rates. For example, cheese subject to simplified tariffs has a customs rate of 5 per cent, although the general customs rates for cheese are in the range of 22.4–40 per cent.

An importer may make an enquiry with Customs about the tariff classification (tariff code) and the tariff rate which would be applied to products that the importer is planning to import, and obtain a written ruling in response, before commencing the importation (Advance Classification Ruling System). The tariff classification, tariff rate and statistical code listed on this Advance Classification Ruling System are then applied to the import declaration.

11 Where are special tariff rates, such as under free trade agreements or preferential tariffs, and countries that are given preference listed?

All tariff rates are set forth in the customs tariff schedule on the website listed above.

Countries that are given preference under EPAs are listed at: www.customs.go.jp/tokyo/zei/origin/flow/step01.htm.

GSP beneficiaries (countries and territories) are listed at: www.customs.go.jp/english/c-answer_e/imtsukan/1504_e.htm.

12 How can GSP treatment for a product be obtained or removed?

In order to receive preferential tariff treatment, it is necessary for an importer to submit a certificate of origin, the GSP (Form A), at the time of import declaration in principle. This certificate must be issued, at the time of exportation, by customs authorities or any other officially authorised body, such as a chamber of commerce and industry in the country of origin, based on the declaration made by the exporter. The goods must be imported directly to Japan for preferential tariff treatment in principle.

There is also a system whereby preferential tariffs are no longer available for products that originate from preferential treatment beneficiary countries or regions once the country's or region's economy has developed or achieved a high level of global competitiveness.

Entire graduation

A country or region is excluded from the list of beneficiaries of Japan's GSP scheme for all items when the country or region has been continuously classified as a 'high-income country' in the World Bank Statistics, published by the International Bank for Reconstruction and Development, for three years up to the previous year.

Due to an amendment of the Act on Temporary Measures concerning Customs in 2017, the standards of exclusion from the preferential treatment above require the country or region to fulfil both (i) being classified continuously in the World Bank Statistics as an 'upper-middle-income country' for three years; and (ii) that the value of exports of the country is no less than 1 per cent of the total value of worldwide exports. The new standards will be implemented from April 2019.

Partial graduation

Products originating from a beneficiary country or region are excluded from preferential treatment when (i) the beneficiary is classified as a 'high-income economy' in the World Bank Statistics of the previous year, and (ii) the value of Japan's imports of the product originating from the beneficiary exceeds ¥1 billion and 25 per cent of the total value of Japan's worldwide imports of the product in the trade statistics of two years ago. The standards of a subject country to (i) above require the country to be classified as an 'upper-middle-income country' in the World Bank Statistics, as well as the value of exports being no less than 1 per cent of the total value of worldwide exports, due to the amendment of the Act in 2017 in accordance with the standards of entire graduation. The new standards for subject countries have been implemented from April 2018.

There are also certain countries or certain products originating from the beneficiary countries or regions that are excluded from preferential treatment when certain conditions are met.

13 Is there a duty suspension regime in place? How can duty suspension be obtained?

Currently, there is no formal duty suspension regime in Japan.

Japan does have a tariff quota system under which a specified quota of certain products may be imported without tariffs or with low tariffs (primary tariff rate) to meet domestic demand for low-priced imported products, but once this quota is met, a relatively high tariff (secondary tariff rate) is applied to further imports in order to protect domestic producers. This tariff quota system differs from the duty suspension regime in that there is a limit to the number of imported goods.

14 Where can customs decisions be challenged in your jurisdiction? What are the procedures?

Any person who is not satisfied with a disposition taken by the Director-General of Customs under the Customs Act or other related laws and regulations may file a protest within three months from the day following the day of the receipt by the petitioner of the notification of a disposition (request for reinvestigation). For a request for reinvestigation, the Director-General of Customs reviews the validity of the disposition and notifies the petitioner of the result with a copy of the decision letter.

If the petitioner is still not satisfied with the decision in response to a request for reinvestigation, it may file an appeal with the Minister of Finance within one month from the day following the day of the delivery of the decision letter. In addition, instead of requesting an investigation, any person who is not satisfied with a disposition taken by the Director-General of Customs may also directly file an appeal to the Minister of Finance within three months from the day following the day of the receipt by the petitioner of the notification of a disposition. These procedures are called a 'request for review'. In a request for review, the Minister of Finance reviews and examines the validity of the disposition and notifies the petitioner of the result with a copy of the written verdict.

If the petitioner is still not satisfied with the decision made by the Ministry of Finance it may file an appeal to the court within, in principle, six months from the day of the receipt of the written verdict.

Trade barriers

15 What government office handles complaints from domestic exporters against foreign trade barriers at the WTO or under other agreements?

The government offices that handle complaints from domestic exporters against foreign trade barriers at the WTO or under other agreements are METI, the MoF and other ministries responsible for the specific industry in Japan.

In particular, METI publishes a 'Report on Compliance by Major Trading Partners with Trade Agreements – WTO, FTA/EPA and IIA' and 'METI Priorities Based on the Report', for the purpose of improving compliance among major trading partners whose trade policies and trade measures might not be consistent with the international rules of the WTO, etc. The Multilateral Trade System Department and Office for WTO Compliance and Dispute Settlement, Trade Policy Bureau within METI has a webpage dedicated to dealing with enquiries regarding trade policies and measures of foreign countries that are faced by companies and business operators. This office will consider whether the foreign government's measures are consistent with WTO and other international rules and provide advice, including, in some circumstances, assisting with the launch of WTO dispute settlement procedures.

16 What is the procedure for filing a complaint against a foreign trade barrier?

The Japanese government takes the approach of using the WTO and other international trade rules to settle disputes regarding international economic issues. When a company, export cooperative or other interested party is faced with a foreign trade barrier and brings the matter to the attention of the ministry responsible for that particular industry, the ministry will interview the interested parties to ascertain the facts. If necessary, the ministry will collaborate with METI and other relevant ministries to handle the matter consistently from the Japanese government's perspective, which can include requesting discussions with the relevant foreign government, and failing a satisfactory outcome through such negotiations, filing a complaint through dispute resolution procedures under the WTO or the relevant EPA.

17 What will the authority consider when deciding whether to begin an investigation?

When a company, export cooperative or other interested party is faced with a foreign trade barrier and brings the matter to the attention of METI, the MoF and other Japanese ministries responsible, the Japanese government will look at the evidence provided and decide whether to begin an investigation based on whether the foreign government's actions are in violation of WTO or other international rules.

18 What measures outside the WTO may the authority unilaterally take against a foreign trade barrier?

Japan also uses international trade rules outside the WTO to resolve disputes relating to international economic matters.

If the relevant government authority determines that there is a foreign trade barrier that is against an international trade rule, the Japanese government will conduct bilateral negotiations with the other country and take other appropriate measures, such as investor–state arbitration (where a bilateral investment treaty or BIT exists) and other EPA/BIT dispute settlement processes.

19 What support does the government expect from the private sector to bring a WTO case?

If an industry wishes to bring a WTO case, it must discuss the case with the relevant government authority in detail. As a part of this

consultation process, the industry would be required, at its own cost, to collect data, conduct research and provide necessary information in order to enable the authority to determine whether or not to begin an investigation and bring a WTO case.

20 What notable trade barriers other than retaliatory measures does your country impose on imports?

Under the Customs Act, any person wishing to import goods must declare them to Customs, obtain an import permit and make payment of customs duty and excise taxes after necessary examination of goods (Import Declaration).

The Customs Act prohibits the importation of the following goods:

- heroin, cocaine, MDMA, opium, cannabis, stimulants, psychotropic substances and other narcotic drugs (excluding those designated by Ministry of Health, Labour and Welfare Ordinance);
- firearms (pistols, etc), ammunition (bullets) thereof and pistol parts;
- explosives (dynamite, gunpowder, etc);
- precursor materials for chemical weapons;
- germs that are likely to be used for bio-terrorism;
- counterfeit, altered or imitation coins, paper money, banknotes or securities, and forged credit cards;
- books, drawings, carvings and any other goods which may harm public safety or morals (obscene or immoral materials, eg, pornography);
- child pornography;
- goods which infringe upon intellectual property rights; and
- goods which constitute the unfair competition under the Unfair Competition Prevention Law.

In addition, with respect to import cargos that have an adverse impact on the economy, industries, sanitation, health, public safety or public morals, etc, in Japan, the Foreign Exchange and Foreign Trade Act and other laws and regulations control the import of those cargoes by requiring permits, approvals, etc, or inspections by administrative agencies or satisfaction of other conditions on the import of cargoes. For example, imported plants are required to go through plant quarantine, and the importation of certain plants from specific areas, harmful plants and animals such as insects, mites or bacteria, and soil and plants to which soil is attached is banned unless permission is obtained for use in testing and research etc (Plant Protection Act). Also, in order to prevent invasion of domestic animal infectious diseases from overseas, imports of cloven-hoofed animals such as cattle, pigs and sheep, equine animals and fowl are banned unless a certificate of import quarantine is obtained upon inspection by the Animal Quarantine Service of the Ministry of Agriculture, Forestry and Fisheries or a permit is obtained from the Minister of Agriculture, Forestry and Fisheries (Act on Domestic Animal Infectious Diseases Control).

To import endangered animals and plants subject to restrictions under the Convention of International Trade in Endangered Species of Wild Fauna and Flora (Convention), it is necessary to obtain an export permit issued by the government authority as stipulated by the Convention, as well as an import licence issued by the Ministry of Economy, Trade and Industry.

Export controls

21 What general controls are imposed on exports?

With regard to exports from Japan, an export declaration, inspection and permit are required under the Customs Act. An export declaration requires submission of an export declaration in a prescribed form, an invoice, a package list and other documents. When an exporter wishes to export cargo (or technology; hereinafter the same) that requires a permit or approval under laws or regulations other than the Customs Act, the exporter must be able to prove to customs that these requirements have been met.

22 Which authorities handle the controls?

The Customs and Tariff Bureau of the MoF handles export customs clearance procedures, although permits and approvals for export of certain cargo are governed by other government agencies pursuant to the laws and regulations that require such permits and approvals. The most important of these is the Foreign Exchange and Foreign Trade Act (Foreign Exchange Act), and METI is the government agency responsible for permits and approvals for export of cargo under the Foreign Exchange Act.

23 Are separate controls imposed on specific products? Is a licence required to export such products?

For security purposes, the Foreign Exchange Act controls the export of certain cargo using two methods, namely list control and catch-all control.

Specific cargo subject to export controls is designated in the Export Trade Control Order (Export Order) and the Foreign Exchange Order. List control requires exporters to obtain an export permit from METI if their export cargo is on the control list and have the specifications set out in the Ordinance of the Ministry Specifying Goods and Technologies Pursuant to Provisions of the Appended Table 1 of the Export Control Order and the Appended Table of the Foreign Exchange Order. Based on international export control regimes, the said list includes arms and other dual-use equipment that may be used for the development of weapons of mass destruction.

Catch-all control is a system whereby exporters must obtain a permit from METI for their export cargo other than those included in the control list (excluding food and timbers etc) if notified by METI to apply for an export permit (inform requirement) or if it is judged, based on expected usage and the end user, that such cargo might be used for the development of weapons of mass destruction.

24 Has your jurisdiction implemented the WCO's SAFE Framework of Standards? Does it have an AEO programme or similar?

In order to implement the WCO's SAFE Framework of Standards, Japan amended the Customs Tariff Act and relevant laws in 2012 to introduce the advance filing rules, which require shipping companies to submit information electronically to customs for maritime container cargo to be loaded on a vessel bound for a port in Japan, in principle, at least 24 hours before departure of the vessel from the port of loading. In addition, the Customs and Tariff Bureau of the MoF implemented the

Update and trends

Overview

The multilateral trade agreements that Japan is currently negotiating are the Trans-Pacific Partnership Agreement (the TPP Agreement) and a Japan–EU Economic Partnership Agreement (EPA).

TPP Agreement

The TPP Agreement is a trade agreement that was initially being negotiated among 12 countries: Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, the United States and Vietnam. The TPP Agreement is an ambitious agreement billed as a high-level, comprehensive and balanced treaty. Negotiations of the terms of the TPP Agreement were basically concluded in October 2015, but the United States declared its withdrawal from the TPP Agreement in January 2017. In May 2017, the 11 countries, excluding the United States, began negotiations on an agreement as a legal framework to realise the contents of the TPP Agreement, and following that, final agreement was reached. The Comprehensive and Progressive Agreement for Trans-Pacific Partnership (the CPTPP) was signed by the 11 countries on 8 March 2018. The said Agreement, except for some clauses, is an agreement to realise the contents of the TPP Agreement and maintains the high standards of the TPP Agreement. Cooperation is being promoted in the 11 countries aiming for the early entry into force of the CPTPP.

Japan–EU EPA

Since March 2013, Japan had been negotiating with the EU on an EPA, and in December 2017, the parties reached agreement in each field except for a settlement system for investment disputes. The Japan–EU EPA will contribute to economic growth, including the creation of jobs and strengthening the competitiveness of companies by promoting trade and investment through the abolition of tariffs and the development of investment rules etc. Japan and the EU will finalise and sign the agreement in 2018, aiming for its entry into force before spring of 2019.

authorised economic operator (AEO) programme, a system conforming with international standards. Under this programme, companies that have well-organised cargo security management and compliance systems are given the benefit of simple and reduced customs clearance procedures. Currently, Japan has signed mutual recognition of this AEO programme with seven other countries.

25 Where is information on countries subject to export controls listed?

The catch-all control described in question 23 only applies to exports shipped to certain regions, and the Export Order exempts certain countries ('white countries') from catch-all control. Also, some of the catch-all controls provide for various cases where prior permits are required for cargo exported to countries and regions subject to a UN arms embargo, as listed in the Export Order: www.meti.go.jp/policy/anpo/securityexportcontrol3.html.

For the purpose of national security and international cooperation etc, the Foreign Exchange Act requires exporters to obtain approval from METI for the export of cargos to certain regions. The destinations subject to this requirement are listed in the Export Order.

26 Does your jurisdiction have a scheme restricting or banning exports to named persons and institutions abroad?

METI publishes an 'End User List', which lists foreign companies and organisations believed to be involved in the development of weapons of mass destruction etc. The End User List is not an embargo list, though export to companies and organisations on the list requires a permit from METI unless it is clear that the export cargo is not to be used for the development of weapons of mass destruction based on the way in which the cargo will be used, the way in which the cargo is traded, the terms of the transaction and other factors.

The End User List (as of 29 March 2016) can be found at: www.meti.go.jp/policy/anpo/law_document/tutatu/kaisei/20160329_3.pdf.

27 What are the possible penalties for violation of export controls?

Customs Act

- Ten years of imprisonment with labour or a fine of not more than ¥30 million, or both;
- forfeiture of the embargoed goods and unpermitted export goods; and
- dual liability also applies.

Foreign Exchange Act

- Ten years of imprisonment with labour or a fine of not more than ¥10 million, or both, provided, however, that if the price of the subject of the violation, when multiplied by five, exceeds ¥10 million, the fine shall be not more than five times of that price;
- administrative sanction for banned export of cargos for a maximum of three years; and
- dual liability also applies.

Financial and other sanctions and trade embargoes

28 What government offices impose sanctions and embargoes?

The MoF and METI have the authority to implement economic sanctions if (i) they are deemed necessary in order to perform international agreements, (ii) they are deemed especially necessary for Japan to contribute to international efforts for world peace, or (iii) a cabinet decision is made to take countermeasures deemed necessary to maintain the peace and safety of Japan.

29 What countries are currently the subject of sanctions or embargoes by your country?

Currently, comprehensive economic sanctions are in force in respect of North Korea, and partial economic sanctions are in force in respect of Iran, Libya, Syria, Somalia and Eritrea.

Details are at: www.meti.go.jp/policy/external_economy/trade_control/01_seido/04_seisai/seisai_top.html (Japanese only).

30 Are individuals or specific companies subject to financial sanctions?

Yes. See 'List of economic sanctions and individuals/activities subject thereto' (as of 20 May 2016), www.mof.go.jp/international_policy/gaitame_kawase/gaitame/economic_sanctions/list.html (Japanese only).

Miscellaneous

31 Describe any trade remedy measures, import or export controls not covered above that are particular to your jurisdiction.

Not applicable.

Atsumi & Sakai

Yuko Nihonmatsu **yuko.nihonmatsu@aplaw.jp**
Fumiko Oikawa **fumiko.oikawa@aplaw.jp**
Mariko Sanno **mariko.sanno@aplaw.jp**

Fukoku Seimei Building
2-2-2 Uchisaiwaicho, Chiyoda-ku
Tokyo 100-0011
Japan

Tel: +81 3 5501 2111
Fax: +81 3 5501 2211
www.aplaw.jp/en/

Jordan

Baha'a Armouti
Armouti Advocates

Overview

1 What is the main domestic legislation as regards trade remedies?

The main legislation governing trade remedies in Jordan is the National Production Protection Law No. 21 of 2004. The law has two bylaws: the National Production Protection Regulation No. 55 of 2000, regulating safeguard investigations and measures, and the Anti-Dumping and Anti-Subsidies Regulation No. 26 of 2003, regulating anti-dumping (AD) and anti-subsidies investigations and measures. The rules of the law and regulations were derived from the WTO Agreements on Safeguards, Anti-Dumping and Subsidies and Countervailing Measures.

The law and regulations are published in Arabic at the website of the Ministry of Industry and Trade at www.mit.gov.jo/Pages/viewpage.aspx?pageID=137.

2 In general terms what is your country's attitude to international trade?

Jordan is an open market economy, and has been embracing market liberalisation policies since its accession to the WTO in April 2000. Today, Jordan has seven effective FTAs: the Greater Arab Free Trade Agreement (GAFTA), and bilateral agreements with Canada, EFTA, the EU, Singapore, Turkey and the US. It is in the process of negotiating with Kenya and Mexico.

Jordan has a good track record of compliance with WTO decisions. To date, no Jordanian measures have been contested at the Dispute Settlement Body of the WTO. Also, Jordanian authorities and courts give due consideration to the WTO's dispute settlement panel's decisions, as observed in various legal precedents concerning trade remedy and customs cases.

Trade defence investigations

3 Which authority or authorities conduct trade defence investigations and impose trade remedies in your jurisdiction?

The National Production Protection Directorate (NPPD) is the competent authority in Jordan investigating trade remedy complaints (ie, anti-dumping, subsidies and countervailing measures, and safeguards). The NPPD is not an independent governmental body; rather, it is a directorate within the Ministry of Industry and Trade, which investigates trade remedy petitions and recommends proper measures to the Minister of Industry and Trade.

As regards enforcement, the Customs Department is the competent authority imposing trade remedy measures against subject imports through the levy and collection of tariff rates (ad valorem or specific) and supervision of quotas.

The NPPD's web address is http://mit.gov.jo/Pages/viewpage.aspx?pageID=192.

The Customs Department's web address is www.customs.gov.jo.

4 What is the procedure for domestic industry to start a trade remedies case in your jurisdiction? Can the regulator start an investigation ex officio?

According to the law, trade remedy petitions should be filed by the domestic industry of a specific product as a whole, or a major proportion thereof, in order for such petition to be considered to have been applied by or on behalf of the domestic industry. The NPPD is also entitled to self-initiate investigations if there is concrete evidence that imports are increasing in the market or being sold at dumped or subsidised prices, causing injury to the domestic industry producing like products or threat thereof.

As a requirement for initiating the safeguard investigation, the applicants of the safeguard petition must constitute not less than 25 per cent of the whole domestic industry. As regards anti-dumping and countervailing measures petitions, initiation shall be accepted by the NPPD if the petition has been supported by domestic producers whose production constitutes more than 50 per cent of the total production of the like product produced by the domestic industry expressing either support for or opposition to the application. However, no AD or SCM investigation shall be initiated if domestic producers supporting the petition account for less than 25 per cent of total production of the like product produced by the domestic industry.

The domestic industry may be represented by any relevant industrial union or chambers for filing SG, AD or SCM petitions.

As regards official fees, the filing of a trade remedy petition is subject to an official fee of 250 Jordanian dinars. Upon filing, the NPPD examines the petition and must decide whether or not to initiate the investigation within 14 days from the filing date of a 'complete' petition, subject to an extension for a similar period.

Evidence supporting the petitions usually constitutes financial statements of the domestic industry duly ratified by an authorised auditor, invoices, price lists, social security documents, and samples of the domestic product and the imported products.

If the petition is accepted for initiation purposes, applicants are required to pay initiation fees of 750 Jordanian dinars. Agricultural producers petitioning against agricultural imports are exempted from filing and initiation fees.

5 What is the procedure for foreign exporters to defend a trade remedies case in your jurisdiction?

The law requires the NPPD to give all interested parties, including foreign exporters, ample opportunity to participate in the investigation. In safeguard investigations, exporters are usually notified through Jordan's notification to the WTO on the initiation of investigation as required by law and the Safeguards Agreement, providing all relevant information concerning the petition, procedures and time frames of the investigation. The NPPD is also required to publish an initiation advertisement in two daily newspapers containing information on the petition in addition to procedures of the investigation and the deadlines for all interested parties to participate in the investigation. Additionally, in practice, the NPPD usually notifies the embassies of major exporting countries on the initiation of investigation.

As for anti-dumping and anti-subsidies investigations, the law obligates the NPPD to notify known foreign exporters upon receipt of AD or SCM petitions. The law also requires the NPPD to publish an initiation advertisement in two daily newspapers containing all procedural

timelines and participation requirements of the investigation, including the collection and submission of questionnaires, deadlines for written submissions, and the public hearings.

The time frames of the investigations are not set by the law or the regulations; rather they are at the discretion of the NPPD to set. In the safeguard investigations conducted by the NPPD, such time frames are usually set in the initiation decision, the initiation notification and the newspaper advertisement. In practice, the NPPD usually gives all interested parties in a safeguard investigation 21 days to request participation and to collect questionnaires, one month to return the questionnaires from the receipt date and approximately two months to provide written submissions, whether in support of or against the petition.

The duration of a safeguard investigation, according to law, is six months from the initiation date, subject to extension in special circumstances for an additional period of two months. The duration of anti-dumping and anti-subsidies investigations is 12 months, subject to an extension of an additional period of eight months.

6 Are the WTO rules on trade remedies applied in national law?

Upon joining the WTO, Jordan conformed its national legislation with the WTO Agreements, including the agreements on safeguards, anti-dumping and subsidies and countervailing measures. The rules of the National Production Protection Law and its by-laws have been completely derived from said WTO agreements. On the other hand, the WTO Agreements are superior to national laws in the Jordanian legal system, as most of the related national laws contain provisions giving the WTO Agreements, and practise due consideration when interpreting the rules. Moreover, the Law for Ratifying the Accession of Jordan to the WTO No. 4 for the Year 2000 accords superiority to the WTO Agreements over national laws when a conflict arises, and this has been followed and considered by Jordanian courts and competent authorities.

Jordan has not treated any country as a non-market economy, and has not officially declared its position on same, especially since no anti-dumping investigation has yet been initiated in Jordan.

7 What is the appeal procedure for an unfavourable trade remedies decision? Is appeal available for all decisions? How likely is an appeal to succeed?

According to the law, only final decisions (determinations) can be appealed before the Administrative Court. An affected party may file a lawsuit before the Administrative Court within 60 days from the issuance date. The judgments of the Administrative Court may be appealed to the Higher Administrative Court.

Appeals before the Administrative Court usually succeed if there is a significant procedural violation committed by the relevant administrative institution in establishing the decisions or determinations.

8 How and when can an affected party seek a review of the duty or quota? What is the procedure and time frame for obtaining a refund of overcharged duties? Can interest be claimed?

With regard to AD and SCM measures, any affected party may request review of the measures at any time after imposition provided that such party can present justified reasons to conduct the review. As for safeguards, the review request is not available for affected parties under the law. However, the law obligates the NPPD to conduct a mid-term review provided that the duration of the safeguard measure is not less than three years. Any trade remedy measure can be reviewed after six months of its application under competition law.

To obtain a refund of overcharged duties, the affected party should submit a refund claim, supported by the relevant customs statement, to the Department of Value Affairs at the Customs Directorate. Upon receipt and acceptance of the claim, the Value Affairs Department drafts a refund memo for examination by the Audit Office, the Department of Income Tax and the Finance and Collection Department within the Customs Directorate, and if the memo is approved by the three departments the Value Affairs Department issues a cheque to the claimant for the amount of the extra duty paid.

9 What are the practical strategies for complying with an anti-dumping/countervailing/safeguard duty or quota?

A practical strategy for complying with trade remedy measures is typically to contest the measures and to seek review and refunds on a regular basis under the National Production Protection Law and Competition Law. Importers may also seek re-sourcing of the product from other countries or reformulating them.

Customs duties

10 Where are normal customs duty rates for your jurisdiction listed? Is there an exemption for low-value shipments? If so, at what level? Is there a binding tariff information system or similar in place? Are there prior notification requirements for imports?

Customs duty rates are listed in the Harmonized Tariff Schedule published annually in the Official Gazette at the outset of each year. Also, modifications of tariff rates are published regularly in the same Gazette. The complete tariff schedule can be found at the Customs Directorate's website: www.customs.gov.jo.

Low-value shipments are exempted from customs duties if the value of the shipment does not exceed US$150 per shipment.

The Customs Directorate has an information system for Jordanian companies to assess the tariff classification of products, which can be accessed at www.customs.gov.jo/ar/e_services.aspx (currently in Arabic, as the English version is under construction). The information system, however, is not binding.

Certain types of imports are subject to non-automatic licensing under Imports and Exports Law No. 21 of 2001 for reasons of protection of health, safety, the environment, national security, public order and morals, and the conservation of natural resources. Importers of products subject to non-automatic licensing are required to obtain prior approvals from certain governmental agencies to obtain an import licence from the Ministry of Industry and Trade. Non-automatic licences are issued within 15 working days of submission of documents. The licensee has the right to import the quantity specified in the licence during the period of its validity. The web portal for inquiring about prior approvals is http://e-service.mit.gov.jo:8888/E-Services/faces/administration/maintainInstituteAims.jsp.

11 Where are special tariff rates, such as under free trade agreements or preferential tariffs, and countries that are given preference listed?

All tariff rates, whether preferential or normal, are listed on the Customs Directorate's website at https://services.customs.gov.jo/JCcits/sections.aspx. The system also lists countries enjoying tariff preferential treatment. The system is in Arabic and the English version is under construction.

12 How can GSP treatment for a product be obtained or removed?

Jordan does not participate in the Global System of Trade Preferences (GSTP). Jordan receives trade preferences under the Generalized System of Preferences schemes of Japan, New Zealand, Belarus, Kazakhstan, Australia and the Russian Federation. Also, Jordan has established Qualified Industrial Zones (QIZs) under the Jordan–US Free Trade Agreement where most QIZ factories export their products to the US with preferential trade preferences.

To obtain GSP treatment for a certain product, importers should apply to the Industrial Development Directorate (IDD) at the Ministry of Industry and Trade by completing a form provided by the IDD for this purpose.

13 Is there a duty suspension regime in place? How can duty suspension be obtained?

Duty suspension is possible under Jordanian Customs Law No. 20 of 1998, as it can be requested for temporary admission imports, imports destined for free trade zones and raw materials imported to manufacture products in Jordan for exportation purposes. Duty suspension can be obtained by applying to the Customs Directorate, provided the applicant provides a bank guarantee or cash guarantee as required by article 88 of the Customs Law.

14 Where can customs decisions be challenged in your jurisdiction? What are the procedures?

Under Article 80 of the Customs Law, affected parties may file administrative appeals of decisions pertaining to the value of the goods, their origin, their standards or their tariff classification to a dispute settlement committee established within the Customs Directorate. The committee reviews the dispute and then recommends proper measures to the Customs General Director. The decisions of the General Director can be appealed to the Customs Court of First Instance.

As for judicial appeals, affected parties may challenge any customs decision by filing a lawsuit before the Customs Court of First Instance. The Customs Court has jurisdiction to review any violation of the rules of customs law, free trade agreements, standards and metrology law, investment law and sales tax law.

The judgments of the Customs Court of First Instance can be appealed to the Customs Appellate Court. The judgments of the Customs Appellate Court can be appealed to the Cassation Court.

Trade barriers

15 What government office handles complaints from domestic exporters against foreign trade barriers at the WTO or under other agreements?

There is no specific office or procedure set forth by Jordanian law for complaining about foreign trade barriers under the WTO or free trade agreements. However, in practice, complaints are usually filed with the Ministry of Industry and Trade, which examines the complaints and conducts the necessary communications with the concerned agencies in the relevant foreign countries through Jordanian embassies, delegations and commercial attachés.

16 What is the procedure for filing a complaint against a foreign trade barrier?

See question 15.

17 What will the authority consider when deciding whether to begin an investigation?

The ministry does not conduct an investigation, but would ask applicants to provide documents supporting their allegations of the existence of technical barriers against their exports.

18 What measures outside the WTO may the authority unilaterally take against a foreign trade barrier?

Jordan may suspend concessions provided under free trade agreements if a technical barrier is unjustly imposed against certain Jordanian exports by a free trade partner country, and in accordance with the rules of such free trade agreements. Also, the government may apply different measures against non-WTO members, such as prohibition and quantitative restrictions.

19 What support does the government expect from the private sector to bring a WTO case?

Jordan has never raised any dispute with member countries at the WTO level. However, whenever there is a claim by any affected Jordanian exporter against technical barriers applied by member countries against Jordanian imports, the government expects claimants to cover lawyers' fees and all associated expenses, and to provide the necessary data, information and evidence supporting their allegations. The same applies to trade remedies issues.

20 What notable trade barriers other than retaliatory measures does your country impose on imports?

Under Import and Export Law No. 21 of 2001, the government can impose prohibitions or restrictions on imports. Some imports are prohibited by reason of public safety, health and environment, or protection of national resources, or to implement UN Security Council resolutions.

Import licences, both automatic and non-automatic, are issued mainly by the Ministry of Industry and Trade. Importation Decree No. 109 of 2015 lists the products subject to automatic and non-automatic licences.

Update and trends

- At the end of May 2018, Jordan notified Turkey of the suspension and termination of the free trade agreement that was signed in 2011. The termination is expected to take effect in December 2018 (six months from the date of termination notification). The Jordanian cabinet proclaimed that the suspension was necessary to protect domestic industries from 'subsidised' Turkish imports and to remedy the trade balance between the two countries.
- The Jordanian cabinet has recently issued a decision to prohibit the importation of Portland cement to protect the domestic industry. No legal justification was provided for this decision.
- The Jordanian cabinet has increased special taxes on imported hybrid cars from 12.5 per cent to 55 per cent.
- The controversial proposed amendments to income tax law that were proposed early in 2018 by the government did not pass, following protests by Jordanians. The rejected draft intended significant increases in income taxes on individuals and companies, reaching as much as 25 per cent.

Non-automatic import licences are used for the protection of health, safety, national security, public order, the environment, morals and the conservation of natural resources. They may also be issued for products subjected to quantitative restrictions.

The Ministry of Agriculture is responsible for SPS measures to protect animal and plant health against pests and diseases.

Export controls

21 What general controls are imposed on exports?

Export controls on certain products take the form of export prohibitions, restrictions and licensing as regulated under the Import and Export Law No. 21 of 2001.

Export prohibition can be imposed on certain products to fulfil international obligations, such as for nuclear weapons and chemical products. Some products can also be subjected to export fees or temporary fees to prevent shortages of certain products in the local market.

22 Which authorities handle the controls?

Generally, export prohibitions and licensing arrangements for all products are handled by the Ministry of Industry and Trade, except for agricultural products, which are arranged by the Ministry of Agriculture. Such controls are enforced by the Customs Directorate.

Export fees are applied by different governmental agencies. For example, export fees on mining and quarrying products are collected by the Natural Resources Authority, and on agricultural products by the Ministry of Agriculture.

23 Are separate controls imposed on specific products? Is a licence required to export such products?

There are separate controls imposed on specific products such as wheat flour and dual-use materials. For example, wheat flour and other wheat products are subject to export licensing arrangements to ensure that the consumer subsidies granted to these products are reimbursed by exporters when the products are exported.

Also, some controls are imposed to fulfil international obligations, such as for nuclear weapons and chemical products, and those on endangered species. Jordan is a contracting party to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) and a signatory to the Chemical Weapons Convention and the Treaty on the Nonproliferation of Nuclear Weapons.

24 Has your jurisdiction implemented the WCO's SAFE Framework of Standards? Does it have an AEO programme or similar?

Yes. Jordan does implement the WCO's SAFE Framework of Standards. The Customs Directorate has applied an AEO programme since 2005. The programme title is the Golden List, designed to enhance the security and facilitation of international trade.

25 Where is information on countries subject to export controls listed?

Export controls are not specific to certain countries. However, they are published in the Official Gazette. Information on export controls can be requested from the Directorate of Trade of the Ministry of Industry and Trade (www.mit.gov.jo/Pages/viewpage.aspx?pageID=191).

26 Does your jurisdiction have a scheme restricting or banning exports to named persons and institutions abroad?

Yes. However, the information is not publicly available, but can be requested by importers from the Central Bank of Jordan.

27 What are the possible penalties for violation of export controls?

The penalties for violating export controls vary according to the type of control applied. Violations of export prohibitions are subject to criminal liabilities under customs law, where the penalty for exporting a product prohibited from exportation is a fine not less than 50 Jordanian dinars up to 1,000 Jordanian dinars, and if such violation is repeated the violator would face imprisonment for one month up to three years. Fees violations are subject to different fines regulated under the different laws organising export fee payments for each concerned institution.

Financial and other sanctions and trade embargoes

28 What government offices impose sanctions and embargoes?

The Central Bank of Jordan (www.cbj.gov.jo).

29 What countries are currently the subject of sanctions or embargoes by your country?

Such information is not published publicly, but may be requested by importers from the Central Bank of Jordan at www.cbj.gov.jo.

30 Are individuals or specific companies subject to financial sanctions?

Such information is not published publicly, but may be requested by importers from the Central Bank of Jordan at www.cbj.gov.jo.

Miscellaneous

31 Describe any trade remedy measures, import or export controls not covered above that are particular to your jurisdiction.

Not applicable.

ARMOUTI
ADVOCATES

Baha'a Armouti **b.armouti@armouti.com**

32 Prince Shaker bin Zaid Street
Al-Shmesani
Amman
Jordan

Tel: +962 6 5697878
Fax: +962 6 5697879
www.armouti.com

Korea

Sung Baek Jin, Young Gee Park, Hyun Soo Joo and Steve H Oh

Lee & Ko

Overview

1 What is the main domestic legislation as regards trade remedies?

The Customs Act and the Act on the Investigation of Unfair International Trade Practices and Remedy against Injury to Industry (the Trade Remedies Investigation Act) are the two main domestic laws as regards trade remedies in Korea.

English versions of the Customs Act and the Trade Remedies Investigation Act are available at http://elaw.klri.re.kr/eng_service/lawView.do?hseq=37150&lang=ENG and http://elaw.klri.re.kr/eng_service/lawView.do?hseq=31963&lang=ENG.

2 In general terms what is your country's attitude to international trade?

Korea is a member of the WTO, which supports free trade. Korea has entered into 15 free trade agreements with Chile, Singapore, EFTA, ASEAN, India, the EU, Peru, the US, Turkey, Australia, Canada, China, Colombia, New Zealand and Vietnam. Recently, Korea has concluded an FTA negotiation with six Central American countries: Costa Rica, Guatemala, Honduras, Panama, El Salvador and Nicaragua. Korea has complied with WTO decisions in good faith. As to Korea's track record on compliance with WTO decisions, an article 21.5 panel under the Dispute Settlement Understanding had been requested only once out of eight WTO dispute cases in which Korea was the losing party.

Trade defence investigations

3 Which authority or authorities conduct trade defence investigations and impose trade remedies in your jurisdiction?

Trade remedy investigations and trade remedy measures are conducted by different government bodies. Trade remedy investigations are conducted by the Korea Trade Commission (KTC) (www.ktc.go.kr:20443/en/main.do), a government body within the Ministry of Trade, Industry and Energy (MOTIE). If affirmative decisions are made by the KTC, the Ministry of Strategy and Finance (MOSF) (english.mosf.go.kr) imposes trade remedy measures such as anti-dumping duties, countervailing duties and safeguard measures. The Korea Customs Service (KCS) is responsible for collecting any duties arising from trade remedy cases (www.customs.go.kr/kcshome/site/index.do?layoutSiteId=english).

4 What is the procedure for domestic industry to start a trade remedies case in your jurisdiction? Can the regulator start an investigation ex officio?

With respect to anti-dumping or countervailing duty investigations, persons interested in the domestic industry that suffers material injury etc, under article 51 of the Customs Act, or 'the minister of the competent ministry in charge of such domestic industry' may ask the Minister of Strategy and Finance to levy anti-dumping or countervailing duties as prescribed by Ordinance of the Ministry of Strategy and Finance, and such request shall be deemed a request filed with the KTC established pursuant to the provisions of article 27 of the Act on the Investigation of Unfair International Trade Practices and Remedy against Injury to Industry (the Act) for making an investigation necessary to levy anti-dumping or countervailing duties (article 51 of the Customs Act and articles 59 and 73 of the Enforcement Decree of the Customs Act). As for safeguard investigations, where the increased import of particular goods is causing, or is feared to cause, serious injury to a domestic industry that produces the same kind of goods as the particular goods or goods in direct competition with the particular goods, any interested person in such domestic industry or the heads of the central administrative agencies in charge of the domestic industry may apply to the KTC for an investigation into the injury to the domestic industry caused by the importing of such goods (article 15 of the Act).

For anti-dumping duty investigations, evidential data fully attesting to the fact of dumping goods imported and material injury etc caused thereby must be included in the filing. For safeguard investigations, evidence of serious injury caused by increased imports must be included in the filing (article 59.4 of the Enforcement Decree of the Customs Act). For countervailing duty investigations, adequate evidential data concerning the fact of importing goods for which subsidies etc are paid and the fact of material injury etc caused thereby must be provided to the KTC (article 74.2 of the Enforcement Decree of the Customs Act). As for safeguard investigations, the details, scope and duration of measures that are necessary for remedying the injury to the domestic industry concerned, where there is serious injury or a threat of serious injury to the domestic industry concerned, must be provided to the KTC (article 15 of the Enforcement Decree of the Act).

Upon receiving a request for an anti-dumping or countervailing duty investigation, the KTC shall decide whether to make an investigation into the fact of dumping or importing goods for which subsidies etc are paid, and the fact of damage etc caused thereby, within two months from the day on which such request is received. Upon receipt of any safeguard application, the KTC shall decide whether to commence an investigation in consultation with the head of a related central administrative agency within 30 days from the date of the application.

Any person who intends to request an anti-dumping duty investigation shall furnish the data including the information on the relevant goods, material injury etc caused by the import of the relevant goods to the domestic industry, the extent of support by domestic producers of the goods of the same kind for the relevant request of an investigation and evidential data fully attesting to the fact of dumping goods imported and material injury etc caused thereby (article 59.4 of Enforcement Decree of the Customs Act). Any person interested in the domestic industry that suffers material injury etc due to the import of goods for which subsidies etc are paid shall, when he or she intends to file an application for an investigation thereof, file an application stating the matters, including the information on the relevant goods, material injury etc caused by the import of the relevant goods to the domestic industry and the extent of support by domestic producers of the goods of the same kind for the relevant request of an investigation, appended by related evidential data, with the KTC (article 73.4 of Enforcement Decree of the Customs Act). A person who applies for a safeguard investigation, as to whether increased imports of particular goods cause injury to the domestic industry in accordance with article 15 of the Act, shall submit to the KTC an application indicating the information including the goods concerned, the circumstances in which imports of the goods concerned have caused or are threatening to cause serious injury to the domestic industry and the details, scope and duration of measures that are necessary for remedying the injury

to the domestic industry concerned, where there is serious injury or a threat of serious injury to the domestic industry concerned etc accompanied by the materials verifying the details of the request (article 15 of the Enforcement Decree of the Act).

If the Trade Commission decides that an increase in the import of particular goods causes or is feared to cause serious injury to domestic industry, it may undertake an ex officio investigation (article 16.3 of the Act). There is no explicit provision on whether the KTC may undertake an ex officio investigation in case of an anti-dumping or countervailing duty.

5 What is the procedure for foreign exporters to defend a trade remedies case in your jurisdiction?

When the KTC determines to commence an anti-dumping or countervailing duty investigation, it shall notify the applicant for such investigation, the government of the supplying country of the relevant goods, a supplier and other interested persons of matters concerning the determination of the investigation commencement and shall publish such matters in the Official Gazette within 10 days from the day on which the decision to commence the investigation is made (articles 60.3 and 74.3 of the Enforcement Decree of the Customs Act). However, where a decision on whether to commence a safeguard investigation is made, the KTC shall publish such fact in the Official Gazette (article 16.2 of the Enforcement Decree of the Act).

Exporters who receive questionnaires from the KTC must notify the KTC as to whether or not they intend to respond to such questionnaires by no later than three weeks from the initiation of the investigation.

Exporters who are not specifically identified by the KTC may submit an application to the KTC seeking voluntary participation in the investigation within three weeks of the initiation of the investigation. The KTC has discretion in deciding whether to accept such an application, typically taking into consideration the KTC's workload. If accepted, the KTC will send a questionnaire to such voluntary respondents, or inform them in writing that they are not included in the investigation.

The Minister of Strategy and Finance or the KTC may, when deemed necessary or there is a request from any interested person, give such interested person an opportunity to state his or her opinion at a public hearing etc or persons in conflict of their interests an opportunity to consult with each other (articles 64.8 and 78.8 of the Enforcement Decree of the Customs Act).

For anti-dumping and countervailing duty investigations, when any supplier is asked whether he or she has been involved in dumping goods or not, he or she shall be given a period of at least 40 days from the day on which a written inquiry is delivered to him or her for answering such inquiry, and if the relevant supplier asks to extend such period, citing the grounds therefor, proper consideration shall be given to his or her request (article 64.1 of the Enforcement Decree of the Customs Act). The KTC may also issue a supplemental questionnaire. A one or two-week extension may generally be granted, provided that sufficient reasons for the extension are provided.

The KTC shall conduct a preliminary investigation into whether there is adequate evidence presuming the existence of the fact of dumping or importing goods for which subsidies etc are paid, and the fact of material injury etc caused thereby, and report the results thereof to the Minister of Strategy and Finance within three months from the day on which the matters concerning the determination of the investigation commencement are published in the Official Gazette (articles 61.2 and 75.2 of the Enforcement Decree of the Customs Act). The Minister of Strategy and Finance shall determine whether to take provisional measures and the contents thereof within one month from the day on which the results of the preliminary investigation are reported. If deemed necessary, the period of one month may be extended by up to 20 days (articles 61.3 and 75.3 of the Enforcement Decree of the Customs Act). The KTC shall commence a full-scale investigation beginning from the day following the day on which the results of a preliminary investigation are reported unless special grounds prescribed by Ordinance of the MOSF exist that make it impossible to do so, and the results of such full-scale investigation shall be reported to the Minister of Strategy and Finance within three months from the day on which the full-scale investigation commences (articles 61.5 and 75.5 of the Enforcement Decree of the Customs Act). Where necessary to extend the investigation period in connection with the investigation above and any interested person requests the extension of the investigation period, citing good cause, the KTC may extend the investigation period by up to two months (articles 61.6 and 75.6 of the Enforcement Decree of the Customs Act).

For anti-dumping duty investigations, where the Minister of Strategy and Finance receives the results of a full-scale investigation, he or she shall determine whether to levy anti-dumping duties and substances thereof within 12 months from the date on which such results are published in the Official Gazette and take measures to levy anti-dumping duties. Where any special reason is deemed to exist, he or she may take measures to levy anti-dumping duties within 18 months from the date of publication in the Official Gazette (articles 61.6 and 61.7 of the Enforcement Decree of the Customs Act).

For countervailing duty investigations, the Minister of Strategy and Finance shall decide whether to levy a countervailing duty and the contents thereof, and take a measure to impose such countervailing duty within one month from the day on which the results of the full-scale investigation are received. If deemed necessary, the period of one month may be extended by up to 20 days. The Minister of Strategy and Finance shall take a measure to levy a countervailing duty within one year from the day on which the matters concerning the determination on the commencement of an investigation are published in the Official Gazette. If special reasons are deemed to exist, the Minister of Strategy and Finance may take the measure to impose such countervailing duty within 18 months from the day on which the matters concerning the determination on the commencement of such investigation are published in the Official Gazette (articles 75.7 and 75.8 of the Enforcement Decree of the Customs Act).

6 Are the WTO rules on trade remedies applied in national law?

The WTO rules on trade remedies, such as Agreement on Implementation of article VI of the General Agreement on Tariffs and Trade 1994 (the AD Agreement), the Agreement on Subsidies and Countervailing Measures (the SCM Agreement) and the Agreement on Safeguards, are reflected in Korean domestic laws and regulations because Korea is a WTO member. According to paragraph 1 of article 6 of the Constitution of Republic of Korea (the Constitution), treaties duly concluded and promulgated under the Constitution and the generally recognised rules of international law shall have the same effect as the domestic laws of Korea. If there is a conflict between the treaties and the domestic laws, the principles of lex specialis and lex posterior would be applied. The KTC generally follows the practice of the WTO. Paragraph 3 of article 58 of the Enforcement Decree of the Customs Act (the Decree) provides for a non-market economy (NME) for the purpose of anti-dumping investigations. However, there is no specific country that is currently treated as an NME. For reference, Korea recognised China and Russia in 2005 and Vietnam in 2009 as having attained market economy status.

7 What is the appeal procedure for an unfavourable trade remedies decision? Is appeal available for all decisions? How likely is an appeal to succeed?

Article 13 of the AD Agreement and article 23 of the SCM Agreement provides that each member whose national legislation contains provisions on anti-dumping and countervailing duty measures shall maintain judicial, arbitral or administrative tribunals or procedures for the purpose, inter alia, of the prompt review of administrative actions relating to final determinations and reviews of determinations within the meaning of article 11 of the AD Agreement and article 21 of the SCM Agreement.

As Korea's domestic legislation includes provisions for trade remedies, including anti-dumping and countervailing duty measures, it maintains judicial and administrative procedures for the purpose of the prompt review of an unfavourable trade remedies decision.

Paragraph 2 of article 120 of the Customs Act provides that any administrative litigation against any illegal measure shall not be initiated unless a request for evaluation or adjudication and a decision thereon under the Customs Act is made. In other words, an interested party shall file a request for evaluation or adjudication first, and after a decision thereon is made, the party may initiate administrative litigation. According to paragraph 3 of article 120 of the Customs Act, the administrative litigation shall be initiated within 90 days from the date on which the notice of the decision is given in response to the request for evaluation or adjudication was received.

8 How and when can an affected party seek a review of the duty or quota? What is the procedure and time frame for obtaining a refund of overcharged duties? Can interest be claimed?

An affected party may file a request for a review. Any request for a review may be made after the expiration of one year from the day on which the relevant anti-dumping duties are imposed, or the countervailing duty or the pledge is put into force and such request shall be made before six months from the day on which the effect of anti-dumping duties or the pledge is lost.

The Customs Act and the Decree stipulated regarding refunds of overcharged anti-dumping or countervailing duties. Paragraph 3 of article 53 and paragraph 2 of article 59 of the Customs Act provides that if the amount of anti-dumping or countervailing duties falls short of the amount of provisional anti-dumping or countervailing duties, the difference therefrom shall be refunded. Paragraph 1 of article 67 of the Decree provides that where the amount of anti-dumping duties is lower than that of the provisional anti-dumping duties, the amount of provisional anti-dumping duties, which is equivalent to a difference, shall be refunded. The Customs Act and the Decree, however, do not explicitly provide for any procedure and time frame for those refunds.

9 What are the practical strategies for complying with an anti-dumping/countervailing/safeguard duty or quota?

Seeking reviews could be a way to comply with trade remedy measures. Also, it has been generally observed that importers re-source merchandise from other countries after the imposition of trade remedy measures. Proactively responding to the investigating authorities prior to the imposition of trade remedy measures would also be recommended, as it is generally understood that earnest efforts made during the investigation process would bring a fair result.

Customs duties

10 Where are normal customs duty rates for your jurisdiction listed? Is there an exemption for low-value shipments? If so, at what level? Is there a binding tariff information system or similar in place? Are there prior notification requirements for imports?

The applicable normal customs duty rates are shown in the Harmonised System of Korea, which is available at unipass.customs.go.kr/clip/index.do. The normal customs duty rate for industrial products imported into Korea is generally 8 per cent ad valorem, while the customs duty rates for agricultural products are generally much higher.

An exemption for low-value shipments applies to goods valued at US$150 or less if such goods are considered self-use goods.

Depending on the imported products, Korean importers may be subject to certain certification, reporting or approval requirements stipulated under various laws and regulations governing the importation of such products (ie, other than the Customs Act), such as the Pharmaceutical Affairs Act, the Medical Devices Act and the Chemicals Control Act, among others. While there are generally no prior notification requirements for imports, Korean importers seeking to import certain pharmaceutical and medical device products are required to submit a pre-importation report to the relevant industry association before obtaining customs clearance, and the relevant industry association's acceptance of such report is a precondition for customs clearance.

Importers seeking to import any products that are subject to additional requirements under laws and regulations other than the Customs Act are strongly encouraged to ensure full compliance in view of the KCS's aggressive enforcement actions.

11 Where are special tariff rates, such as under free trade agreements or preferential tariffs, and countries that are given preference listed?

The texts of the various FTAs to which Korea is a member and preferential tariff rates thereunder are available at http://www.customs.go.kr/kcshome/main/content/ContentView.do?contentId=CONTENT_ID_000002349&layoutMenuNo=23266. Information relating to preferential treatment provided under GSP programmes maintained by Korea is available at unipass.customs.go.kr/clip/index.do.

12 How can GSP treatment for a product be obtained or removed?

The MOSF may determine the scope of GSP treatment as applied to particular products and countries upon receiving an opinion from interested parties. If a domestic industry or interested party believes that continuing with a GSP programme may cause (or is likely to cause) material damage to the domestic industry, such industry or party may file a petition with the MOSF seeking to suspend the GSP programme.

When the MOSF determines that it is not proper to levy general preferential tariffs, such as the increase in imports of certain preferential goods, which may cause serious damage to domestic products that produce the same or similar products, the application of the general preferential tariffs to designated goods and country of origin may not be made. In addition, when the Minister of Strategy and Finance decides that it is improper to impose the general preferential tariffs considering the income level of the particular preferential tariff beneficiary country, the proportion of total amount of imports from the target country, the degree of international competitiveness of the specific preferential goods of the target country, and other circumstances, the application of general preferential tariffs can be excluded.

13 Is there a duty suspension regime in place? How can duty suspension be obtained?

Subject to KCS's review and approval, a customs bonded area or free trade zone may be established where the movement of goods into such areas or zones would not give rise to customs duty implications in Korea, unless the goods actually enter into the territory of Korea, in which case the applicable customs duties and other import-related taxes will be payable. Also, certain Korean importers may be exempt from the general requirement that all applicable customs duties and other taxes should be paid at the time of customs clearance, provided that such importers qualify for and participate in the monthly aggregate programme (which would allow the importers to pay customs duties etc on a monthly basis) and collateral programme (allowing the importers to delay payment of customs duties etc for up to 15 days).

14 Where can customs decisions be challenged in your jurisdiction? What are the procedures?

If the KCS issues a notice prior to the imposition of customs duties, an importer may appeal such pre-imposition to the Customs Appeal Committee (CA Committee), which is a committee composed of high-ranking customs office officials and civilian experts that hears Korean importers' grievances regarding KCS's expected duty impositions. A Korean importer may appeal the pre-imposition to the CA Committee within 30 days upon receiving the pre-imposition notice.

If the CA Committee decides to adopt the KCS's pre-imposition, the KCS will then issue a final imposition notice. In such case, the Korean importer would be required to pay the additional duties and other taxes as indicated in the final imposition notice within 15 days after the receipt thereof, regardless of whether the importer decides to further appeal the KCS's decision. Appeal against the pre-imposition notice to the CA Committee is an optional remedy to taxpayers (ie, is not a mandatory procedure). If taxpayers decide not to appeal to the CA Committee, KCS will issue the final imposition notice.

After paying the additional imposition as set forth in the final imposition notice, the next step is to appeal the final imposition to the Tax Tribunal (TT), the Board of Audit and Inspection of Korea(BAI) or the KCS. For practical reasons, however, taxpayers typically choose to appeal to the TT because the KCS is likely to uphold the decisions made by regional customs offices. Any appeal before the TT must be filed no later than 90 days after receiving the final imposition notice. Such appeal to the TT, BAI or KCS is a mandatory preliminary procedure before initiating an administrative litigation (ie taxpayers must appeal to the TT, BAI or KCS before filing complaint to court).

The TT is a quasi-judiciary body under the jurisdiction of the Prime Minister's Office, separate from the KCS. A final determination from the TT is made by a panel of four members, which is composed of two senior government officials associated with the MOSF (which has jurisdiction over the KCS authorities) and two civilian experts. The TT is statutorily required to make its decision within three months from the date of filing an application for appeal. In practice, however, a typical TT proceeding takes much longer than three months, and in many

cases more than one year, depending on the TT's caseload and the complexity of the issues raised in the appeal.

Finally, a Korean importer may appeal the decision made by the TT to the administrative court, the High Court and ultimately the Supreme Court of Korea.

Trade barriers

15 What government office handles complaints from domestic exporters against foreign trade barriers at the WTO or under other agreements?

The KTC and the Trade Dispute Settlement Division of MOTIE (www.motie.go.kr) are primarily responsible for receiving grievances from domestic exporters and interested parties and handling complaints against foreign trade barriers on both substantial and procedural matters, although other relevant ministries or government agencies may also be involved with regard to substantial matters of the complaints. For instance, in the case of agricultural products, the Ministry of Agriculture, Food, and Rural Affairs, and in the case of standards, the Korean Agency for Technology and Standards, is involved in the complaint procedure.

16 What is the procedure for filing a complaint against a foreign trade barrier?

Under article 25-2 of the Act on the Investigation of Unfair International Trade Practices and Remedy against Injury of Industry (the Act), the KTC may conduct an investigation on whether the domestic industry producing the specific goods or services suffers, or is feared to suffer, any injury due to the systems and practices of the trade counterparts that violate international trade norms such as WTO Agreements. According to article 25 of the Decree of the Act, the procedures are followed as below.

First, a person who intends to file an application for an investigation into injury by foreign trade barriers shall submit to the KTC an application, accompanied by the materials verifying the details.

Second, where the KTC is applied to for an investigation into injury, it shall decide whether to commence the investigation into injury within 60 days from the date of receipt of the application and the KTC has decided whether to commence the investigation into injury, it shall notify the applicant of the details, and it shall notify the government of the trading partner country of the details only if it has decided to investigate into injury and publish such fact in the Official Gazette.

Third, the KTC shall judge whether the domestic industry producing goods or services suffers any injury or threat thereof, due to the system and practices of the trading partner country within one year from the date of decision to commence the investigation into injury. When the KTC has judged as a result of investigation that the domestic industry suffers or has concerns over suffering injury, it may recommend the head of related central administrative agency to implement the measures necessary for corrections of the details of violations of the international trade norms by the trade counterparts. Necessary measures pursuant to article 25-3 of the Act means the following:

- the execution of bilateral consultation with the trading partner country;
- the execution of improvement procedures for the system and practices of the trading partner country through the World Trade Organization, etc; and
- the execution of measures necessary for the correction of violation of international trade norms by the trading partner country.

Since the above investigation procedure was established in 2004, no single investigation into foreign trade barriers has yet been initiated.

Meanwhile, a complaint to the WTO Dispute Settlement Body or other forum may be processed through the following procedure. First, stakeholders or associations of those who are injured or to be injured by trade barriers etc request the filing of a complaint to MOTIE. Even if there is no such action, the government can ex officio consider whether to file a complaint. Upon receipt of the request to file a complaint, the Trade Dispute Settlement Division of MOTIE will examine the need for the complaint and the chance of winning the case, together with the relevant departments, and report to a superior authority. If the opinion is made regarding the complaint through internal approval by MOTIE, the government's official position on the complaint will be decided at the Ministerial Meeting on International Economic Affairs presided over by the Minister of Strategy and Finance and Deputy Prime Minister of Economy. If the decision is made at the Ministerial Meeting on International Economic Affairs, a request for a consultation, commencing the dispute settlement procedure, will be made to the WTO through the diplomatic missions abroad, including the Permanent Mission of the Republic of Korea in Geneva.

17 What will the authority consider when deciding whether to begin an investigation?

Standards for such investigation are not expressly stipulated and are left to the discretion of the authorities. In general, the authorities first examine the need to initiate the investigation from a legal point of view and examine the implications of the investigation for diplomatic and economic relations with the country concerned.

18 What measures outside the WTO may the authority unilaterally take against a foreign trade barrier?

Korea does not take unilateral trade measures against foreign trade barriers that surpass the WTO framework, nor would specific statutory guidelines exist to allow unilateral actions outside of the WTO.

19 What support does the government expect from the private sector to bring a WTO case?

Based on past cases where Korea was involved as a petitioner or defendant, the Korean government has been provided from the private sector involved in the WTO proceedings with some financial support in terms of legal fees and translation costs. It appears that the Korean government needs the support of the private sector for the time being due to restraints on the budget for WTO dispute settlement proceedings.

20 What notable trade barriers other than retaliatory measures does your country impose on imports?

The Korean government takes the position that it does not maintain any trade barrier that is inconsistent with its obligations under the WTO Agreements. Some foreign governments may, however, disagree with this claim. For example, Japan has challenged some of Korea's import bans, and testing and certification requirements for radionuclides, which the Korean government said was necessary to protect Korean consumers from radioactive pollutant risks. In addition, several measures, including a ban on exporting the local mapping data to foreign companies and environmental measures, are being criticised by some foreign governments.

Export controls

21 What general controls are imposed on exports?

All goods intended for export must undergo export clearance procedures. These clearance procedures include declaring the goods intended for export to the KCS and obtaining acceptance of the export declaration by the KCS, as well as loading the goods for transportation between Korea and the importing foreign country. Any person who intends to export goods must file an export declaration with and receive acceptance from the head of the customs office having jurisdiction over the location of the relevant goods before loading the goods for transportation.

Separately, exports of 'strategic items' and 'strategic technology' (collectively 'strategic items') require approval from the relevant authorities for purposes of maintaining international peace and security in accordance with multinational strategic materials export control regimes.

Also, the Korean government controls exports of 'national core technologies' under the Act on Prevention of Divulgence and Protection of Industrial Technology.

22 Which authorities handle the controls?

MOTIE has authority over exports of strategic items under the Foreign Trade Act. Also, MOTIE has authority over exports of national core technologies under the Act on Prevention of Divulgence and Protection of Industrial Technology.

The Defence Acquisition Program Administration (www.dapa.go.kr) is responsible for controlling exports of certain defence materials

and major defence industry materials designated as strategic items under the Defence Acquisition Program Act.

The Nuclear Safety and Security Commission (NSASC, www.nssc.go.kr) is responsible for controlling exports of certain atomic-related materials designated as strategic items under the Nuclear Safety Act.

The KCS (www.customs.go.kr) has authority over export clearance procedures under the Customs Act.

23 Are separate controls imposed on specific products? Is a licence required to export such products?

As mentioned above, the Korean government requires a licence prior to the export of strategic items, which include dual-use equipment, military equipment and satellites. The Dual-use Control List has 10 categories of goods and is regularly updated to incorporate resolutions made by the relevant multinational treaties. These 10 categories are as follows:

- Category 1: Special materials and related equipment;
- Category 2: Materials processing;
- Category 3: Electronics;
- Category 4: Computers;
- Category 5: Telecommunications and information security;
- Category 6: Sensors and lasers;
- Category 7: Navigation and avionics;
- Category 8: Marine;
- Category 9: Aerospace and propulsion; and
- Category 0: Nuclear materials, facilities and equipment.

Categories 1 to 9 are controlled by MOTIE, while Category 0 (nuclear materials, facilities and equipment) is controlled by the NSASC.

A licence may also be required under end-use controls, which apply to otherwise non-controlled goods to be supplied to an end user where there are concerns about possible end use as weapons of mass destruction.

Among the strategic items, defence materials and major defence industry materials included in the Military Goods Control List are controlled by the Defence Acquisition Program Administration. Lastly, certain products shipped to North Korea require approval from the Ministry of Unification.

24 Has your jurisdiction implemented the WCO's SAFE Framework of Standards? Does it have an AEO programme or similar?

Yes. Korea implemented the WCO's SAFE Framework of Standards (which was established in June 2005) and amended provisions of the Customs Act in January 2008 to introduce the AEO programme. The KCS's AEO programme was first implemented in April 2009. So far, Korea has executed AEO Mutual Recognition Arrangements (MRAs) with 14 countries, including, among others, the US, Japan and China, allowing participants of the KCS's AEO programme to take advantage of the benefits accorded under the similar programmes implemented by MRA countries. In total, nine parties (exporters, importers, customs brokers, warehouse operators, transporters, freight forwarders, sea carriers, air carriers and terminal operators) have been designated under the AEO programme.

25 Where is information on countries subject to export controls listed?

The Korean government's export controls on strategic items apply equally to all countries.

The Foreign Trade Act merely makes a distinction between exports to Zone A and Zone B countries. Zone A countries include countries that are signatories to the major multinational regimes. Currently, 29 countries are classified as Zone A countries. All other countries are classified as Zone B countries. Since 2007, a licence is required to export strategic items from Korea to any country (including both Zone A and B countries). Approval for Zone A countries, however, is rather routinely granted, while approval for Zone B countries typically involves substantial and lengthy review by MOTIE and is not readily granted.

26 Does your jurisdiction have a scheme restricting or banning exports to named persons and institutions abroad?

The Korean government publishes and updates a Denial List (www.yestrade.go.kr) to restrict or ban exports of strategic items to certain named persons and institutions designated by the UN Security Council or other multinational export control regimes. Exports to those individuals and institutes are subject to scrutinised review by the relevant authority.

Exports of non-strategic items to certain persons and institutions in countries sanctioned by the UN Security Council (the list of which can also be found at www.yestrade.go.kr) require a catch-all licence.

27 What are the possible penalties for violation of export controls?

In the event that strategic items are exported without an export licence, an exporter may be subject to certain criminal sanctions, the severity of which may depend on specific purposes under which the illegal exports were made. For example, if illegal exports were made for purposes of international proliferation, the applicable criminal sanctions are imprisonment for up to seven years or a criminal fine of up to five times the transaction value or both. If the illegal exports were made for other purposes, the applicable sanctions are imprisonment for up to five years or a criminal fine of up to three times the transaction value.

In addition to the foregoing, exporters who violate export control regulations may be prohibited from exporting strategic items for a period of up to three years.

In the case of unauthorised illegal export, or false or fraudulent acquisition, an exporter must receive educational sanctions for a maximum of eight hours. If an exporter violates the duty to keep documents or fails to comply with educational sanctions, an administrative fine of 10 million won or less may be imposed.

For a violation of the Act on Prevention of Divulgence and Protection of Industrial Technology requirements relating to 'national core technologies', certain aggravated criminal sanctions will apply (eg, imprisonment for up to 15 years or criminal fine of up to 1.5 billion won if the violation was for purposes of using the industrial technology in a foreign country, or imprisonment for seven years or a criminal fine of up to 0.7 billion won if the illegal export was made for other purposes).

Financial and other sanctions and trade embargoes

28 What government offices impose sanctions and embargoes?

In Korea, financial sanctions are enforced by the MOSF via Foreign Exchange Transaction Act and MOSF Notification, and trade embargoes are generally imposed by MOTIE via the Foreign Trade Act and MOTIE Notification.

29 What countries are currently the subject of sanctions or embargoes by your country?

Under MOTIE Notification No. 2017-169, exports of designated arms and related items to the following countries are prohibited: Somalia, DR Congo, Sudan, Eritrea, Lebanon, Libya, Syria, North Korea, Central African Republic and Yemen.

The Korean government imposes strong controls on trade with North Korea, and, therefore, exports of any and all items intended for trading with North Korea may be restricted (via the Inter-Korean Exchange and Cooperation Act). Accordingly, anyone who intends to contact North Korea or its people or engage in trade with North Korea, as a matter of general principle, should obtain prior approval from the Ministry of Unification (www.tongtong.go.kr).

30 Are individuals or specific companies subject to financial sanctions?

Korea imposes sanctions on certain entities and individuals as designated by the UN Security Council. Under MOSF Notification No. 2017-39, the following entities and individuals are subject to the Bank of Korea prior approval requirement:

- those in Somalia and Eritrea as designated by the UN Security Council;
- those connected to the the Islamic State of Iraq and the Levant (ISIL) or Al-Qaeda as designated by the UN Security Council;
- those connected to the Saddam Hussein regime as designated by the UN Security Council;

- those in Liberia as designated by the UN Security Council;
- those in the DR Congo as designated by the UN Security Council;
- those in the Republic of Cote d'Ivoire as designated by the UN Security Council;
- those in Sudan as designated by the UN Security Council;
- those in North Korea as designated by the UN Security Council;
- those in Iran as designated by the UN Security Council;
- those connected to the Gaddafi regime as designated by the UN Security Council;
- those connected to the Afghanistan Taliban as designated by the UN Security Council;
- those in the Central African Republic as designated by the UN Security Council;
- those in Yemen as designated by the UN Security Council;
- those in the Republic of South Sudan as designated by the UN Security Council;
- those designated by the US President's Executive Order No. 13224 and separately designed by the MOSF;
- those designated by the US President's Executive Order No. 13382 and separately designed by the MOSF;
- those designated by the US President's Executive Order No. 13573, No. 13582 and separately designed by the MOSF; and
- those designated by the Council of the European Union and separately designated by the MOSF.

Miscellaneous

31 Describe any trade remedy measures, import or export controls not covered above that are particular to your jurisdiction.

There are none other than those discussed above.

Lee & Ko

Sung Baek Jin **sbc@leeko.com**
Young Gee Park **younggee.park@leeko.com**
Hyun Soo Joo **hyunsoo.joo@leeko.com**
Steve H Oh **steve.oh@leeko.com**

Hanjin Building
63 Namdaemun-ro
Jung-gu
Seoul 04532
Korea

Tel: +82 2 772 4000
Fax: +82 2 772 4001/2
www.leeko.com

Malaysia

Lim Koon Huan and Nicholas Lai
Skrine, Advocates & Solicitors

Overview

1 What is the main domestic legislation as regards trade remedies?

The main domestic legislation regarding trade remedies is:
- the Countervailing and Anti-Dumping Duties Act 1993;
- the Safeguards Act 2006; and
- the Strategic Trade Act 2010.

There is also subsidiary legislation (regulations, orders) issued thereunder.

2 In general terms what is your country's attitude to international trade?

Malaysia has been active in its involvement in international trade and has become one of the major trading nations in the world. International trade is a key contributor to Malaysia's economic growth and development.

Malaysia's main exports include electrical and electronics products, chemicals, machinery, appliances and manufactured metals. In terms of natural resources, Malaysia exports crude oil, liquefied natural gas, palm oil and natural rubber. In return, the country imports mainly electronics, machinery, petroleum products, plastics, vehicles, iron and steel products and chemicals.

In 2017, Malaysia's annual exports rose by 18.9 per cent to 935.39 billion ringgit, marking the strongest growth since 2005. Imports grew at the rate of 19.9 per cent to 838.14 billion ringgit. Malaysia's trade surplus in 2017 amounted to 97.25 billion ringgit, the largest trade surplus since 2015.

Malaysia's main trading partners are the United States, the European Union, Thailand, Singapore, Japan and China.

Malaysia is a founding member of the World Trade Organization (WTO) by virtue of its membership in the General Agreement on Tariffs and Trade (GATT) since 1957.

As a WTO member, Malaysia accords high priority to the rules-based multilateral trading system under the WTO, and has continuously been undertaking voluntary reductions and elimination of tariffs to enhance Malaysia's competitiveness; and over the years has adopted open and transparent trade policies and measures.

In addition, Malaysia is committed to building regional and bilateral trade arrangements with individual regional groupings and countries.

At the regional level, Malaysia is part of the ASEAN Free Trade Area (AFTA) together with other ASEAN member states such as Brunei, Cambodia, Indonesia, Laos, Myanmar, the Philippines, Singapore, Thailand and Vietnam, which creates a complete free trade area among them. ASEAN presently has AFTA free trade agreements (FTAs) with China, Japan, Korea, India, Australia and New Zealand.

Through AFTA, Malaysia has also entered into the ASEAN Trade in Goods Agreement and, together with Brunei, Singapore and Thailand, has embarked on a self-certification pilot project since 1 November 2010 that is aimed at facilitating an enhanced environment for trade.

Malaysia has also developed significant relations economically and politically with the Gulf Cooperation Council (GCC) and is keen to have strong bilateral trade ties with the GCC through future FTAs.

As a member of the Organisation of the Islamic Conference (OIC), Malaysia has actively supported and promoted intra-OIC trade and has ratified the Framework Agreement on Trade Preferential System among the OIC countries.

On 4 February 2016, Malaysia signed the Trans-Pacific Partnership (TPP) Agreement, an FTA initiative with Australia, Brunei, Canada, Chile, Japan, Mexico, New Zealand, Peru, Singapore, Vietnam and the United States. Although the United States subsequently withdrew from the TPP under the Trump administration, the other members of the TPP have agreed to pursue the trade deal without the United States. On 9–10 November 2017, the TPP was renamed the Comprehensive and Progressive Agreement for the Trans-Pacific Partnership (CPTPP) and was signed by the remaining 11 member countries on 9 March 2018 after eight rounds of negotiations. However, with the installation of the new Malaysian government following national elections on 9 May 2018, it remains to be seen whether the new trade minister (yet to be appointed at the point of writing) will pursue the CPTPP agenda.

On a bilateral basis, Malaysia has established FTAs with Japan, Pakistan, New Zealand, India, Chile, Australia and Turkey, while negotiations are still under way with the United States and the European Union.

Trade defence investigations

3 Which authority or authorities conduct trade defence investigations and impose trade remedies in your jurisdiction?

The Trade Practices Section of the Ministry of International Trade and Industries, Malaysia (MITI, www.miti.gov.my) is the authority that has been tasked to investigate and deal with unfair trade practices on behalf of the government of Malaysia.

4 What is the procedure for domestic industry to start a trade remedies case in your jurisdiction? Can the regulator start an investigation ex officio?

Generally, any domestic industry or local producer can petition the authority for trade remedies such as anti-dumping, countervailing and safeguard duties against foreign producers or exporters of a similar product.

In a trade remedy petition, cogent evidence in the form of reliable statistics must be provided to the investigative authority. Depending on the type of trade remedies sought, the following information is usually included in the petition:
- the identity of the domestic industry on behalf of which the petition is submitted, including the names and addresses of the other producers of the like product in the domestic industry, and in the case where the petition is submitted on behalf of the regional producers of the similar product, information and details to support the carrying out of an investigation on a regional basis;
- in the case of an anti-dumping or countervailing petition, the petitioner must show that the domestic producers supporting the petition collectively account for more than 50 per cent of the total production of the like product produced by that portion of the domestic industry expressing either support for or opposition to the petition, and that the domestic producers expressing support for the petition account for at least 25 per cent of the total production of the like product produced by the domestic industry;
- a detailed description of the merchandise that defines the requested scope of the investigation, including technical

characteristics and uses of such merchandise and its current Malaysian tariff classification;
- the name of the country in which the merchandise is produced and, if such merchandise is imported from a country other than that in which it is produced, the name of the intermediate country;
- the name and address of each party the petitioner believes is producing the merchandise for export or is exporting to Malaysia; and:
  - in relation to a countervailing duty petition, is receiving a subsidy; or
  - in relation to an anti-dumping duty petition, is selling the merchandise at prices below the normal value;
- any factual information, particularly documentary evidence, relevant to the alleged subsidy or dumping, including:
  - in relation to a countervailing duty petition, the authority which provided the subsidy and the manner in which the subsidy is provided and an estimate of the value of the subsidy to producers or exporters of the merchandise; or
  - in relation to an anti-dumping duty petition, information relevant to the calculation of the normal value and export price of the merchandise;
- for countervailing and anti-dumping petitions filed, the volume and value of the merchandise imported into Malaysia during the last two years and during any other recent period that the petitioner believes to be more representative or, if the merchandise was not imported into Malaysia during the two-year period, information as to the likelihood of its sale for importation into Malaysia. In relation to safeguards, the data period required is three years;
- the name and address of each party who the petitioner believes is importing or, if there were no importations, is likely to import the merchandise;
- evidence of injury to the domestic industry caused by the merchandise and the causal link between the imports of the merchandise and the alleged injury; and
- in relation to a safeguard petition, the petitioner is also required to submit an adjustment plan for the duration of the proposed imposition of the definitive safeguard measure and the proposed relief measures allowing the domestic industry to recover its competitiveness.

5 What is the procedure for foreign exporters to defend a trade remedies case in your jurisdiction?

On receipt of an anti-dumping, countervailing or safeguard petition from the domestic industry or local producers, MITI will issue a notification of the receipt of the petition to governments of the exporting countries concerned. MITI is then obliged to examine the petition to determine whether the evidence presented justifies the initiation of an investigation, the level of support or opposition of the petition by the domestic industry, as well as the public interest involved. If MITI finds that there is insufficient evidence, or it is not in the public interest to proceed, the petition will be rejected.

If MITI decides to initiate an investigation, it will:
- notify all interested parties (the foreign government or manufacturers concerned and local importers) of the decision to initiate the relevant investigation;
- publish a notice of initiation of investigation, and gazette the same; and
- send out a questionnaire and a copy of the non-confidential version of the petition to foreign producers or exporters and local importers to obtain information on prices and injury factors.

In the case of a filed safeguard petition, the Committee on Safeguards of the WTO must also be notified of any decision to initiate a safeguard investigation.

All interested parties will have the opportunity to submit both written (including submitting confidential and non-confidential versions) and oral representations. Legal representation, whether foreign or local, is allowed.

The general timeline of an anti-dumping or countervailing investigation is as follows:
- the decision to initiate the preliminary investigation is to be made within 30 days from the date of receipt of the petition;
- preliminary determination and the final investigation are to be made within 120 days from the date of initiation, and if necessary this can be extended for another 30 days; and
- final determination is to be made within 120 days from the date of the preliminary determination, and if necessary this can be extended for another 30 days.

The general timeline of a safeguard investigation is as follows:
- the decision to initiate the preliminary investigation is to be made within 30 days from the date of receipt of petition;
- preliminary determination and the final investigation are to be made within 90 days from the date of initiation; and
- final determination is to be made within 200 days from the date of the preliminary determination.

6 Are the WTO rules on trade remedies applied in national law?

Malaysia acknowledges and recognises that its international rights and obligations in this area are governed by its membership of the WTO and by the WTO Agreement on Anti-Dumping and on Subsidies and Countervailing Measures, as well as the Agreement on Safeguards. As such, the trade remedy laws in Malaysia incorporate and apply the WTO rules on trade remedies.

'Non-market economy country' is defined in the Countervailing and Anti-Dumping Duties Act 1993 to mean any foreign country that the government of Malaysia determines operates on a centrally planned economy and not on market principles of cost or pricing structures or a free-enterprise economy. There is no definitive list of such non-market economy countries, but each situation will be decided on a case-by-case basis.

7 What is the appeal procedure for an unfavourable trade remedies decision? Is appeal available for all decisions? How likely is an appeal to succeed?

An interested party who is not satisfied with or who is aggrieved by MITI's decision in relation to a final determination or a final administrative review determination may file a judicial review application in the High Court within three months of the publication of the final determination or the final administrative review determination in question. The High Court would then review administrative acts carried out by MITI as prescribed under the national legislation and WTO rules on trade remedies to determine whether these administrative acts have been properly observed. The High Court is not, however, concerned with the merits of the matter.

An interested party who is not satisfied or who is aggrieved by the decision of the authority in relation to a final determination or a final administrative review determination may also utilise the WTO dispute settlement mechanism and bring an appeal to the WTO Appellate Body in Geneva, Switzerland.

8 How and when can an affected party seek a review of the duty or quota? What is the procedure and time frame for obtaining a refund of overcharged duties? Can interest be claimed?

An administrative review may be sought in the following situations:
- where there are changed circumstances in the dumping margin or the amount of subsidy; or
- where the duties imposed or undertakings entered into are no longer considered necessary or maintainable.

Such a review can only be made one year after the date of the publication of the imposition of the definitive duties.

An exporter or a producer whose exports of the subject merchandise are subject to a definitive anti-dumping duty, but who has not exported the subject merchandise to Malaysia during the period of investigation, may apply for an expedited review.

An importer may also request a refund review for any 12-month period after the final determination of an anti-dumping duty investigation.

MITI shall conduct a refund review as requested by the importer only if the importer has:
- filed a refund application with the Customs Department within 30 days of entry of the merchandise into Malaysia; and

- submitted sufficient and complete evidence to show that the amount of anti-dumping duties collected during that 12-month period exceeds the dumping margin determined.

A refund review shall be completed within 180 days from the date MITI decides to conduct such a review.

The results of the refund review shall determine the final anti-dumping duty applicable for each entry for which the appropriate refund was requested and shall also be the basis for the anti-dumping duty rate applicable to all entries made after the review is completed.

If the margin of dumping is found to be less than the anti-dumping duty paid, the difference shall be refunded. If the margin of dumping is found to be greater than the anti-dumping duty paid, the importer shall pay the difference.

In the case of a safeguard petition, MITI is obliged to conduct a mid-term review where safeguard measures have been imposed for a term exceeding three years. Such a review is to be completed within 180 days of the date of initiation of the review.

9 What are the practical strategies for complying with an anti-dumping/countervailing/safeguard duty or quota?

An affected party may avail itself of the various review procedures set out in the relevant legislation when changes in circumstances arise.

Price undertakings are also a viable and attractive option in lieu of the imposition of definitive duties. Such undertaking may, however, only be offered after an affirmative preliminary determination has been reached.

Customs duties

10 Where are normal customs duty rates for your jurisdiction listed? Is there an exemption for low-value shipments? If so, at what level? Is there a binding tariff information system or similar in place? Are there prior notification requirements for imports?

Customs duties are paid on an ad valorem basis on imports and exports as provided under the Malaysian Customs Act 1967. The rates, and any applicable exemptions, are set by subsidiary legislation made under the Customs Act, and depend on the type of goods imported or exported. The rates generally range from zero to 40 per cent, with much higher rates imposed on alcohol and tobacco products.

The complete list of the applicable duties can be found at the Royal Malaysian Customs Department's website (www.customs.gov.my or http://tariff.customs.gov.my). For e-commerce using air courier services, goods imported not exceeding a total value of 500 ringgit per consignment are exempt from custom duties.

Malaysia uses both the Harmonized Commodity Description and Coding System (HS Code) and ASEAN Harmonized Tariff Nomenclature (AHTN).

AHTN is used for trade transactions between Malaysia and the other ASEAN countries, while the HS Code applies for trade with non-ASEAN countries.

Import permits may be required for certain products to be imported. See question 20.

11 Where are special tariff rates, such as under free trade agreements or preferential tariffs, and countries that are given preference listed?

This information can be found at the MITI website (http://fta.miti.gov.my/?mid=49).

12 How can GSP treatment for a product be obtained or removed?

The Generalised System of Preferences (GSP) is a system whereby developed countries grant preferential treatment to eligible products imported from developing countries, so that exports of developing countries would be competitive in the developed countries' markets. The preferential treatment is in the form of reduced import duties, and is granted without reciprocal obligation on the part of the developing countries.

GSP treatment for a product can be obtained when the product genuinely originates from the beneficiary countries and when certain origin conditions are satisfied. The product must also be transported directly from the exporting preference-receiving country to the preference-giving country.

The claim for GSP treatment must be supported by documentary evidence as to origin and consignment. The documentary evidence accepted for purposes of GSP is the certificate of origin, which is more commonly referred to as 'form A', which in Malaysia can be obtained by the interested manufacturer or exporter from the Federation of Malaysian Manufacturers.

In Malaysia, the authorised issuing or endorsing authority for form A is MITI.

In order to obtain GSP treatment, manufacturers or exporters are required to submit an application for cost analysis approval to the Trade Cooperation and Industry Coordination Section of MITI. An approval letter will be issued by the Trade Cooperation and Industry Coordination Section for products that qualify under the rules of origin under the GSP scheme. Once an approval letter is issued, MITI will endorse the said form A submitted by the interested manufacturer or exporter.

13 Is there a duty suspension regime in place? How can duty suspension be obtained?

No, there is no duty suspension regime in place. However, Malaysia has established numerous free trade zones and licensed manufacturing warehouses with various investment incentives where manufacturing companies can produce or assemble imported products primarily for re-exportation. Customs controls in these zones are minimal, and all machinery and raw materials and components used in the manufacturing process may be imported duty-free.

14 Where can customs decisions be challenged in your jurisdiction? What are the procedures?

The Customs Appeal Tribunal (CAT) is an independent body, established to decide on appeals against the decision of the director-general of customs pertaining to matters under the Customs Act 1967, the Goods and Services Tax Act 2014 and the Excise Act 1976.

A filing fee of 100 ringgit is payable for each appeal lodged, and must include particulars such as the name, address, particulars of dispute, reasons of appeal and the remedy sought.

An appeal to the CAT must be filed within 30 days from the date of notification in writing of the decision of the director-general of customs.

The CAT's decision is deemed to be an order of a sessions court and can be enforced accordingly. The appellant or the Director-General of Customs may appeal against the decision of the CAT to the High Court on a question of law or of mixed law and fact.

Trade barriers

15 What government office handles complaints from domestic exporters against foreign trade barriers at the WTO or under other agreements?

The Trade Practices Section of MITI.

16 What is the procedure for filing a complaint against a foreign trade barrier?

Malaysia does not have a specific procedure for trade barrier complaints and adopts the WTO procedure for dispute settlement. This includes requesting consultations, formally demanding negotiations to try to settle the matter or, as a last resort, requesting the WTO to set up a panel of three arbitrators to judge the case.

17 What will the authority consider when deciding whether to begin an investigation?

See question 16.

18 What measures outside the WTO may the authority unilaterally take against a foreign trade barrier?

Alternative measures include government-to-government negotiations and the threat of possible trade sanctions.

Update and trends

Malaysia's use of safeguard duties is a relatively new development, with the country having its first investigation in 2011. Since then there have been five investigations (nearly one per year), all involving the importation of local steel products. In one of the recent investigations, MITI took an interesting stand on Licensed Manufacturing Warehouses (LMW). Under the Customs Act, the RMCD may grant an LMW licence to entities that import, manufacture and re-export products to the global market. As an incentive, LMW holders are exempt from paying duties when importing raw materials. MITI had decided that safeguard duties will apply to LMW holders on imports of raw materials and the product under investigation, despite the duty exemption (by statutory definition). A trade association representing the affected parties has challenged MITI's decision to impose safeguard duties on LMW and the court's decision is due to be release in late June 2018.

Brexit will have a minimal effect in the medium to long term, but a minor impact in the near term due to the close economic ties between Malaysia and the UK. The withdrawal of the United States has not ended the prospects of realising the TPP, but Malaysia's position remains unclear pending the appointment of a new Trade Minister. With a larger focus on Asia Pacific, RCEP will benefit Malaysia in that the market is geographically nearer and more relevant to Malaysia. The negotiations for RCEP have taken and will take time due to the number of participating members with varying interests and capabilities. The liberalisation of trade through FTAs and partnerships will see the promotion of freer trade, creating heightened competition domestically with potential for frequent application of trade remedies.

19 What support does the government expect from the private sector to bring a WTO case?

Where it is deemed necessary, the government will institute a WTO case in Geneva through the Attorney General's Chambers (AGC). The private sector is expected to assist by forwarding the necessary trade information and figures to the AGC and attending to any queries the AGC might have in preparation of the WTO case.

20 What notable trade barriers other than retaliatory measures does your country impose on imports?

The government of Malaysia operates a system of import licensing. Import permits are required for a number of items, including arms and explosives; motor vehicles; certain drugs and chemicals; plants; soil; tin ore, slag or concentrates; and various essential foodstuffs. Prohibited imports include multicolour copying machines, any 'indecent or obscene' articles and certain poisonous chemicals.

All imported beef and poultry products must originate from facilities that have been approved by Malaysian authorities as halal.

Import duties generally range from zero to 40 per cent. In line with Malaysia's commitment to the ASEAN Common Effective Preferential Tariffs scheme, all industrial goods traded within ASEAN are subject to import duties of between zero and 5 per cent only.

In addition to import duties, the government of Malaysia also imposes excise duties on certain selected categories of imports such as automobiles, leaf tobacco, cigarette products and alcoholic beverages.

Export controls

21 What general controls are imposed on exports?

Goods may be exported to any country except Israel. Exports are controlled only in certain cases as follows:

- gazetted or controlled goods (usually this applies when the goods are in short supply);
- goods sensitive in nature and strategic or hazardous items; and
- goods regulated or prohibited by international agreements to protect endangered wildlife species.

There are two categories of controls on items for export:

- items that are absolutely prohibited from being exported to all countries, for example turtle eggs, rattan, arms and related materials, petroleum and petroleum products; and
- products that require an export licence and are subject to government control, for example livestock and livestock products, grains, minerals and toxic or hazardous materials.

MITI and the Ministry of Domestic Trade, Co-operatives and Consumerism administer the requisite licences for most of the controlled goods.

22 Which authorities handle the controls?

The Royal Malaysian Customs Department (RMCD) is responsible for the enforcement of customs and related laws, including issuance of legally binding advance rulings on valuation and classification matters, among others. Matters in dispute (eg, product classification and valuation of goods for customs purposes) can be brought before the CAT.

23 Are separate controls imposed on specific products? Is a licence required to export such products?

Yes. The Strategic Trade Act 2010 (STA) was enacted to strengthen the country's ability to curb exports and transhipment of strategic items and technology, including arms and related material (eg, military items; nuclear materials, facilities and equipment; special materials and related equipment; material processing; sensors; lasers; navigation and avionic equipment; and electronics and computers) as well as activities that will or may facilitate the design, development, production and delivery of weapons of mass destruction). The STA is administered by MITI.

The STA controls the transactions of strategic items, unlisted items and restricted activities.

A special permit is required for transactions of strategic items or of unlisted items to a restricted end user, while transactions of strategic items or unlisted items to a prohibited end user are not allowed.

For further information, see: http://www.miti.gov.my/index.php/pages/view/2581.

24 Has your jurisdiction implemented the WCO's SAFE Framework of Standards? Does it have an AEO programme or similar?

The authorised economic operator (AEO) is a concept introduced by the SAFE Framework of Standards referring to operators involved in the movement of goods along the international trade supply chain who have achieved the required security standards and are accredited by the member country. The AEO scheme developed by the RMCD is based on a similar concept.

The RMCD AEO website presently lists 59 approved AEO companies (www.customsgc.gov.my).

25 Where is information on countries subject to export controls listed?

A definitive and comprehensive list of strategic items is prescribed in the Strategic Trade (Strategic Items) Order 2010. Information on the subject items can also be found at www.miti.gov.my/miti/resources/STA%20Folder/PDF%20file/pua_20170331_P.U_.(A)90_.pdf.

Restricted end users and prohibited end users are determined by the Minister of International Trade and Industry through the issuance of a ministerial order, and such an order may include from time to time regimes, countries' bodies corporate or individuals subject to United Nations Security Council sanctions, as well as any persons of concern to Malaysia.

Currently the list of restricted end users and prohibited end users can be found in the Strategic Trade (Restricted End-Users and Prohibited End-Users) Orders 2010, 2011, 2014 and 2016 (PU(A) 484/2010, PU(A) 150/2011, PU(A) 88/2014, PU(A) 313/2014 and PU(A) 177/2016).

Restricted end users

These are:

- North Korea and Iran (embargoed and no exception for transit);
- Democratic Republic of the Congo, Ivory Coast, Lebanon, Sudan and Libya (embargoed and subject to transit permit for military items);
- Afghanistan, Iraq, Liberia, Rwanda and Somalia (subject to transit permit for military items); and
- Eritrea (subject to transit permit for restricted military items).

Prohibited end users

These are:

- various named individuals and entities of the Democratic People's Republic of Korea included in the List which is established, maintained and updated by the United Nations Security Council pursuant to the United Nations Security Council Resolution 1718 (2006); and
- various named individuals and the Islamic Republic of Iran included in the List which is established, maintained and updated by the United Nations Security Council pursuant to the United Nations Security Council Resolution 2231 (2015).

26 Does your jurisdiction have a scheme restricting or banning exports to named persons and institutions abroad?

Yes – see question 25 for the list of restricted end users and prohibited end users as presently in force under the Strategic Trade (Restricted End-Users and Prohibited End-Users) Order 2010, 2011, 2014 and 2016.

27 What are the possible penalties for violation of export controls?

Both the Customs Act 1967 and the Strategic Trade Act 2010 have their own penalty provisions and in summary provide for the following penalties for violation of export controls:

- a jail sentence of between two years and life imprisonment, depending on the severity and type of offence; and
- fines of between 10,000 ringgit and 30 million ringgit.

In addition, in view of the serious repercussions from the misuse of strategic items and unlisted items for the purpose of restricted activities, the STA also imposes capital punishment for certain offences where the breach or offence results in death.

Financial and other sanctions and trade embargoes

28 What government offices impose sanctions and embargoes?

MITI is the authority charged with imposing trade sanctions.

29 What countries are currently the subject of sanctions or embargoes by your country?

North Korea and Iran, in relation to strategic items (see www.miti.gov.my/index.php/pages/view/3420), and Israel generally, under the Customs (Prohibition of Imports) Order 2017 subject to a special licence issued by MITI.

30 Are individuals or specific companies subject to financial sanctions?

No.

Miscellaneous

31 Describe any trade remedy measures, import or export controls not covered above that are particular to your jurisdiction.

Ever since Malaysia started producing locally made cars, Malaysia has implemented measures to protect its automobile manufacturing industry from foreign competition using high tariffs and non-tariff trade barriers. Government policies also distinguish between 'national' cars (ie, domestic producers Proton and Perodua) and 'non-national' cars, which include most vehicles manufactured in Malaysia by non-Malaysian-owned firms.

MITI oversees a system of approved permits, which allow the holder to import cars and distribute them locally.

SKRINE

Lim Koon Huan **lkh@skrine.com**
Nicholas Lai **nicholas.lai@skrine.com**

Unit No. 50-8-1, 8th Floor, Wisma UOA Damansara
50 Jalan Dungun, Damansara Heights
50490 Kuala Lumpur
Malaysia

Tel: +60 3 2081 3999
Fax: +60 3 2094 3211
www.skrine.com

Mexico

Alexis Michel
SMPS Legal

Overview

1 What is the main domestic legislation as regards trade remedies?

The main Mexican legislation regarding trade remedies is:

- Article 131 of the Federal Constitution: www.diputados.gob.mx/LeyesBiblio/pdf/1_150917.pdf;
- Foreign Trade Law and its Regulations: www.diputados.gob.mx/LeyesBiblio/pdf/28.pdf and www.diputados.gob.mx/LeyesBiblio/regley/Reg_LCE.pdf;
- Customs Law and its Regulations: www.diputados.gob.mx/LeyesBiblio/pdf/12_270117.pdf and www.diputados.gob.mx/LeyesBiblio/regley/Reg_LAdua_200415.pdf;
- Federal Law of Administrative Procedure: www.diputados.gob.mx/LeyesBiblio/pdf/112_020517.pdf;
- Ministry of Economy Internal Regulations: www.diputados.gob.mx/LeyesBiblio/regla/n163.pdf; and
- Tax Administration Service Internal Regulations: www.diputados.gob.mx/LeyesBiblio/regla/n154.pdf.

Article 131 of the Federal Constitution establishes the exclusive faculty of the Federation to regulate at all times and prohibit if necessary, for security reasons, the circulation inside the Republic of all goods, whatever their provenance. In addition, it entitles the President to increase, diminish or suppress the quotas of export and import tariffs, and to create others; as well as to restrict and to prohibit imports, exports and transit of products, when deemed urgent, in order to regulate foreign trade, the economy of the country and the stability of national production.

The Foreign Trade Law regulates unfair foreign trade practices, investigation procedures, safeguard measures and remedies.

The Customs Law establishes regulations regarding the application of anti-dumping or countervailing duties.

The Federal Law of Administrative Procedure shall apply to acts, procedures and resolutions of the Federal Public Administration.

In addition, the Ministry of Economy Internal Regulations control the activity of the Ministry of Economy to determine and impose trade remedies. The Tax Administration Service (SAT) Internal Regulations grant the power to such entity to collect such trade remedies.

Further, according to jurisprudential criteria, international treaties and agreements are considered hierarchically superior to domestic legislation. In this regard the following agreements must be considered:

- agreement concerning the application of Article VI of the General Agreement on Tariffs and Trade (GATT): www.gob.mx/cms/uploads/attachment/file/31687/19-adp.pdf;
- agreement concerning subsidies and countervailing measures: www.gob.mx/cms/uploads/attachment/file/31688/24-scm.pdf;
- agreement concerning safeguard measures: www.gob.mx/cms/uploads/attachment/file/31676/25-safeg.pdf; and
- free trade agreements.

Depending on the treaty, additional regulations and dispute resolution measures can be found in the corresponding chapter of each treaty.

Finally, regarding appeals against trade remedies, the following domestic legislation should be considered:

- Federal Tax Code: www.diputados.gob.mx/LeyesBiblio/pdf/8_291217.pdf;
- Federal Contentious Administrative Procedure Law: www.diputados.gob.mx/LeyesBiblio/pdf/LFPCA_270117.pdf; and
- Amparo Appeal Law: www.diputados.gob.mx/LeyesBiblio/pdf/LAmp_190118.pdf.

The Federal Tax Code regulates the revocation appeal procedure; meanwhile, the Federal Contentious Administrative Procedure Law regulates trials before the Federal Court of Administrative Justice (TFJA). Additionally, the Amparo Law regulates the procedure of the extraordinary means of defence named amparo, before the Federal Courts.

2 In general terms what is your country's attitude to international trade?

Mexico is a member of the World Customs Organization (WCO) and the World Trade Organization (WTO).

Mexico currently has 12 FTAs with 46 countries, including the North American Free Trade Agreement (NAFTA) with the US and Canada, which has made Mexico one of the main producers and exporters in the automotive sector worldwide. Likewise, it has signed 32 Agreements for the Promotion and Reciprocal Protection of Investments with 33 countries and nine agreements within the framework of the Latin American Integration Association.

On 23 May 2018, Mexico published in the Official Gazette of the Federation (DOF) its approval of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), which is an FTA between Mexico, Australia, Brunei, Canada, Chile, Japan, Malaysia, New Zealand, Peru, Singapore and Vietnam, allowing Mexico to open its market to new economies.

Currently, Mexico is renegotiating the NAFTA terms, which may be updated later this year. Also, the Mexican Government is exploring the options to actualise the free trade agreement with the European Union.

Mexico has been involved in 24 cases as complainant, 14 cases as respondent and 84 cases as a third party in WTO disputes, and has an acceptable compliance record with WTO decisions.

Trade defence investigations

3 Which authority or authorities conduct trade defence investigations and impose trade remedies in your jurisdiction?

The Ministry of Economy, through the International Commercial Practices Unit (UPCI), is the authority empowered to investigate and impose trade remedies in Mexico (www.gob.mx/se/acciones-y-programas/industria-y-comercio-unidad-de-practicas-comerciales-internacionales-upci?state=published).

However, the Ministry of Finance and Public Credit (SHCP), through the SAT, is the authority empowered to collect anti-dumping and countervailing duties imposed as trade remedies (www.sat.gob.mx).

4 What is the procedure for domestic industry to start a trade remedies case in your jurisdiction? Can the regulator start an investigation ex officio?

The determination of trade remedies in Mexico is carried out through an investigation that analyses the existence of dumping and subsidies, the damage or threat of damage to a domestic industry, and the causal relationship between them. With regard to safeguard measures, the

authority will investigate and analyse if the increase in imports damages a branch of national production.

The initial procedure of the investigation regarding trade remedies, such as dumping, subsidies and safeguard measures, is as follows:

- the investigations are initiated ex officio or at the request of a party in the affected national industry that represents at least 25 per cent of the total production of identical or similar merchandise, produced by the branch of national production that is considered affected;
- a written request must be submitted to the UPCI, stating the arguments that support the need to apply anti-dumping or countervailing duties, complying with the following requirements:
  - general information about the promoter, volume and value of the national production of the product identical or similar to that of the imported product, the country of origin of the merchandise, the persons who made the exports in conditions detrimental to Mexico, and the evidence that shows that the importing of the goods in question damages or threatens to damage the domestic industry;
  - in the case of dumping, an indication of the difference between the normal value and the comparable export price;
  - regarding subsidies, the foreign government or foreign authority involved, the form of payment, the amount of the subsidy or the impact of the subsidy on the export price; and
  - in safeguard measures, the facts and data showing that the increase in imports causes serious injury or threat of serious injury to the domestic industry of identical, similar or directly competing merchandise.

The procedure following the presentation of the request is:

- within 17 business days the UPCI may request additional information and documents, which must be provided by the parties within 20 business days;
- within 20 business days after the request, the UPCI may discard the request if it does not meet the legal requirements; and
- within 25 business days following the presentation of the trade remedy request, the UPCI may admit the request and announce the initiation of the investigation.

5 What is the procedure for foreign exporters to defend a trade remedies case in your jurisdiction?

Once the resolution to initiate the investigation has been published in the DOF, the UPCI must notify the interested parties, including foreign exporters, so that within a period of 23 business days they can appear before the UPCI and present the arguments, information and evidence that they deem pertinent.

The UPCI will give the applicants the opportunity to present their counter arguments or replies within the next eight business days.

Interested parties in the investigation procedure may be represented before the authority through a legal representative appointed for that purpose, who shall have a law degree, except for those who belong to the boards of directors of the interested parties.

If necessary, the UPCI may require other evidentiary elements, information and data that it deems pertinent to the investigation.

Within a period of 90 business days following the beginning of the investigation, the UPCI will issue a preliminary ruling through which it will be able to: (i) determine provisional anti-dumping or countervailing duties; (ii) not impose anti-dumping or countervailing duties and continue with the investigation procedure; or (iii) terminate the investigation if there is insufficient evidence.

Once the preliminary ruling is issued and published in the DOF, the UPCI will grant a term of 20 business days so that the interested parties may submit additional arguments, information and evidence.

Within a period of 210 business days following the beginning of the investigation, a final resolution will be issued by the UPCI in which it may: (i) impose definitive anti-dumping or countervailing duties; (ii) revoke the provisional anti-dumping or countervailing duties; or (iii) declare the investigation concluded without imposing anti-dumping or countervailing duties.

During the investigation, interested parties may request the UPCI to hold a conciliatory hearing in which solutions will be proposed. An agreement following the conciliatory hearing will be considered as a final resolution.

Likewise, when in the course of the investigation the exporter of the goods voluntarily commits to modify their prices or cease their exports, or if the government of the exporting country eliminates or limits the subsidy, the UPCI may suspend or terminate the investigation without applying the trade remedy, after analysing whether these commitments eliminate the harmful effect of the unfair practice.

Regarding safeguard measures, once the resolution of the initiation of the investigation has been published in the DOF, the determination of safeguard measures must be made within a period of no more than 210 business days, counted from the day following publication.

It is important to consider that these measures will be subject to the provisions set out in the international treaties, agreements and conventions to which Mexico is a party.

In the case that the circumstances are critical and there is evidence that the increase in imports has caused or threatens to cause damage, provisional safeguard measures could be established within a period of 20 days, counted from the day following the publication in the DOF of the beginning of the investigation. The duration of the provisional safeguard measures may not be more than six months.

The final resolution that confirms, modifies or revokes the safeguard measures must be published within 210 business days after the day following the publication in the DOF of the resolution that initiated the procedure.

6 Are the WTO rules on trade remedies applied in national law?

Yes. Mexico has incorporated the WTO provisions on trade remedies in its Foreign Trade Law and its Regulations.

As stated in question 1, according to jurisprudential criteria, international treaties and agreements are considered hierarchically superior to domestic legislation. Mexico has been an active member of the WTO since 1995, and thus the WTO rules on trade remedies, the Agreement concerning the application of Article VI of the General Agreement on Tariffs and Trade, the Agreement concerning Subsidies and Countervailing Measures and the Agreement concerning Safeguard Measures are applied and followed in practice.

The Foreign Trade Law and its Regulations consider non-market economies when cost and price structures do not reflect market prices.

Mexico will be able to determine whether an economy is a market economy based on whether: (i) the currency of the foreign country is convertible in a generalised manner in the international currency markets; (ii) the salaries of that country are established through free negotiation between workers and employers; (iii) the decisions of the sector or industry of that country adapt to the market without interference from the state; and (iv) foreign investments are allowed.

7 What is the appeal procedure for an unfavourable trade remedies decision? Is appeal available for all decisions? How likely is an appeal to succeed?

The challenge mechanisms against trade remedies decisions are described below.

Revocation appeal

This appeal proceeds against resolutions issued by the UPCI that: (i) dismiss the request for initiation of the investigation procedure; (ii) declare the end of the investigation without imposing an anti-dumping or countervailing duty or safeguard measures; (iii) determine definitive anti-dumping or countervailing duties or safeguard measures.

The appeal must be filed within 30 business days following the notification of the resolution, before the same authority that issued the act (UPCI), stating the facts, arguments and probatory support in relation to the illegality of the resolution. The authority must issue a resolution within three months, confirming or revoking its act. If it is not issued within that period, the interested party may consider that the authority ruled negatively and begin a nullity trial before the TFJA, which will order the authority to expressly report the grounds and reasons it took into consideration to deny the request.

In practice, the probability of success of this type of appeal is low, since the appeal is heard by the same authority. Therefore, this often leads to the authority confirming its resolution.

Despite the above, it is important to consider that this means of defence must be exhausted before initiating a nullity trial before the TFJA, since its interposition is not optional.

Nullity trial

This trial proceeds after the revocation appeal has concluded.

A nullity appeal must be filed before the TFJA, which is a specialised three-judge court in administrative, tax and foreign trade matters, within 30 business days following the notification of the revocation appeal resolution.

The court will issue the corresponding ruling within 45 business days following the date on which the trial instruction was closed, in which it will decide to confirm the validity of the resolution or declare its nullity.

In practice, this is the most effective means to revoke an unfavourable trade remedy decision. However, the resolution time can be longer than the 45 days stated in the law.

Amparo

The constitutionality of the judgments issued by the TFJA declaring the validity of the unfavourable trade remedies resolutions may be challenged through an amparo before the corresponding Federal Collegiate Courts (TCC).

The amparo must be filled within a period of 15 business days counted from the notification of the decision of the TFJA.

Extraordinarily, the amparo resolution may be challenged before the Supreme Court of Justice, but only when constitutional issues are asserted.

8 How and when can an affected party seek a review of the duty or quota? What is the procedure and time frame for obtaining a refund of overcharged duties? Can interest be claimed?

As a general rule, the anti-dumping or countervailing duties will be eliminated within a period of five years, unless before the end of that period the UPCI has initiated an annual or a sunset review to determine whether the suppression of that duty would lead to the continuation or repetition of the unfair trade practice.

The anti-dumping or countervailing duties may be reviewed annually at the request of a party or at any time ex officio by the UPCI, following the same procedure for its determination.

Interested parties may request in writing to the UPCI to carry out a review or a sunset review, providing the information and proof that justify their petition, along with the forms established by the authority for such effects.

If the importers involved paid excessive or unduly severe anti-dumping or countervailing duties, or if as a result of one of the appeals referred to in question 7 the anti-dumping or countervailing duties are revoked, the interested party may request a refund of the difference in its favour of the total duties paid, duly updated with the respective interest.

The refund process must be requested from the SAT, which is the authority in charge of collecting anti-dumping or countervailing duties.

The interested party has a term of five years as of the date of payment to request a refund. The procedure is as follows:

- once the refund request is submitted, if there are errors, the authority could request the taxpayer to clarify the irregularities of its request within a period of 10 business days. If it does not do so it will be considered to have withdrawn the request;
- the authorities may require the taxpayer, within a period no longer than 20 business days, to submit additional documents that it considers necessary and relate to the refund request; and
- the return must be made within a period of 40 business days following the date on which the application was submitted. In practice this time frame is regularly exceeded.

9 What are the practical strategies for complying with an anti-dumping/countervailing/safeguard duty or quota?

There are several alternatives to deal with an anti-dumping or countervailing duties, as well as safeguard measures, depending on each case.

If the anti-dumping, countervailing duty or safeguard measure is considered illegal or if the circumstances have changed, a review or challenge mechanism may be filed by the interested parties, following the procedures and forms established in the law for such purposes.

Alternatively, goods may be sourced from another jurisdiction or supplier that has not been subject to such duties.

Reformulating the products may be considered when analysing if the tariff classification of the new product is subject to any anti-dumping or countervailing duties or safeguard measures.

Customs duties

10 Where are normal customs duty rates for your jurisdiction listed? Is there an exemption for low-value shipments? If so, at what level? Is there a binding tariff information system or similar in place? Are there prior notification requirements for imports?

Customs duty rates are listed in the General Import Duties and General Export Duties Law (LIGIE) which contains the Tariff Schedule for each good.

For purposes of guidance and information, the Mexican government launched the Comprehensive Foreign Trade Information System (SIICEX), where tariffs, duties, free trade agreements, anti-dumping or countervailing duties, safeguard measures and other information regarding goods are listed. However, this information is not binding (www.siicex.gob.mx/portalSiicex/.

The Customs Law, its Regulations and the General Rules of Foreign Trade establish certain exceptions for some merchandise on which customs duties will not be paid; for example passenger baggage on international trips, donations for cultural and teaching purposes, and works of art destined to be part of permanent collections of museums open to the public.

Some low-value shipments carried out by the postal service are consider exempt from customs duties if the customs value is equal to or less than the equivalent in national or foreign currency of US$50.

The general requirements for importing goods into Mexico are: enrolment in the Federal Register of Taxpayers, prior registration in the General Importers Registry, and filling an import entry which contains all the information regarding the value, transport and other data regarding the imported goods.

Some products, depending on their nature and tariff classification, may be subject to specific requirements, including: (i) prior import notices; (ii) enrolment before the Importers Specific Sector Registry; and (iii) specific requirements and permissions of the authority in charge of the regulation of the good to be imported (eg, health supplies require prior import permits and these are issued by the Ministry of Health).

Currently, 118 tariff classifications are subject to prior permits, of which 97 correspond to imports. The products subject to prior import permission are crude oils of petroleum, gasoline, turbosine, propane, butane, articles of clothing, anti-pollution equipment, and research and development equipment, among others.

Registration in the Importers Specific Sector Registry will be necessary for the importation of chemical, radioactive and nuclear products, firearms and ammunition, explosives and material related to explosives, cigars, footwear, textiles and clothing, ethyl alcohol, hydrocarbons, steel and automotives.

11 Where are special tariff rates, such as under free trade agreements or preferential tariffs, and countries that are given preference listed?

Special or preferential tariff rates under free trade agreements signed by Mexico can be found in the treaties themselves and their annexes (www.siicex.gob.mx/portalSiicex/).

There are also Sectoral Promotion Programmes (PROSEC), which are instruments aimed at entities producing certain goods, in which they are allowed to import with preferential ad valorem tariffs raw materials that will be used in the elaboration of specific products, no matter whether the goods to be produced are destined for export or for the domestic market (www.gob.mx/cms/uploads/attachment/file/224497/2.3.2_PROSEC.pdf).

Additionally, to promote national productivity, the Ministry of Economy has implemented the benefit of Rule Eight, which allows manufacturers to import with preferential tariffs, inputs, parts, components, machinery, equipment and other goods related to production processes, particularly for PROSEC programmes (www.siicex.gob.mx/portalSiicex/Transparencia/Permisos/infgeneral.htm).

12 How can GSP treatment for a product be obtained or removed?

There is no formal procedure for a product to obtain or remove GSP treatment. However, the Ministry of Economy has implemented a procedure before its Foreign Trade Commission, which will analyse the commercial circumstances and reasons brought by any interested individual or entity before determining a recommendation for a GSP amendment.

13 Is there a duty suspension regime in place? How can duty suspension be obtained?

Yes. The President may be empowered by the Congress of the Union to suppress the quotas of export and import tariffs issued by the Congress itself, and to create others when it deems it urgent, in order to regulate foreign trade, the economy of the country or the stability of national production, or to perform any other purpose for the benefit of the country.

14 Where can customs decisions be challenged in your jurisdiction? What are the procedures?

Customs decisions can be challenged through a revocation appeal before the issuing authority, a nullity appeal before the TFJA and through an amparo before the Federal Courts. Exceptionally the Supreme Court of Justice may consider cases, following the procedures indicated in question 7.

Trade barriers

15 What government office handles complaints from domestic exporters against foreign trade barriers at the WTO or under other agreements?

The Ministry of Economy, the Permanent Mission of Mexico before the WTO and the Ministry of Foreign Affairs are the offices in charge of these procedures (www.gob.mx/se/, www.gob.mx/se/acciones-y-programas/representaciones-comerciales and www.gob.mx/sre).

16 What is the procedure for filing a complaint against a foreign trade barrier?

There is no formal procedure for national exporters to file a complaint against a foreign trade barrier. Notwithstanding the foregoing, the Internal Regulations of the Ministry of Economy and the Ministry of Foreign Affairs empower these authorities to defend and represent the interests of nationals against foreign trade barriers imposed by other countries.

Therefore, depending on the treaty or agreement to which Mexico is a party, the mentioned authorities will request the affected party to provide the information and documentation they deem necessary for such purpose.

17 What will the authority consider when deciding whether to begin an investigation?

Apart from the probatory support provided by the parties, the authorities must verify the existence of the alleged trade barrier and the violation of the applicable treaty or agreement.

18 What measures outside the WTO may the authority unilaterally take against a foreign trade barrier?

The authorities must comply with the dispute resolutions dispositions set out in the international treaties and agreements to which Mexico is a party.

Despite the above, based on article 131 of the Federal Constitution, the Federation can prohibit the circulation of all kinds of imported goods, whatever their origin, for security reasons, when it deems it urgent in order to regulate foreign trade, the economy of the country or the stability of national production, or to perform any other purpose for the benefit of the country.

19 What support does the government expect from the private sector to bring a WTO case?

The Mexican government acts independently when presenting a case before the WTO, and no contribution of any kind is expected from the private sector. However, the private sector can provide information and documentation that it deems pertinent and necessary for the Mexican government to bring a WTO case.

20 What notable trade barriers other than retaliatory measures does your country impose on imports?

When importing into Mexico, importers must comply with the non-tariff restrictions and regulations applicable to the specific tariff classification. Among these we may find quotas, general and sectoral import registries, notices, permits and marking requirements.

Export controls

21 What general controls are imposed on exports?

As a general rule, most exports are not subject to taxes, duties or restrictions. Nevertheless, exporters must: (i) enrol before the Federal Register of Taxpayers; (ii) enrol in the sectoral exporters registry for certain goods; (iii) comply with non-tariff restrictions and regulations when applicable; and (iv) file an export entry before customs, declaring the customs value and identification of the goods.

Additionally, specific goods may be subject to permits or controls based on their tariff classification or on their nature and use.

22 Which authorities handle the controls?

The authorities that handle exports controls in Mexico are the Ministry of Economy and the SHCP.

Depending on the tariff classification, some other authorities may participate in export controls, granting licences or prior permits.

23 Are separate controls imposed on specific products? Is a licence required to export such products?

Yes. There are certain vulnerable goods for which specific permits or requirements must be fulfilled before export (eg, dual goods and dangerous substances).

Regarding the export of alcoholic beverages, cigarettes, tobacco, energising beverages, some minerals (such as silver and gold), among others, annex 10 of the General Rules of Foreign Trade establishes a register before the sectoral export registry.

24 Has your jurisdiction implemented the WCO's SAFE Framework of Standards? Does it have an AEO programme or similar?

Yes. On 5 June 2005, Mexico signed a letter of intent to implement the WCO's SAFE Framework Standards, and since then it has certified several companies that meet the established requirements and signed mutual recognition agreements.

In Mexico, the SAT implements the authorised economic operator certification programme (AEO), which seeks to strengthen the security of the foreign trade logistics chain through the implementation of internationally recognised minimum-security standards in coordination with the private sector.

25 Where is information on countries subject to export controls listed?

Countries subject to export controls are listed in the 'Agreement that modifies the diverse by which measures are established to restrict the export or import of various goods to the countries, entities and persons indicated' (http://dof.gob.mx/nota_detalle.php?codigo=5509634&fecha=28/12/2017).

This agreement is issued in compliance with article 24 of the United Nations Charter (UN Charter), regarding the primary responsibility of any member to maintain international peace and security.

26 Does your jurisdiction have a scheme restricting or banning exports to named persons and institutions abroad?

No. However, as question 25 states, Mexico restricts the export of certain goods to certain countries in compliance with the UN Charter.

27 What are the possible penalties for violation of export controls?

The possible penalties related to the violation of export controls are: (i) the imposition of fines; (ii) suspension or cancellation of the exporter's registers; (iii) suspension or cancellation of the customs agent's patent; (iv) seizure of the goods; and (v) in some cases, criminal penalties.

Financial and other sanctions and trade embargoes

28 What government offices impose sanctions and embargoes?

In general, the SAT is the authority that may impose sanctions related to exports.

However, there are some goods that require prior permits or licences issued by other authorities responsible for regulating certain goods. In such cases, the responsible authority may be empowered to impose fines and other sanctions.

29 What countries are currently the subject of sanctions or embargoes by your country?

There is no country subject to sanctions or embargo by Mexico. However, as stated in questions 25 and 26, the export of some goods to certain countries is prohibited.

30 Are individuals or specific companies subject to financial sanctions?

Individuals and legal entities that violate the provisions of current Mexican legislation when exporting or importing goods from and into national territory can be subject to financial penalties.

Miscellaneous

31 Describe any trade remedy measures, import or export controls not covered above that are particular to your jurisdiction.

In general terms, the trade remedies and controls applicable in Mexican legislation have been covered in this article. Nevertheless, because Mexico is very dynamic when implementing new controls, measures and sanctions, we strongly recommend that new importers and exporters perform a detailed analysis, on a case-by-case basis, to avoid any delays and inconvenience in their trade operations.

Alexis Michel **amichel@smps.com.mx**

Andrés Bello No 10-8A
Col Polanco
11560
Mexico City
Mexico

Tel: +52 55 5282 9063
Fax: +52 55 5282 9063
www.smpslegal.com

Turkey

M Fevzi Toksoy, Bahadır Balkı and Ertuğrul C Canbolat

ACTECON

Overview

1 What is the main domestic legislation as regards trade remedies?

Turkey is a party to the General Agreement on Tariffs and Trade (GATT) and the Agreement on Implementation of article VI of GATT 1994. As the Constitution of Turkey requires, domestic law should comply with international agreements. Therefore, the domestic trade remedies available under Turkish legislation are based on and in compliance with the above-mentioned agreements. The main domestic instruments concerning trade remedies of Turkey are as follows: (i) anti-dumping and anti-subsidy rules; (ii) safeguarding and surveillance measures; and (iii) quota implementations. The main legislation in this regard consists of the following:

- Law on Prevention of Unfair Competition in Imports (No. 3,577, as amended);
- Regulation on Prevention of Unfair Competition in Imports (No. 23861);
- Decision on Prevention of Unfair Competition in Imports (No. 99/13482);
- Decree on the Safeguard Measures in Imports (No. 2004/7305);
- Regulation on the Safeguard Measures in Imports (No. 25486);
- Communiqué on Prevention of Unfair Competition in Imports (No. 2008/6); and
- Procedure and Principles of Implementation for Communiqué No. 2008/6 on Prevention of Unfair Competition in Imports.

Refer to www.ekonomi.gov.tr/portal/faces/home/ithalat/ticaretPolitikasiSav/ticaretPolitikasiSav-Ticaret_Politikasi_Savunma_Araclari_Nedir for the original Turkish texts and to www.tariff-tr.com/ImportLegislation.aspx for the unofficial English texts.

2 In general terms what is your country's attitude to international trade?

Turkey is a member of the WTO, the OECD, the G20 and the United Nations Conference on Trade and Development. Turkey is also an associate member of the EU and is a candidate for full membership. Therefore, Turkey has been adapting its legislation to the EU acquis to be eligible for full membership. The Customs Union between the EU and Turkey requires Turkey to align itself with the preferential customs regime of the EU, which concerns both autonomous regimes and preferential regimes with third-party countries. Therefore, Turkey's free trade agreements (FTAs) with other countries are in line with the customs regime of the EU. Further, Turkey's commercial policy should be aligned with the EU's Common Commercial Policy.

In addition to the Common Customs Tariff, the preferential trade regime applied for third countries constitutes the most important part of the trade policy of Turkey. For the past few years, Turkey has tended to use all trade remedy tools more frequently. Therefore, the number of investigations has increased rapidly. Based on the WTO's Report on G20 Trade Measures of November 2017, during July 2016–June 2017, the number of investigations initiated by Turkey significantly increased compared to July 2015–June 2016 (from 8 to 19). Subsequently, Turkey ranked third along with Canada among G20 members for the initiation of anti-dumping investigations during July 2016–June 2017. Such increase appears to be in line with the total increase among the G20 members for the same periods (from 203 to 241). However, Turkey ranked eighth when it comes to the number of anti-dumping measures imposed in the same period. Chemicals, metals, glass and ceramics, and textiles are the products most affected by the duties imposed.

Turkey has signed and ratified several FTAs, bilateral investment treaties (BITs) and trade and cooperation agreements with different countries. Turkey has signed FTAs with the following countries: Albania, Bahrain, Bosnia and Herzegovina, Chile, EFTA, Egypt, Faroe Islands, Georgia, Israel, Jordan, Kosovo, Lebanon, Macedonia, Malaysia, Mauritius, Moldova, Montenegro, Morocco, Palestine, Serbia, Singapore, South Korea, Syria and Tunisia. The FTA between Turkey and Syria was suspended in 2011. The FTAs signed with Kosovo and Lebanon are undergoing the ratification process. Further, the FTA negotiations with Ghana are reported to be concluded and the FTA is expected to be signed soon. The scope of the FTAs in force with EFTA, Bosnia and Herzegovina, Serbia and Georgia is planned to be expanded and is currently in negotiation.

Turkey has signed and ratified BITs with the following countries: Afghanistan, Albania, Argentina, Australia, Austria, Azerbaijan, Bahrain, Bangladesh, Belarus, Belgium-Luxembourg, Bosnia and Herzegovina, Bulgaria, China, Croatia, Cuba, Czech Republic, Denmark, Egypt, Estonia, Ethiopia, Finland, France, Georgia, Germany, Greece, Hungary, India, Indonesia, Iran, Israel, Italy, Japan, Jordan, Kazakhstan, Kuwait, Kyrgyzstan, Latvia, Lebanon, Libya, Lithuania, Macedonia, Malaysia, Malta, Moldova, Mongolia, Morocco, Netherlands, Oman, Pakistan, Philippines, Poland, Portugal, Qatar, Romania, Russia, Saudi Arabia, Senegal, Serbia, Singapore, Slovakia, Slovenia, South Korea, Spain, Sweden, Switzerland, Syria, Tajikistan, Thailand, Tunisia, Turkmenistan, Ukraine, United Arab Emirates, UK, US, Uzbekistan and Yemen.

Turkey has signed and ratified trade and cooperation agreements with a large number of countries, including: Afghanistan, Argentina, Australia, Bangladesh, Brazil, China, Colombia, India, Indonesia, Israel, Kyrgyzstan, Lebanon, Malaysia, Mexico, Moldova, Mongolia, Oman, Pakistan, Philippines, Qatar, Russian Federation, South Korea, Syria, Thailand, Ukraine, Uruguay and Yemen. In addition, Turkey is a member of the following regional initiatives: the Organization of Islamic Cooperation, the Economic Cooperation Organization and the Organization of the Black Sea Economic Cooperation and Development.

Trade defence investigations

3 Which authority or authorities conduct trade defence investigations and impose trade remedies in your jurisdiction?

Anti-dumping and safeguard measures are reviewed separately by different departments within the Ministry of Economy. The procedures are as follows.

Information on the authorities concerning anti-dumping measures

The Directorate General of the Ministry of Economy is authorised to conduct a preliminary examination upon complaint or ex officio. If the Directorate General concludes that the reasons for initiation are justified, it will formalise a recommendation to initiate an investigation. The Board of Evaluation for Unfair Competition in Imports will then

decide whether or not to authorise the Directorate General to carry out the investigation. The Board of Evaluation for Unfair Competition is authorised to make proposals in the course of an investigation, to evaluate the results and to submit decisions on the imposition of provisional or definitive measures, or both, to the state minister in charge of foreign trade affairs for approval.

Information on the authorities concerning safeguard measures

The Ministry of Economy is authorised to propose, apply and monitor safeguard measures. The Board for the Evaluation of Safeguard Measures for Imports decides, among other things, whether to initiate an investigation; to adopt, review, extend, modify or abolish any provisional or definitive safeguard measure; and to determine the form, extent and duration of such measures.

4 What is the procedure for domestic industry to start a trade remedies case in your jurisdiction? Can the regulator start an investigation ex officio?

It should be noted that the procedure for domestic industry to start a trade remedies case and the content of a complaint may vary depending on the type of the requested trade remedy and this part only includes the procedure for an anti-dumping or subsidy investigation.

According to the Law on Prevention of Unfair Competition in Imports, producers or natural persons, legal entities and establishments acting on behalf of a production line can file a complaint concerning the dumped imports to the Directorate General of Imports. This complaint will be made 'by or on behalf of the domestic industry' and must fulfil the requirements laid down in article 5.4 of the WTO Anti-Dumping Agreement.

The complaint must be submitted in writing. It must include, among other things, information on the domestic producers, domestic production line, details concerning the subject product, sales and cost structure of the complainant, as well as its economic indicators (eg, productivity, profitability, employment, capacity usage rate, investment), information on known exporters and importers, and documents supporting dumped imports, injury and causation. In the case of an application for the initiation of a subsidy investigation, the documents regarding the existence of a subsidy schedule, amount and characteristics will be attached. In this regard, it should be emphasised that the Turkish legislation obliges the investigating authority to respect the confidential nature of such data.

Further, the competent authority can also initiate an investigation ex officio if there is sufficient evidence that an injury has occurred to the domestic industry caused by imports that have been subject to dumping or subvention.

The complaint shall be considered to have been brought by or on behalf of the domestic industry if it is supported by those producers whose collective output constitutes more than 50 per cent of the total production of the like product produced by that portion of the domestic industry expressing either support for or opposition to the application and shall not be less than 25 per cent of total production of the like product produced by the domestic industry in Turkey (the representativeness test). In the case of fragmented industries involving an exceptionally large number of producers, the support and opposition of the domestic industry may be determined by using statistically valid sampling techniques (paragraph 3 of article 20 of the Regulation on the Prevention of Unfair Competition in Imports).

An investigation shall not be initiated where it is determined that the dumping margin, amount of subsidy or volume of imports is negligible (paragraph 4 of article 20 of the Regulation on the Prevention of Unfair Competition in Imports). Negligible rates as regards the margin of dumping or amount of subsidy or volume of imports are as follows:

- regarding dumping investigations, cases where:
  - the margin of dumping expressed as a percentage of the export price is less than 2 per cent; or
  - the volume of dumped imports from the concerned country is found to account for less than 3 per cent of imports of the like product and, where more than one country is involved, imports from countries accounting for less than 3 per cent individually do not account collectively for more than 7 per cent of imports of the like product; and
- regarding subsidy investigations, cases where:
  - the amount of subsidy is less than 1 per cent of the value of the product concerned; or
  - as regards imports from developing countries:
    - having reserved the provision of article 27.11 of the Agreement on Subsidies and Countervailing Measures, the amount of subsidy does not exceed 2 per cent of the value of the product concerned; or
    - the volume of subsidised imports from the concerned country is found to account for less than 4 per cent of the total imports of the like product and, where more than one developing country is involved, imports from developing countries accounting for less than 4 per cent individually do not account collectively for more than 9 per cent of the total imports (article 28 of the Regulation on the Prevention of Unfair Competition in Imports).

Within a maximum of 45 days, the Directorate General of Imports must conclude its examination and prepare its proposal for the evaluation of the Board of Evaluation for Unfair Competition in Imports, which resolves whether or not to initiate an investigation. If initiation is resolved, the relevant country will be notified and a communiqué will be published in the Official Gazette. If the Board of Evaluation for Unfair Competition in Imports decides not to conclude an investigation, only the complainant will be notified. No information on the complaint will be revealed until an investigation is initiated.

For the purposes of preventing injury during the investigation, the Turkish Ministry of Economy may impose a provisional measure after 60 days from the initiation of the investigation; therefore, the Turkish Ministry of Economy shall not adopt any measure within the 60 days from the initiation of the anti-dumping investigation. The duration of provisional measures shall be limited to four months. However, it may be extended to a period not exceeding six months upon the exporters' request.

Definitive measures remain in force for five years as of the date of imposition of the measure or as of the conclusion of the most recent review covering both dumping and injury. As to safeguard measures, the duration of a measure, including any provisional measure, is limited to four years. However, it can be extended for a total period of 10 years.

5 What is the procedure for foreign exporters to defend a trade remedies case in your jurisdiction?

Upon initiation of an investigation, the relevant country will be notified concerning the investigation and a communiqué will be published in the Official Gazette. The subject products, the exporter country or country of origin, dumped or subsidised import, and explanations related to the allegations and the time frame for interested parties to submit their responses to the questionnaire will be addressed in the above-mentioned communiqué.

The usual period of investigation is 12 months, but an additional six-month extension can be applied by the Ministry. In most cases the Ministry concludes the investigation by the end of the 12 months. The use of an extra six months depends on the number of cooperating firms, as well as the number of subject countries and subject products.

After the initiation of an investigation, questionnaires are sent to known importers and exporters of the subject product. Any parties that are willing to cooperate with the investigating authority should submit their responses to the questionnaires within 37 days. This time frame may be extended by the Directorate General.

During trade remedy proceedings, the Ministry previously did not require the parties to submit the documents in Turkish. However, from early 2015, the Ministry has changed its policy in regard to the trade remedy proceedings and required all documents and correspondence, including responses to the questionnaires, to be provided in Turkish.

The Directorate General also allows the interested parties (eg, associations and industrial users of the subject product) to participate in the investigations and express their opinions.

6 Are the WTO rules on trade remedies applied in national law?

Yes, Turkey is a member of the WTO. According to article 90 of the Constitution of the Republic of Turkey, international agreements duly put into effect have the force of law. Turkey has signed and ratified the WTO Agreements and they have duly been put into effect. Therefore,

WTO Agreements have the force of law in Turkey. The Turkish legislation on trade remedies is compatible with the WTO Agreements.

7 What is the appeal procedure for an unfavourable trade remedies decision? Is appeal available for all decisions? How likely is an appeal to succeed?

All decisions concerning trade remedies, whether positive or negative, are considered as administrative actions in Turkey. Therefore, the appeal body for trade remedies decisions is the Council of State.

In terms of the likelihood of success of an appeal procedure, it should be noted that the Turkish trade remedies legislation enables the investigating authority to enjoy wide discretion, and the Council of State's approach is to acknowledge such discretion of the investigating authority. Therefore, the issue of whether an appeal is likely to succeed depends on strong evidence in support of the investigating authority having made an error in its evaluations or findings.

8 How and when can an affected party seek a review of the duty or quota? What is the procedure and time frame for obtaining a refund of overcharged duties? Can interest be claimed?

According to the Regulation on Prevention of Unfair Competition in Imports, there are two kinds of review investigation. These are:

- interim review investigation – according to article 34 of the Regulation, after one year of the entry into force of definitive measures for exporters, importers or domestic producers of a product subject to the measure may request a review investigation. A review investigation can also be initiated ex officio. The request must be supported by sufficient evidence demonstrating that the review is fair. Additionally, the request must be submitted in writing to the Directorate General; and
- sunset review – according to article 35 of the Regulation, measures that will be terminated are published in the Official Gazette in the last year of the five-year validity period of the measures. Domestic producers of the subject product may request initiation of expiry review investigation at least three months from the end of the validity period. The request must be supported by sufficient evidence and must be submitted in writing to the Directorate General. A sunset review can also be initiated ex officio.

Furthermore, the Regulation on Safeguard Measures for Imports empowers the investigating authority to impose a safeguard measure in the form of customs duties, additional financial charges, restrictions on quantity or value of imports, tariff quotas or a combination of these measures. The duration of safeguard measures shall not exceed four years, including the duration of any provisional measure, unless it is extended. The duration of the measure may be extended in accordance with the results of a new investigation to be initiated, provided it is determined that the safeguard measure continues to be necessary to prevent or remedy serious injury and there is evidence that the domestic producers are adjusting to the conditions of the internal market. An extended measure shall not be more restrictive than it was at the end of the initial period and shall continue to be liberalised. The total period of application of a safeguard measure shall not exceed 10 years.

Lastly, a refund application must be submitted within six months of the collection date of the measures. The application must be supported by sufficient evidence concerning the dumping or subsidy margin for the representative period, the amount of refund of taxes claimed and all relevant documents. A refund application must be submitted in writing to the Directorate General. The Directorate General must file a decision within 12 months, but this time frame can be extended by six months. If the decision is positive, the relevant authorities must grant a refund within 90 days from the date of the refund decision.

9 What are the practical strategies for complying with an anti-dumping/countervailing/safeguard duty or quota?

Any strategy to be adopted by interested parties will take into consideration all relevant factors, including the type of trade remedies, the subject products, market structures (including upstream and downstream markets), competitiveness of those markets, cost-price analysis and Turkey's policies. Most importantly, the pricing policies should be monitored.

An importer who requests a refund of paid taxes because of having paid more than the amount of dumping margin or subvention amount since the dumping margin or subvention amount was removed or diminished may apply in writing to the Directorate General for an investigation. This request can be made within six months after the measures are applied and the tax is collected.

Local producers may also apply for an investigation if the import prices are decreased to a level at which the applied taxes become ineffective. Such an investigation can also be initiated ex officio upon the request of the Directorate General of Imports.

Customs duties

10 Where are normal customs duty rates for your jurisdiction listed? Is there an exemption for low-value shipments? If so, at what level? Is there a binding tariff information system or similar in place? Are there prior notification requirements for imports?

Binding tariff information is regulated under article 9 of the Turkish Customs Code, and according to the article binding tariff information is given by the Undersecretariat of Customs if taxpayers request it. This request must be submitted in writing. Importers may request binding tariff information concerning:

- determination of import or export taxes: calculation of export tax refunds in the scope of agriculture policy and all payments given to import or export; and
- usage of import, export or prior consent documents: binding tariff information is binding from the date the information was given and valid for six years from the date the information was given.

The exemptions from custom duty and exceptions are listed under article 167 of the Turkish Customs Code. Paragraph 4 of article 167 regulates the exemption for low-value shipments. As a general practice, the Council of Ministers regulates and determines the exemptions, including the exemption for low-value shipments, in accordance with the conditions of the related period's trade policy. Currently, article 45 of the Council of Ministers' Decision on the Implementation of Certain Articles of the Customs Code (the Decision) regulates the exemption for low-value shipments. Under this article, goods sent by post or fast cargo, with a value that does not exceed €22 for each shipment, as well as books or printed publications for personal use whose value does not exceed €150 are exempt from customs duty. It should be noted that restrictions apply for certain goods, including, among others, certain cosmetic products, mobile phones, and food supplements and sports nutrition. In addition, article 62 of the Decision sets a fixed customs duty for goods with a value between €22 and €1,500 for products brought into Turkey in person. The customs duties for these goods are 18 per cent of the value for direct shipments from the EU and 20 per cent of the value for shipments from other countries. In addition, in light of the country of origin, if the imported good is a book or similar printed publication, the duty is 8 per cent. However, books or printed publications that are sent to or procured by public institutions and organisations, libraries and museums, as well as organisations engaging in educational or scientific research, are exempt from customs duty. Turkey's customs tariff system is the Customs Tariff Statistics Positions. This index, which is based on the World Customs Organization's Harmonized System, is updated and approved every year by the Ministry Council. The index is a 12-digit code for the identification and classification of imported and exported products.

11 Where are special tariff rates, such as under free trade agreements or preferential tariffs, and countries that are given preference listed?

Under article 16 of Partnership Council Decision No. 1/95, which established the Customs Union, reduced customs duty rates are published in the Import Regime Decision Appendix II List within a column titled GSP countries in order to comply with the EU's Generalised Scheme of Preferences (GSP).

The EU's regime is partly applied since GSP annexes are provided together with the decision. Together with the Additional Decision to the Import Regime Decision, published in the Official Gazette on 25 August 2004, harmonisation can be reached with regard to the results of products, countries (except for Armenia), products' accuracy rating, discount rate, excluded sectors and special incentive regulation.

Update and trends

Turkish trade remedies policy has been affected by the protectionist approach currently being implemented by the US. In recent years, the US has initiated safeguard investigations and imposed strong measures against steel products as well as aluminium. In retaliation to this protectionist approach, the EU has also initiated a safeguard investigation concerning steel products to prevent trade diversion into the EU.

Following these events, in April 2018 Turkey initiated a safeguard investigation into imports of steel-iron products. The investigation covers 21 different steel products and the scope can be widened pursuant to the information collected throughout the investigation. For now, the following product categories are being investigated by the Ministry: (i) flat rolled products; (ii) bars, rods and angles; (iii) railway or tramway truck construction materials; (iv) tubes, pipes and hollow profiles; and (v) stainless steel.

Another important aspect of the investigation is that products originating from the EU may be exempted from the measures, if imposed.

Turkey currently only benefits from the GSP of the US, Japan, Russia, Belarus, New Zealand, Australia and Canada.

12 How can GSP treatment for a product be obtained or removed?

GSP treatment for a product can be obtained and removed by the Directorate General of Imports within the Ministry of Economy.

Pursuant to the Import Regime Decision, Turkey takes any necessary measure for countries, establishments and companies that disturb the balance of commerce and payments in Turkey's commercial relations, breaching their obligations determined by international agreements or acting contrary to the principle of universality within the context of international agreements.

13 Is there a duty suspension regime in place? How can duty suspension be obtained?

Turkey has a tariff suspension system. In the scope of the tariff suspension system, the products that are free of customs duties are listed in the Regulation of Import Regime Decision Appendix V.

Producers resident in Turkey can request tariff suspension for raw materials, semi-finished goods or components that are used in the production of their goods and finished goods not available in the EU and Turkey. Additionally, the level of import duty saved must amount to a minimum of €15,000. All documents are sent to the Directorate General electronically and physically.

All requests are forwarded to the Economic Tariff Question Group, which is a part of the European Commission. All requests are firstly evaluated by this group and the outcome is sent to the Commission. After the final decision by the Commission, suspension updates enter into force in the EU and Turkey simultaneously. Suspension decisions are valid for five years.

14 Where can customs decisions be challenged in your jurisdiction? What are the procedures?

Relevant parties make their reconciliation application to the authorised reconciliation commission or make their challenge application to the relevant Head Directorate within 15 days from the date of notification of the additional tax and fine decision.

If the Head Directorate refuses the challenge application, the relevant parties can appeal the negative decision in the administrative courts within 30 days from the date of notification of the negative decision.

Trade barriers

15 What government office handles complaints from domestic exporters against foreign trade barriers at the WTO or under other agreements?

According to the Regulation on Trade Barriers, complaints from domestic exporters are handled by the Turkish Trade Barrier Notification Centre.

16 What is the procedure for filing a complaint against a foreign trade barrier?

The relevant parties can file a complaint regarding a foreign trade barrier on the website of the Ministry of Economy. A working group on trade barriers reviews whether or not the notified problem constitutes an actual trade barrier. After sufficient data is gathered on the problem in order to provide a legal basis in light of international treaties, the issue will be submitted to the relevant units to take legal action. The complainant will be informed of any legal issues and actions with regard to its complaint.

The relevant parties may also file a complaint against a foreign technical barrier on the website of the Turkish Trade Barrier Notification Centre.

17 What will the authority consider when deciding whether to begin an investigation?

The authority will consider whether all the documents and information sent by applicants constitute sufficient evidence to justify initiating an investigation.

18 What measures outside the WTO may the authority unilaterally take against a foreign trade barrier?

Turkey has signed and ratified treaties between the EU, China, EFTA, Israel, Russia, Ukraine, Iran, Lebanon and Bulgaria. Some measures may be taken against foreign trade barriers by these treaties.

19 What support does the government expect from the private sector to bring a WTO case?

The government does not have any expectations from the private sector to bring a WTO case.

20 What notable trade barriers other than retaliatory measures does your country impose on imports?

Products within the scope of the relevant Communiqué on Standardisation of Foreign Trade No. 2008/2 shall be inspected by the Inspectors for Standardisation of Foreign Trade for commercial quality. A Control Certificate is given to the importers if the products meet the required standards.

Agricultural products are inspected by the Ministry of Agriculture and Rural Affairs pursuant to the relevant Communiqué on Standardisation of Foreign Trade No. 2008/5 published by the Directorate General for the Standardisation of Foreign Trade. Before importing these agricultural products, a Control Certificate is required from the ministry. Upon inspection by the ministry, a Letter of Conformity is issued to the importer provided that the products in question do not constitute any health risks. As to plants and animals, a phytosanitary certificate issued by the country of origin is additionally required for plants and related products, and health certificates may be required for livestock and animal products, depending on the country of origin.

Imports of critical materials related to ordinance products are also subject to a special procedure.

Export controls

21 What general controls are imposed on exports?

Under the Regulation on Trade Barriers and Standardisation on Foreign Trade, products that are listed in Appendix 1 of this regulation are subject to mandatory standards and quality controls. Exporters must apply to the relevant Group Presidency of Inspectorates for the Standardisation of Foreign Trade to export the listed products. A Control Certificate is issued by the Group Presidency of Inspectorates for the Standardisation of Foreign Trade if the products meet the required standards.

22 Which authorities handle the controls?

The Inspectorates of Standardisation for Foreign Trade handle the controls.

23 Are separate controls imposed on specific products? Is a licence required to export such products?

Specific certificates and analysis may be required in particular in cases of plant and livestock exports. The details are as follows:

- phytosanitary certificate – export of unprocessed agricultural products requires the phytosanitary certificate in order to attest that the consignment meets phytosanitary export requirements. The certificate is prepared in line with the 1951 Rome Treaty; and
- health certificate – all agricultural products require a health certificate based on the demands of the purchasing country. The evaluations of the inspection report and analysis results are based either on the demands of the purchasing country or the Turkish Food Codex.

There are also additional procedures, such as the EU's requirement of an analytical report as well as a health certificate to show that aflatoxin levels are acceptable in the case of exportation of nuts and dried fruits, or the requirement of a radiation analysis to prove that radiation levels are below the limits for exportation of mushrooms.

The Russian Federation also requires additional analysis when exporting fresh fruits and vegetables. Exports of livestock and animal products may also differ from country to country. Under the Regulation on the Protection of Export of Dual-Use and Sensitive Products and Communiqué on the Export of Chemical Products that are listed in the Appendix of the Chemical Weapons Agreements, the Ministry of Economy controls the export of dual-use and chemical products. According to the legislation, the exporter must apply to the Istanbul Mining and Metals Exporters Union's Secretary General to obtain a licence.

Additionally, Turkey is a party or member to the Wassenaar Arrangement, the Chemical Weapons Convention, the Missile Technology Control Regime, The Australia Group, the Zangger Committee and the Nuclear Suppliers Group.

24 Has your jurisdiction implemented the WCO's SAFE Framework of Standards? Does it have an AEO programme or similar?

Turkey is a party to the WCO's SAFE Framework of Standards Agreement. According to article 5/A of the Turkish Customs Code, AEO status can be granted by the Undersecretariat of Customs to economically active residents who have the requisite qualifications, such as financial capability.

25 Where is information on countries subject to export controls listed?

There are no export restrictions based on countries.

26 Does your jurisdiction have a scheme restricting or banning exports to named persons and institutions abroad?

No, there is no scheme restricting or banning exports in Turkey.

27 What are the possible penalties for violation of export controls?

According to the Customs Law, administrative monetary fines can be applied in cases of violation. The amount of the fine depends on the violation of the relevant scope of the article of the Customs Law.

Financial and other sanctions and trade embargoes

28 What government offices impose sanctions and embargoes?

The Council of Ministers is authorised to impose embargoes. Any customs-related sanctions are to be applied by Customs' administrative authorities and deputies.

29 What countries are currently the subject of sanctions or embargoes by your country?

The FTA between Turkey and Syria was suspended in 2011. Other than that, there are currently no official sanctions or embargoes applied by Turkey.

However, the practice in Turkey can differ for foreign-originated companies in Turkey, Turkish companies with foreign partners and companies working with EU countries or the US. Foreign-originated companies may refrain from working with countries such as Iraq, Iran, Syria, China, Lebanon, North Korea, Liberia and Zimbabwe owing to sanctions or embargoes applied in the country where they originate

30 Are individuals or specific companies subject to financial sanctions?

There is currently no official list of individuals or specific companies subject to financial sanctions applied by Turkey.

However, similarly to question 29, the practice in Turkey can differ for foreign-originated companies in Turkey, Turkish companies with foreign partners and companies working with EU countries or the US. Foreign-originated companies may refrain from working with persons, groups and entities subject to financial sanctions in the country in which they originate.

Miscellaneous

31 Describe any trade remedy measures, import or export controls not covered above that are particular to your jurisdiction.

There are no measures or import or export controls that are not covered above.

ACTECON

M Fevzi Toksoy **fevzi.toksoy@actecon.com**
Bahadır Balkı **bahadir.balki@actecon.com**
Ertuğrul C. Canbolat **ertugrul.canbolat@actecon.com**

Çamlıca Köşkü – Francalacı Sokak
No. 28 Arnavutköy, Beşiktaş 34345
Istanbul
Turkey

Tel: +90 212 211 50 11
Fax: +90 212 211 32 22
www.actecon.com

Ukraine

Nataliia Isakhanova, Olesia Kryvetska and Andrii Pylypenko

Sergii Koziakov & Partners

Overview

1 What is the main domestic legislation as regards trade remedies?

The main domestic legislation regarding trade remedies is as follows:

- Law No. 959-XII on Foreign Economic Activity, 16 April 1991 (last amended 3 January 2017), articles 1, 6, 9 and 31;
- Law No. 330-XIV on Protection of Domestic Industry against Dumped Imports, 22 December 1998 (last amended 11 August 2013);
- Law No. 331-XIV on Protection of Domestic Industry against Subsidised Imports, 22 December 1998 (last amended 11 August 2013); and
- Law No. 332-XIV on Application of Safeguard Measures against Imports to Ukraine, 22 December 1998 (last amended 11 August 2013).

English translations of these laws, accurate as at January 2013, can be found in Ukraine's notification to the WTO regarding laws and regulations on trade remedy matters, available on the WTO website (G/ADP/N/1/UKR/1/Suppl.1, G/SCM/N/1/UKR/1/Suppl.1 and G/SG/N/1/UKR/1/Suppl.1) at www.wto.org/english/thewto_e/countries_e/ukraine_e.htm.

In March 2018, the Ukrainian government submitted to Parliament five draft laws concerning the reform of trade defence instruments in Ukraine. The draft laws comprise new versions of Ukraine's laws 'On Protection from Dumped Imports', 'On Protection from Subsidised Imports' and 'On Safeguard Measures', as well as a draft law 'On Amendments to the Legislative Acts in the Area of Trade Defence' and a draft law 'On Amendments to the Customs Code of Ukraine Concerning Trade Defence'. The draft laws are currently being considered by the Ukrainian Parliament and are expected to be adopted by the end of 2018.

2 In general terms what is your country's attitude to international trade?

Trade liberalisation at multilateral level

As a WTO member, Ukraine has been taking advantage of the WTO negotiating and dispute settlement mechanisms. Since accession to the WTO in 2008, Ukraine has participated in 30 WTO disputes. In seven disputes, Ukraine has participated as a complainant, in four as a respondent and in 19 as a third party. As of July 2018, the current disputes Ukraine is involved in as either complainant or respondent are the following:

As complainant:

- DS499: *Russia – Measures Affecting the Importation of Railway Rolling Stock, Railway Switches, other Railway Equipment and Parts Thereof* (the Panel report is expected in 2018);
- DS512: *Russia – Measures Concerning Traffic in Transit* (the Panel report is expected by the end of 2018);
- DS530: *Kazakhstan — Anti-dumping Measures on Steel Pipes* (in consultations on 19 September 2017); and
- DS532: *Russia – Measures Concerning the Importation and Transit of Certain Ukrainian Products* (in consultations on 13 October 2017).

As respondent:

- DS493: *Ukraine – Anti-Dumping Measures on Ammonium Nitrate* (complainant – the Russian Federation) (the Panel report is expected by the end of 2018); and
- DS525: *Ukraine – Measures relating to Trade in Goods and Services* (complainant – the Russian Federation; in consultations on 19 May 2017).

Moreover, Ukraine ratified the Trade Facilitation Agreement and acceded to the revised Government Procurement Agreement. Ukraine is also a party to the protocol amending the TRIPS that provides for facilitating access to affordable medicines for poorer countries.

Trade liberalisation at regional level

Since 2014, Ukraine is party to the EU–Ukraine Association Agreement. The Association Agreement came into full force on 1 September 2017. The economic part of the Association Agreement establishing the Deep and Comprehensive FTA (DCFTA) commenced in January 2016. It was, however, being provisionally applied until both chambers of the Dutch Parliament upheld ratification of the Association Agreement in May 2017.

The EU–Ukraine Association Agreement provides for political association and economic integration between the parties and includes the DCFTA as an integral part. The Association Agreement was the first example of a new generation of agreements between the EU and Eastern Partnership countries, focusing on core reforms, good governance, economic recovery and growth, and cooperation in a number of sectors, including energy; transport; environmental protection; industrial cooperation; social development and protection; equal rights; consumer protection; and education, youth and cultural cooperation. Special attention was given to respect for human rights and fundamental freedoms, the rule of law, democracy, market economy and sustainable development. The DCFTA, apart from the liberalisation of services and the elimination of tariffs for most goods, stipulates harmonisation with EU standards, conformity assessment requirements, sanitary and phytosanitary rules, and norms on intellectual property protection, public procurement and competition. The DCFTA also includes specific provisions on trade-related energy matters.

Ukraine has also FTAs with the Commonwealth of Independent States (CIS) of 2011 (which replaces the CIS FTA of 1994), Macedonia (2001), GUAM (Georgia, Ukraine, Azerbaijan and Moldova) states (2002), the EFTA states (2010), Montenegro (2012) and Canada (2016). Furthermore, at the end of May 2018 Ukraine completed negotiations on FTA with Israel and is currently in FTA negotiations with Turkey.

Ukraine's trade deal with the EFTA states was the first comprehensive and modern FTA concluded by Ukraine. The FTA covers trade in goods and services, investment, intellectual property rights, government procurement, competition, institutional provisions and dispute settlement.

Ukraine is a party to the Commonwealth of Independent States (CIS) FTA between Armenia, Belarus, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan and Ukraine. The CIS FTA covers trade in goods only. On 19 May 2018, the President of Ukraine signed a decree to withdraw all Ukrainian envoys from the statutory bodies of the CIS.

Along with that, Ukraine has carried out preferential trade regimes with the CIS countries under bilateral FTAs with Azerbaijan, Armenia, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Tajikistan,

Turkmenistan and Uzbekistan. The FTA between Ukraine and Russia was suspended in January 2016 to the extent that the EU and Ukraine strengthened their trade ties and Russia decided to suspend the free trade area with Ukraine on the basis of Annex 6 to the CIS FTA. Annex 6 entitles members of the Customs Union to introduce the most-favoured nation (MFN) tariff against imports from another party to the CIS FTA, provided that the preferential trade regimes concluded by the latter party with third countries resulted in an increase in imports to the Customs Union.

Ukraine is also party to the GUAM FTA(2002). In March 2017, the GUAM states signed a series of arrangements on fostering the FTA and mutual recognition of certain customs procedures.

The Canada–Ukraine Free Trade Agreement (CUFTA) covers trade in goods only. It also includes separate chapters on competition policy, monopolies and state enterprises; e-commerce; intellectual property; government procurement; labour; environment; transparency; and trade-related dispute settlement. CUFTA came into force on 1 August 2017.

On 1 February 2018, Ukraine acceded to the regional Convention on pan-Euro-Mediterranean preferential rules of origin (PEM Convention). The PEM Convention is expected to increase Ukraine's share of value added and promote FDI and employment.

Trade defence investigations

3 Which authority or authorities conduct trade defence investigations and impose trade remedies in your jurisdiction?

In Ukraine, trade defence investigations are conducted by:

- the Ministry of Economic Development and Trade of Ukraine (the Ministry) (www.me.gov.ua); and
- the Interdepartmental Commission on International Trade (the Commission) (www.me.gov.ua).

The Ministry, through the department that deals with cooperation with the WTO and trade defence matters, is entitled to conduct trade defence investigations, but not to adopt preliminary or final determinations. Upon concluding its investigation, the Ministry will prepare a report that forms the basis for the Commission to make a determination regarding imposition or non-imposition of preliminary or final measures.

The Commission makes decisions regarding:

- the initiation of investigations;
- positive or negative determinations on dumping, injury and the causal link between them; and
- the imposition of anti-dumping measures.

The Commission is an interdepartmental body that consists of representatives of various ministries and governmental agencies, such as the Ministry of Economic Development and Trade, the Ministry of Foreign Affairs, the Ministry of Agricultural Policy and Food, the Ministry of Energy and Coal Industry, the Ministry of Infrastructure, the State Fiscal Service and the Anti-monopoly Committee. The Minister of Economic Development and Trade is the head of the Commission by virtue of his or her office.

4 What is the procedure for domestic industry to start a trade remedies case in your jurisdiction? Can the regulator start an investigation ex officio?

In order to start a trade remedies case, domestic industry must submit an application to the Ministry of Economic Development and Trade. At the same time, anti-dumping or anti-subsidy investigations can begin, upon an application submitted by trade unions of employees and governmental bodies, if they possess relevant evidence of dumping or subsidisation and material injury. Safeguard investigations can also be initiated upon information collected by the Ministry itself. In practice, however, nearly all trade remedies cases are initiated upon application made by domestic industry.

The Ministry examines the application and forwards to the Commission a report on the results of such examination with recommendations either to launch the investigation or to deny the application. The Commission will take a decision on whether to initiate a trade remedies investigation generally within the 30-day period from the date of submission of the application.

The application to start an anti-dumping or anti-subsidy investigation shall contain the evidence of dumping or subsidisation, injury and causation. The application shall include the following information:

- general information regarding the applicant;
- data on the applicant's production of the products concerned (by volume and value);
- a list of all known domestic producers of like products (or associations of domestic producers of like products) and, if possible, of the volume and value of production of like products by these producers;
- products (including their full description) that are stated to be the subject of dumping or subsidisation and the name of the country (or countries) of origin or export that is the subject of the application; and
- a list of known exporters, foreign producers and importers of products under investigation.

For anti-dumping investigations:

- the prices at which products under investigation are sold for consumption in the domestic market of the country or countries of origin or export (or, where such information is available, the prices at which the products are sold from the country of origin or export to a third country or on the constructed value of products); and
- information on export prices, or prices at which the products are first resold to an independent buyer in the importing country.

For anti-subsidy investigations:

- evidence with regard to the existence, amount and nature of the subsidy in question, and evidence that a subsidy is actionable; and
- the volumes and dynamics of allegedly dumped or subsidised imports, and the effect of these imports on prices of like products in the importing country market and the state of the domestic industry.

The application to launch an anti-dumping or anti-subsidy investigation also contains information on public interest.

The application to start a safeguard investigation shall include information regarding the volume and prices of the allegedly surged imports. It normally also includes general data regarding domestic industry, evidence regarding serious injury caused to domestic industry, a description of the products concerned, causation and public interest.

The ex officio initiation procedure is not envisaged as such for competent authorities. However, if the executive authority in Ukraine possesses evidence of dumping and injury to the domestic industry the law requires that these materials are forwarded or submitted to the Ministry of Economic Development and Trade for assessment, which if necessary will advise the Interdepartmental Commission on International Trade to initiate an investigation.

The new draft laws on trade defence instruments referred to in question 1 explicitly provide for an ex officio initiation procedure. Within this procedure the Ministry of Economic Development and Trade will be entitled to recommend to the Commission, upon its own initiative, the initiation of a trade investigation. The Commission must then adopt a decision based on the Ministry's report within 10 days, provided the Ministry's report is substantiated by the evidence.

5 What is the procedure for foreign exporters to defend a trade remedies case in your jurisdiction?

Foreign exporters participate in a trade remedies case as interested parties, but they do not acquire this status automatically. Foreign exporters can enjoy all the rights of the interested parties if they inform the Ministry of their desire to participate in the investigation within the established time limit.

After taking the decision to initiate a trade defence investigation, the Commission publishes a notice in the Official Gazette. The public notice aims to inform all parties concerned, including foreign exporters, about a launched investigation. As a standard practice, the notice sets a term of 30 days for the registration of foreign exporters and producers (as well as other parties concerned) as interested parties to the investigation.

Once a company is registered as an interested party, it enjoys all relevant rights prescribed by law to defend its interests, such as

submitting commentaries, participating in the hearing, submitting a post-hearing brief and reviewing a case record. If the deadline for registration is missed, the right to enjoy such opportunities is forfeited.

Normally, a public notice also sets a deadline of 60 days (45 days in safeguard investigations) for submitting an initial commentary regarding the investigation. This commentary can be submitted both by interested parties registered with the Ministry and by non-registered parties.

Shortly after the initiation of the investigation, the Ministry sends a questionnaire to known foreign exporters and producers. The Ministry usually considers foreign producers and exporters as being known if they are registered as an interested party. Sometimes the Ministry sends the questionnaire to non-registered foreign exporters. Foreign producers (exporters) usually have to reply to the questionnaire within 37 days from the date of the Ministry's sending of the questionnaire. They can also request an extension, which is granted by the Ministry in the majority of cases. The standard duration of extension is two weeks.

In almost every investigation the Ministry holds public hearings with the participation of all interested parties (domestic industry, foreign producers and exporters, embassies of exporting countries, importers etc). After the public hearings, the participants in the hearings submit post-hearing briefs, which are taken into consideration by the Ministry during the investigation.

A foreign producer or exporter also has a right to request consultation with domestic industry, where both parties can present and discuss their arguments. After the consultation, the written briefs are submitted to the Ministry.

In addition, the Ministry, in the course of the investigation, may send additional requests for information or clarification of previously submitted information.

All information submitted to the Ministry by an interested party shall be sent promptly by this party to all other participants in the investigation. The interested parties are also entitled to review the public case record in the Ministry. In practice, interested parties can comment on written information submitted by other interested parties.

The period of an anti-dumping or anti-subsidy investigation shall not exceed one year from the date of publication of the notice on its initiation. The Commission may extend the term of an investigation for up to 18 months. The duration of a safeguard investigation shall not exceed 270 days from the date of initiation of such investigation. Under extraordinary circumstances this term may be extended by the Commission to up to 330 days.

6 Are the WTO rules on trade remedies applied in national law?

Ukraine belongs to a group of countries where international treaties ratified by Parliament become part of domestic legislation. In particular, pursuant to article 9 of the Constitution of Ukraine, international treaties that are in force and agreed to be binding by Parliament are part of the domestic legislation. Article 19.1 of the Law on International Treaties of Ukraine additionally says that international agreements ratified by Parliament are part of domestic legislation and shall be applied under the procedure provided for the norms of domestic legislation. Furthermore, if the international agreement, duly ratified by Parliament, sets rules other than those envisaged in Ukrainian legislation, the rules of the international agreement shall apply (article 19.2 of the Law on International Treaties of Ukraine).

Thus, WTO trade remedies agreements have direct effect in Ukraine. They are applied by the Ministry in the course of the investigation along with domestic trade remedies laws (ie, the Ministry refers directly to WTO rules in its requests, letters and reports). If there is a contradiction between a domestic rule and a corresponding WTO rule, the latter shall be applied. Finally, the compliance of national measures with international treaties ratified by the Ukrainian Parliament can be challenged before national courts.

Foreign producers and exporters often refer to WTO trade remedies agreements while presenting their position before the investigating authority in the course of investigations. They can also litigate final or preliminary determinations on the imposition of trade remedy measures before national courts invoking provisions of the WTO Agreements.

7 What is the appeal procedure for an unfavourable trade remedies decision? Is appeal available for all decisions? How likely is an appeal to succeed?

Any final or preliminary determination in a trade remedies case can be challenged in the administrative court. Trade remedies cases, however, are often quite complicated and their consideration may continue for several years.

8 How and when can an affected party seek a review of the duty or quota? What is the procedure and time frame for obtaining a refund of overcharged duties? Can interest be claimed?

Review

Foreign producers or exporters can seek a review of anti-dumping or countervailing duty measures after one year from their date of application. Such a request shall be submitted to the Ministry and should provide sufficient evidence and proof of the necessity of an interim review. The interim review shall be launched if the request proves that:

- continuation of application of anti-dumping or countervailing duty measures is no longer necessary for the prevention of dumping or subsidisation;
- continuation or resumption of injury is unlikely, should the anti-dumping or countervailing duty measures be cancelled or altered; or
- applied anti-dumping or countervailing duty measures are not or shall not be sufficient for the prevention of dumping or subsidisation that causes injury.

In the course of the interim review, the Ministry examines whether the circumstances of dumping or subsidisation and injury have changed considerably, whether the applied measures have had the desired effect and whether there is prevention of injury previously established during the original investigation.

The domestic anti-dumping and countervailing duties law also provides for expiry review and newcomers' review.

Refund

Importers may apply for a refund of anti-dumping or countervailing duties, provided an importer proves, and the Commission decides that, the margin of dumping or subsidisation on the basis of which the rate of the duty has been calculated was decreased to a zero rate or a lower rate than the initially calculated margin of dumping.

The application for refund is submitted to the State Fiscal Service. The application shall be supplemented with documents confirming importation of goods into Ukraine, their customs clearance and payment of the anti-dumping or countervailing duty within six months from the date of accepting the Commission's decision on imposition of the duty. The Customs Service shall immediately forward the application to the Ministry of Economic Development and Trade. A copy of the application shall also be sent to the Commission and the Ministry of Finance of Ukraine.

The Commission, on the proposal of the Ministry, shall consider the application together with the conclusions of the Customs Service and the Ministry of Finance of Ukraine. The Commission shall take a decision based on the results of such consideration. The Commission may also take a decision on initiation of an interim review of the anti-dumping or countervailing measures.

The Commission shall generally take a decision regarding a refund within 12 months, but not later than 18 months from the date of submission by an importer of the application. The Ministry of Finance of Ukraine shall refund the stipulated amounts within 90 days of the date of making a relevant decision by the Commission.

9 What are the practical strategies for complying with an anti-dumping/countervailing/safeguard duty or quota?

If a trade remedies measure is imposed, foreign producers or exporters can challenge the determination before the national courts or seek review of anti-dumping or countervailing duties measures not earlier than in a year after the measures are imposed. If targeted foreign producers have factories in several countries, they may consider shipping into Ukraine products of another origin (in the case of anti-dumping or countervailing duty measures). In the case of anti-dumping, companies whose products are under investigation may also voluntarily

undertake to review their prices or cease exports at dumped prices to settle an investigation.

Customs duties

10 Where are normal customs duty rates for your jurisdiction listed? Is there an exemption for low-value shipments? If so, at what level? Is there a binding tariff information system or similar in place? Are there prior notification requirements for imports?

The Ukrainian Classification of Commodities of Foreign Economic Activity is based on the six-digit Commodity Description and Coding System (used for the purpose of accounting for the exports and imports of goods), which is developed on the basis of the Harmonized Commodity Description and Coding System. Under the classification, goods are codified in sections, groups, trade positions and sub-positions, and their names and digital codes are unified and assigned with respective tariff rates. Customs duty rates are listed in Law No. 584-VII on Customs Tariff, 19 September 2013. As a WTO member, Ukraine is subject to the goods schedule indicating bound rates. The information on binding tariffs and applied rates can be accessed at www.wto.org/english/thewto_e/countries_e/ukraine_e.htm. No prior notification is needed for imports under Ukrainian legislation.

Ukrainian laws provide for tariff preferences for e-commerce imports. The Customs Code of Ukraine (article 374) exempts from import duty any products (except for excise goods) being shipped to one customer if the total invoice value of the shipment does not exceed €150.

Currently, the Parliament of Ukraine is considering a draft law proposing to increase the duty-free value threshold to €300.

Furthermore, under Ukrainian legislation shipments with an invoice value from €150 to €10,000 shall be taxed at 10 per cent import duty plus VAT enshrined in the Tax Code of Ukraine (generally 20 per cent)

11 Where are special tariff rates, such as under free trade agreements or preferential tariffs, and countries that are given preference listed?

Unlike the EU, Ukraine has no Generalised Scheme of Preferences, and consequently only those countries having FTAs with Ukraine, can benefit from preferential tariffs. At the time of writing, Ukraine has FTAs with the EU, CIS countries (except for Russia since 2016), Macedonia, Georgia, Montenegro, the EFTA states and Canada, and is concluding an FTA with Israel (as of the end of June 2018). Ukraine is also negotiating FTAs with Turkey.

Import duty is differentiated in respect of goods originating from countries that are members of customs unions with Ukraine or which form free trade zones with it. In the case of the introduction of any special preferential customs procedure in accordance with international treaties ratified by the Parliament of Ukraine, the preferential rates of import duty set by the customs tariff of Ukraine shall be applied.

Preferential rates of import duty set by the customs tariff of Ukraine shall be applied for goods originating from Ukraine or member states of the WTO or countries with which Ukraine has entered into bilateral or regional agreements under MFN treatment.

12 How can GSP treatment for a product be obtained or removed?

Ukraine does not grant GSP treatment to any country. Only countries subject to FTAs with Ukraine have preferential tariffs. In order to benefit from the regime, the company concerned must provide the customs authorities with a valid certificate of origin confirming that the product is produced in the territory of the FTA member state. In the case of the Agreement on Free Trade Area of 2011 between Ukraine and other CIS countries, tariff rates on imports are mainly eliminated, and export duties are fixed, with a further reduction. Generally, all tariff rates and other trade liberalisation measures are prescribed and fixed in the respective trade agreements. For instance, the EU–Ukraine Association Agreement also contains in its annexes the schedules of tariff rates on imports and exports, and other measures subject to implementation and execution with respect to the preferential trade regime.

13 Is there a duty suspension regime in place? How can duty suspension be obtained?

Ukraine has no system where the company concerned can submit a request for a duty suspension regime. A general system of duty exemption is determined, however, by the Customs Code of Ukraine (article 282), where the goods subject to exemption are listed. Among such goods are means of transport for commercial use engaged in scheduled international transportation of goods or passengers (or both), as well as items necessary for their normal operation, raw materials, oil, Ukrainian currency, foreign currency, securities, goods that are imported within the framework of international technical assistance under international treaties, goods for product-sharing agreements, archival documents, several types of pharmaceutical products, equipment for the purpose of alternative energy, and goods and items paid for at the expense of grants (sub-grants) provided, for example, under the programme of the Global Fund to Fight AIDS, Tuberculosis and Malaria in Ukraine.

In May 2015, the President of Ukraine signed the laws providing amendments to the Customs Code and Tax Code of Ukraine, prescribing exemption of defence products from import duties. The exemptions apply to components (materials, components, parts, equipment and component parts) that are imported into Ukraine for use in the production of defence products if the customer of such products is the state. At the same time, these products are not exempted from import duty if they originate or are imported from the territory of a country recognised as an occupying state or aggressor in relation to Ukraine under the law.

Besides that, items such as goods imported into the customs territory of Ukraine within the framework of international technical assistance in accordance with international treaties, goods (raw materials, products, machinery and equipment) coming to Ukraine under international technical assistance given on a free and irrevocable basis for further service, preparation for decommissioning, and decommissioning of power-generating units of the Chernobyl nuclear power plant, goods or items paid for at the expense of grants (sub-grants) provided under the programme of the Global Fund to Fight AIDS, Tuberculosis and Malaria in Ukraine, goods treated as humanitarian aid and goods imported into the customs territory of Ukraine to the address of the Red Cross Society of Ukraine are subject to exemption from specific types of duties.

Furthermore, in Ukraine there exists a temporary admission regime (article 103 of the Customs Code). Goods subject to this regime shall be fully or partially exempted from payment of import duties. The list of such goods is prescribed in articles 105 and 189 of the Customs Code of Ukraine and in Annexes B.1–B.9, C and D of the convention on temporary admission.

14 Where can customs decisions be challenged in your jurisdiction? What are the procedures?

The Customs Code has been in force since 1 June 2012 (last amended 4 April 2018). With regard to challenging the actions of customs authorities, the Customs Code envisages two types of appeal. The first is pre-trial appeal of the decisions, acts and omissions of the customs authorities, and the second (article 29 of the Customs Code) is a judicial procedure, which is regulated by separate law. Article 29 states also that if the decisions, acts or omissions of a state fiscal authority or its officials are appealed both before a supreme authority (superior public official) and in court and the court initiates a legal proceeding, such appeal shall no longer be proceeded by the said supreme authority (superior public official). Article 24 of the Customs Code contains the list of decisions, acts and omissions that may be challenged. Moreover, in comparison to the previous version of the Customs Code, such a list includes not only the particular decisions of customs authorities on the customs issues that may be challenged, but also the decisions that satisfy or refuse to satisfy the complaints of legal or natural persons.

Decisions, acts and omissions may be appealed to higher authorities and officials. Superior public officials in respect of the officials and other employees of the state fiscal authorities are the chief executives of those authorities. Higher authorities are the following:

- for customs officials – heads of the customs authorities;
- for customs posts – the head of that branch of customs posts;
- for the specialised customs authorities and customs organisations – the State Fiscal Service; and

- for the State Fiscal Service – the Ministry of Finance of Ukraine (as of June 2018, the Cabinet of Ministers of Ukraine is considering moving the State Fiscal Service from the control of the Ministry of Finance of Ukraine directly to the Cabinet of Ministers of Ukraine. The final governmental decision has not yet come into force).

Requirements regarding the form and content of the complaints, the terms of their submission, procedure and terms for their consideration, as well as liability for illegal actions related to submission and consideration of the complaints, are determined by the Law of Ukraine No. 393/96-BP on Public Appeals. The duly submitted complaint on the decision, act or omission of the customs authority shall be considered for not more than one month (it may be considered urgently or within 15 days), but this may be extended to up to 45 days. Moreover, the term of consideration may be even shorter if the citizen duly substantiates the reason. A complaint shall be submitted within one year after the decision is adopted, but not later than one month after familiarisation of such a decision. The judicial procedure implies filing the case before the relevant administrative court.

Trade barriers

15 What government office handles complaints from domestic exporters against foreign trade barriers at the WTO or under other agreements?

Normally, the Ministry of Economic Development and Trade is responsible for handling complaints against trade barriers and relevant WTO issues. In 2014, the Cabinet of Ministers of Ukraine with its Regulation No. 550 appointed the Deputy Minister of Economy – Trade Representative of Ukraine. The Trade Representative, among other things, deals with issues of ensuring the promotion of the economic interests of Ukraine in the European and global markets, and coordination of trade missions abroad, and provides for analysis of the status and trends of international trade, proposals concerning priorities of Ukraine's trade policy development, the impact of trade remedies on trade development and proposals for improving the efficiency of their usage to achieve economic growth. The most important objective of the Trade Representative with respect to the WTO and foreign trade barriers is that the Trade Representative is in charge of monitoring WTO members' compliance with their WTO commitments in order to protect the rights and interests of Ukraine and its enterprises efficiently and in a timely manner. To this end the Trade Representative provides for such actions as, inter alia, identification of the facts or the threat of application by foreign countries, customs unions or economic groups, anti-dumping, countervailing and safeguard measures with respect to products originating in Ukraine, and conducting of investigations to establish the facts of discriminatory or hostile actions by other states, customs unions or economic groups with respect to the legitimate rights and interests of the foreign economic activity of Ukraine.

The Trade Representative also performs the function of the representative of Ukraine to the WTO and the Black Sea Trade and Development Bank, and reports directly to the Minister of Economic Development and Trade. The Trade Representative ensures the predictability and transparency of Ukraine's trade policy.

Within the structure of the Ministry of Economic Development and Trade there is an independent structural unit – the Trade Defence Department. It has a division for domestic market protection and a division on protection of trade interests on foreign markets. Its objectives include measures to protect the interests of Ukrainian businesses in anti-dumping, countervailing and safeguard investigations carried out by foreign states with respect to Ukrainian products; protecting the rights and interests of Ukraine in the trade and economic sphere, using WTO instruments and international agreements of Ukraine; and representation of Ukraine at the WTO Dispute Settlement Body.

In 2017, the Cabinet of Ministers of Ukraine established the International Trade Council as an interim consultative and advisory body of the Cabinet of Ministers of Ukraine. It is composed of the heads of the highest executive institutions, including the Minister of Economic Development and Trade and the Deputy Minister of Economy – Trade Representative of Ukraine. Among the main objectives of the Council are the formation and implementation of the basic principles and position of the Ukrainian side on issues arising within the framework of membership in the WTO and solving of the problematic issues of Ukraine's cooperation within the framework of this organisation, as well as the participation of Ukraine in the activities within the framework of the WTO and determination of ways and mechanisms of dispute settlement related to the protection of the rights and interests of Ukraine in the trade and economic sphere, including within the framework of the WTO.

The home page of the Ministry of Economic Development and Trade is at www.me.gov.ua. In addition, the Ministry of Justice of Ukraine (www.minjust.gov.ua) has the authority to represent Ukraine in foreign and international courts and jurisdictional authorities. Consequently, if the WTO dispute enters the stage of panel establishment and composition, the Ministry of Justice cooperates with the Ministry of Economic Development and Trade.

16 What is the procedure for filing a complaint against a foreign trade barrier?

A concerned company addresses the respective department within the Ministry of Economic Development and Trade (through the particular department and Trade Representative) with a letter outlining the scope of the trade barrier. The general term of response to the complaint letter of the concerned company is one month. Upon examination of the complaint, the Ministry may either initiate a meeting with the company to discuss the barrier in question or refuse to initiate the proceedings. If the complaint is well grounded, the Trade Representative may initiate the establishment of working groups to prepare draft legal acts on this issue or to convene meetings regarding the particular trade and foreign economic issues concerned.

Moreover, in early June 2016, the government of Ukraine adopted the procedure of protection of the trade and economic rights and interests of Ukraine within the framework of the WTO. The procedure was approved by Decree No. 346 of the Cabinet of Ministers of Ukraine on 1 June 2016. If the interested authorities or diplomatic missions of Ukraine reveal any measures taken by other economies that are inconsistent with the WTO commitments, they must respectively inform the Ministry of Economic Development and Trade of these measures within five days. Along the same lines, the interested organisations (companies) must submit the relevant communication to the Ministry, providing the formal requisites of the companies as well as sufficient evidence and materials supporting the alleged violation. Upon considering the communications, the Ministry may either find this allegation substantiated and decide on the establishment of an interdepartmental working group or find the allegation groundless.

The interdepartmental working group is responsible for cooperation between the interested authorities and interested organisations; it elaborates on and submits to the Ministry possible mechanisms and instruments of settlement concerning the trade-distorting measures faced by interested Ukrainian authorities and organisations; it participates in the drafting and preparation of documents and materials pursuant to the procedures prescribed by the Dispute Settlement Understanding of the WTO; and it submits to the Ministry recommendations for the engagement of legal and economic advisers and independent experts in the consultations or dispute settlement or both. The interdepartmental working group is jointly headed by the Minister of Economic Development and Trade of Ukraine and the Trade Representative of Ukraine.

17 What will the authority consider when deciding whether to begin an investigation?

Formally, the Ministry of Economic Development and Trade firstly considers whether the application contains all sufficient grounds for initiating the WTO case. Furthermore, the authority normally considers trade policy and relations with the member imposing the trade barrier, the volume of production, the export or import of the subject merchandise, and the injury that is caused by the trade barrier. A particular role in this process is performed by the Trade Representative of Ukraine, who deals with issues of analysis, proposals and recommendations concerning illegitimate foreign trade barriers. In accordance with article 4.19 of Regulation No. 550 of the Cabinet of Ministers of Ukraine of 16 October 2014, he or she may initiate special investigations concerning such measures.

18 What measures outside the WTO may the authority unilaterally take against a foreign trade barrier?

Ordinary procedure against non-WTO members

Ukraine may find the facts of discriminatory or hostile actions of non-WTO members. The procedure for finding such facts (or their absence) is set forth in the Law on Foreign Economic Activity and in the Order of Conducting Investigations Aimed at Establishing Facts of Discriminatory and/or Hostile Actions of Other States, Customs Unions or Economic Groups Concerning Legitimate Rights and Interests of Business Entities of Ukraine, adopted by Decree No. 2120 of the Cabinet of Ministers of Ukraine, 22 November 1999. Such an investigation is conducted by the Ministry of Economic Development and Trade of Ukraine (it may be initiated by the Trade Representative) upon the application of a business entity of Ukraine, which may be submitted to the Ministry, to the office of Trade Representative, or through trade missions, diplomatic and consular institutions. Upon receipt of a duly executed application followed by evidence and documents and in accordance with Order No. 2120, the Ministry conducts an investigation lasting 60 days. The Ministry submits its report on the results of the investigation to the Interdepartmental Commission on International Trade to make a decision on the presence or absence of facts of discriminatory actions. The decision of the Commission is published in the Official Gazette. The applicant may withdraw the application. In this case, the application is deemed as not submitted.

According to the Law on Foreign Economic Activity, Ukraine may introduce such measures in the form of partial or full trade embargo, cancellation of MFN status and special preferential regime, imposition of special duties and quotas, foreign economic operations licensing etc.

Fast-track procedure against a state recognised as an aggressor or occupant

Since December 2015, the Cabinet of Ministers of Ukraine has been entitled to take unilateral counter-measures against a state that is recognised as an aggressor or occupant (articles 9 and 29 of the Law on Foreign Economic Activity). Herewith, such measures can be taken pursuant to the decision of the Cabinet of Ministers of Ukraine without completing the previous investigation and consultation stages.

19 What support does the government expect from the private sector to bring a WTO case?

Commonly, to bring a WTO case the companies concerned should be prepared to cover lawyers' fees, translations and supporting documents containing, inter alia, all necessary information about the facts and statistics concerning the alleged violation, the foreign state competent authority allegedly violating the rules and procedures etc. Having prepared the position paper, companies address the Ministry of Economy and the Trade Representative with the issue. Trade statistics are compiled by the State Statistics Committee. More rarely, the Ministry engages other state enterprises, including expert institutions or economic research institutes. The fees for such state enterprises' services are expected to be borne by the companies concerned. As transparency in relations and permanent dialogue between business and the government act as the cornerstone of the protection of the private sector's interests, in pursuing such goals in Ukraine special trade councils help to establish such communication.

20 What notable trade barriers other than retaliatory measures does your country impose on imports?

Every year the government of Ukraine compiles a list of products subject to an import and export licensing and quotas regime. The list of such products for 2018 can be found in Regulation No. 1018 of the Cabinet of Ministers of Ukraine dated 20 December 2017 (available at http://zakon5.rada.gov.ua/laws/show/1018-2017-%D0%BF).

In practice, one of the most notable barriers for imports may be regarded as the practical realisation of customs valuation of goods. Although the WTO Customs Valuation Agreement has direct effect in Ukraine and the provisions of the Customs Code of Ukraine incorporate the procedures for customs valuation, importers face the problem of declaring higher prices for goods than their transaction value.

Export controls

21 What general controls are imposed on exports?

The following general requirements must be fulfilled to export products from Ukraine:

- exporters shall provide customs authorities with the required set of documents for exporting products (customs declaration; invoices; contracts; specifications; certificate of origin; bill of lading; documents confirming payment of customs fees and duties; and various certificates if necessary for specific products (phytosanitary certificate, ecological certificate, permission to import (export) or to transit narcotic drugs, psychotropic substances or precursors of narcotic drugs and psychotropic substances, veterinary certificate etc);
- exporters shall settle customs payments, if any are envisaged by the legislation current on the day of exportation. The notion of 'customs payments' includes customs duties, VAT and excise duty (article 4.27 of the Customs Code of Ukraine);
- exported products are subject to a zero-VAT rate (article 195 of the Tax Code of Ukraine) and are not subject to excise tax (article 213 of the Tax Code of Ukraine);
- export customs duties can be introduced by laws passed by the Ukrainian Parliament. Currently, Ukraine applies export duties to barley; ferrous alloy scrap metal; non-ferrous scrap metal and semi-processed products with that use; waste and scrap of ferrous metal; seed grains of certain sunflowers; and livestock and certain leather primary products; and
- exporters shall fulfil the requirements of non-tariff regulation if any are envisaged by the legislation on the day of exportation (eg, licensing or certification).

An exporter shall be registered with a local customs office in order to perform export transactions.

In addition, pursuant to the Law on Foreign Economic Activity, it is generally prohibited in Ukraine to export:

- goods considered part of the national, historical, archaeological or cultural heritage of the Ukrainian people;
- natural resources that are exhausted, if this limitation also applies to internal consumption or production;
- products that infringe intellectual property rights;
- goods subject to Resolutions of the UN Security Council regarding limitations or embargoes on the supply of goods in the proper state;
- timber and lumber of valuable and rare breeds of trees; and
- postal parcels that could pose a threat to life and health.

22 Which authorities handle the controls?

Export controls are predominantly handled by the following authorities:

- the Parliament of Ukraine (iportal.rada.gov.ua);
- the Cabinet of Ministers of Ukraine (www.kmu.gov.ua);
- the National Bank of Ukraine (NBU) (www.bank.gov.ua);
- the Ministry of Economic Development and Trade of Ukraine (www.me.gov.ua);
- the State Fiscal Service (minrd.gov.ua);
- the Interdepartmental Commission on International Trade;
- the State Service of Export Control of Ukraine (www.dsecu.gov.ua);
- the State Food Safety and Consumer Protection Service of Ukraine (www.consumer.gov.ua); and
- the National Standardization Body of Ukraine – Ukrainian National Research and Educational Center for Standardization, Certification and Quality (www.ukrndnc.org.ua).

23 Are separate controls imposed on specific products? Is a licence required to export such products?

Military and dual-use equipment

Exports of military equipment and dual-use equipment are subject to Law No. 549-IV on State Controls for International Transfer of Military and 'Dual-Use' Goods of 20 February 2003, and numerous regulations and orders of competent authorities.

The law regulates the international transfer (export, import, re-export, temporary admission, temporary export, transit, other transfers) of military and dual-use equipment, including providing intermediary services; production, scientific and technical cooperation;

and transfer of goods for demonstration in international exhibitions and fairs for the purpose of advertising, testing, trade and exchange transactions.

In general terms, export controls of military and dual-use equipment identify those products subject to such controls and govern the issuing of permits and determinations for exports and conducting negotiations on such exports. The one-time permit or conclusion shall be issued for single transfer or for conducting negotiations on a single transfer of military and dual-use equipment. Its legal force shall not exceed one year. The one-time permit may be issued to a foreign entity that intends to exhibit such a product or to test its performance.

The general permit is issued for multiple transfers or for conducting multiple negotiations on the transfer of specific products provided to a certain final consumer. The legal force of the general permit shall not exceed three years.

An open permit is issued for multiple transfers or for conducting multiple negotiations on the transfer of specific products provided to different final consumers. As with the general permit, the legal force of the open permit shall not exceed three years.

Permits, conclusion or import certificates may also be cancelled or suspended by the competent authority if there are, inter alia, grounds for securing the national interests of the state, cancelling the registration of the entity as a subject of international transfers of goods or the need to carry out an additional review of the documents.

In order to obtain a permit for exports, a Ukrainian business entity is obliged to establish an internal export control system. The State Service of Export Control of Ukraine (the State Service) is a state body authorised to decide on the issuing of permits, conclusions and certificates. An application for issuing a permit shall be examined within 45 days (for exports or re-exports of military equipment) or 30 days (for exports or re-exports of dual-use or temporary exports (imports)); and in some cases, where such application is subject to interdepartmental consideration, the term will be extended to 90 days. The documents filed with the State Service shall be subject to a state-led expert examination.

Following the examination of the application and the requisite documents, the State Service may grant a permit, refuse a permit or leave the matter undecided. The State Service will decide to refuse to issue a permit if:

- such refusal is necessary for the protection of state interests or compliance with Ukraine's international obligations;
- in the case of an exporting company's bankruptcy or termination of its activities in accordance with Ukrainian legislation; or
- if the State Service needs to conduct a supplementary expert examination of the documents.

Consideration of the application for issuing a permit, conclusion or certificate may be terminated if, after the request for additional documents is sent to the applicant, the State Service does not obtain such documents within two months.

Export ban on untreated timber

In April 2015, the Ukrainian Parliament adopted the a prescribing a temporary export ban on untreated timber for the next 10 years.

The products at issue are classified under code 4403 in the Ukrainian Classification of Goods of Foreign Economic Activities. The export restrictions apply to trees except for pines – starting from 1 November 2015; and to pine trees – starting from 1 January 2017. Moreover, since 2005, the permanent export ban covers timber and lumber made of rare and valuable trees, including acacia, birch, cherry, pear, walnut, chestnut, yew, sycamore and juniper. For other types of timber and lumber not covered by the aforesaid categories to be exported, a certificate of origin is required. The Cabinet of Ministers of Ukraine is responsible for issuing the certificate of origin.

Export licences

In January 2015, the Ukrainian government considerably shortened the list of goods subject to export licensing. Such products include ozone-depleting substances and products containing them (under the terms of the Montreal Protocol); optical polycarbonate and equipment for the production of discs for laser reading systems; goods with alloyed ferrous metal content, non-ferrous metal content and alloys thereof; anthracite coal; gold; silver; natural gas; and zinc and copper-bearing wastes subject to quotas.

The full list of goods subject to export licensing is updated annually according to a decree of the Cabinet of Ministers of Ukraine (zakon3.rada.gov.ua/laws/show/1009-2016-%D0%BF).

Export duties

In line with its WTO commitments, Ukraine has been gradually reducing the export duty rates for certain product groups, such as wastes and scrap of ferrous metals; alloyed scrap ferrous metals and semi-finished products; some oil seed crops; and natural gas and liquefied natural gas. Based on the relevant sector-specific laws on export duties, the list of these products is subject to annual update.

On 12 July 2016, the Parliament of Ukraine adopted a law that provided for a provisional increase in export duties for ferrous scrap metal. Currently the export duty rate amounts to €45 per ton and is valid until July 2019.

24 Has your jurisdiction implemented the WCO's SAFE Framework of Standards? Does it have an AEO programme or similar?

On 13 March 2012, the Ukrainian Parliament passed a new version of the Customs Code of Ukraine in order to implement the WCO's SAFE Framework of Standards into domestic customs legislation and harmonise it with several international treaties (in particular, the International Convention on the Simplification and Harmonization of Customs Procedures, the Convention on Temporary Admission and the Customs Convention on the International Transport of Goods under Cover of TIR Carnets).

According to the Compendium of AEO Programmes (2012), the authorised economic operator (AEO) programme has not yet been introduced in Ukraine; however, there are developments regarding this matter at governmental and parliamentary level. At the end of 2014, the State Fiscal Service of Ukraine developed amendments to the Customs Code of Ukraine in order to simplify the procedure of goods registration, in particular, within the framework of further implementation of the AEO programmes.

In 2015, Ukraine also ratified the WTO Trade Facilitation Agreement and EU–Ukraine Association Agreement. Both agreements, inter alia, provide for objectives to ensure additional measures to simplify trade procedures for entities satisfying certain criteria, in other words, AEOs. In pursuit of the agreements mentioned, on 25 April 2016, the Ukraine government approved the draft law prepared by the Ministry of Finance of Ukraine on the implementation in Ukraine of the AEO Institute. The draft law provides for issuance by the competent authorities of certificates of two types – regarding security and safety or regarding simplification of customs procedures. To receive such preferences, applicants must show impeccable financial solvency, appropriate record keeping, compliance with customs legislation and taxation rules, and a business reputation.

After its proper consideration and adoption, the above-mentioned draft law will permit the mutual recognition of AEOs by Ukraine and the EU.

On 29 December 2017, another draft law, No. 7473, was registered (available at http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=63291). As of June 2018, the document is under consideration by the Tax and Customs Policy Committee of the Parliament of Ukraine.

25 Where is information on countries subject to export controls listed?

Among other functions, the State Export Control Service of Ukraine takes measures to implement the decisions of the Security Council to establish or cancel an embargo on the export of goods. It also provides for the monitoring and analysis of exports from Ukraine and the exchange of relevant information on exports of particular categories of goods with the relevant authorities of foreign states and international organisations.

Countries subject to export controls are defined by regulations adopted by the Cabinet of Ministers of Ukraine. These regulations are based on Resolutions of the UN Security Council. For instance, Resolution of the Cabinet of Ministers of Ukraine No. 302 on Implementation of the Resolutions adopted by the Security Council of the UN regarding Libya, 18 April 2012, was passed to fulfil Resolutions No. 1970 dated 26 February 2011, No. 1973 dated 17 March 2011, No.

Update and trends

Reform of trade defence instruments in Ukraine

In March 2018, the Ukrainian government submitted to Parliament the five draft laws concerning reform of trade defence instruments in Ukraine. The draft laws comprise new versions of the Laws of Ukraine 'On Protection from Dumped Imports', 'On Protection from Subsidised Imports' and 'On Safeguard Measures', as well as including a draft law 'On Amendments to the Legislative Acts in the Area of Trade Defence' and a draft law 'On Amendments to the Customs Code of Ukraine Concerning Trade Defence'. The draft laws are currently being considered by the Ukrainian Parliament and are expected to be adopted by the end of 2018.

The reform has been required for a long time. The current Ukrainian trade remedies legislation was adopted in 1998, 10 years before Ukraine acceded to the WTO.

Certain systemic problems exist with regard to trade investigations in Ukraine. Many of them were articulated in the WTO dispute filed by Japan against Ukraine over safeguard measures on passenger cars (DS468). The lack of transparency is an important problem here, whether in the initiation of the investigation or the application of measures.

The new draft laws provide for significant improvements applicable to all three types of trade investigations. The most important changes are exemplified below by the proposed rules concerning anti-dumping proceedings.

1 Enhancement of procedural transparency

1.1 The draft law introduces a new compulsory stage: within eight months (for anti-dumping and anti-subsidy investigations) and six months (for safeguard investigations) from the date the investigation was launched, the Ministry of Economic Development and Trade must prepare a preliminary report and send it to the Commission;
1.2 The draft law obliges the MEDT to disclose to interested parties its calculations of the dumping margin and injury margin;
1.3 The draft law also obliges the MEDT to prepare and send to interested parties a non-confidential version of important procedural documents such as the MEDT's preliminary report on the results of the investigation, the MEDT's determinations on substantial facts and circumstances and information about the Commission's final decision;
1.4 The interested parties will receive electronic access to non-confidential materials during the investigation;
1.5 The draft law specifies the requirements for information to be provided by interested parties at the request of the MEDT; failure to comply with these requirements may lead to non-incorporation of respective information in the proceeding materials; and
1.6 If any information submitted by any interested party is rejected during the investigation, the MEDT shall immediately provide the party with an explanation of the reasons that have led to arguments being accepted or rejected, and give an opportunity to submit additional information.

2 Improvement of some procedural issues and increase in predictability of application of trade remedies

2.1 The draft laws regulate in detail the procedure of ex officio initiation of the trade investigations by the MEDT;
2.2 The procedure and grounds for extending the MEDT's deadlines will be better regulated;
2.3 The draft law provides for a detailed mechanism for the application of preliminary measures, review procedure, consultations and hearings, acceptance of price undertakings from exporters of the product subject to anti-dumping investigation, grounds for extending the scope of product subject to anti-dumping measures and suspension of anti-dumping measures;
2.4 The draft law contains a chapter on anti-circumvention investigations;
2.5 The draft law introduces disciplines on provision of financial guarantees in specific cases (ie, preliminary measures application, anti-circumvention investigations, and surveillance and regional surveillance measures); and
2.6 The draft law governs internal procedures concerning the implementation of WTO Panel and Appellate Body reports.

3 Composition and functions of the Interdepartmental Commission on International Trade

3.1 Pursuant to the current laws, the composition of the Commission is approved by the Cabinet of Ministers of Ukraine upon proposal of the Minister of Economic Development and Trade. According to the draft laws, the Members of the Commission will be appointed by the Minister of Economic Development and Trade of Ukraine;
3.2 Pursuant to the current laws, the Commission may take its decisions exclusively at meetings. The draft laws provide for more flexibility and allow the Commission's decisions to be made after the members sign it in working order; and
3.3 The draft law considerably extends the list of decisions that may be taken by the Commission, given that the new draft law regulates in detail the review procedure of anti-dumping measures, expansion the product scope subject to anti-dumping measures, and provision of financial guarantees in specific cases.

2009 dated 16 September 2011, No. 2016 dated 27 October 2011, No. 2017 dated 31 October 2011 and No. 2022 dated 2 December 2011, or Order No. 359p of the Cabinet of Ministers of Ukraine on implementation of the UN Security Council Resolution No. 2231 dated 20 June 2015 regarding Iran.

Within the context of Russian military actions against Ukraine and the occupation of Crimea, the National Security and Defence Council of Ukraine, in its decision of 27 August 2014, prohibited exports to the Russian Federation of military and dual-use production.

The countries currently subject to export controls are listed on the UN website. This list can also be found on the website of the State Service of Export Controls of Ukraine with an indication of the relevant Resolutions of the UN Security Council and the Regulations of the Cabinet of Ministers of Ukraine.

26 Does your jurisdiction have a scheme restricting or banning exports to named persons and institutions abroad?

The Law of Ukraine No. 1644-VII on Sanctions, 14 August 2014 (the Law on Sanctions), provides for such a possibility in the form of the restriction of economic operations. The Law on Sanctions is described in detail in questions 28–30. To date, the Law on Sanctions has not been altered or amended.

The Law on Sanctions was amended on 17 December 2017. This law enables the National Security and Defence Council to impose sanctions on specified persons by submission of the Parliament of Ukraine, the President of Ukraine, the Cabinet of Ministers of Ukraine, the NBU and the Security Service of Ukraine.

27 What are the possible penalties for violation of export controls?

As of July 2018, the Ministry of Economic Development and Trade of Ukraine has been using such non-tariff instruments widely as special sanctions in foreign economic activities according to article 37 of the Law on Foreign Economic Activity. In practice, these special sanctions are company-specific restrictions that usually take the form of an individual licensing regime or suspension of foreign economic activity. The special sanctions are imposed on Ukrainian companies and their foreign counterparties by the Ministry upon the request of the tax and customs authorities, the Security Service of Ukraine and other public authorities.

Special sanctions on foreign economic activities should be distinguished from sanctions within the meaning of the Law on Sanctions referred to in questions 28–30.

However, on 21 June 2018, the Parliament of Ukraine adopted a new Law on Currency. This act, among other significant improvements, provides for exclusions of article 37 from the Law on Foreign Economic Activities. It will result in the elimination of special sanctions on foreign economic activities as a non-tariff instrument of export and import control.

In order to come into force, the new Law on Currency must be signed by the President of Ukraine and be officially published. It is expected to be fully implemented in January–February 2019. Under the new Law on Currency, Ukrainian exporters that fail to comply with the settlement period in export–import operations will be subject to a 0.3 per cent penalty for each day of delayed payment. The amount of

the penalty shall not exceed the total amount of funds unpaid by the respective foreign importer.

Financial and other sanctions and trade embargoes

28 What government offices impose sanctions and embargoes?

The Law on Foreign Economic Activity authorises Parliament to introduce trade embargoes (complete or partial) and to cancel MFN treatment or special preferential treatment as a trade sanction in response to the discriminatory or hostile acts of other states. Other types of sanctions regarding exporters and importers can be also applied by cabinet ministers of Ukraine (ie, the introduction of licensing) and the Commission (ie, the introduction of extra duties or quotas).

At the same time, the law says that if Ukraine and the state that has acted in a discriminatory or hostile manner towards Ukraine are members of the same international intergovernmental organisation, consideration and settlement of the dispute is carried out in accordance with the rules and procedures of that organisation. In other words, Ukraine cannot introduce these trade sanctions in response to allegedly discriminatory or hostile actions by WTO members; it must submit the matter to the WTO dispute settlement procedure.

In addition, the Law on Sanctions provides for the imposition of special economic and other restrictive measures – sanctions. In accordance with article 5 of this law, proposals concerning the implication, cancellation and alteration of sanctions may be submitted to the National Security and Defence Council of Ukraine by the Parliament of Ukraine, the President of Ukraine, the Cabinet of Ministers of Ukraine, the NBU and the Security Service of Ukraine. A decision on the application, cancellation and amendment to sanctions against a foreign state or an undefined group of individuals of a certain type of activity (sectoral sanctions) shall be adopted by the National Security and Defence Council of Ukraine and come into effect following the decree of the President of Ukraine. Such a decision is to be approved within 48 hours from the date of issuing of the President's decree by the Supreme Council of Ukraine. The decision enters into force from the moment of adoption by the Parliament of Ukraine and its execution is mandatory. In addition, the NBU is entitled to adopt special currency regulations. For instance, Resolution No. 12 of the Board of the NBU dated 21 February 2017 prescribes a procedure for the NBU's refusal to issue of individual licences for currency transactions if the relevant transaction operator or final beneficiary is a Russian resident.

On 19 May 2017, Russia challenged at the WTO certain trade restrictions that had been imposed by Ukraine due to protection of its national security interests (DS525). Russia's Request for Consultations covers, inter alia, the import ban on Russian products as well as financial and economic sanctions against Russian individuals and companies. The parties are likely to proceed to the Panel stage. If Ukraine invokes the national security exception as justification before the Panel, this will be a landmark WTO case to shed light on the legal test of GATT 1994 article XXI.

29 What countries are currently the subject of sanctions or embargoes by your country?

According to article 29 of the Law of Ukraine on Foreign Economic Activity of Ukraine, Ukraine can enforce a complete or partial embargo in response to discrimination by, or unfriendly actions of, other countries, customs unions or economic groups.

Currently no countries are subject to trade embargoes by Ukraine (except for those introduced based on Resolutions of the UN Security Council). The countries currently subject to export controls are listed on the website of the UN.

Moreover, as mentioned in question 18, Ukraine has been applying import bans for certain products from the Russian Federation starting from 1 January 2016 until the end of 2018, and has prohibited exports to the Russian Federation of military and dual-use production for military end use by the Russian Federation. Notably, the Decree of the Cabinet of Ministers of Ukraine No. 1147 of 30 December 2015 provides for a list of products originated from Russia that are prohibited from importing to Ukraine. The products range from confectionery to small grain crops, soya sauce, tomato sauce, fresh and preserved fish and fish roe. The Ukrainian version of the list (last amended on 1 March 2018) is available at http://zakon3.rada.gov.ua/laws/show/1147-2015-%D0%BF/paran10#n10. The Cabinet of Ministers of Ukraine each year extends the term of validity of the Decree and updates it.

30 Are individuals or specific companies subject to financial sanctions?

Financial sanctions (such as freezing assets, a ban on entry to a country and embargoes on weapons) against individuals or companies can be introduced in fulfilment of a relevant decision of the UN Security Council.

In accordance with article 1 of the Law on Sanctions, sanctions may be imposed by Ukraine on a foreign state, a foreign legal entity, a legal entity that is controlled by a foreign entity or individual, non-resident foreigners, stateless persons and entities engaged in terrorist activities. Sanctions may be imposed in response to potential threats to national interests, national security, sovereignty and the territorial integrity of Ukraine or any other state, occupation of the territory of Ukraine or any other state, following violations of the Universal Declaration of Human Rights, the Charter of the United Nations under the resolutions of the General Assembly and the UN Security Council, or decisions and regulations of the Council of the European Union. Economic sanctions may take the form of trade operations blocking and account freezing; partial restriction or full suspension of transit, flights and transportation through Ukraine; cancellation or suspension of licences; and suspension of economic and financial obligations etc.

At present, the Decision of the National Security and Defence Council of Ukraine of 28 April 2017 (enacted by the Decree of President of Ukraine of 15 May 2017 No. 133/2017) (last amended on 2 May 2018) (http://zakon3.rada.gov.ua/laws/show/n0004525-17/paran2#n2) is the latest version of the list of natural and legal persons subject to sanctions The document includes, among other things, such sanctions as the prohibition on moving capital out of the territory of Ukraine; the

SERGII KOZIAKOV & PARTNERS
ATTORNEYS & COUNSELLORS AT LAW

Nataliia Isakhanova **n.isakhanova@kievbarrister.com**
Olesia Kryvetska **o.kryvetska@kievbarrister.com**
Andrii Pylypenko **a.pilipenko@kievbarrister.com**

5/24 Irynynska Street
Kiev 01001
Ukraine

Tel: +380 44 590 4828
Fax: +380 44 590 4830
office@kievbarrister.com
www.kievbarrister.com

prohibition on state purchase contracts on goods, works and services with entities; and the freezing of assets of particular persons. Following the adoption of this document, the previous decisions of the National Security and Defence Council lost their validity.

Miscellaneous

31 Describe any trade remedy measures, import or export controls not covered above that are particular to your jurisdiction.

EU tariff-rate quotas for agricultural products from Ukraine

Within the framework of the EU–Ukraine Association Agreement, the EU provides tariff quotas for 36 Ukrainian products. However, while some tariff quotas have been exploited by Ukraine for half a year, others remain unfulfilled. Consequently, the extension of EU tariff-rate quotas (TRQs) for agricultural products from Ukraine is one of the compelling issues that both sides have been negotiating since the EU–Ukraine free trade area started to apply. On 29 September 2016, the European Commission submitted in this regard the Proposal for a Regulation of the European Parliament and of the Council. The proposal envisaged further agricultural-related TRQs to be further expanded for 36 months. On 4 July 2017, the European Parliament backed additional tariff quotas for Ukrainian products with the following annual volumes: natural honey (25,000 tons), processed tomatoes (3,000 tons), wheat (65,000 tons), maize (625,000 tons) and barley (325,000 tons).

United Arab Emirates

Jonathan Brown and Raymond Kisswany
Charles Russell Speechlys LLP

Overview

The United Arab Emirates (UAE) is a federation comprising seven Emirates: Abu Dhabi, Dubai, Sharjah, Ajman, Umm Al Quwain, Fujairah and Ras Al Khaimah. Each Emirate is a separate legal jurisdiction. Abu Dhabi, Dubai and Ras Al Khaimah each have their own separate court systems. The other four Emirates use the Federal Courts. There is no supreme court to which appeals can be made from the courts of each Emirate. Thus, the highest court in each Emirate is the Court of Cassation. Below the Court of Cassation there are two tiers of courts: a Court of First Instance and a Court of Appeal. In each Emirate, UAE Federal Law applies as well as the laws and decrees enacted by each Emirate. In case of conflict, UAE Federal Law has primacy.

The UAE is a civil law-based legal system, except in respect of two financial free zones: the Dubai International Financial Centre (DIFC) and the Abu Dhabi Global Market (ADGM). UAE civil and commercial laws do not apply in these two free zones; instead, the DIFC and ADGM have enacted their own laws, which are substantially based on English common law. However, while DIFC laws have existed for a number of years, the ADGM laws are still being drafted and enacted. Both the DIFC and the ADGM have their own courts' system, with international judges from England and other Commonwealth countries as well as Emirati judges. The DIFC Courts have been operating since 2007. The ADGM Courts only started operating earlier this year and, as of the time of writing this chapter, no cases have yet been heard before the ADGM Courts. There are various other free zones in the UAE, which often have their own regulations and procedures, but are governed by UAE Federal Law and do not have their own court systems.

It is important to emphasise that UAE laws are not capable of interpretation with complete certainty, as no system of binding judicial precedent exists in UAE courts. The DIFC Courts and ADGM Courts, being common law courts, have a system of binding precedent. The DIFC Courts also frequently refer to English and other Commonwealth judgments, which are treated as highly persuasive. The ADGM Courts are also expected to do the same.

The Cooperation Council for the Arab States of the Gulf (GCC) was established in 1981 and is a regional organisation composed of six Gulf Arab states: the UAE, Saudi Arabia, Oman, Kuwait, Bahrain and Qatar (collectively, the GCC states). In the UAE, laws and policies in some areas, including customs procedures and tariffs, are developed and applied at the GCC level.

1 What is the main domestic legislation as regards trade remedies?

The GCC Common Law on Anti-Dumping, Countervailing Measures and Safeguard Measures and its Rules of Implementation as ratified by UAE Federal Law No. 7 of 2005 (the Anti-Dumping Law) is the primary legislation with respect to trade remedies.

2 In general terms what is your country's attitude to international trade?

The UAE has long been a hub for international trade and continues to seek to expand that role through trade, investment and development, primarily focused on diversifying the economy, emphasising competitiveness and technology sectors. Furthermore, the UAE focuses on free zones and economic specialised zones, which form important facets of the UAE economy and its growth strategy. Advantages for investment within free zones include no corporate or personal income taxes (which is the same throughout the UAE), exemptions from customs duties and exemptions from several domestic regulations that apply within the customs territory; moreover, foreign ownership in free zones is not limited to 49 per cent, as it is within the customs territory. Currently, about two-thirds of exports of non-oil related products are from free zones.

The Unified Economic Agreement of 1981 (UEA) under the GCC created a free trade area between the GCC states and is compatible with Article XXIV of the General Agreement on Tariffs and Trade 1994 (GATT 1994). The free trade area eliminated customs duties and other restrictive regulations on commerce in all trade between GCC states for goods originating in the GCC.

The UAE is a member of the Greater Arab Free Trade Area (GAFTA), which entered into force on 1 January 1998. GAFTA eliminated all customs tariffs among GAFTA member states as of 1 January 2005. GAFTA covers trade in goods only; however, members are involved in negotiations to create an agreement in trade of services.

In 2015, the UAE, as part of the GCC, entered into free trade agreements with Singapore and the European Free Trade Association (EFTA). Currently, the UAE and its GCC partners are negotiating free trade agreements with the EU, Japan, China, India, Pakistan, Turkey, Australia, New Zealand, Korea and Mercosur, which includes Brazil, Argentina, Uruguay and Paraguay. The UAE has also concluded several trade, economic and technical cooperation agreements with various countries.

Trade defence investigations

3 Which authority or authorities conduct trade defence investigations and impose trade remedies in your jurisdiction?

The Department of Anti-Dumping (DOA) within the UAE Ministry of Economy (MOE): www.economy.gov.ae/english/Ministry/MinistrySectors/IndustrialAffairsSector/anti-dumping/Pages/actions.aspx.

4 What is the procedure for domestic industry to start a trade remedies case in your jurisdiction? Can the regulator start an investigation ex officio?

An investigation may be initiated in response to a complaint filed by a UAE industry against dumped imports into the UAE or ex officio by the DOA. Industries considering filing an anti-dumping complaint must lodge an application with the DOA evidencing (i) dumping, (ii) injury and (iii) a causal link between the dumped imports and the alleged injury. Once the complaint is filed, the DOA will examine the complaint to determine whether there is sufficient evidence to justify the initiation of an anti-dumping investigation and, if the conditions are met, an investigation will be initiated. An anti-dumping investigation is normally concluded within 12 months or up to a maximum of 18 months, during the course of which the DOA provides all interested parties in filing a complaint – in particular, exporters, producers and importers – the opportunity to submit their views, hold public hearings and send questionnaires to the involved parties in order to collect relevant information. If all the conditions are met, an anti-dumping duty will be imposed on imports of the concerned products originating in

or exported from the exporting country or countries concerned. The DOA provides a flowchart with respect to the investigation procedures, which can be found at www.economy.gov.ae/english/Ministry/MinistrySectors/IndustrialAffairsSector/anti-dumping/Documents/Document%205%20Flow%20Charts%20-%20English%20-%20DumpingEV.pdf.

5 What is the procedure for foreign exporters to defend a trade remedies case in your jurisdiction?

Generally, parties are notified of an investigation through diplomatic channels and through public publications. The DOA, once having initiated an investigation, will also send questionnaires to concerned parties. Exporters are able to defend trade remedies cases by making submissions to the DOA.

6 Are the WTO rules on trade remedies applied in national law?

The UAE has been a member of the WTO since 10 April 1996 as well as a member of GATT since 8 March 1994. However, WTO rules do not take precedence over domestic law. Having said that, the UAE complies with WTO rules, agreements and commitments and the UAE's trade remedies are generally consistent with the WTO. The UAE's trade remedy rules, as legislated in the Anti-Dumping Law, are based on the respective WTO rules.

7 What is the appeal procedure for an unfavourable trade remedies decision? Is appeal available for all decisions? How likely is an appeal to succeed?

A separate appeal regime does not exist with regard to trade remedies. However, the general rule is that any ministerial decision is appealable to the Abu Dhabi Court of First Instance (ADCFI). The DOA is a department within the MOE and, therefore, its decisions may be appealed to the ADCFI.

8 How and when can an affected party seek a review of the duty or quota? What is the procedure and time frame for obtaining a refund of overcharged duties? Can interest be claimed?

Precise information related to this question is not available; however, it appears that this would fall under the remit of the DOA and, therefore, these types of issues would have to be dealt with as part of the trade remedy hearings held by the DOA.

9 What are the practical strategies for complying with an anti-dumping/countervailing/safeguard duty or quota?

This is rather fact-specific and would depend on the particular issues attributed to the case.

Customs duties

10 Where are normal customs duty rates for your jurisdiction listed? Is there an exemption for low-value shipments? If so, at what level? Is there a binding tariff information system or similar in place? Are there prior notification requirements for imports?

Generally, most customs duty is calculated on cost, insurance and freight (CIF) value at a flat rate of 5 per cent, with the exception of alcohol products (50 per cent duty) and tobacco products (100 per cent duty). CIF value is normally calculated by reference to the commercial invoices associated with the related shipment; however, the customs authorities of each individual Emirate are not required to accept the figures if the goods have been undervalued, and may set an estimated value on the goods.

There are various exemptions to customs duty, such as essential items (including staple foodstuffs and pharmaceuticals) as well as items that are for personal use purposes.

Further information can be obtained from the UAE Federal Customs Authority (FCA) website: www.fca.gov.ae.

11 Where are special tariff rates, such as under free trade agreements or preferential tariffs, and countries that are given preference listed?

The UAE has a standard tariff rate of 5 per cent, with some specific exceptions.

12 How can GSP treatment for a product be obtained or removed?

Not applicable.

13 Is there a duty suspension regime in place? How can duty suspension be obtained?

No.

14 Where can customs decisions be challenged in your jurisdiction? What are the procedures?

Article 61 of the Common Customs Law for the GCC States (Common Customs Law) sets out the procedure for settling disputes related to customs decisions. A valuation committee composed of customs administration officials seeks to settle disputes arising between customs and persons concerned with regard to the value of imported goods. The committee may seek the assistance of experts at its discretion. However, an importer may also seek to appeal customs decisions to the UAE court with competent jurisdiction.

Trade barriers

15 What government office handles complaints from domestic exporters against foreign trade barriers at the WTO or under other agreements?

A separate entity or office does not exist and there is no precise information available on dealing with such an issue. As such, complaints from domestic exporters against foreign trade barriers are likely to be dealt with on an ad hoc basis by the UAE Ministry of Foreign Affairs (MOF).

16 What is the procedure for filing a complaint against a foreign trade barrier?

There is no precise information with regard to this question and it appears that these types of issues would be dealt with on an ad hoc basis.

17 What will the authority consider when deciding whether to begin an investigation?

There is no precise information with regard to this question and it appears that these types of issues would be dealt with on an ad hoc basis.

18 What measures outside the WTO may the authority unilaterally take against a foreign trade barrier?

It is difficult to advise on this particular issue as it has not come up in the past. The UAE could, theoretically, suspend trade as a result of a foreign trade barrier; however, this is completely speculative.

19 What support does the government expect from the private sector to bring a WTO case?

The UAE has not, to date, commenced any action or had action commenced against it in the WTO. It would be likely that the UAE government would retain the legal services of a private law firm and charge those fees to the private exporter; however, this is speculative given that there have been no cases in the WTO involving the UAE (aside from as a third party).

20 What notable trade barriers other than retaliatory measures does your country impose on imports?

General import documentation is required; however, the UAE maintains a free exchange and liberal trading system with limited trade barriers.

Export controls

21 What general controls are imposed on exports?

Declaration documents, including packing lists and export invoices, are usually required.

22 Which authorities handle the controls?

Generally, the FCA and customs authority of each individual Emirate.

23 Are separate controls imposed on specific products? Is a licence required to export such products?

The UAE has specific types of goods that are restricted or prohibited from being imported, exported or transhipped through the UAE. A specific list can be found at www.dubaicustoms.gov.ae/en/eServices/ServicesForBusinesses/CustomsInformation/Pages/Prohibited-and-Restricted-Goods.aspx.

24 Has your jurisdiction implemented the WCO's SAFE Framework of Standards? Does it have an AEO programme or similar?

Dubai Customs implemented the WCO SAFE Framework and introduced the AEO programme in September 2015, and was the first UAE customs authority to introduce an AEO programme. Other Emirates are expected to follow suit in due course.

25 Where is information on countries subject to export controls listed?

There is no centrally available list of countries subject to export controls.

26 Does your jurisdiction have a scheme restricting or banning exports to named persons and institutions abroad?

The UAE does not have a centrally available scheme restricting or banning exports to named persons and institutions abroad.

27 What are the possible penalties for violation of export controls?

Specific information is not available.

Financial and other sanctions and trade embargoes

28 What government offices impose sanctions and embargoes?

Generally, the UAE does not publicise sanctions in place apart from the Arab League Boycott of Israel and specific individuals and entities (eg, designated terrorist individuals and organisations). US, EU and UN sanctions are enforced on an ad hoc basis. The UAE government is ultimately in charge of imposing such sanctions and embargoes.

29 What countries are currently the subject of sanctions or embargoes by your country?

There is no publicly available information on whether trade with specific countries or entities is prohibited.

30 Are individuals or specific companies subject to financial sanctions?

There is no publicly available information regarding individuals or specific companies that are subject to financial sanctions. It is generally understood that the UAE follows UN sanction protocols.

Miscellaneous

31 Describe any trade remedy measures, import or export controls not covered above that are particular to your jurisdiction.

All measures and controls have been discussed above.

CRS
CharlesRussell Speechlys

Jonathan Brown **Jonathan.Brown@CRSBLaw.com**
Raymond Kisswany **Raymond.Kisswany@CRSBLaw.com**

Index Tower, West Tower
11th Floor, Unit 1108
PO Box 507226
Dubai International Financial Centre
Dubai
United Arab Emirates

Tel: +971 4 246 1900
Fax: +971 4 246 1901
www.charlesrussellspeechlys.com

United States

Yohai Baisburd
Cassidy Levy Kent (USA) LLP

Overview

1 What is the main domestic legislation as regards trade remedies?

The primary legislation for US trade remedies law is the Tariff Act of 1930, as amended (the Act). The vast majority of US trade remedy actions take the form of anti-dumping (AD) or countervailing duty (CVD) actions. Statutory authority for AD actions is located in Subtitle B of Title VII of the Act (see 19 USC section 1671 et seq). Authority for CVD actions is at Subtitle A of Title VII of the Act (see 19 USC section 1671 et seq).

The third most common trade remedy is safeguards. The Trade Act of 1974 provides for section 201 safeguard or 'escape clause' actions to provide temporary restrictions on imports (see 19 USC sections 2251 to 2254). Other trade remedies include section 301 actions (see 19 USC sections 2411 to 2420), which focus on violations of trade agreements or other foreign practices that restrict US commerce, section 406 actions for relief from 'market disruption' imports from non-market economy countries (see 19 USC section 2436), section 232 national security investigations (see 19 USC section 1862) and section 337, which focuses on unfair practices in import trade such as patent and copyright infringement.

2 In general terms what is your country's attitude to international trade?

The US believes in a system of open trade subject to the rule of law. Since the Second World War, the US's policy has generally been that engagement in world trade offers US producers access to large foreign markets, while at the same time competition from foreign producers helps keep prices down for numerous goods, thereby reducing pressures from inflation. Additionally, the majority of US citizens have generally found that trade promotes economic growth, social stability and democracy in individual countries and advances world prosperity, the rule of law and peace in international relations.

However, an open trading system requires that countries allow fair and non-discriminatory access to each other's markets. Thus, the US participates in multilateral and bilateral agreements granting countries favourable access to its markets if they reciprocate by reducing their own trade barriers. Efforts to liberalise trade have traditionally focused on reducing tariffs and certain non-tariff barriers to trade. However, the US also frequently urges foreign countries to deregulate their industries and to take steps to ensure that the remaining regulations are transparent, do not discriminate against foreign companies and are consistent with international practices. US interest in deregulation arises in part out of concern that some countries may use regulation as an indirect tool to keep exports from entering their markets.

Under the Trump Administration, US trade policy has focused increasingly on reducing trade deficits, obtaining reciprocity in the treatment of imports and exports between countries and promoting bilateral negotiations. In order to gain negotiating leverage with trading partners, the Trump Administration has imposed tariffs under section 232 (national security) on a variety of steel and aluminium products from nearly all countries and section 301 (unfair trade actions) on imports from China. The Trump Administration is also seeking reforms at the WTO, primarily with respect to the dispute settlement process.

While the US pursues a general adherence to the principles of non-discrimination, it has joined certain preferential trade arrangements. The US Generalized System of Preferences (GSP) programme, for instance, seeks to promote economic development in poorer countries by providing duty-free treatment for certain goods that these countries export to the US; the preferences cease when the producers of a product no longer need assistance to compete in the US market. Another preferential programme, the Caribbean Basin Initiative, seeks to help an economically struggling region that is considered politically important to the US; it gives duty-free treatment to all imports to the US from the Caribbean area except textiles, some leather goods, sugar and petroleum products. The US is currently a party to 14 free trade agreements (FTAs) with 20 countries.

Trade defence investigations

3 Which authority or authorities conduct trade defence investigations and impose trade remedies in your jurisdiction?

AD and CVD investigations are carried out concurrently by the Enforcement and Compliance division in the International Trade Administration (ITA) of the Department of Commerce (DOC) (www.trade.gov) and the US International Trade Commission (ITC) (www.usitc.gov). The ITA is charged with determining whether sales have been made at less than fair value for AD investigations and whether illegal subsidies were granted in CVD investigations. The ITC meanwhile determines whether the relevant US domestic injury has been harmed or is threatened with harm by reason of dumped or subsidised merchandise. If both agencies make positive determinations (ie, dumping or subsidisation occurred and the US domestic injury has been harmed or is threatened with harm), then an order against the subject merchandise is imposed. The ITA will direct US Customs and Border Protection (CBP) to collect tariffs calculated to offset the dumping or subsidisation it ultimately finds.

In safeguard actions, the ITC determines whether merchandise is entering the country in such increased quantities as to constitute a 'substantial cause of serious injury, or threat of serious injury'. If the ITC makes an affirmative determination, it provides remedy recommendations to the US Trade Representative (USTR), which then conducts its own inquiry with the assistance of the Trade Policy Staff Committee. The USTR then makes its final recommendation to the office of the President.

4 What is the procedure for domestic industry to start a trade remedies case in your jurisdiction? Can the regulator start an investigation ex officio?

AD and CVD investigations are typically initiated based on a petition filed simultaneously with the ITA and the ITC by a domestic interested party, such as a manufacturer or a union within the domestic industry producing the product which competes with the imports to be investigated (see 19 USC section 1673a(a) (AD); 19 USC section 1671a(a) (CVD)). The ITA can also self-initiate an investigation. While self-initiation rarely happens, in 2017, the US self-initiated investigations on aluminium plate from China.

The law requires that the petitioners represent at least 25 per cent of domestic production and that of the percentage of the industry

expressing an opinion on the petition, greater than 50 per cent be in favour of the petition. The petition is required to contain certain information, including information about the party filing the petition and a thorough description of the goods and exporters of the goods addressed in the petition. The petition must also provide evidence supporting the allegation of dumping or subsidisation. The petition must provide data relevant to the price of the merchandise in the US market and appropriate comparison market, and names and addresses of US importers of the merchandise. Additionally, for subsidisation the petition should provide facts about the subsidy, such as what government body authorises it, how it is provided or paid, and its value to the producers or sellers of the merchandise.

The petition must also provide evidence of material injury, such as the volume and value of the imported merchandise over the last three years both in absolute terms and relative to US consumption or production; the effect of the merchandise in undercutting, depressing or suppressing the price of like products in the US; the actual and potential decline in output, sales, market share, profits, productivity, return on investment and utilisation of capacity; the actual and potential negative effects on cash flow, inventories, employment, wages, ability to raise capital and investment; and any further information that demonstrates actual or potential injury or retardation to US industry as a result of the dumped or subsidised merchandise.

The ITA must determine the sufficiency of the petition within 20 days of receiving it (this can be extended by an additional 20 days under certain circumstances) (see 19 USC section 1671a(c) and 1673a(c)). If the ITA finds the petition sufficient and initiates the investigation, the ITC must make a preliminary determination of injury within 45 days.

A section 201 investigation may be initiated by the filing of a petition by any group considered to be representative of an industry, including a trade association, firm, union or group of workers (see 19 USC section 2252(a)(1)). It can also be initiated at the request of the President, the USTR, the House Ways and Means or Senate Finance Committees or the ITC itself (see 19 USC section 2252(b)(1)(A)).

5 What is the procedure for foreign exporters to defend a trade remedies case in your jurisdiction?

The investigations and reviews conducted by the ITA and the ITC in trade remedy cases are done in a transparent manner that allows for the participation of all interested parties. Upon receipt of a petition, the administering authority must notify the government of any exporting country named in the petition by delivering a public version of the petition to an appropriate representative of such country (see 19 USC section 2271). If the ITA determines that a petition satisfies all statutory requirements to initiate an investigation, notice is made by the publication of a notice of initiation in the Federal Register. The notice of initiation will describe the general history of the proceeding and the ITA's findings, and will specify due dates for the submission of comments or responses required to participate in the investigation. The ITA will then send questionnaires to mandatory respondents, specifying when responses to the questionnaires are due.

Meanwhile, the ITC posts an alert on its website a day or two after the petition is filed, posts a preliminary investigation schedule and publishes a notice in the Federal Register, sends questionnaires to the domestic producers, importers and foreign exporters and holds a staff conference 20 days after the petition is filed. Parties wishing to participate in the preliminary phase of the ITC investigation must file an entry of appearance within seven days of the Federal Register notice. The ITC preliminary phase must be completed within 45 days of receipt of the petition.

The time frames for investigation differ for the ITA and the ITC. In CVD cases, the law allows the ITA 65 days to make a preliminary determination, which can be extended to 130 days at the petitioner's request or if the ITA determines that the case is extraordinarily complicated. Final determinations are due 75 days after publication of the preliminary determination, unless the ITA aligns the CVD investigation with the AD investigation, in which case it is due on the due date of the AD final determination. In AD cases, the ITA preliminary determination must be made within 140 days, but this can be extended to 190 days at the petitioner's request or if the case is deemed by the ITA to be extraordinarily complicated. The final determination is due 75 days after publication of the preliminary determination. The final determination can be extended to 135 days at the request of the petitioner if the preliminary determination was negative, or the exporters if the preliminary determination was affirmative.

Between initiation of the investigation and the preliminary determination, the ITA solicits information from foreign producers and exporters. The ITA selects as many mandatory respondents as it deems its resources will allow it to investigate – typically the largest two or three exporters of the merchandise under investigation – and requires these mandatory respondents to provide extensive company, sales and cost data in response to standard questionnaires. The ITA uses these data to calculate AD and CVD margins for each respondent. The ITA assigns an average of these calculated margins to cooperating parties that were not individually investigated. After the preliminary determination, the ITA conducts on-site verification of the submitted data and releases a report of its findings. All parties have the opportunity to submit comments and arguments at times throughout the process, and to submit case briefs regarding the ITA preliminary determination before the final determination.

As discussed above, the ITC preliminary determination must be made within 45 days of receipt of the petition. If that determination is negative, the investigation ends. If that determination is affirmative, and the ITA final determination is affirmative, the ITC investigation continues to its final determination, which must take place by the later of either within 120 days of the ITA's preliminary affirmative determination or within 45 days of the ITA's affirmative final determination. The ITC also holds hearings prior to making its final determination and allows parties to submit briefs both before and after the hearing.

For safeguard investigations, the ITC usually makes its injury determination within 120 days, but may extend that deadline by up to 30 additional days if the investigation is deemed extraordinarily complicated. The ITC's report to the President must be submitted within 180 days of the petition filing, but this can be extended to 240 days if critical circumstances are alleged.

6 Are the WTO rules on trade remedies applied in national law?

The US is a signatory member of the WTO. While the WTO Agreements are not US law, to ensure that US AD and CVD procedures comply with the WTO Anti-Dumping and Subsidies Agreements, Congress enacted the Uruguay Round Agreements Act (URAA) in 1994. As the statement of administrative action for the URAA explains, the URAA was 'intended to bring US law fully into compliance with US obligations under [the WTO Agreements]', including the provisions of the Anti-Dumping and Subsidies Agreements. Thus, in Congress's view, the URAA ensures that the ITA and ITC will act fully in conformity with the provisions of the Anti-Dumping and Subsidies Agreements when issuing their AD and CVD. In instances where the WTO Dispute Settlement Body has ruled that US laws or practice have violated WTO provisions, the US has generally sought to change US law or agency practice to bring it into conformity.

7 What is the appeal procedure for an unfavourable trade remedies decision? Is appeal available for all decisions? How likely is an appeal to succeed?

Parties may appeal any final factual findings or legal conclusions by the ITA or ITC, or any negative preliminary determination by the ITC, at the US Court of International Trade (CIT). Parties may also contest decisions to suspend an investigation and decisions not to initiate an investigation, the final results of administrative reviews, and scope determinations. CIT decisions can be further appealed to the Court of Appeals for the Federal Circuit, and even the US Supreme Court. Countries subject to the North American Free Trade Agreement (NAFTA) may request binding review by a binational panel.

The CIT applies a deferential standard of review when assessing administrative agency determinations. The court examines whether factual determinations by the agency are supported by substantial evidence, and whether legal determinations are in accordance with the law. In instances where the law is not clear, the court cannot substitute its own judgment for that of the agency, but only determine whether the agency's interpretation of the law 'is based on a permissible construction of the statute'.

8 How and when can an affected party seek a review of the duty or quota? What is the procedure and time frame for obtaining a refund of overcharged duties? Can interest be claimed?

Each year an interested party may request an administrative review under an AD or CVD order at the ITA (see 19 USC section 1675 and 19 CFR section 351.213). The review requests are due by the last day of the anniversary month of the order (ie, the month in which the order was published). Administrative reviews are similar to investigations, but with longer timetables. The ITA will recalculate AD and CVD margins pursuant to the review. Preliminary results of review are due within 245 days (or 365 if extended) of the last day of the anniversary month and final results within 120 days of the publication of the preliminary results (or 180 if fully extended).

In instances where the cash deposit of duties exceeds the final liquidation amount, the CBP will refund the difference, plus interest. Likewise, if the cash deposit is less than the final liquidation, the party is charged the difference, plus interest for any entries made after publication of the order(s).

The ITA and ITC also conduct periodic reviews pursuant to US laws implementing article 11.2 of the Anti-Dumping Agreement and article 21.2 of the Subsidies Agreement to determine the need for continued imposition of duties. These reviews are referred to as 'sunset reviews' at the ITA and 'five-year reviews' at the ITC. During these reviews, at the request of interested parties, the ITA determines whether the continued imposition of the duties is necessary to offset the dumping or subsidies, and the ITC determines whether the injury would be likely to continue or recur if the duty were removed or varied, or both. If either determination is negative, the order is terminated.

9 What are the practical strategies for complying with an anti-dumping/countervailing/safeguard duty or quota?

Parties may have the opportunity to have their AD or CVD rates lowered during yearly administrative reviews. Each year, the ITA reviews as many mandatory respondents as it deems its resources will allow – usually two respondents. Thus, a party wishing to reduce its AD or CVD margin will only be selected for individual review if it is one of the largest producers or exporters to apply. Other companies that request reviews (but are not selected) generally receive the weighted-average margin of the selected respondents.

If a party has applied for review and is selected as a respondent, strategies for obtaining a lower AD rate are primarily based on having increased the US price, lowered the normal value, or identified and eliminated sales and practices that tend to increase margins (eg, sample sales, sales of second quality product). For CVD cases, the respondent would have to eliminate the use of subsidies found to be countervailable.

Customs duties

10 Where are normal customs duty rates for your jurisdiction listed? Is there an exemption for low-value shipments? If so, at what level? Is there a binding tariff information system or similar in place? Are there prior notification requirements for imports?

Tariff duty rates are listed in the Harmonized Tariff Schedule of the United States (HTSUS) and can be found at www.usitc.gov/tata/hts/index.htm. The HTSUS lists the applied duty rates for countries with most-favoured nation (MFN) status, the non-MFN rates and special rates applied to countries with which the US has entered into FTAs or to which it provides unilateral trade preferences under the GSP or other programmes. Eligible shipments made to one person on one day with a value of under $800 are generally exempt from duties. Alcohol, cigarettes and tobacco and goods subject to Partner Government Agency requirements (Food and Drug Administration, Environmental Protection Agency etc) are not eligible for this exemption.

Pursuant to 19 CFR Part 177, an importer can request a binding ruling from the CBP's Office of Regulations and Rulings. The request can cover classification and other issues such as customs valuation and right to make entry. The rulings are binding on the CBP with respect to the specific goods and transactions described in the ruling request. These rulings also provide guidance to the importing public. Published rulings are available at rulings.cbp.gov. Ruling requests can be submitted electronically at apps.cbp.gov/erulings/.

For cargo security reasons, importers are required to provide prior notification to the CBP of goods imported by ocean vessel. These security-related prior notifications are known as the 'Importer Security Filing' (ISF). The Food and Drug Administration (FDA) requires prior notification for food imports. Rules for prior notice can be found at www.fda.gov/Food/GuidanceRegulation/ImportsExports/Importing/ucm2006837.htm. The notification requirements allow the FDA to manage risk associated with imported food.

Steel products must also be licensed prior to importation. The Steel Import Monitoring and Analysis system requires licences for imports of steel mill products. Rules for the steel importation licensing requirements can be found at hq-web03.ita.doc.gov/Steel/SteelLogin.nsf.

11 Where are special tariff rates, such as under free trade agreements or preferential tariffs, and countries that are given preference listed?

All tariff rates are set forth in the HTSUS at the website listed above. The FTA and preferential tariff eligible countries are identified in the General Notes to the HTSUS.

12 How can GSP treatment for a product be obtained or removed?

Importers can request GSP treatment at the time of importation by claiming GSP on the entry documents submitted to the CBP.

The US has a system for requesting modifications to the GSP list. The instructions can be found at ustr.gov/issue-areas/trade-development/preference-programs/generalized-system-preference-gsp.

The USTR chairs an inter-agency group that governs the GSP programme. The GSP Committee conducts an annual review to consider changes to the lists of products and countries that are eligible for GSP treatment. Interested parties can submit petitions for the removal of products or countries. Products generally automatically lose eligibility if a country becomes proficient in the production and export of that product as evidenced by import values exceeding a threshold established by USTR. However, countries can submit petitions requesting a waiver of the GSP eligibility requirement.

13 Is there a duty suspension regime in place? How can duty suspension be obtained?

Historically, Congress has passed a Miscellaneous Tariff Bill that included non-controversial duty suspensions (generally for goods not produced in the US). In accordance with the American Manufacturing and Competitiveness Act of 2016, the US has adopted a more formal duty suspension process. Entities seeking duty suspension must now submit a request to the ITC, which will review the requests and make recommendations to Congress. Under these new procedures, duty suspension requests must demonstrate that the potential loss of revenue to the US will be less than $500,000 in a calendar year.

14 Where can customs decisions be challenged in your jurisdiction? What are the procedures?

Once an entry is liquidated by the CBP, the first step is filing a protest with the CBP port following the procedures provided in 19 CFR 174.12. The protest must be filed within 180 days of liquidation of an entry. If this fails, then the decision can be appealed to the US Court of International Trade, and that decision can be appealed to the US Court of Appeals for the Federal Circuit.

Trade barriers

15 What government office handles complaints from domestic exporters against foreign trade barriers at the WTO or under other agreements?

Generally, complaints related to foreign trade barriers are taken to the USTR. However, depending on the issue, other agencies may be involved. For example, if the dispute includes an agricultural product, then the US Department of Agriculture will be involved. However, the USTR always has the lead on WTO disputes.

16 What is the procedure for filing a complaint against a foreign trade barrier?

Generally, complaints against foreign trade barriers are handled informally with the USTR and other agencies as appropriate. However, in

Update and trends

The Trump Administration has prioritised the reduction of US trade deficits and has expressed a strong preference for bilateral negotiations over multilateral approaches. The Trump Administration has consistently raised concerns regarding what it identifies as a lack of reciprocity between the US approach to imports (eg, lack of a VAT at the border) and those of certain trading partners. The WTO MFN obligations and US bound tariff rates are seen as restricting the negotiating power of the US.

In an effort to gain leverage in trade negotiations, the US has looked to domestic legislation, such as section 301 and section 232, as a legal mechanism (under US law) to impose tariffs on trading partners. As of July 2018, the US has announced that it could impose section 301 duties on over $200 billion in imports from China.

The US is expected to continue to focus on renegotiating NAFTA, challenging tariff and non-tariff barriers in other countries, and seeking to obtain modifications in Chinese actions regarding technology transfer, overcapacity in steel and aluminium, and state-owned enterprises.

2007, the administration created the Interagency Trade Enforcement Center (ITEC). ITEC is an USTR-led body with 22 trade analysts with expertise in a wide range of areas needed for successful enforcement. This is the group tasked with investigating cases and working with domestic industries in collecting data to support possible cases.

However, there is a formal process under which petitions can be filed under section 301 of the Trade Act of 1974, which provides the authority and procedures to commence dispute settlement proceedings and if necessary impose trade sanctions. Any party may file a petition requesting that the USTR initiate an investigation of an act, policy or practice that violates a trade agreement or is unjustifiable and burdens and restricts US commerce. The USTR has 45 days in which to decide whether to initiate an investigation.

17 What will the authority consider when deciding whether to begin an investigation?

First, the legal merits of the case will be considered. If the USTR does not consider the foreign action to be a violation, the case will not be brought. Moreover, the weaker the case, the less likely it is that it will be brought. Assuming that the legal merits are strong, the USTR will consider the US economic interest in the case. For example, is a trade barrier having a significant impact on US exports? The greater the volume of exports impacted, the greater the chance that the case will be brought. Finally, the political relations with the target country will be taken into consideration.

18 What measures outside the WTO may the authority unilaterally take against a foreign trade barrier?

Section 301 provides for unilateral action, but only when the alleged violation is not covered by the WTO Agreements, NAFTA or certain other FTAs. If the alleged violation is not covered by a trade agreement and the action is deemed to be 'unjustifiable, unreasonable, or discriminatory, and burdens and restricts US commerce' then the USTR is authorised to take unilateral action to remedy the trade barrier.

Section 232 also authorises the President to impose tariffs or quotas to address imports that negatively impact the national security of the US. For the purposes of section 232, the economic security of the US is considered part of its national security.

19 What support does the government expect from the private sector to bring a WTO case?

Formally none. The USTR has a group of lawyers and professionals that will prepare the written statements, conduct negotiations and participate in hearings. However, the resources of the USTR are very thin and if an industry wants to increase the chances of having a case brought and winning the case, it will offer legal and other support for the case. This support could, and often does, include collecting data, drafting portions of the written submission, conducting research and providing technical support. This support is paid for by the private parties and not the USTR.

20 What notable trade barriers other than retaliatory measures does your country impose on imports?

If asked, the US government generally and the USTR in particular would say none. However, in fact there are a number of explicit trade restrictions. For national security reasons, trade with certain countries – including North Korea, Cuba, Iran and Syria – is restricted or largely prohibited. Under the guise of its export control laws, the US has also restricted certain commercial dealings with certain Russian entities.

Outside of the national security area, restrictions are in place for phytosanitary reasons. For example, the US maintains restrictions on poultry imports from various countries due to health concerns. Additionally, importation of endangered species and items from endangered species are restricted under the Convention on International Trade in Endangered Species of Wild Fauna and Flora regime. The US also maintains quotas on such products as sugar, peanuts, peanut butter and cheese. A list of the commodities subject to quotas can be found at www.cbp.gov/trade/quota/guide-import-goods/commodities.

Export controls

21 What general controls are imposed on exports?

Export controls serve multiple purposes, such as guarding national security, protecting the economy and supporting national foreign policy. As a result, different government agencies have different rules and lists specifying who or what is considered export-sensitive and where export controls apply. Most US exports, however, take place under expressly defined exceptions or waivers and do not require a specific export licence or other special authorisation. Export licences are only required in certain situations involving national security, foreign policy and terrorist concerns. Additionally, certain places, as well as denied persons and organisations, are subject to additional restrictions.

22 Which authorities handle the controls?

The US Department of Commerce – Bureau of Industry and Security (BIS) (www.bis.doc.gov) is responsible for implementing and enforcing the Export Administration Regulations (EAR), which regulate the export and re-export of most commercial items. The government often refers to the items and products that the BIS regulates as dual-use – items that have both commercial and military or proliferation applications – but purely commercial items without an obvious military use are also subject to the EAR.

The US Department of State, Directorate of Defence Trade Controls (www.pmddtc.state.gov) has authority over defence articles and defence services, under the International Traffic in Arms Regulations (ITAR).

The US Treasury, Office of Foreign Assets Control (OFAC) (www.treasury.gov), prohibits or restricts trade with a list of countries and an ever-growing directory of individuals and companies.

The Department of Energy's US Nuclear Regulatory Commission (www.nrc.gov) controls the export and re-export of nuclear materials, nuclear technology and technical data for nuclear power.

23 Are separate controls imposed on specific products? Is a licence required to export such products?

The US Department of State controls the export of 'defense articles and defense services' under the ITAR. Items in this category to be export-controlled are placed on the US Munitions List, which is maintained by the Department of State in conjunction with the US Department of Defense. This list includes such obvious things as firearms, ammunition and explosives, but also military vehicles (land, air and sea); spacecraft (including non-military); military and space electronics; protective personnel equipment; guidance and control equipment; and components, auxiliary equipment and miscellaneous articles related to military equipment. Export of any item or technology on the US Munitions List requires specific authorisation from the Department of State. For practical purposes, the ITAR regulations dictate that information and material pertaining to defence and military-related technologies may only be shared with US persons if approval from the US Department of Defense is received or special exemption is used.

Dual-use items are regulated under the EAR, based on the Commerce Control List maintained by the BIS. The export control provisions of the EAR are intended to serve the national security, foreign policy, non-proliferation and short-supply interests of the US and, in

some cases, to carry out its international obligations. Some controls are designed to restrict access to dual-use items by countries or persons that might apply such items to uses inimical to US interests. The EAR also include some export controls to protect the US from the adverse impact of unrestricted export of commodities in short supply.

The Department of Energy's US Nuclear Regulatory Commission controls the export and re-export of nuclear materials, nuclear technology and technical data for nuclear power.

24 Has your jurisdiction implemented the WCO's SAFE Framework of Standards? Does it have an AEO programme or similar?

The CBP has taken a lead role in the development of international standards in customs security, including the adoption of the World Customs Organization's SAFE Framework. In this leadership role, the CBP has developed the US Customs–Trade Partnership Against Terrorism (C-TPAT), a voluntary government-business initiative to build cooperative relationships that strengthen international supply chain and US border security. The C-TPAT engages with industry by providing certifications to companies that voluntarily agree to adopt and integrate the programme's security guidelines into their supply chains. The programme is open to all parties participating in the movement of international goods, including carriers for ocean, air, rail and road; and importers, foreign manufacturers, brokers, consolidators, ocean transportation intermediaries, port authorities and terminal operators (see www.cbp.gov/xp/cgov/trade/cargo_security/ctpat/).

The Container Security Initiative (CSI) is a programme through which the US CBP negotiates bilateral cargo security agreements with the governments of US trading partners to establish procedures for screening and inspecting high-risk maritime cargo containers before they are loaded aboard vessels bound for the US. The CSI is now operational at 58 ports in North America, Europe, Asia, Africa, the Middle East, and Latin and Central America (see www.cbp.gov/border-security/ports-entry/cargo-security/csi/csi-brief).

25 Where is information on countries subject to export controls listed?

In the Commerce Country Chart, the EAR maintain lists of every country subject to export controls and the reasons for the listing (see www.bis.doc.gov/index.php/regulations/export-administration-regulations-ear).

The ITAR includes a list of 'proscribed countries' that are subject to US arms embargoes. The State Department maintains a general policy of denying licence applications for exports of ITAR-controlled items to the proscribed countries. The list of ITAR-proscribed countries, which is available at www.pmddtc.state.gov/embargoed_countries/, is significantly broader than the list of countries subject to US economic sanctions (see question 29).

OFAC administers and enforces economic and trade sanctions against targeted countries for particular foreign policy and national security reasons. The list is subject to change at any time. A current list of OFAC sanctions programs and additional guidance regarding prohibited transactions is available at www.ustreas.gov/ofac.

26 Does your jurisdiction have a scheme restricting or banning exports to named persons and institutions abroad?

The US government provides a downloadable file that consolidates the export screening lists of the Departments of Commerce, State and the Treasury into one spreadsheet as an aid to industry in conducting electronic screens of potential parties to regulated transactions at export.gov/ecr/eg_main_023148.asp.

27 What are the possible penalties for violation of export controls?

International Traffic in-Arms Regulations (ITAR)

- up to $1 million per violation or imprisonment of up to 20 years, or both pursuant to 22 USC 2778(c).

Export Administration Regulations

Export Administration Act of 1979

- criminal: up to $1 million per violation or imprisonment of up to 20 years, or both; and
- administrative: up to $11,000 per violation or $120,000 per violation for items involving national security.

International Emergency Economic Powers Enhancement Act

- criminal: up to $100,000 per violation or imprisonment of up to 20 years, or both; and
- administrative: up to the greater of $250,000 per violation or twice the amount of the transaction.

Office of Foreign Assets Control

Trading with the Enemy Act of 1917, 50 USCS section 5

- criminal (wilful violation): up to $1 million per violation, and up to $100,000 in individual fines, per violation or imprisonment of up to 10 years, or both;
- criminal (knowing violation): up to $100,000 or up to 10 years in prison, or both, per violation; and
- civil: up to of $65,000 per violation.

International Emergency Economic Powers Act, 20 USCS section 1701

- criminal: up to $1 million per violation or imprisonment of up to 20 years, or both; and
- civil: up to $250,000 per violation or twice the amount of the transaction that is the basis of the violation, whichever is the greater.

Financial and other sanctions and trade embargoes

28 What government offices impose sanctions and embargoes?

Economic sanctions are administered by OFAC (www.treasury.gov/about/organizational-structure/offices/Pages/Office-of-Foreign-Assets-Control.aspx).

CLK

CASSIDY LEVY KENT

Yohai Baisburd **ybaisburd@cassidylevy.com**

900 19th Street NW
Suite 400
Washington, DC 20006
United States

Tel: +1 202 567 2300
Fax: +1 202 567 2301
www.cassidylevy.com

29 What countries are currently the subject of sanctions or embargoes by your country?

A list of the current OFAC sanctions list is included at www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx. Comprehensive sanctions are imposed on North Korea, Syria, Iran, Sudan and Cuba. Other sanctions are maintained against Belarus, the Central African Republic, Myanmar and Russia. This list is revised frequently.

30 Are individuals or specific companies subject to financial sanctions?

Yes, OFAC maintains a list of specially designated persons, which can be found at www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx.

Miscellaneous

31 Describe any trade remedy measures, import or export controls not covered above that are particular to your jurisdiction.

The US has a range of import measures intended to protect the environment and wildlife that have extraterritorial reach. These laws include the Marine Mammal Protection Act, which bans the importation of marine mammals and marine mammal products. It also prohibits the importation of tuna that is not caught in nets that protect dolphins. A similar law is in effect to protect sea turtles. Similarly, the High Seas Driftnet Fisheries Enforcement Act imposes sanctions on countries that allow driftnets to be used in the high seas. The Lacy Act makes it illegal to engage in the trade of fish, wildlife or plants taken in violation of US law.

Intellectual property rights and unfair trade practices are also enforced with the use of the trade laws. Under section 337 of the Tariff Act of 1930, it is unlawful to engage in unfair methods of competition and unfair acts if the effect is to injure or threaten to injure an industry in the US. Under section 337, it is also unlawful to import goods that infringe a valid patent, copyright or design.

Getting the Deal Through

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Agribusiness
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Anti-Corruption Regulation
Anti-Money Laundering
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Arbitration
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Automotive
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Aviation Liability
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Private Antitrust Litigation
Private Banking & Wealth Management
Private Client
Private Equity
Private M&A
Product Liability
Product Recall
Project Finance
Public M&A
Public-Private Partnerships
Public Procurement
Real Estate
Real Estate M&A
Renewable Energy
Restructuring & Insolvency
Right of Publicity
Risk & Compliance Management
Securities Finance
Securities Litigation
Shareholder Activism & Engagement
Ship Finance
Shipbuilding
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