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EIGHTH EDITION

Editors
Folkert Graafsma and Joris Cornelis

THE LAWREVIEWS

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PREFACE

I LIVING IN A POST-PANDEMIC TRADE WORLD

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

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

1 United Nations News, 'Ukraine conflict putting global trade recovery at risk: WTO' (2022), available at <https://news.un.org/en/story/2022/04/1116052>, last accessed on 13 June 2022. While a 'grain corridor' deal has been recently reached, the security and robustness of this corridor is not guaranteed. See: BBC, 'Food crisis: Ukraine grain export deal reached with Russia, says Turkey' (22 July 2022), available at: https://www.bbc.com/news/world-europe-62254597 (last accessed 2 August 2022).

2 In fact, in trying to avert the worst, India banned exports of wheat, Turkey banned the exports of beans, lentils and seed and olive oil, Serbia banned exports of vegetables oil, maize and wheat, Indonesia banned exports of Cooking oil and its raw materials – to name a few.

3 Regulation (EU) 2022/870 of the European Parliament and of the Council of 30 May 2022 on temporary trade-liberalisation measures supplementing trade concessions applicable to Ukrainian products under the Association Agreement between the European Union and the European Atomic Energy Community and their Member States, of the one part, and Ukraine, of the other part [2022] OJ L152/103.

4 The reason for Russia's growing export surplus is that Western sanctions imports are working either directly (i.e., by cutting Russia's imports) or indirectly (i.e., by causing capital flight). According to Mark Harrison, history teaches that, in wartime, export surplus is an indicator of a weaker, not stronger,

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

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

II REBUILDING TRUST AT THE WTO

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

i Covid-19 vaccines

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

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

5 World Trade Organization, 'The crisis in Ukraine: implications of the war for global trade and development' (2022), available at <www.wto.org/english/res_e/booksp_e/imparctukraine422_e.pdf>, last accessed on 13 June 2022.

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

7 Director General Ngozi Okonjo-Iweala, 12MC Closing Speech, available at <www.wto.org/english/news_e/spno_e/spno27_e.htm>, last accessed on 17 June 2022.

8 Deputy Director-General Anabel Gonzalez, speech of 29 October 2021, transcript available at <www.wto.org/english/news_e/news21_e/ddgag_29oct21_e.htm>, last accessed on 14 July 2022.

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

ii Food security and agriculture

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

iii Fisheries

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

10 WTO, Draft Ministerial Declaration on the Emergency Response to Food Insecurity of 16 June 2022, WT/MIN(22)/W/17/Rev.1, available at <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/MIN22/W17R1.pdf&Open=True>, last accessed on 17 June 2022; and WTO, Draft Ministerial Declaration on World Food Programme Food Purchases Exemption from Export Prohibitions of Restrictions of 10 June 2022, WT/MIN(22)/W/18, available at <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/MIN22/W18.pdf&Open=True>, last accessed on 17 June 2022.

11 The debate around India's demand to seek a permanent exemption on public stockholdings of food grains from the WTO subsidy rules meant that no consensus could be reached on reforming the agricultural trade policy.

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

13 Statement by Philip Chou, senior director of global policy with the Washington-based conservation group Oceana. Reported by Paul Withers in 'WTO agreement to curb fishing subsidies is "meagre," says expert Social Sharing' (17 June 2022), available at <www.cbc.ca/news/canada/nova-scotia/wto-agreement-curb-subsidies-prevent-overfishing-1.6492624>, last accessed on 17 June 2022.

14 Director General Ngozi Okonjo-Iweala, 12MC Closing Speech, available at <www.wto.org/english/news_e/spno_e/spno27_e.htm>, last accessed on 17 June 2022.

15 Amar Breckenridge, 'Miraculous catch or struggling to stay afloat? Early thoughts on the WTO's 12th Ministerial Conference' (17 June 2022), available at <www.trade-knowledge.net/commentary/

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

iv E-commerce

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

v WTO reform

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

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miraculous-catch-or-struggling-to-staying-afloat-early-thoughts-on-the-wtos-12th-ministerial-conference/?utm_source=rss&utm_medium=rss&utm_campaign=miraculous-catch-or-struggling-to-staying-afloat-early-thoughts-on-the-wtos-12th-ministerial-conference>, last accessed on 18 June 2022.

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

17 Comments made during the webinar: SIEL Conversations: The Outcomes of MC12 and the Future of the Multilateral Trading System, held on 27 June 2022, accessible at https://www.youtube.com/watch?v=hI9i7onD34k; participants included Anabel González, Bernard Hoekman, Victor do Prado, Peter Ungphakorn and Iryna Polovets.

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

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

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

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

III NEW TRENDS IN THE OLD CONTINENT

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

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

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

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

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

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

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

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

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

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25 At the time of writing, this marks the fourth time the UK government has delayed the implementation of sanitary and phytosanitary checks on EU imports.

26 BBC News, 'EU set to take legal action against UK over post-Brexit deal changes' (15 June 2022), available at <www.bbc.com/news/uk-politics-61795553>, last accessed on 18 June 2022.

27 AD0012: Aluminium Extrusions from China; AD0020: Ironing Boards from Turkey; AD0021: Optical Fibres from China; and AS0022: Optical Fibres from China. For updates, see: UK TRA, 'Investigations currently in progress', available at <www.trade-remedies.service.gov.uk/public/cases/>, last accessed on 15 June 2022

28 See: Commission Implementing Regulation (EU) 2022/72 of 18 January 2022 imposing definitive countervailing duties on imports of optical fibre cables originating in the People's Republic of China and amending Implementing Regulation (EU) 2021/2011 imposing a definitive anti-dumping duty on imports of optical fibre cables originating in the People's Republic of China [2022] OJ L12/34.

29 Emilio Casalicchio, 'Meet the Trade Remedies Authority, the UK watchdog in a political storm' (9 June 2022), available at <www.politico.eu/author/emilio-casalicchio/>, last accessed on 18 June 2022.

30 UK Department for International Trade, 'UK-India Free Trade Agreement: the UK's strategy', available at <https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1046839/uk-india-free-trade-agreement-the-uks-strategic-approach.pdf>, last accessed on 13 June 2022.

31 See: Dharshini David, 'Whisky and visas could be part of a UK-India trade deal' (22 April 2022), available at <www.bbc.com/news/business-61180390>, last accessed on 15 June 2022, who writes: 'No other nation

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

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

i Draft regulation on foreign subsidies

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

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

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

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

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

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

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

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

ii Revised enforcement regulation

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

iii Anti-coercion instrument

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

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

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

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

iv Carbon border adjustment mechanism

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

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

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

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

41 Frederik Erixon, Oscar Guinea, Vanika Sharma and Renata Zilli Montero, 'The new wave of defensive trade policy measures in the European Union: design, structure and trade effects' (2022), p. 50, available at <https://ecipe.org/publications/new-wave-of-defensive-trade-policy-measures-in-eu?mc_cid=f536ecdc53&mc_eid=eae92434a4>, last accessed on 14 June 2022.

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

v Continued bilateral dispute settlement activity

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

IV IS THE UNITED STATES CHANGING ITS ATTITUDE TOO?

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

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

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

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

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

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

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

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

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

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

V AND WHAT ABOUT CHINA?

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

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

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

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

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

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

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

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

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

VI AFRICA: A NEW BIG TRADE PLAYER ON THE HORIZON

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

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

54 WTO, Draft Ministerial Decision on the TRIPS Agreement of 17 June 2022, WT/MIN(22)/W/15/Rev.2, available at https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/MIN22/W15R2.pdf&Open=True, last accessed on 17 June 2022.

55 For example, by interpreting the WTO rules in 'creative' ways so as to target Chinese State-owned enterprises, as explained by Simon J. Evenett, Juhi Dion Sud and Edwin Vermulst in 'The European Union's New Move Against China: Countervailing Chinese Outward Foreign Direct Investment' (2020), 15(9) KLI BV 413.

56 Henry Gao, 'China's Changing Perspective on the WTO: From Aspiration, Assimilation to Alienation' (8 November 2021), available at <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3958510#:~:text=The%20paper%20argues%20that%20the,the%20core%20values%20of%20WTO>, last accessed on 18 June 2022.

57 As of June 2022, only 43 of the 54 signatories have ratified the AfCFTA and deposited their instruments of ratification of the Agreement with the AfCFTA Secretariat.

58 Webber Wentzel in alliance with Linklaters, 'AfCFTA Insights Series' (2020), p. 6, available at <www.webberwentzel.com/News/Documents/2021/africa-legal-webber-wentzel-2020-review.pdf>, last accessed on 13 June 2022.

59 UN Economic Commission for Africa (UNECA), 'The AfCFTA Country Business Index (ACBI) Report' (2022), available at <https://repository.uneca.org/bitstream/handle/10855/47595/b12003657.pdf?sequence=1&isAllowed=y>, last accessed on 13 June 2022.

60 The World Bank, 'The African Continental Free Trade Area' (2020), available at <www.worldbank.org/en/topic/trade/publication/the-african-continental-free-trade-area>, last accessed on 13 June 2022.

61 Virusha Subban, 'China's trade ties with Africa continue to strengthen' (2022), Namibia Economist, available at <https://economist.com.na/70954/special-focus/chinas-trade-ties-with-africa-continue-to-strengthen/>, last accessed on 18 June 2022.

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

VII LAST BUT NOT LEAST: TRADE REMEDIES

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

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

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

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

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

64 Or some would say: copied from the US.

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

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

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

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

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

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

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

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

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

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

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

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

VIII SUMMARY

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

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

Folkert Graafsma and Joris Cornelis
VVGB Advocaten | Avocats
Brussels, August 2022

Chapter 12

MALAYSIA

Lim Koon Huan and Manshan Singh[1]

I OVERVIEW OF TRADE REMEDIES

Trade remedies have historically been a relatively underused and underdeveloped area of trade law in Malaysia.

Malaysia achieved its independence on 31 August 1957 and by 24 October 1957 was already a signatory to the General Agreement on Tariffs and Trade (GATT).

In response to Article VI of GATT, by virtue of the Customs (Dumping and Subsidies) Ordinance 1959 – which was largely modelled on the United Kingdom's Customs Duties (Dumping and Subsidies) Act 1957 – a law to prevent dumping was introduced in Malaysia for the first time.

However, this Ordinance was never implemented as there were issues with its enforceability.[2] First, this was attributed to the fact that there was no specific provision on the causal link between dumping and injury brought upon the domestic industry.[3] This was contrary to Article VI of GATT, in which causality was a condition. Second, the Ministry of Finance was the relevant authority to determine and collect anti-dumping duties under the Ordinance.[4] Owing to the complex procedures, the Ministry was not well equipped to administer the law on anti-dumping.

Simultaneously, the Kennedy Round (1964–1967), followed by the Tokyo Round (1973–1979) and subsequently the Uruguay Round (1986–1994) brought significant changes to laws on anti-dumping under GATT. These changes, and the fact that Malaysia created its anti-dumping law very early on, left regulators in the lurch as the Ordinance was rapidly losing its relevance and was not up to the standards of the time.

The government instead preferred the approach of imposing import duties across the board.[5] However, this was an inefficient technique – one that led to some unintended consequences. First, it went against the policy of the government at the time, which was to reduce protectionist measures to create a competitive domestic industry.[6] Second, it led to inflation.[7]

Therefore, in light of Malaysia's commitment under GATT, and its new-found commitment as a member of the Association of Southeast Asian Nations (ASEAN) under the

1 Lim Koon Huan is a partner and Manshan Singh is a senior associate at Skrine.

2 Malaysian Parliament Hansard Report dated 20 May 1993 at page 3,370.

3 id.

4 id., at page 3,372.

5 id. at page 3,370.

6 id.

7 id.

ASEAN Free Trade Area, the Countervailing and Anti-Dumping Duties Act 1993 (CADDA) was enacted to address the pitfalls of the previous Ordinance. One of the primary changes under CADDA was that a specialist division under the Ministry of International Trade and Industry (MITI) was tasked to administer Malaysia's anti-dumping law.

Again, however, as CADDA was implemented before the conclusion of the Uruguay Round, substantial changes had to be made to bring the law into compliance with the Agreement on Implementation of Article VI. Thus, by virtue of the Countervailing and Anti-Dumping Duties (Amendment) Act 1998, CADDA underwent some substantial changes, primarily with regard to definitions, basic principles and investigative procedures, to reach its current form.

With regard to safeguarding measures, Malaysia enacted the Safeguards Act 2006 (SA) to fulfil its obligations as a World Trade Organization (WTO) Member. The SA is in direct conformity with the WTO Agreement on Safeguards.

As detailed above, Malaysia suffered several setbacks in implementing its laws on trade remedies, which is why trade remedies were an underused and underdeveloped area of trade law in Malaysia. This was propounded by the fact that most industries in Malaysia were undergoing a developmental phase, as is the case with most developing nations, and as such did not have sufficient initiative to seek such remedies.

Nevertheless, the tide turned rapidly as the speed of economic development brought with it an appetite for local industries to seek trade remedies, as evidenced by the increase in number of initiated investigations in recent years.

As it stands, CADDA and the SA, both of which are administered by MITI, are the relevant legislation that provide for trade remedies in Malaysia. They are both also in line with WTO standards and obligations.

II LEGAL FRAMEWORK

i Anti-dumping measures

CADDA is the primary law that provides for trade remedies in Malaysia. It is also the most widely used. Approximately 70 anti-dumping investigations have been initiated[8] in the past 20 years. Although this is a small number in comparison with other jurisdictions, there has been an increase in investigations in recent years, with more than 30 initiations between 2011 and 2018 alone.

CADDA provides for the investigation, the determination of dumping and the imposition of anti-dumping duties. 'Dumping' is defined as the importation of merchandise into Malaysia at less than its normal value as sold in the domestic market of the exporting country.[9]

Under CADDA, 'normal value' means the comparable price actually paid or payable in the ordinary course of trade for the like product sold for consumption in the domestic market of the exporting country.[10] CADDA defines 'exporting country' to mean the country of export of the subject merchandise. In instances where the subject merchandise is not exported

8 Anti-dumping Initiations: By Reporting Member 01/01/1995 – 31/12/2014 provided by the WTO.

9 Countervailing and Anti-Dumping Duties Act 1993 [CADDA], Section 2(1).

10 id., at Section 16(1).

directly to Malaysia but trans-shipped through an intermediate country, the intermediate country would be considered to be the exporting country if the subject merchandise is substantially transformed in that country.[11]

In the event that there are no sales in the domestic market of the exporting country or when sales do not permit a proper comparison, the normal value can be determined by two methods. The first is by comparing the comparable price of the like product when exported to an appropriate third country.[12] In the event that there are reasonable grounds for believing or suspecting that a sale of the like product is at a price below unit production costs in the exporting country, the sale may be treated as not having been made in the ordinary course of trade by reason of price and may be disregarded in determining normal value.[13]

The second method of determining normal value is by constructing the value of the subject merchandise by adding the cost of production to a reasonable amount for selling, administrative and other general expenses and for profits.[14] The amount for selling, administrative and other general expenses and profits shall be based on actual information pertaining to production and sales in the ordinary course of trade.[15]

CADDA defines 'export price' to mean the price actually paid or payable for the subject merchandise.[16] If there is no export price, or if the exporter and importer or a third party are related, or there is a compensatory arrangement between the exporter and the importer or a third party, the export price may be constructed on the basis of the price at which the subject merchandise is first resold to an independent buyer or, if it is not resold, on any reasonable basis.[17]

With regard to comparison of normal value and export price, CADDA provides for a fair comparison to be made. The comparison shall be made at the same level of trade and, in respect of sales made, as close as possible to the same time. Other differences that affect price comparability shall be given due consideration.[18] If the subject merchandise is not imported directly from the country of origin but is exported from an intermediate country, the price at which the subject merchandise is sold from the exporting country to Malaysia shall be compared.[19]

CADDA defines 'injury' to mean material injury or threat of material injury to the domestic industry, or material retardation of the establishment of such an industry.[20] A determination of injury for the purpose of an anti-dumping duty investigation shall involve an objective examination of both the volume of imports of the subject merchandise and the effect of the subject merchandise on prices in the domestic market for like products and the consequential impact of the imports on the domestic producers.[21]

11 id., at Section 2(1).
12 id., at Section 16(2)(a).
13 id., at Section 16(3).
14 id., at Section 16(2)(b).
15 id., at Section 16(5).
16 id., at Section 17(1).
17 id., at Section 17(2).
18 id., at Section 18(2).
19 id., at Section 18(5).
20 id., at Section 2(1).
21 id., at Section 22a(1).

Last, it must be demonstrated that the subject merchandise, through the effects of dumping, is causing injury to the domestic industry.[22] In doing so, an examination must take place, based on all relevant evidence available and any other known factors that show the subject merchandise may be causing injury to the domestic industry.[23]

With regard to procedure, an anti-dumping investigation can be initiated through the filing of a petition containing sufficient evidence of dumping and injury, with a causal link between the imports of the subject merchandise and injury, made to the government by or on behalf of the domestic industry.[24] In addition, the government can, in special circumstances, initiate an anti-dumping investigation of its own volition.[25]

Upon receiving the petition, the government of the exporting country targeted in the petition[26] will be notified. Then, an investigation will be conducted to ascertain whether there is sufficient evidence to justify an investigation, whether there is a sufficient degree of support or if the investigation is in the public interest.[27] Upon doing so, the government can reject the petition. If the petition is rejected, the petitioner will be notified.[28]

If the government decides to initiate an investigation, the appropriate interested parties[29] will be notified and a notice of initiation will be published.[30] Parties can then choose to make their views known and the relevant parties can respond to the government's questionnaire, which is a means of gathering information to make a decision as set out in the Countervailing and Anti-Dumping Duties Regulation 1994 (CADDR).[31]

Thereafter, within 120 days of the date of publication of the notice of initiation of investigation, which may be extended by an additional 30 days, the government will make a preliminary determination.[32] The preliminary determination can be in the form of either a negative preliminary determination or an affirmative preliminary determination. If a negative preliminary determination is made and it is satisfied that all necessary elements for the imposition of anti-dumping duties are not found, then the investigation will cease.[33]

In the event of an affirmative preliminary determination, provisional safeguarding measures may be imposed. A final determination shall then be made within 120 days of the date of publication of the notice of the affirmative preliminary determination.[34] The final

22 id., at Section 22a(2).

23 id., at Section 22a, Paragraphs (3) and (4).

24 id., at Section 20, Paragraphs (1) and (2).

25 id., at Section 20(7).

26 id., at Section 20(3).

27 id., at Section 20(4).

28 id., at Section 20(6).

29 Section 2(1) of CADDA defines an 'interested party' to mean a producer, exporter or importer of the subject merchandise; a trade or business association a majority of whose members are producers, exporters or importers of the subject merchandise; the government of a country in which the subject merchandise is produced or from which it is exported; a producer of the like product in Malaysia; a trade or business association a majority of whose members produce a like product in Malaysia; or any other party considered appropriate by the government.

30 Section 20(8) of CADDA.

31 Countervailing and Anti-Dumping Duties Regulation 1994 [CADDR], Regulations 8 and 9.

32 id., at Regulation 9.

33 id., at Regulation 11.

34 id., at Regulation 15(1).

determination will be required to state, inter alia, the names of the exporters and producers of the subject merchandise, a description of the subject merchandise, factors that led to injury and any other reasons.[35]

Finally, it is important to note that CADDA provides for a judicial review mechanism for any party who is not satisfied with, or who is aggrieved by, the decision in the government's final determination.[36]

ii Subsidies and countervailing measures

Like anti-dumping measures, countervailing measures are provided for in CADDA. However, in contrast to anti-dumping, there has been very minimal activity in this area. To date, there have been no countervailing investigations initiated by Malaysia to report to the WTO.[37]

An actionable subsidy that causes adverse effects to the domestic interest, such as causing injury to the domestic industry, shall be subject to countervailing measures.[38]

Much like an anti-dumping investigation, an initiation of investigation of countervailing duties can be made on behalf of the domestic industry[39] or by the government in special circumstances.[40] One of the distinguishing factors in the procedure under CADDA between investigations for countervailing measures and for anti-dumping measures is that, for countervailing measures, there is a requirement to have a consultation with the interested foreign governments with the prospect of arriving at a mutually agreed solution.[41]

If a mutually agreed solution is not reached, injury and causal link would have to be established before an affirmative decision can be made. The procedural requirements for countervailing measures resemble those for anti-dumping as both these trade remedies are regulated under the same statutory regime under CADDA and CADDR.

iii Safeguard measures

The SA came into force on 22 November 2007. Despite receiving a lukewarm response in the beginning, with the first petition not submitted to the government until nearly four years later, on 1 April 2011, since then Malaysia has seen two other safeguard investigations and two further petitions in 2016, and another investigation in 2020, bringing the total to six.

From a legislative perspective, the SA is a reflection of the WTO's Agreement on Safeguards. A petition can be initiated either by the domestic industry or by the government at its own initiative.[42] To fulfil the requirements for a safeguard measure, a surge in imports must be established. Then it must be shown that the imports caused serious injury[43] or carry the threat of serious injury to the domestic industry.[44]

35 id., at Regulation 15(2).
36 CADDA, Section 34a(1).
37 Countervailing Initiations: By Reporting Member 01/01/1995 – 31/12/2014 provided by the WTO.
38 CADDA, Section 2c.
39 id., at Section 4(1).
40 id., at Section 4(6).
41 id., at Section 5(1).
42 Safeguards Act 2006 [SA], Section 10.
43 id., at Section 8(1).
44 id., at Section 9(1).

If factors other than increased imports of the product under investigation are at the same time causing or threatening to cause injury to the domestic industry, that injury shall not be attributed to the increased imports.[45]

When the government has determined that there is sufficient evidence of serious injury, or threat of serious injury, an investigation will be initiated.[46] This is effected by the publication of a notice of initiation.[47] Interested parties, such as foreign exporters and producers of the product under investigation, importers of the product under investigation, governments of exporting countries, domestic producers and relevant trade and business associations within Malaysia, may participate in the investigation.[48]

All interested parties will have the opportunity to present their views and evidence at a public hearing. In addition, interested parties will be given the opportunity to respond to all written and oral presentations of other interested parties, and to comment on whether the safeguard measure would be in the public interest.[49]

Thereafter, the government will make a preliminary determination on whether the product under investigation is being imported into Malaysia in increased quantities and whether the conditions for a safeguard measure have been met.[50]

If a negative preliminary determination is made, the investigation can be either terminated or investigated further.[51] Either way, a preliminary determination would need to be given within 90 days; this period may be extended by a further 30 days.[52] If an affirmative preliminary determination is made, a provisional safeguard measure will be applicable.[53] A provisional safeguard measure imposed shall not exceed 200 days.[54] This time limit coincides with the requirement under the Safeguards Regulations 2007 for a final determination to be issued within 200 days.

The government can impose either a negative final determination or an affirmative final determination. An affirmative final determination shall include, inter alia, a complete description of the product under investigation, the factors that led to serious injury, the duration of the safeguard measure, the time limit for progressive liberalisation and a list of the developing countries exempted.

Although not expressly provided for under the SA, both preliminary and final determinations can be open to judicial review in the Malaysian High Court on the grounds that the investigative authority made a decision tainted with illegality, irrationality or procedural impropriety.

To date, there have been three safeguard measures imposed upon a final determination out of the six investigations initiated.

45 id., at Section 8(3).
46 id., at Section 14(1).
47 id., at Section 16.
48 id., at Section 2(1).
49 id., at Section 18(1).
50 id., at Section 20(1).
51 id., at Section 20(2).
52 Safeguards Regulations 2007, Regulation 9.
53 SA, Section 20(3).
54 id., at Section 22(3).

III TREATY FRAMEWORK

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. The principal exports include electrical and electronics products, chemicals, machinery, appliances and manufactured metals.[55] 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. Malaysia's top export and import partners are Singapore, China, the United States and Japan.[56]

As a trading nation, Malaysia has shown a high level of commitment towards building regional and bilateral trade ties through arrangements with individual regional groupings and countries. Malaysia's trade policy has been to pursue efforts in creating a more liberalised and fair global trading environment while according a high priority to the WTO system.

Malaysia currently has bilateral free trade agreements (FTAs) with Japan, Pakistan, New Zealand, India, Chile, Australia and Turkey. Negotiations are still under way with the European Union. Virtually all the bilateral FTAs have specific chapters on trade remedies – most of which reflect the regime under WTO, namely the Agreement on Implementation of Article VI on Anti-Dumping, the Agreement on Safeguards and the Agreement on Subsidies and Countervailing Measures.

In relation to safeguard measures, the bilateral FTA with New Zealand contains an interesting *de minimis* provision, which states that the originating product from a party may be excluded if it does not cause serious injury or a threat of serious injury.[57]

This departs from the wording under the WTO Agreement on Safeguards and the SA, in which the *de minimis* provisions are restricted to apply only to imports from developing country WTO Members with less than 3 per cent of total imports. Other developing country WTO Members with less than 3 per cent total imports amount to less than 9 per cent of total imports.[58]

The difference mainly lies in the fact that New Zealand may not be considered a developing country Member under the WTO, although there is no definitive list in this regard, and the term 'not a cause of serious injury of threat thereof'[59] could plausibly apply to instances in which one of the parties has a share of total imports of more than 3 per cent.[60] Essentially, this widens the scope of the *de minimis* provision for imports.

At the regional level, Malaysia is part of the ASEAN Free Trade Area (AFTA), benefiting from a complete free trade area with the other ASEAN Member States (Brunei, Cambodia, Indonesia, Laos, Myanmar, the Philippines, Singapore, Thailand and Vietnam). ASEAN currently has AFTA FTAs with China, Japan, South Korea, India, Australia and New Zealand.

55 Malaysia's Trade Statistics 2015, at www.matrade.gov.my/en/malaysian-exporters/services-for-exporters/trade-a-market-information/trade-statistics.

56 id.

57 New Zealand–Malaysia Free Trade Agreement, Article 5.3.

58 WTO Agreement on Safeguards, Article 9.1.

59 See footnote 58.

60 SA, Section 40A provides that a safeguard measure can be applied in accordance with the terms and conditions agreed in a trade agreement.

Through AFTA, Malaysia has also entered into the ASEAN Trade in Goods Agreement and, with Brunei, Singapore and Thailand, has embarked on a self-certification pilot project since 1 November 2010, the aim of which is to facilitate 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 OIC countries.

Another interesting development in relation to Malaysia's treaty framework is its involvement in the Regional Comprehensive Economic Partnership (RCEP), which was signed at the end of 2020 by the ASEAN Member States and Australia, China, Japan, New Zealand and South Korea.

In the past, Malaysia has favoured entering into multilateral FTAs. This is evidenced by its keen involvement in multilateral FTAs such as RCEP, illustrating its desire to make the most of its central geographical location to drive its developing export-orientated economy.

IV RECENT CHANGES TO THE REGIME

On a general level, there have not been many developments to the laws regulating trade remedies in Malaysia. The significant changes from a Malaysian perspective occurred in 1998 with the amendment to CADDA and thereafter the introduction of the SA, which came into force in 2007.

That being said, there have been some interesting minor changes to the legislative regime. The Safeguards (Amendment) Act 2012 came into force on 1 September 2013. The amendment allows Malaysia to conduct a safeguard investigation and impose safeguard measures on specific countries in accordance with the terms and conditions established in a trade agreement entered into by the government.[61] Prior to the amendment, all investigations and safeguard duties were imposed on a global basis irrespective of the source.

V SIGNIFICANT LEGAL AND PRACTICAL DEVELOPMENTS

In relation to the anti-dumping investigations initiated between 1995 and 2003, 13 of the 22 investigations were connected with subject merchandise based on pulp of wood or other fibrous cellulosic material, paper newsprint and paperboard-based materials and recovered paper materials,[62] targeting nations such as Thailand, Indonesia and South Korea.

No anti-dumping investigations were initiated from 2007 to 2011. However, since 2011, there has been a sharp increase, with more than 30 investigations initiated.[63] Interestingly, with the exception of one investigation on polyethylene terephthalate, all have targeted steel or steel-related subject merchandise such as steel wire rods, steel reinforcing concrete bars, hot-rolled coils and cold-rolled stainless steel in coils from nations such as China, Vietnam, South Korea and Japan.

61 SA, Section 40A.

62 Provided by the WTO.

63 Anti-dumping Initiations: By Reporting Member 01/01/1995 – 31/12/2014 provided by the WTO.

The current trend in Malaysia is that most, if not all, initiations of investigations for trade remedy measures are intrinsically intertwined with the steel industry; therefore, any discussion on trade remedies in Malaysia must involve a discussion about the steel industry.

Until 2002, the steel industry suffered from low prices and surpluses of capacity. From 2003, during the 'long boom' that occurred in the regional steel industry, China's rapid growth and expansion resulted in a significant increase in the demand for steel.[64]

By 2008, China was consuming 35 per cent of the world's steel as compared with 13 per cent in 1995. During the 'long boom', most steel companies, Malaysian steel producers included, underwent massive expansion.[65] However, in August 2008, steel prices tumbled on the back of the global financial crisis. By the middle of 2009, in response to stimulus packages in various countries, the demand for building materials began to increase and by 2012 consumption of steel had surpassed the 2008 levels.[66] Malaysia's construction industry at that time underwent massive growth and expansion on the back of the government's economic transformation programme.

During this period, China continued to increase its steel-making capacity and produced at a high level, resulting in large quantities of steel being available for low prices.[67] In addition, China benefited from stimulus measures implemented by its government in 2013, which took the form of tax cuts for small and medium-sized enterprises and streamlined customs regulations to facilitate exports and reforms in value added tax.[68]

This resulted in the suppression of steel prices in the Malaysian market. As such, a number of investigations have been initiated against exporters.

Although steel products still form the basis of a large number of the investigations conducted, there has also been a shift in recent years to other types of products, such as chemicals.

From a legal perspective, in 2008 we observed the beginning of judicial reviews under Section 34a of CADDA against decisions made by MITI.[69] In a reported case, an applicant was successful in reviewing and quashing the decision by the government of Malaysia made under CADDA.[70]

On the safeguard front, there has been an increase in cases under the SA. To date, all the investigations under the SA have been in relation to steel-related products.

In July 2015, upon a final determination, the government of Malaysia imposed the first-ever safeguard measure by imposing safeguard duty starting at 17.4 per cent on imports of hot-rolled steel plates. The duty applied for three years and was gradually reduced to 10.4 per cent in the final year. Exemptions were given for products whose grade and quality the domestic producers could not manufacture.

In April 2016, the first-ever judicial review of a preliminary determination under the SA was brought before the Malaysian High Court. Judicial review is a remedy available in Malaysia against decisions made in the exercise of a public duty or function. Although the Malaysian High Court granted leave or permission to review the decision to the applicant,

64 The 11th Report on Status and Outlook of the Malaysian Iron and Steel Industry 2014/2015 by the Malaysian Iron and Steel Industry Federation, at page 36.

65 id.

66 id.

67 id., at page 38.

68 id.

69 *PT Pabrik Kertas Tjiwi Kimia TBK v. Kerajaan Malaysia* [2007] 3 MLJ 781.

70 id.

who was the petitioner for the safeguard investigation, the review was ultimately dismissed on technical grounds. This confirms for the first time that decisions made under the SA are amenable to review by the courts; however, this is not expressly provided by statute.

In May 2016, the government of Malaysia initiated two simultaneous investigations against steel wire rods and deformed bar-in-coil, and steel concrete reinforcing bars, which was an unprecedented move based on petitions initiated by local steel mills. In April 2017, upon a final determination, the government imposed the second and third safeguard measures by imposing, respectively, safeguard duties starting at 13.9 per cent on imports of steel wire rods and deformed bar in coils and 13.42 per cent on imports of steel concrete reinforcing bars.

Further, in June 2017, the government initiated an anti-dumping investigation on imports of cold-rolled stainless steel originating from China, South Korea, Taiwan and Thailand. In February 2018, anti-dumping duties were imposed on imports from China, South Korea, Taiwan and Thailand. The duties will be in force until 2023.

In 2019, two anti-dumping investigations were initiated: one against cold-rolled coils originating from China, Japan, South Korea and Vietnam; and one against steel concrete reinforcing bars originating from Turkey and Singapore. Anti-dumping duties were imposed in both investigations.

In 2020, an anti-dumping investigation was initiated against imports of galvalume, which resulted in the imposition of anti-dumping duties on imports from China, South Korea and Vietnam.

Recently in 2021, it has been observed that the there has been a slew judicial review applications in the Malaysian High Court challenging the decisions made by the government on the imposition of anti-dumping duties. Some of these applications have been successful in setting aside the decisions on the grounds of breach of natural justice, procedural impropriety and failure to provide adequate reasons for the decisions.

VI TRADE DISPUTES

At the WTO level, there has been very little activity in relation to trade disputes involving Malaysia. In 1995, Malaysia was a respondent in a request for consultation made by Singapore, which was later withdrawn. In 1997, Malaysia was a complainant and requested consultation in *United States – Import Prohibition of Certain Shrimp and Shrimp Products*. The decision of the panel was reversed by the Appellate Body in 1998.

In recent years, Malaysia's role in WTO disputes has been confined to that of a third party. WTO disputes in which Malaysia has been involved as a third party include *European Union – Anti-Dumping Measures on Biodiesel from Argentina*, *India – Certain Measures Relating to Solar Cells and Solar Modules* and *Australia – Certain Measures Concerning Trademarks, Geographic Indications and Other Plain Packaging Requirements Applicable to Tobacco Products and Packaging*.[71]

In 2020, Malaysia requested WTO dispute consultations with the European Union regarding measures adopted by the EU and its Member States affecting palm oil and palm crop-based biofuels.

71 WTO Disputes by country/territory, at www.wto.org/english/tratop_e/dispu_e/dispu_by_country_e.htm#mys.

VII OUTLOOK

Malaysia is unique in the sense that the use of trade remedies is still in its infancy. From a trade practitioner's perspective, these are interesting, formative times.

Although Malaysia's manufacturing sector is largely open to foreign investment and international competition, there are policies in place to protect certain key industries. There are various requirements to obtain approval permits to import certain goods into the country. In addition, tariffs are imposed on certain products and non-tariff barriers to trade. This, alongside government policies to stimulate growth in local industries by providing various incentives, has accorded protection to the developing local industries.

As a consequence, the Malaysian government is seen to have been taking a proactive role in protecting its key local industries, which it considers are essential for the nation's growth. This is likely to be the reason why trade remedies are still an underused means of recourse in Malaysia as the policy is to take pre-emptive protectionist measures to protect local industries from harm, as opposed to reactionist measures such as anti-dumping and safeguard measures. This is one of the primary reasons why the use of trade remedies in Malaysia is not as common as in other jurisdictions.

Appendix 1

ABOUT THE AUTHORS

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Lim Koon Huan graduated from the University of Melbourne with a bachelor of commerce degree and LLB (Hons). She was admitted to the Malaysian Bar in 1995 and commenced her legal practice with Skrine.

She has experience in a wide range of civil litigation and arbitration work in the High Court, Court of Appeal and the Federal Court. She co-heads the competition practice group and leads the trade remedies practice group.

She also advises and acts for various local and foreign banks and financial institutions, securities firms, oil and gas multinationals, construction and property development companies in relation to procedures, requirements and compliance with Malaysian laws, including trade remedies, competition and anti-corruption practices.

She has authored numerous articles and chapters on Malaysian issues. She also delivers presentations for various seminars and talks to clients on Malaysian law and legal issues of interest. She is listed in *Who's Who Legal: Trade and Customs* and has been a contributing author for the Malaysian chapters of several international publications.

MANSHAN SINGH

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Manshan Singh graduated from the University of Leeds (UK) and subsequently completed his master's degree following a programme of advanced study in the field of international corporate law at the same university.

Upon returning to Malaysia, he obtained certain capital markets services representative's licences and underwent training at the Securities Commission of Malaysia. Thereafter, Manshan obtained his certificate in legal practice and commenced his pupillage at Skrine.

Manshan was subsequently admitted as an advocate and solicitor of the High Court of Malaya and has since been a part of Skrine's dispute resolution division. His areas of practice include trade remedies, competition law, and corporate and commercial litigation.

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