

THE INTERNATIONAL  
TRADE LAW  
REVIEW

SIXTH EDITION

**Editors**

Folkert Graafsma and Joris Cornelis

THE LAWREVIEWS

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TRADE LAW  
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# PREFACE

*May you live in interesting times!* This ancient curse of apocryphal origin could perhaps summarise the recent turmoil and economic disasters our planet has not seen since the Great Depression. Superficially *Jaws in Space*, we endure allegories of the Ancient Plagues. The Appellate Body has vaporised, Brexit did materialise and, to make matters worse, an invisible lethal pathogen has entered the scene. The latter, of course, also has consequences well beyond trade, exceeding the realm of this book.

Staying with trade, not only has the Appellate Body ceased to function, certain WTO Members seem to dismiss the binding nature of its rulings altogether.<sup>1</sup> There are worrying tendencies by some Members to shift from a multilateral to a regional or bilateral trading system – not to speak of unilateral measures. While such systems are usually referred to as ‘free trade agreements’, they have not always managed to live up to this expectation. Undoubtedly, Members may have some reasons for such policy shifts, but if all start to propagate these types of agreements, we could find ourselves back in the 1920s before too long.

In this light, it is imperative to strengthen the arbiter when the ‘soccer (or rugby) game of international trade’ may slowly be spinning out of control. When the game is rough, the referee must be tough. Although the Multiparty Interim Appeal Arbitration Agreement (MPIA) (the stopgap Appellate Body) is a good start (see below), some other fixes are also needed. Members *will* need to partially update the rule book, partially rectify a few selected rulings, and look for an improved implementation and enforcement mechanism.

Even the European Union (EU), with ‘multilateralism written in its DNA’,<sup>2</sup> seems to have caught some early symptoms of unilateralism by formulating responses to some perceived WTO failures outside the multilateral framework. For example, although this is not really new, a few years ago the EU revamped part of its normal value determination by modernising and neutralising its old analogue country methodology.<sup>3</sup> More recently, however, the EU has also started acting against transnational subsidies – something not traditionally understood to be included in the Marrakesh rule book. Indeed, apart from targeting transnational subsidies through its regular Anti-subsidy Regulation,<sup>4</sup> the EU is now also in the process of designing

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1 Communication from the United States in *US – Countervailing Measures on Supercalendered Paper from Canada*, WT/DS505/12. In the past such decisions were not announced *expressis verbis*.

2 Speech by EU Trade Commissioner Phil Hogan at Dublin business event, 6 December 2019, at <https://trade.ec.europa.eu/doclib/press/index.cfm?id=2088>.

3 See Regulation 2017/2321 published in OJ L338/1 dated 19 December 2017.

4 See, for example, Commission Implementing Regulation (EU) 2020/776, published in OJ L189/1 dated 15 June 2020.

a completely new and all-encompassing legal instrument<sup>5</sup> addressing the distortive effect of foreign subsidies in the fields of competition, public procurement, takeovers, investment, etc. If enacted, this powerful and broadly scoped new tool, potentially capable of decapitating any nine-headed water serpent, is something about which we will undoubtedly hear much more in the years to come. Finally, the Chief Trade Enforcement Officer is also new and is designed to increase monitoring and enforcement of environmental and labour obligations under EU trade agreements; while laudable *in se*, it also confirms a shift away from multilateralism.

On the upside, however, some other recent developments illustrate that the EU is simultaneously attempting to uphold the banner of free trade and promote multilateralism. Under an EU initiative, an unprecedented interim appeal arrangement for WTO disputes has become effective (the MPIA), with currently some 20 plus participating Members pledging their commitment to a rules-based trading system. This agreement addresses some efficiency concerns that were raised with respect to the Appellate Body, such as only allowing arbitrators to address issues that are necessary to resolve the dispute, and limiting possibilities to extend the 90-day time limit. This innovative and interesting stopgap agreement also raises important questions for the future of international trade dispute settlement in the post-MPIA era. Importantly, what will be the relevance of MPIA decisions in a future if and when the Appellate Body were to resurrect? How will the dispute settlement system function with fractured jurisprudence? These early questions have recently been addressed in an excellent blog.<sup>6</sup>

Another promising silver lining is the continuing negotiations on fisheries subsidies. Although it has proven extremely difficult to make unanimous decisions with 164 WTO Members, fish are not known to respect national borders and therefore the only possible and effective response to the rapidly depleting global fish stocks is multilateral. These negotiations are a good opportunity, therefore, for the WTO to demonstrate its effectiveness, its capabilities as a rule-making organisation, and its ability to adapt to changing times.

Similarly, the recent announcement of the WTO Director General to step down before the end of his term should be used as an opportunity to usher in some new energy to the organisation. Let us share the hope expressed by the Director General that him stepping down does not mean that ‘the ship is . . . going down’ but that command will simply be transferred to someone else who will ‘hopefully . . . inject precisely that kind of energy and stamina that . . . is badly needed’.<sup>7</sup>

Let us, therefore, not lose all faith in the future of the multilateral trading system. *May we live in hopeful times.* With this in mind, we are deeply grateful for the continued support of our faithful contributors: Charlotte Morgan and Samuel Coldicutt at Linklaters for the Brexit chapter (A New Framework for UK Customs and Trade); Michael-James Clifton at EFTA and Pekka Pohjankoski of the University of Helsinki for the EU Courts chapter; Philippe De Baere at Van Bael & Bellis for the WTO chapter; Alfredo A Bisero Paratz at Wiener•Soto•Caparrós for the Argentina chapter; Mauro Berenholc and René Medrado at

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5 See the recent ‘White paper on levelling the playing field as regards foreign subsidies COM(2020) 253 final’, dated 17 June 2020. This latter concept-law is still in its initial ‘blueprinting stage’ and has not yet formally translated into a new law.

6 See <https://ielp.worldtradelaw.net/2020/01/guest-post-update-from-the-void-questions-for-the-new-interim-appeal-agreement-iaaa.html>.

7 Bloomberg interview with WTO Director General Roberto Azevedo, at <https://www.bloomberg.com/news/articles/2020-05-14/wto-chief-citing-chaos-says-he-s-not-the-right-man-for-the-job>.

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Finally, as ever, we wish you enjoyable reading during these challenging times.

**Folkert Graafsma and Joris Cornelis**

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August 2020

# EURASIAN ECONOMIC UNION

*Sergey Lakhno*<sup>1</sup>

## I OVERVIEW OF TRADE REMEDIES

The Eurasian Economic Union (EAEU) continues to be an active user of trade defence instruments.

Between July 2019 and July 2020, the following developments took place with regard to the application of trade remedy instruments by the EAEU:

- a* An anti-dumping investigation (AD-26) initiated on 29 June 2018 into imports into the EAEU territory of galvanised steel originating from China and Ukraine was extended until 28 October 2019. The investigation was concluded on 6 December 2019 with the imposition of an anti-dumping duty of between 12.69 and 23.90 per cent (depending on the manufacturer) for five years against exporters from both countries.<sup>2</sup>
- b* A safeguard investigation (SG-10) was initiated on 7 August 2018 into imports into the EAEU territory of certain types of metal. A draft report on the results of the investigation was published on 10 June 2019 proposing to apply a safeguard measure in the form of a safeguard quota for one year, to prevent serious injury to the affected EAEU industry. The investigating authority, the Department for Internal Market Defence (DIMD) of the Eurasian Economic Commission (EEC), only published its final report on 8 August 2019. DIMD decided to impose a safeguard quota of 1,327,728 tons on all imports of the product. Moreover, while choosing the level of safeguard customs duty to be applied in cases of exhaustion of the allocated quota, DIMD proceeded on the basis that the increase in the average weighted import prices that would trigger the duty should be set at 20 per cent, the level that, in the authority's opinion, would eliminate the difference between the import price of hot-rolled steel for the EAEU and the weighted average total import price for the European Union (EU) and the United States, to which a duty of 25 per cent applies. Moreover, products originating from developing and least-developed countries that are users of the EAEU's unified system (except the Republic of Korea) or from parties to the Commonwealth of Independent States Free Trade Area (except Ukraine) would be exempt from the safeguard measure.<sup>3</sup>

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1 Sergey Lakhno is a counsel at International Law Firm Integrites.

2 [http://www.eurasiancommission.org/ru/act/trade/podm/investigations/PublicDocuments/AD26\\_report\\_final.pdf](http://www.eurasiancommission.org/ru/act/trade/podm/investigations/PublicDocuments/AD26_report_final.pdf).

3 [http://www.eurasiancommission.org/ru/act/trade/podm/investigations/PublicDocuments/SG10\\_report\\_final.pdf](http://www.eurasiancommission.org/ru/act/trade/podm/investigations/PublicDocuments/SG10_report_final.pdf).

- c* An anti-dumping investigation (AD-27) was initiated on 4 September 2018 into imports into the EAEU territory of hot-rolled seamless pipes made of corrosion-resistant steel originating from China. The investigation concluded in December 2019 with the imposition of an anti-dumping duty of 15.50 per cent for a five-year period.
- d* An interim anti-dumping investigation (AD-7-R1) was initiated on 26 February 2019 into imports of mill rolls originating from Ukraine. On 24 May 2019, a decision was made to extend the anti-dumping measure by 26 per cent until 25 February 2020. DIMD stated in its final report of 31 January 2020 that cancellation of the anti-dumping measure might still result in injury to an economic sector.<sup>4</sup>
- e* A safeguard investigation (SG-12) was initiated on 4 March 2019 into imports into the EAEU territory of welded pipes made of stainless steel. The application was withdrawn and thus DIMD suspended the investigation on 27 December 2019.
- f* An anti-dumping investigation (AD-28) was initiated on 7 May 2019 into imports into the EAEU territory of aluminium tape originating from Azerbaijan and China. At the time of writing, the investigation is pending.
- g* An interim anti-dumping investigation (AD-19-R2) was initiated on 13 June 2019 into imports of steel railway wheels originating from Ukraine. On 17 June 2019, DIMD published its draft report proposing to suspend application of the anti-dumping duty until the end of the interim anti-dumping investigation. This happened upon request by the EAEU consumers of the wheel products, which indicated the extent of both the industry's inability to supply the market with the required quantity of relevant products and the unusually extreme price increases. On 9 June 2020, DIMD published its final report, concluding that the changed circumstances serving as the basis for the interim investigation were temporary and thus there was no need to suspend the anti-dumping measure.<sup>5</sup> Therefore, as from 2 June 2020, the old measure would continue to apply.
- b* An anti-dumping investigation (AD-29) was initiated on 2 September 2019 into imports into the EAEU territory of leaf springs originating from China. At the time of writing, the investigation is pending.
- i* An anti-dumping investigation (AD-30) was initiated on 24 December 2019 into imports of welded stainless-steel pipes originating from China into the EAEU territory. At the time of writing, the investigation is pending.
- j* An interim review of an anti-dumping investigation (AD-14-R1) was initiated on 16 January 2020 into imports of kitchen and cutlery made of stainless steel originating from China into the EAEU territory. On 18 May 2020, DIMD published notification of the extension of the anti-dumping duty from 15.41 to 27.16 per cent (depending on the manufacturer) until 15 January 2021.<sup>6</sup> At the time of writing, the investigation is pending.
- k* An anti-dumping investigation (AD-31) was initiated on 9 April 2020 into imports into the EAEU territory of graphite electrodes with a diameter of not more than 520mm originating from China. At the time of writing, the investigation is pending.

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4 [http://www.eurasiancommission.org/ru/act/trade/podm/investigations/PublicDocuments/AD7R1\\_report\\_final.pdf](http://www.eurasiancommission.org/ru/act/trade/podm/investigations/PublicDocuments/AD7R1_report_final.pdf)

5 [http://www.eurasiancommission.org/ru/act/trade/podm/investigations/PublicDocuments/AD19R2\\_report\\_final\\_dated\\_09062020.pdf](http://www.eurasiancommission.org/ru/act/trade/podm/investigations/PublicDocuments/AD19R2_report_final_dated_09062020.pdf)

6 [http://www.eurasiancommission.org/ru/act/trade/podm/investigations/PublicDocuments/AD14R1\\_notice\\_prolongation.pdf](http://www.eurasiancommission.org/ru/act/trade/podm/investigations/PublicDocuments/AD14R1_notice_prolongation.pdf)

- l* An interim review of anti-dumping measures (AD-16-R1) against imports of OCTG tubes originating from China into the EAEU territory was initiated on 13 May 2020. At the time of writing, the investigation is pending.<sup>7</sup>
- m* An anti-dumping investigation (AD-32) was initiated on 29 June 2020 into imports into the EAEU territory of aluminium cookware originating from China. At the time of writing, the investigation is pending.

EAEU countries were also extensively targeted by trade remedy measures on foreign markets.

On 13 August 2018, the EU announced an anti-dumping investigation relating to imports of mixtures of urea and ammonium nitrate in aqueous or ammonia solution originating in Russia, the United States and Trinidad and Tobago. As mentioned in the 'Notice of initiation of an anti-dumping proceeding concerning imports of mixtures of urea and ammonium nitrate originating in Russia, Trinidad and Tobago and the United States of America', dated 13 August 2018:

*The allegation of dumping from Russia is based on both a comparison of the domestic price with the export price (at ex-works level) of the product under investigation when sold for export to the Union and a comparison of a constructed normal value (manufacturing costs, selling, SG&A and profit, for which the costs for gas, SG&A and profit were adjusted) with the export price (at ex-works level) of the product under investigation when sold for export to the Union. Both comparisons show dumping.<sup>8</sup>*

On 10 September 2019, the EU adopted the final report on this investigation, according to which, the European Commission decided to apply to products originating from the Russian Federation a fixed amount of duty ranging from €27.77 to €42.77 per tonne (depending on the manufacturer).<sup>9</sup>

On 15 April 2019, Egypt imposed provisional safeguard duties of up to 15 per cent on semi-finished steel and 25 per cent on rebar imports following the country's launch of a safeguard probe at the end of March 2019. The measure was set to apply for 180 days and was designed to remedy the increase in imports arising from trade measures elsewhere – most notably in the United States and the EU.<sup>10</sup> In October 2019, Egypt's Ministry of Trade and Industry imposed a gradual safeguard measure on the imports of certain iron and steel products for a period of three years, including the period of temporary measures imposed by the Minister in April. The measure includes the imposition of fees of 25 per cent on rebars used in construction during the period from 12 October 2019 to 11 April 2020; 21 per cent for the period from 12 April 2020 to 11 April 2021; and 17 per cent for the period from 12 April 2021 to 11 April 2022. It also features the imposition of a step-by-step safeguard fee of 16 per cent on semi-finished products of iron or billet steel during the period from 12 October 2019 to 11 April 2020; 13 per cent during the period from 12 April 2020 to 11 April 2021; and 10 per cent from 12 April 2021 to 11 April 2022.<sup>11</sup>

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7 <http://www.eurasiancommission.org/ru/act/trade/podm/investigations/default.aspx>.

8 [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C\\_.2018.284.01.0009.01.ENG&toc=OJ:C:2018:284:TOC](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.C_.2018.284.01.0009.01.ENG&toc=OJ:C:2018:284:TOC).

9 <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32019R1688&from=EN>.

10 [www.argusmedia.com/en/news/1885288-egypt-to-impose-safeguard-duties-on-steel-update](http://www.argusmedia.com/en/news/1885288-egypt-to-impose-safeguard-duties-on-steel-update).

11 <https://egyptindependent.com/egypts-industry-ministry-imposes-protective-measures-on-iron-imports/>.

On 3 June 2019, the US International Trade Commission (the US Commission) announced the start of the third review to determine whether revocation of the anti-dumping duty order on silicon metal from Russia would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. In its final report of 28 May 2020, the US Commission determined that revocation of the order on silicon metal from the Russian Federation would be likely to lead to continuation or recurrence of dumping and that the magnitude of the dumping margins likely to prevail would be a weighted-average dumping margin of up to 87.08 per cent.<sup>12</sup> Initially, on 26 March 2003, the US Department of Commerce (Commerce) issued an anti-dumping duty order on imports of silicon metal from Russia. Following the first five-year review by Commerce and the US Commission, effective from 16 July 2008, Commerce issued a continuation of the anti-dumping duty order on imports of this product from Russia. Following the second five-year review by Commerce and the US Commission, effective from 2 July 2014, Commerce issued a continuation of the anti-dumping duty order on imports of silicon metal from Russia.<sup>13</sup>

On 24 January 2020, the EU initiated the start of the second review of the anti-dumping measures applicable to imports of certain welded pipes and tubes of iron or non-alloyed steel originating in Belarus, the People's Republic of China and Russia. The purpose of the review is to determine whether the expiry of the anti-dumping measures would be likely to result in continuation or recurrence of dumping and injury to the Union industry. Definitive measures are to be taken by the European Commission on 23 January 2021.<sup>14</sup>

In addition, Ukraine introduced a number of restrictive measures against goods from EAEU countries:

- a* In December 2018, an anti-dumping investigation was launched into imports of roller bearings originating from Kazakhstan. The investigation concluded on 6 December 2019 with the imposition of an anti-dumping duty ranging from 20.75 to 22.75 per cent (depending on the manufacturer of the product) for five years.<sup>15</sup>
- b* In July 2018, Ukraine initiated an anti-dumping investigation into imports of rods of carbon and other alloy steels originating in the Republic of Belarus and the Republic of Moldova. On 14 May 2019, Ukraine decided to extend the duration of the investigation for 15 months.<sup>16</sup> The investigation concluded in December 2019 with the imposition of an anti-dumping duty ranging from 0.0 to 31.8 per cent for producers in the Republic of Belarus and from 13.80 to 35.37 per cent for producers in the Republic of Moldova, for five years.<sup>17</sup>
- c* In April 2019, an anti-dumping investigation was launched into imports of aerated concrete blocks from Belarus. According to the complainant, it was initiated because

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12 [https://www.usitc.gov/trade\\_remedy/731\\_ad\\_701\\_cvd/investigations/2019/Silicon%20metal%20from%20Russia%20/Full%20Review/fr-notice-final\\_results-ad.pdf](https://www.usitc.gov/trade_remedy/731_ad_701_cvd/investigations/2019/Silicon%20metal%20from%20Russia%20/Full%20Review/fr-notice-final_results-ad.pdf).

13 [www.federalregister.gov/documents/2019/06/03/2019-11344/silicon-metal-from-russia-institution-of-a-five-year-review](https://www.federalregister.gov/documents/2019/06/03/2019-11344/silicon-metal-from-russia-institution-of-a-five-year-review).

14 [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:JOC\\_2020\\_024\\_R\\_0008&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:JOC_2020_024_R_0008&from=EN).

15 <https://ukurier.gov.ua/uk/articles/antidempingovi-zahodi-shodo-importu-v-ukrayinu-pid/>.

16 <https://ukurier.gov.ua/uk/articles/antidempingove-rozsliduvannya-shodo-importu-v-92/>.

17 <https://ukurier.gov.ua/uk/articles/antidempingovi-zahodi-shodo-importu-v-ukrayinu-pru/>.

- of the sharp increase in imports between 2017 and 2018, up from 41 per cent to 98 per cent respectively. The investigation concluded in February 2020 with the imposition of an anti-dumping duty of 34.19 per cent for five years.<sup>18</sup>
- d* In April 2019, an anti-dumping investigation was launched into imports of cables and ropes from the Russian Federation. The investigation concluded in February 2020 with the imposition of an anti-dumping duty of 50.09 per cent for five years.<sup>19</sup>
- e* In April 2019, a review of an anti-dumping duty on ammonium nitrate from the Russian Federation was initiated because of the expiration of the measure then in force. Application of the duty was extended for the period of the review. Furthermore, ammonium nitrate was included on the sanctions list of banned goods from the Russian Federation published by the Cabinet of Ministers of Ukraine at the end of June 2019. At the time of writing, the review of the investigation is still pending.
- f* In July 2019, Ukraine initiated an anti-dumping investigation into imports of aluminium car wheels originating in the People's Republic of China and the Russian Federation;<sup>20</sup> on 25 June 2020, the investigating authority extended the duration of the investigation to 18 months.<sup>21</sup>
- g* In July 2019, Ukraine initiated an anti-dumping investigation into imports of matches originating in the Republic of Belarus and the Russian Federation. The investigation concluded in May 2020 with the imposition of an anti-dumping duty of 21.32 per cent on products originating from the Republic of Belarus and 45.79 per cent for those from the Russian Federation.<sup>22</sup>
- h* In August 2019, Ukraine initiated a safeguard investigation into imports of mineral fertilisers containing nitrogen and phosphorus and mineral fertilisers containing nitrogen, phosphorus and potassium regardless of the country of origin and export. On 26 May 2020, the investigating authority, the Interdepartmental Commission on International Trade (ICIT), decided to extend the duration of the investigation for up to 300 days;<sup>23</sup> On 24 June 2020, Ukraine suspended the investigation without the imposition of safeguard measures;<sup>24</sup> notably, Russian companies are among the key suppliers of these products on the Ukrainian market.
- i* In August 2019, Ukraine initiated a safeguard investigation into imports of some nitrogen fertilisers (in particular: ammonium nitrate and lime-ammonium nitrate, urea and urea-ammonium mixtures);<sup>25</sup> On 24 June 2020, Ukraine suspended the investigation without imposing safeguard measures;<sup>26</sup> notably, Russian companies are also among the essential suppliers of these products on the Ukrainian market.
- j* In October 2019, Ukraine initiated a sunset review of anti-dumping measures applied to imports of railroad switches originating from Russia.<sup>27</sup> At the time of writing, the review is pending.

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18 <https://ukurier.gov.ua/uk/articles/ostatochni-antidempingovi-zahodi-shodo-importu-36/>.

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26 <https://ukurier.gov.ua/uk/articles/pripinennya-specialnogo-rozsliduvannya-shodo-import/>.

27 <https://ukurier.gov.ua/uk/articles/antidempingovi-zahodi-shodo-importu-v-ukrayinu-str/>.

- k* In December 2019, Ukraine initiated a safeguard investigation into imports of syringes.<sup>28</sup> However, this investigation will have only a minor impact on Ukraine's trade relationship with the EAEU countries.
- l* In February 2020, Ukraine initiated a safeguard investigation into imports of caustic soda.<sup>29</sup> Russian companies are among the largest exporters of caustic soda into Ukraine.
- m* In February 2020, Ukraine launched a safeguard investigation into imports of polymeric materials. On 28 May 2020, the ICIT decided to apply preliminary measures in the form of safeguard duties of 18 per cent for 200 days.<sup>30</sup> Products of this kind originating from Armenia, Belarus, Kazakhstan and Kyrgyzstan were excluded from the scope of the preliminary safeguard duties. On 22 June 2020, the ICIT substantially decreased the scope of the measure by excluding from the investigation products that are not produced in Ukraine.
- n* In May 2020, Ukraine initiated a safeguard investigation into imports of fresh cut roses.<sup>31</sup> However, this investigation will have no significant impact on Ukraine's trade relationship with the EAEU countries.
- o* On 25 June 2020, Ukraine initiated an anti-dumping investigation into imports of plywood originating from Belarus.<sup>32</sup>

## II LEGAL FRAMEWORK

As indicated in the previous edition of *The International Trade Law Review*, changes to the current EAEU trade defence regime continue to be the subject of ongoing discussion, including during the past year. However, there have been no significant amendments or alterations to the principal piece of legislation, the Protocol on the Application of Safeguard, Anti-Dumping and Countervailing Measures to Third Countries,<sup>33</sup> during this period.

## III RECENT CHANGES TO THE REGIME

Again as discussed in last year's edition, the EAEU Member States continue to be very active in negotiating free trade regimes with third parties. In September 2019, during the United Nations General Assembly, representatives of India and the EAEU discussed the final procedural stage in the establishment of the free trade agreement (FTA) between India and the EAEU.<sup>34</sup> However, at the time of writing, the signing of the FTA agreement between these countries is not complete. On 20 June 2019, Russia launched negotiations with South Korea on investment and a trade in services agreement. To date, Russia and South Korea have held three rounds of negotiations, reaching a consensus on how to open their service markets and how to organise their FTA agreement.<sup>35</sup> On 2 October 2019, Singapore and

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28 <https://ukurier.gov.ua/uk/articles/specialne-rozsliduvannya-shodo-importu-v-ukrayinu-/>.

29 <https://ukurier.gov.ua/uk/articles/rozsliduvannya-shodo-importu-v-ukrayinu-sodi-kaust/>.

30 <https://ukurier.gov.ua/uk/articles/zahodi-shodo-importu-v-ukrayinu-polimernih-material/>.

31 <https://ukurier.gov.ua/uk/articles/specialne-rozsliduvannya-shodo-importu-100/>.

32 <https://ukurier.gov.ua/uk/articles/antidempingove-rozsliduvannya-shodo-importu-v-119/>.

33 Annex No. 8 to the Treaty on the Eurasian Economic Union.

34 <https://www.aninews.in/news/world/us/pm-modi-meets-armenian-counterpart-nikol-pashinyan-on-sidelines-of-unga20190926083146/>.

35 <http://www.koreaherald.com/view.php?ud=20200323000333>.

the EAEU finalised and signed an FTA in Yerevan.<sup>36</sup> In October 2019, Uzbek government officials announced that Uzbekistan will aim to complete FTA negotiations with the EAEU by the end of 2021.<sup>37</sup> In March 2020, Uzbekistan announced that it wished to become an EAEU observer state.<sup>38</sup> In February 2020, the Armenian Prime Minister met with the President of the Bundestag, Germany's federal parliament. At the meeting, the sides discussed the development of cooperation between the EAEU and the EU.<sup>39</sup>

This year's key changes to the EAEU trade defence regime related to measures dealing with the covid-19 situation. On 3 April 2020, the Council of the EEC approved a list of critical imports to minimise the negative economic consequences of the spreading coronavirus infection, covid-19, and to prevent a shortage of socially essential goods in the EAEU countries. The list has been based on proposals submitted by the EAEU countries and includes food, agricultural and medical products for which increased demand or short-term shortages due to the current situation can be observed in the Member States. As a result, from 16 March to 30 September 2020, the EEC reduced import duties on certain personal protective equipment and medicines in response to the coronavirus situation.<sup>40</sup> In addition, from April to 30 June 2020, the EAEU eliminated import tariffs on certain food products, including potatoes, onions, garlic, carrots, cabbage, pepper, wheat, long grain rice, buckwheat, prepared foods for infants, base ingredients for the production of infant milk substitutes, juices, medicine, pipettes, disinfection units, endoscopes and thermometers. Furthermore, the EAEU temporarily simplified the country-of-origin confirmation procedure applied to goods imported from developing and least-developed countries, including through an option to provide electronic or paper copies of certificates of origin between 18 April 2020 and 30 September 2020.<sup>41</sup>

Along with the above-mentioned liberalising measures, the EAEU was forced to apply trade-restricting measures because of the spread of covid-19. For the period from 5 April to 30 September 2020, the EAEU adopted an export ban on personal protective equipment, disinfectants and medical supplies. On 10 May 2020, the export ban on certain types of textile materials and restrictions on exports of disinfectants were lifted and disinfectants can now be exported with authorisation. The other export prohibition applied by the EAEU concerned certain food products, namely onions, garlic, turnips, rye, rice (unless originating from Kazakhstan), buckwheat, millet, cereals, wholemeal flour and cereal grain granules, hulled buckwheat, prepared buckwheat foods, crushed and uncrushed soybeans, and sunflower seeds. This export ban was valid from 31 March to 30 June 2020.<sup>42</sup>

Apart from this, Member States of the EAEU have applied their own measures in response to the developing pandemic situation. In January 2020, Russia applied a sanitary and phytosanitary measure, temporarily prohibiting imports of exotic and decorative animals, including insects, arthropods, amphibians, reptiles and live fish and hydrobionts originating from China. In May 2020, Russia lifted this restriction.

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36 <https://www.straitstimes.com/politics/pm-lee-hails-singapores-trade-deal-with-eurasian-bloc>.

37 <https://www.urdupoint.com/en/business/uzbekistan-expects-to-sign-free-trade-deal-wi-731049.html>.

38 <https://www.rferl.org/a/uzbekistan-observer-of-russia-led-trade-bloc/30474675.html>.

39 <https://armenpress.am/eng/news/1004835.html>.

40 <http://www.eurasiancommission.org/en/nae/news/Pages/03-04-2020-2.aspx>.

41 [https://www.wto.org/english/tratop\\_e/covid19\\_e/trade\\_related\\_goods\\_measure\\_e.htm?fbclid=IwAR02cjHUVr6plOUkUAz4rj1dkJZrvN9B2cbR2zIYouoz1jD8fXz1eavkid1](https://www.wto.org/english/tratop_e/covid19_e/trade_related_goods_measure_e.htm?fbclid=IwAR02cjHUVr6plOUkUAz4rj1dkJZrvN9B2cbR2zIYouoz1jD8fXz1eavkid1).

42 <https://www.macmap.org/covid19>.

On 2 March 2020, Kazakhstan prohibited imports of Chinese fruit. The measure was withdrawn on 22 April 2020. On 1 May 2020, Kazakhstan temporarily banned imports of certain petroleum products delivered by railway from the Russian Federation. The measure will be in force until 1 August 2020. On 15 May 2020, Kazakhstan introduced an export ban on certain types of timber because of covid-19; this restriction is valid until 15 November 2020.<sup>43</sup>

As to active EAEU trade investigations under quarantine conditions, the EEC has been effectively applying digital methods to the conduct of investigations by uploading all the materials relevant to a particular investigation to a specific electronic account and providing the interested parties with access to it. Through the electronic account, therefore, the interested parties can analyse and make comments on the submitted non-confidential version of the complaint or questionnaire answers submitted by the other interested parties in the investigation. Also, the EEC has been quite consistent in granting additional extensions of the deadline for interested parties to submit documents necessary for trade investigations. However, interested parties must first provide objective facts and reasoning as to why they are unable to submit necessary documents on time. As a basis for a request of extension, interested parties may rely on restrictive quarantine measures in the country of origin that impede the effective preparation of such documents within the initial deadline.

#### **IV SIGNIFICANT LEGAL AND PRACTICAL DEVELOPMENTS**

As indicated in the previous edition of *The International Trade Law Review*, there have been changes in the enforcement practice of the EEC's DIMD in recent years, especially regarding the standard for proving injury to domestic industry.

One controversial enforcement decision taken by the EEC last year has developed further in the current year, namely the enforcement decision taken in June 2019 relating to an anti-dumping duty on imports of Ukrainian steel railway wheels produced by Ukrainian company Interpipe on the EAEU market. For the first time, a measure in force was revised following requests from consumers, in this case consumers from Belarus and Kazakhstan. On 22 December 2015, the EEC had applied an anti-dumping duty of 34.22 per cent on Ukrainian railway wheels, which were the only alternative to the same product produced in the EAEU. However, following a statement by the EAEU consumers of these wheel products, indicating the extent of both the industry's inability to supply the market with the required quantity of relevant products and the unusually extreme price increases, DIMD was forced, on 13 June 2019, to open a review of the existing measures and suspend them until the end of the interim anti-dumping investigation.<sup>44</sup> Nevertheless, according to DIMD's decision of 9 June 2020, the measures taken in respect of the Ukrainian producers of steel railway wheels will have to be renewed. The grounds for the interim investigation were temporary and there remained a possibility of injury to the EAEU market in the event of withdrawal of the anti-dumping measures. Therefore, the duties on wheels from Ukraine will be applied until the end of the five-year period, namely 21 January 2021. Nonetheless, the EEC is monitoring the situation closely and is ready to return quickly to consideration of the issue should negative trends be detected.<sup>45</sup>

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43 *ibid.*

44 [www.eurasiancommission.org/ru/act/trade/podm/investigations/AD-19-R2/default.aspx](http://www.eurasiancommission.org/ru/act/trade/podm/investigations/AD-19-R2/default.aspx).

45 <http://www.eurasiancommission.org/ru/nae/news/Pages/09-06-2020-03.aspx>.

## V TRADE DISPUTES

### i World Trade Organization dispute settlement

#### *EAEU countries as the dispute complainant*

Among the five current member countries of the EAEU, Russia remains the most active user of the World Trade Organization (WTO) dispute settlement system.

As was mentioned in last year's edition, the Russian Federation was a party to the WTO dispute DS493: *Ukraine – Anti-Dumping Measures on Ammonium Nitrate*, for which the Report of the Appellate Body was circulated on 12 September 2019. The dispute concerned the anti-dumping measures maintained by Ukraine on imports of ammonium nitrate from Russia. The Ukrainian authorities had originally imposed anti-dumping measures on these imports following an anti-dumping investigation, which they extended following an interim and expiry review determination. The Russian government filed the case with the World Trade Organization in May 2015, challenging the Ukrainian authorities' determinations of dumping and likelihood-of-dumping, injury-related aspects of their determinations and their decision to include a Russian producer – EuroChem, which allegedly had a *de minimis* dumping margin in the original investigation phase – within the scope of the review determination.

As the result, the panel stated that the Ukrainian authorities had violated Articles 5.8, 2.2, 2.2.1, 2.2.1.1, 11.2 and 11.3 of the Anti-Dumping Agreement.

On 12 September 2019, the Report of the Appellate Body was circulated to the WTO members. In its findings, the Appellate Body upheld the panel's report and found that the panel did not err in its interpretation and application of the challenged provisions of the Dispute Settlement Understanding and the Anti-Dumping Agreement. The alleged breach of Article 5.8 of the Anti-Dumping Agreement was supported by arguments that the Ukrainian authorities unlawfully included EuroChem in the scope of the subsequent interim and expiry reviews and imposed on it an anti-dumping duty of 36.03 per cent, despite the company having a *de minimis* dumping margin in the original investigation period. Ukraine's rejection of the gas prices paid by Russian producers and its failure to provide the basis for that decision was considered to be in violation of Article 2.2.1.1 of the Anti-Dumping Agreement. Moreover, the Appellate Body stated that Ukrainian authorities violated Article 2.2 because they did not make sufficient adjustments to ensure that the surrogate gas price reflected costs in Russia. Furthermore, the Appellate Body concluded that inconsistencies with cost calculations under Article 2.2.1.1 distorted the ordinary-course-of-trade test conducted by the Ukrainian authorities under Article 2.2.1.<sup>46</sup>

The case DS554: *United States – Certain Measures on Steel and Aluminium Products* initiated by Russia on 29 June 2018 continues to proceed very slowly.

On 4 September 2019, the chair of the panel informed the WTO's Dispute Settlement Body (DSB) that because of the complexity of the issues before the panel and the fact that the same three persons had been appointed to serve as panellists in multiple proceedings, the panel expected to issue its final report to the parties no earlier than autumn 2020. In its communication, the chair also informed the DSB that the report would be available to the public once it had been circulated to WTO members in all three official languages, with the date of circulation dependent on completion of translation.<sup>47</sup>

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46 [https://www.wto.org/english/tratop\\_e/dispu\\_e/493abr\\_conc\\_e.pdf](https://www.wto.org/english/tratop_e/dispu_e/493abr_conc_e.pdf).

47 [https://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds544\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds544_e.htm).

***EAEU countries as the dispute respondent***

EAEU countries more often act as the respondents in trade disputes.

In DS475: *Russian Federation – Measures on the Importation of Live Pigs, Pork and Other Pig Products from the European Union*, following lengthy compliance proceedings that took up a large part of 2017–2019, on 28 January 2020, the chair of the panel informed the DSB that it had granted the EU's request of 24 January 2020 to suspend its work pursuant to Article 12.12 of the Dispute Settlement Understanding (DSU). In its communication, the panel noted that its authority would lapse on 28 January 2021 unless the EU indicated that it wished the panel to recommence its work.<sup>48</sup>

In DS499: *Russia – Measures Affecting the Importation of Railway Equipment and Parts Thereof*, initiated by Ukraine in October 2015, the panel report was circulated to WTO members on 30 July 2018.

On 27 August 2018, Ukraine notified the DSB of its decision to appeal to the Appellate Body on certain issues of law and legal interpretations in the panel report. On 3 September 2018, the Russian Federation notified the DSB of its decision to cross-appeal.

Proceedings gathered pace in September 2019, when the oral hearing in this appeal was held. On 4 February 2020, the Appellate Body report was circulated to WTO members.

The Appellate Body upheld the finding of the panel in its preliminary ruling, stating that Ukraine had properly identified the measures at issue in its panel request according to Article 6.2 of the DSU. However, pursuant to Article 5.1.1 of the Technical Barriers to Trade Agreement (the TBT Agreement), the Appellate Body found that the panel did not properly examine the existence of 'comparable situations' in this particular case. The panel relied only on the security information in Ukraine and disregarded the specific aspects of suppliers with less favourable conditions to access the market and the locations of suppliers' facilities. Also, the Appellate Body found that the panel erred in its application of the burden of proof under Article 5.1.2 of the TBT Agreement in requiring Ukraine to provide evidence that the requirements of one specific provision under Russian law were fulfilled, for purposes of demonstrating that the proposed alternative measure was reasonably available.

On 19 March 2020, the Russian Federation requested the chair to circulate to WTO members a communication indicating that it had revoked certain requirements for the recognition of conformity assessment procedures and informed relevant Ukrainian producers of requirements they should comply with to obtain a certificate of conformity. In its communication, the Russian Federation observed that, by taking these actions, it considered it had fully implemented the DSB's rulings and recommendations in this dispute. On 23 March 2020, Ukraine requested the chair of the DSB to circulate a communication indicating that it respectfully asked the DSB to request the Russian Federation to elaborate on the compliance requirements for Ukrainian producers to obtain certificates of conformity, in particular, those related to the safety of the certification body employees. Ukraine also observed that it believed that the issue of the implementation of the DSB's rulings and recommendations could be considered only after reviewing and analysing the requested information.<sup>49</sup>

DS530: *Kazakhstan – Anti-dumping measures on steel pipes* has made little significant progress since July 2018. The only move was made on 7 September 2018, when Ukraine supplemented its consultation request of 19 September 2017. Ukraine referred to Kazakhstan's

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48 [https://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds475\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds475_e.htm).

49 [https://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds499\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds499_e.htm).

failure to implement the findings of the investigating authority in the interim review of the anti-dumping duty on steel pipes, initiated in October 2017, concluding that the duties should be decreased.<sup>50</sup>

DS530 was supported by similar cases initiated by Ukraine. Namely, DS569: *Armenia – Anti-Dumping Measures on Steel Pipes* and DS570: *Kyrgyz Republic – Anti-Dumping Measures on Steel Pipes*. These two cases also made no significant progress.

The third case featuring Russia as respondent is DS566: *Russian Federation – Additional Duties on Certain Products from the United States*. On 27 August 2018, the United States requested consultations with the Russian Federation concerning the imposition by the Russian Federation of additional duties with respect to certain products originating in the United States.

On 8 January 2019, the United States requested the Director General to establish the panel and on 25 January 2019, the Director General duly established the panel.

On 4 September 2019, the chair of the panel informed the DSB that the panel expected to issue its final report to the parties by the second half of 2020. In its communication, the chair also informed the DSB that the report would be available to the public once it had been circulated to the WTO members in all three official languages, with the date of circulation dependent on completion of translation.<sup>51</sup>

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50 [www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds530\\_e.htm](http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds530_e.htm).

51 [www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds566\\_e.htm](http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds566_e.htm).

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Sergey Lakhno is a counsel and head of international trade practice at International Law Firm Integrates. He has more than 15 years' experience of the trade law of the World Trade Organization (WTO), preferential trade agreements, the application of trade remedy measures aimed at protecting domestic markets and the interests of companies in foreign markets (anti-dumping, safeguard and countervailing measures), issues related to foreign trade regulations and harmonisation of Ukrainian legislation with WTO and EU requirements. He has participated in trade investigations into Ukrainian products in the EU, Canada, the United States, Brazil and the Eurasian Economic Union markets, as well as in investigations to protect Ukraine's domestic market from unfair imports.

During 2016 and 2017, Sergey worked in the Anti-Monopoly Committee of Ukraine, where he applied instruments of economic analysis in investigations into violations of economic competition law.

While working at Interpipe in the period 2006–2016, Sergey protected company interests in trade remedy investigations in domestic and foreign markets, and dealt with regulatory and customs issues related to the company's foreign trade activities.

Sergey worked in various positions at the Ministry of Economy of Ukraine in the period 1999–2005, and in 2006, as an adviser to the Minister, he formed Ukraine's negotiating position and WTO membership commitments, conditions for state support and access to the markets for goods and services.

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