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RM6183 TRADE LAW PANEL

LOT 1 – INTERNATIONAL TRADE & DISPUTES
PROSPECTUS FOR CLIFFORD CHANCE
FEBRUARY 2025

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INTRODUCTION

JESSICA GLADSTONE LEADS CLIFFORD CHANCE'S INTERNATIONAL TRADE LAW PRACTICE, WHICH INCLUDES TRADE PRACTITIONERS FROM ACROSS THE FIRM'S 32 OFFICES. WE ARE A TRUSTED ADVISER TO GOVERNMENTS AND CORPORATE CLIENTS ON A FULL RANGE OF COMPLEX AND STRATEGICALLY IMPORTANT INTERNATIONAL TRADE MATTERS AND DISPUTES.

Technical Expertise

Clifford Chance advises governments and private sector clients on key aspects of international trade law, including the resolution of disputes under the WTO Covered Agreements and FTAs. With technical specialists, advocates, disputes strategists, and trade negotiators amongst our team, we are ready to assist you with everything that may arise on the UK's trade agenda, including potential WTO disputes.

Our global team brings a wealth of experience from past roles in government, international organisations, and academia; and so we have a deep understanding of the political and diplomatic environment within which trade law operates. Our team includes practitioners who have been senior advisers on trade and investment law to governments around the world.

Our trade practice leverages our deep expertise in other areas of law, including public and administrative law, intellectual property, corporate and financial regulation, and public policy, to handle the full breadth of trade related issues and disputes across the world.

Global Network of Practitioners

Effective international trade law advice requires an understanding not only of international rules, but also the relevant domestic regulatory frameworks that exist "on the ground". Our trade team is truly global—with expertise across our network of 32 offices, supplemented by our extensive sub-contractor network, including local trade practices across a number of jurisdictions. Our partner firm in the US and Canada, Cassidy Levy Kent (CLK), enhances in particular the depth of our senior level trade experience—adding a former WTO Appellate Body Chair, and senior US and Canadian government advocates to our global offering.

Understanding the Bigger Picture

International trade law is complex, and effective legal advice requires an appreciation of the political and diplomatic environment within which trade law operates around the world. Our team understands how government and diplomatic processes work, and we look at instructions "through the eyes of a Government Lawyer". We recognise that legal advice often forms one piece of a broader decision-making process, and we strive to be pragmatic and solutions-focussed in our advice, including seeking to resolve potential trade disputes by amicable settlement rather than litigation.

We have been trusted by government and corporate clients to advise on a range of complex and important projects—and we bring this experience to bear in all our mandates. Our in-house "UK Government Academy" ensures that each member of the UK Government team has access both to learning on how to be an effective advisory lawyer and to lessons learned from previous UK Government and wider public sector matters.

Working Together and Developing Capability

We know that collaboration plays a crucial role in building the UK's international trade law capacity—particularly as it develops new trading relationships following its exit from the EU. Our approach is to work in partnership with UK Government teams, to deliver the results you need. Whether it is working closely with your other advisers, liaising with cross-government stakeholders or sharing our thought-leadership and value-add services, we will be an effective member of your team and find ways to upskill your staff in managing and litigating international trade disputes along the way.

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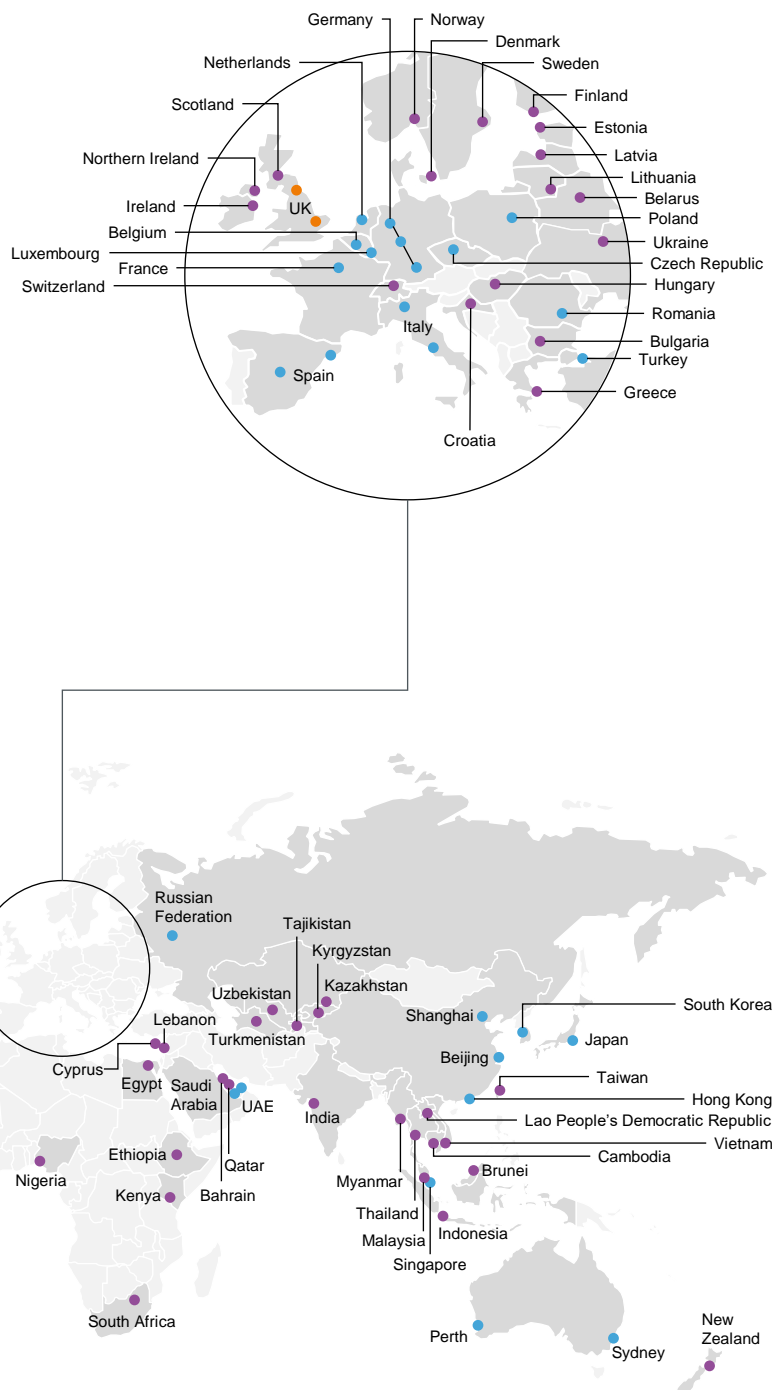


GLOBAL OFFERING

Clifford Chance, together with its team of local subcontractors, has a presence in five continents, covering virtually all of the **UK's major trading partners**.

This includes a local presence in all **CPTPP**, **Mercosur**, **Pacific Alliance** and **USMCA** member states, as well as extensive coverage across the European Union (**EU**), European Economic Area (**EEA**), Gulf Cooperation Council (**GCC**), Association of Southeast Asian Nation (**ASEAN**), Eurasian Economic Union (**EAEU**), European Free Trade Association (**EFTA**) and Regional Comprehensive Economic Partnership (**RCEP**) regional trade blocs.

Our global presence allows us to provide advice to the UK government on the domestic and international dimensions of trade negotiations, disputes and the resolution of market access barriers.



- Clifford Chance
- Subcontractor
- Both

INTERNATIONAL TRADE AND DISPUTES

ADVICE AND SUPPORT FOR INTERNATIONAL TRADE DISPUTES, INCL. ACTING ON BEHALF OF GOVERNMENT

Summary of experience and expertise

We have extensive experience advising governments as both complainants and respondents in trade disputes initiated before the GATT (prior to 1994), the Dispute Settlement Body of the WTO and arbitration proceedings under FTAs.

Members of our team, including our partner firm, Cassidy Levy Kent (CLK) have represented 16 separate WTO Members in some 41 disputes before WTO panels concerning claims under almost all of the WTO Covered Agreements, including the General Agreement on Tariffs and Trade (GATT), General Agreement on Trade in Services (GATS), Agreement on Technical Barriers to Trade (TBT Agreement), Agreement on the Implementation of Article VI of the GATT (the Anti-Dumping Agreement), Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement), Agreement on Subsidies and Countervailing Measures (SCM Agreement), Agreement on Agriculture (Agriculture Agreement), Agreement on Import Licensing, Agreement on Trade-Related Intellectual Property Rights (TRIPS), all with reference to the Dispute Settlement Understanding (DSU).

In addition, Clifford Chance has represented 17 States in international arbitration, including in relation to trade claims brought under FTAs. Our team includes former senior trade law advisers to governments around the world, including the UK, Canada, US, New Zealand and the EU, all of whom have acted as counsel in a variety of disputes.

Relevant work highlights

- In Korea's WTO challenge to the US 'zeroing' methodology for dealing with so-called 'targeted dumping' (DS464: *US—Large Residential Washers (Korea)*) members of the CLK team (having represented the petitioner in the challenged domestic case), advised USTR counsel in both the WTO Panel and Appellate Body stages. Current CLK advisor Thomas R. Graham, as former Chair of the WTO Appellate Body, chaired the division that adjudicated DS464. Members of the CC team also represented third parties in the dispute.
- In a prior role in government, a member of our team Jeremy Stewart was part of team representing **New Zealand** as a complainant (and third party in a related dispute) against Indonesia in a WTO dispute involving the application of the GATT, the Agreement on Agriculture and the Agreement on Import Licensing Procedures (DS477: *Indonesia—Import Licensing Regimes*; DS484: *Indonesia—Chicken*).
- Members of the team also have experience in representing **Canada** and **US** conducting appeals under Chapter 10 of the Canada-US-Mexico FTA and Chapter 19 of NAFTA.
- Our team, including lawyers at CLK, currently represent **the Government of Nova Scotia/Canada** in three ongoing WTO disputes: a challenge to US countervailing duties on softwood lumber from Canada (DS533); a challenge to US anti-dumping measures applying differential pricing methodology to softwood lumber from Canada (DS534); and defending against an Australian complaint regarding deductions on the tax applicable to wines from certain regions (DS537).

Team contacts



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- Chris Cochlin has argued in over 20 separate WTO panel and Appellate Body hearings and other ad hoc sectoral trade and investment proceedings.
- Thomas R. Graham has experience of more than 40 disputes as Member and Chair of the WTO Appellate Body.

INTERNATIONAL TRADE DISPUTES

ADVICE AND SUPPORT FOR INTERNATIONAL TRADE DISPUTES, INCL. ACTING ON BEHALF OF GOVERNMENT (CONTINUED)

Case study

Canada – Measures Governing the Sale of Wine (WTO complaint by Australia (DS537))

Overview

The CLK team represented the Government of Nova Scotia in WTO panel proceedings concerning measures in Nova Scotia governing the sale of wine.

Australia challenged various Canadian provincial government measures concerning the sale of wine. As the sale of alcohol in Canada is generally handled by provincial governments, any action taken at the point of sale is generally attributable to Canada under international law. In theory, this would make “emerging wine” cheaper to end customers than other wine if sold at wholesale at the same price. Australia claimed that Nova Scotia’s measures violated Articles II:1 and III:4 of the GATT 1994.

Issues included, but were not limited to, argumentation and analysis of Articles XVII and XIV of the GATT 1994 as potential defenses because Nova Scotia uses a state trading enterprise to purchase and sell wine and had otherwise included the emerging wine region policy as a reservation in the just-completed Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP).

Key Points

1. Provision of urgent advice to stakeholders

The CLK team provided constant and immediate support to the Nova Scotia Ministers for International Trade, Finance and Treasury Board, and Agriculture, as well as to the officials supporting these Ministers. This was in order to obtain direction from these Ministers from a policy perspective and then determine how best to use the litigation to protect these policy interests, which might or might not align with the Federal government’s overall policy interests.

2. Working with Government Counsel team

Although representing a Provincial stakeholder (members of the Government of Canada’s Trade Law Bureau acted as leading counsel), CLK was intimately involved in developing defenses, drafting submissions, drafting answers to Panel questions, advising Nova Scotia policymakers concerning the litigation and potential policy changes, and advising the Nova Scotia Government on how to engage with and keep affected industry informed concerning the dispute.

As measures affecting the sale of alcohol have been frequent subjects of GATT and WTO panel and Appellate Body decisions, CLK needed to develop novel legal arguments to present to the Panel to allow policymakers the time to determine the best course of action concerning the challenged measure.

3. Consideration of political and policy contexts

The dispute presented a potential existential threat to one of Nova Scotia’s premier tourism drivers: the Nova Scotia grape growing and wine industry. Industry outreach from winemaker to grape grower was therefore paramount. Contemporaneous with this dispute, the Federal government was pursuing an aggressive commitment to the rules-based system (attempting to take advantage of a vacuum from the Trump Administration’s withdrawal from the same). Defending the policy in the context of existing GATT and WTO precedent became challenging but necessary given stakeholder interests. In addition, Nova Scotia was not the only Province with challenged measures, making coordination with the other provincial governments necessary.

4. Litigation Strategy

Counsel represented Nova Scotia before the WTO Panel. Leveraging strong defensive arguments, counsel was able to assist Nova Scotia policymakers chart a path with Australia towards a mutually agreed solution to the dispute that provided Nova Scotia with maximum policy flexibility for implementing next steps.

INTERNATIONAL TRADE DISPUTES

ADVICE ON ALL STAGES OF INTERNATIONAL TRADE DISPUTES

Summary of experience and expertise

Our team includes several trade practitioners with experience representing States through all stages of an international trade dispute, including consultations, the panel stage, and appeals before the WTO Appellate Body. Our extensive experience before WTO and NAFTA panels, as well as the Appellate Body (both as counsel and adjudicator), means we are ideally placed to act as appellate counsel for the UK, including in ad-hoc appeal mechanisms under Article 25 of the DSU (for example, the Multi-Party Interim Appeal Arbitration Arrangement (MPIA)).

Members of our team have represented WTO Members in appeals proceedings concerning virtually all of the WTO Covered Agreements, as well as in compliance and retaliation arbitrations under Articles 21.5 and 22.6 of the DSU. We have extensive experience of both written and oral advocacy in more than 20 distinct appellate proceedings, including formulating detailed answers in real time to complex questions posed by a WTO appellate division.

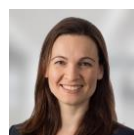
In Thomas R. Graham, DIT will benefit from access to a former Chair of the Appellate Body (Member from 2011-2019), having adjudicated scores of appeals, and acted as advocate in numerous GATT and WTO disputes, including the well-known series of GATT disputes concerning the EC challenge (and subsequent counter-challenges by the US) relating to Domestic International Sales Corporations in the US (for example, *United States Income Tax Legislation (DISC)*, I/4422 (1976), *GATT BISD 288/114* (1981), *GATT Contracting Parties acceptance of 1976 panel decision*).

Relevant work highlights

Members of our team acted as appellate counsel in the majority of the disputes referred to in Specialism 1 above. The following experience is of particular note:

- Clifford Chance's Michel Petite, former head of the EU's Legal Services directorate, was part of a team representing **the European Union** and conducted oral advocacy in several hearings before the Appellate Body concerning alleged subsidies to the aircraft industry challenged by the US, along with Brazil and Canada as third parties (e.g. DS316 and DS317: *Measures Affecting Trade in Large Civil Aircraft*).
- Separate members of our team have previously acted on teams advising **the Appellants** and **the US** as a third party and complainant in a related dispute, in proceedings arising from measures taken by the EU prohibiting the importation and marketing of seal products; a critical case in establishing the exceptions available under the GATT and TBT Agreement (DS401: *EC—Seal Products*). Thomas R. Graham also served as the Presiding Member of the Appellate Body division in the appeal.
- Members of our team conducted advocacy in Article 21.5 DSU compliance proceedings before the Appellate Body on behalf of **Canada** in relation to US challenges against measures affecting milk imports and dairy product exports (DS103: *Canada—Dairy*).
- Jessica Gladstone has contributed thought leadership on key issues such as reform of the WTO Appellate Body, including "*The WTO Appellate Body crisis – A way forward?*"

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- Members of the team also have experience in representing **Canada** and **US** conducting appeals under Chapter 10 of the Canada-US-Mexico FTA and Chapter 19 of NAFTA.
- Chris Cochlin has argued in over 20 separate panel and Appellate Body hearings and other ad hoc sectoral trade and investment proceedings.
- Thomas R. Graham has experience of 33 disputes as Member and Chair of the WTO Appellate Body.

INTERNATIONAL TRADE DISPUTES

ADVICE ON ALL STAGES OF INTERNATIONAL TRADE DISPUTES (CONTINUED)

Case study

Canada – Measures Affecting the Importation of Milk and the Exportation of Dairy Products (WTO complaint by the US and New Zealand (DS103, DS113))

Overview

The United States challenged Canada in respect of alleged export subsidies granted on dairy products by operation of Canada's new end-use milk pricing system implemented as a result of the Uruguay Round negotiations under the Agreement on Agriculture. The US also challenged the administration by Canada of the tariff-rate quota on fluid milk imports, which, again, was the result of the "tarrification" of import quotas resulting from Uruguay Round agriculture negotiations. New Zealand subsequently launched its own challenge relating to export subsidy claims and Canada's new end-use milk pricing system. The two disputes were joined and yielded ground-breaking arguments and analyses under the new export subsidy provisions of both the Agreement on Agriculture as well as the Agreement on Subsidies and Countervailing Measures.

While in the employ of the Government of Canada's Trade Law Bureau, counsel now at CLK Canada represented the Government of Canada before multiple panel proceedings and multiple Appellate Body appeals over the course of six years of high-stakes and politically-sensitive trade litigation. Specifically, the litigation covered original WTO panel proceedings; original Appellate Body proceedings; proceedings regarding compliance with WTO dispute-settlement decisions under Article 21.5 of the WTO Dispute Settlement Understanding; panel implementation proceedings regarding Art. 21.5 DSU; Appellate Body proceedings regarding the Panel's findings regarding implementation under Article 21.5; second recourse to Art. 21.5 DSU panel implementation proceedings; and Second Recourse to Art. 21.5 DSU Appellate Body implementation proceedings.

Key Points

1. Liaising with Government and other stakeholders

As part of a small team of (3) trade litigators of the Trade Law Bureau, counsel provided constant and immediate support to the Minister for International Trade and the Minister of Agriculture, as well as to the trade and agriculture officials supporting these Ministers, from Deputy Minister downward, over the course of the appeal.

The dispute involved Canada's most sensitive trade sector as a matter of trade policy (having just overhauled end-use pricing as a result of the Uruguay Round GATT/WTO negotiations), and the policies involved were highly politically sensitive. At the time, dairy producers (farmers) were the most organized and effective lobby both in provincial capitals and in Ottawa. Spanning 10 separate provincial governments and provincial industries, in addition to national associations of both farmers and national and multinational dairy processors, the policy and political stakes were high and required constant foresight and close cooperation with federal policy and political officials throughout the litigation and multiple implementation phases.

Counsel took all of these positions into account when deciding on legal strategy for the appellate proceedings.

2. Case management

The small team of trade litigators generated case calendars and scheduled multiple streams of work product that sequenced and incorporated input from scores of stakeholders advancing legal, policy, and political considerations in the formulation of the Canada's argumentation to be deployed before the Appellate Body. Counsel represented Canada before the Appellate Body at all stages, scoring key wins, and otherwise mounted multiple defenses yielding a "war of attrition" that afforded Canadian governments and industries alike the time necessary to transition to an alternative and sustainable regulatory framework. Legal research conducted at the time was cutting-edge and required close cooperation and dialogue with Canadian trade negotiators responsible for key issues during the Uruguay Round GATT negotiations. These included assessment of how arguments would apply to measures of Canada's key trading partners, including the US and the EU.

3. Capacity building with Government

As a result of the appeal and implementation procedures, the small team of government litigators became go-to resources on a wide range of agricultural and industrial sector program and policy development initiatives.

PREVENTION OF INTERNATIONAL TRADE DISPUTES

Summary of experience and expertise

Our international trade team have advised governments and businesses on all aspects of the WTO Covered Agreements and the common chapters and disciplines of FTAs. Our team includes individuals who have been senior advisers on trade and investment law to governments around the world: UK (former FCO legal adviser, Jessica Gladstone); the EU (Former Head of DG Legal, Michel Petite); the US (Former USTR General Counsel, Robert C. Cassidy and Deputy General Counsel, Thomas R. Graham); and New Zealand (former Senior International Trade Law Adviser, Jeremy Stewart). In these roles, our team members have given detailed legal advice to decision makers in mitigating against legal risks and preventing WTO and FTA disputes. Our team has also successfully advised global businesses and influential trade bodies in discussions with governments aimed at resolving potential WTO claims.

Relevant work highlights

- Michel Petite has advised **the European Union** on numerous potential trade disputes either against or by other WTO Members. He has also advised on potential measures to mitigate such risks, including, for example, in relation to the WTO compatibility of agricultural and industrial subsidies under the SCM Agreement and access to foreign financial markets for EU baanother, the majority of which were resolved through WTO negotiations.
- In a former role, a member of our team advised a sovereign state on the application of the prohibited and actionable subsidy provisions of the Agriculture and SCM Agreements in relation to another WTO Member's subsidy programme.
- Members of the team have advised **Brazil** (also **the US** and **Canada**) on the WTO compatibility of subsidies provided by the US to domestic cotton producers. Both governments entered into a settlement agreement in October 2014, just prior to the imposition of retaliatory tariffs by Brazil on US goods.

Team contacts



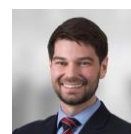
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- Members of our team advised the steel industry on potential settlement of a WTO case won by Taiwan against aspects of **Canada's** AD duty regime relating to the treatment of exporters with de minimis dumping margins. Our advice enabled Canada to avoid a WTO appeal by negotiating with Taiwan amendments to Canadian legislation.

Case study

Our client, the **government agency of an EMEA State**, intended to embark upon broad-ranging reforms to its trade, investment and government procurement laws.

We provided international trade and investment law advice as part of the development of these policies. Our advice played a key role in progressing departmental and ministerial decision-making, enabling legal risks to be taken into account in assessing each policy proposal and providing options for implementing reforms so as to minimize legal risk under international treaties.

Key Points

1. Advising multiple stakeholders

In providing our advice, we attended multiple meetings with senior government ministers and officials from different departments to outline legal risks and potential mitigations for various proposals. We leveraged our team's prior experience advising governments to ensure that our advice was practical, solutions-focused and took into account the broader political and strategic considerations, while ensuring that key risks were clearly articulated.

2. Advice in the context of international trade law and ongoing negotiations

The broad scope of the proposals meant that our advice included an analysis of the State's commitments under a range of international treaties, including: (i) regional trade agreements; (ii) bilateral and plurilateral investment treaties; (iii) the GATT, the GATS and the other WTO Covered Agreements; and (iv) the Government Procurement Agreement.

3. Liaising with local counsel and project management

Throughout the above process, we worked seamlessly with our local partner firm in the jurisdiction, ensuring all international trade law advice was consistent with relevant provisions of domestic law. This required updating our local law firm on a regular basis, providing clear and prompt instructions and managing costs for maximum efficiency, while maintaining continuous high standards of advice.

TRADE REMEDIES

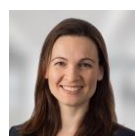
Summary of experience and expertise

Our team has decades of experience in representing petitioners and respondents in domestic trade remedies investigations and ensuing litigation before national courts, and also governments as complainants and respondents in dispute settlement panels convened to determine treaty compliance of duty determinations under the WTO's GATT, Anti-Dumping Agreement and/ or the Agreement on Safeguards, NAFTA or other FTAs. Members of our team in Brussels, London, Washington D.C., Ottawa and elsewhere have been involved in over 150 AD duties investigations, 100 CV duties investigation and advised on dozens of safeguard measures, particularly in relation to industrial products (steel and chemicals), technology (semiconductors and mobile phones) and politically sensitive industries such as agriculture, aviation, autos and renewable energy (wind/ solar). Our lawyers have acted as counsel in numerous WTO disputes concerning challenges to trade remedies determinations, including on key issues such as China's non-market economy status. Thomas R. Graham have also acted as an Appellate Body Member in several WTO trade remedies decisions determining the legality of various AD duty, CV duty and safeguard measures imposed by WTO Members.

Relevant work highlights

- We advised an **international goods manufacturer** on issues relating to the interpretation of non-preferential rules of origin and the application of EU anti-dumping duties;
- Michel Petite, as Director of DG Legal, advised the **European Union** on the development and implementation of its trade remedies regime.
- Thomas R. Graham advised various **United States** agencies (**US Trade Representative** and **US Department of Commerce**), and Robert C. Cassidy advised the **US Congress** on the implementation of GATT-consistent administrative trade investigation policies and was the primary architect of the modern antidumping and countervailing duty rules statutes enacted in the Trade Agreements Act of 1979
- Members of our team have been centrally involved in several of the recent WTO disputes regarding application of the WTO trade remedy rules to imports from China, including DS437 (*US—Countervailing Measures (China)*), DS464 (*US—Washing Machines*), DS471 (*US—Anti-dumping methodologies (China)*) and DS516 (*EU—Price Comparison Methodologies*).
- Members of our team advised sub-federal governments and Canada in several WTO challenges against the US in relation to CV duties applied to softwood lumber from Canada (e.g. DS194, DS236, DS257, DS264, DS533).
- Members of our team advised the US Trade Representative (**USTR**) as co-counsel on behalf of the petitioner in several WTO disputes concerning the US' application of CV duties and safeguards (e.g. DS539, DS437, DS464, DS505 and DS546 for safeguards).
- Thomas R. Graham has acted as a Member and **Chair of the WTO Appellate Body** in dozens of appeals ruling on the WTO consistency of national trade remedies measures (e.g. DS464, cited above).
- Jorge Miranda was involved in drafting Mexican trade remedy laws and then headed domestic trade remedy investigation. As counselor at the WTO Rules Division, he advised on over 20 panel disputes concerning trade remedies and trained officials of many WTO Members.

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- We have extensive domestic anti-dumping experience in Europe and North America, including:
 - Clifford Chance has represented applicant companies in 15 separate proceedings before the **European Court of Justice** challenging trade remedy and state aid determinations by the **European Commission** (e.g. Case C-245/95P on behalf of NSK);
 - CLK has represented clients in more than half of the 40 active Canadian AD/CV duties orders in force today, having been successful in 12/13 of our most recently initiated cases.
 - CLK have recently represented a wide range of importers and domestic trade representative groups and other interested parties in **USDOC** and **US Court of International Trade** AD and CV duties investigations and litigation.

TRADE REMEDIES

(CONTINUED)

Case study

US – Anti-Dumping Measures on Fish Fillets from Viet Nam (WTO complaint by Vietnam (DS536))

Overview

Lawyers at CLK coordinated with USTR on behalf of the US catfish industry in WTO panel proceedings concerning AD measures imposed by the US against imports of comparable fish fillets (pangasius) from Vietnam. Although the domestic industry was not a party to the dispute, it assisted USTR in developing arguments, drafting preliminary analysis and preparing written submissions and answers to Panel questions.

The case revolved around USDOC determinations made over a decade earlier, based partly upon regulations that no longer existed. Consequently, members of the team were in a unique position to assist USTR because they had worked at USDOC when the determinations had been made and had fundamental knowledge of the legal basis for such determinations and the reasons for the revocation of the regulations at issue.

Vietnam challenged various USDOC AD determinations over the preceding decade of annual reviews following the original imposition of duties. The primary challenge against the determination was that USDOC had not removed a company from the scope of the order despite a regulation that companies should be removed after three consecutive years of evidence of zero dumping. By the time Vietnam initiated the WTO dispute, the regulation at issue had been revoked for many years. Vietnam made arguments under Articles 11 and 9.3 of the Anti-Dumping Agreement and Article VI:2 of the GATT. The Panel's report has been issued but not yet circulated.

Key Points

1. Representing Stakeholders to USTR

Due to our team's existing relationships with USTR and USDOC, we immediately coordinated with USTR on behalf of our industry group client. This included educating government counsel regarding the domestic industry's position and the long history of the fish fillets proceedings. Consequently, from the beginning of the WTO dispute, our team was able to advocate effectively.

2. High-stakes policy and political context

The dispute was initially aimed at challenging the entirety of the US anti-dumping methodology, including the assumption of non-market status applied by USDOC to Vietnam. This methodology is the cornerstone of hundreds of US cases brought by dozens of petitioning industries. Like China in its challenge to the same methodology in DS516 (*EU — Price Comparison Methodologies*), Vietnam also eventually withdrew its claim. However, the remaining claims had the potential to open a back-door for Vietnamese exporters to avoid AD duties, notwithstanding an assumption of non-market economy status.

3. Project management and liaising with USTR

Counsel advocated for the domestic catfish industry throughout the dispute, providing USTR with draft positions and arguments from the perspective of the catfish producers as well as from the perspective of experienced USDOC lawyers at the time the determinations at issue were delivered. Counsel further coordinated with USTR during the time of the Panel hearings, working closely with government counsel on its oral advocacy and draft answers to the Panel's questions.

Expertise and capacity building in Government

The CLK team played a critical role in the proceedings due to its unique position of having a deep bench of former government attorneys. Among them was the attorney that worked on the revocation of the regulation at issue as well as on previous WTO arguments involving that regulation. As a result, the matter team were able to provide draft positions that detailed the function of that regulation and why USDOC's actions at the present time were consistent with the US' obligations under the WTO Covered Agreements. This was of invaluable assistance to USTR's advocates at the Panel hearings.

INTERNATIONAL LAW RELATING TO TRADE

Summary of experience and expertise

Our team includes numerous experts with wide-ranging experience of advising on all principles of international trade law including the WTO Covered Agreements, a broad spectrum of FTAs and other treaties, and other aspects of international economic law. Several members of the team have previously held roles as senior international trade law advisers to the governments of WTO Members, while others have worked as legal advisers and even Chair of the Appellate Body at the WTO itself. Our team has significant recent experience advising sovereign states and private sector clients on key aspects of WTO law, FTAs, international customs law and ongoing trade negotiations.

Relevant work highlights

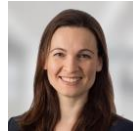
- Our team has experience in advising on all of the WTO Covered Agreements, including:
 - We have advised on numerous provisions of the **GATT** in dozens of WTO disputes, from national treatment and MFN principles to the potential application of exceptions under Articles XX and XXIV GATT and XIV GATS.
 - We advised a global company on potential violations of the **GATT, GATS, TBT Agreement and TRIPS** in relation to regulations limiting participation in domestic markets on the basis of nationality.
 - We advised a sovereign state in relation to **financial services** equivalence arrangements with the EU.
 - Our IP and Trade teams regularly advise on trademark issues governed by international treaties such as the **Paris Agreement** and **TRIPS**.
 - Clifford Chance has successfully represented Pfizer and Eli Lilly before the Spanish Supreme Court regarding the interpretation of Articles 27 and 70 of TRIPS.
 - Members of our team have represented the EU, the US and private airline stakeholders in disputes, including before WTO panels and the Appellate Body, relating to subsidies of civilian aircraft manufacturers and potential violations of the **SCM Agreement**.
 - Separate members of our team have previously advised the EU, US, New Zealand and other WTO Members on agricultural import and export restrictions, subsidies and alleged violations of the **Agreement on Agriculture**, including in recent disputes such as DS477 (*Indonesia–Import Licensing Regimes*).
 - Charles Levy had a lead role in the US negotiation position in relation to the **TRIMS Agreement**, as counsel to various industry and business coalition groups advising USTR and relevant committees of both houses of Congress.
 - Members of our team have advised several WTO Members on the provisions and practice under the **Dispute Settlement Understanding**.
- We advised the **UK Department for Business and Trade** in relation to its negotiation of an enhanced UK-Korea Free Trade Agreement (FTA).
- We advised the **UK Department for International Trade** on the negotiation, drafting and implementation of a number of continuity FTAs following the UK's exit from the EU, and on the UK-EU TCA.
- We provided strategic advice to a **government agency** on the design of a range of proposed trade and investment regulations and incentive programmes with trade and investment implications. Our advice included analysis of commitments under a range of international treaties, including FTAs, BITs, GATT and GATS.
- We advised a **state-owned entity** on WTO and EU law matters arising in connection with a potential incentive programme involving the government of an EU Member State (including under the SCM Agreement and EU trade defence regulations).
- We advised an **international technology services** company on WTO rights and obligations concerning digital sovereignty and national security measures imposed by various EU countries and the impact of these measure on public procurement of cloud services.
- We advised an **international automobile manufacturer** on WTO rights and obligations, along with customs and subsidy control issues arising from the EU-UK Trade and Cooperation Agreement.
- We advised a **multinational consumer goods retailer** on strategic options for mitigating the impact of customs procedures imposed on shipments of products from Great Britain to individual consumers in Northern Ireland.
- We advised a **State** on the WTO and FTA consistency of proposed regulations relating to the development of a regulated carbon trading market.
- We advised a **leading technology company** on the consistency of various domestic regulatory measures with WTO and FTA obligations.

INTERNATIONAL LAW RELATING TO TRADE

(CONTINUED)

- We advised **one of the world's largest food and consumer goods manufacturers** on the application of rules of origin under the EU-Korea FTA and the **Agreement on Rules on Origin**.
- We provided strategic commercial and trade law advice to **a major global technology company** on the potential use of free trade zones, customs warehouses and tariff preferences under FTAs in several European and Asian States.
- We advised **an Australian aluminium producer** on the legality of certain export controls under the Australian-United States Aluminium Agreement.
- We advised a **State** on the implications of MFN provisions in existing FTAs on current and future FTA negotiations.
- We advised a **number of corporate clients** on the tariff implications of Brexit, and possible effects of non-tariff barriers in a number of industries.

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Case study

Advice on trade restrictive measures affecting a global consumer product producer

Overview

A major multinational consumer product producer instructed us regarding the WTO compatibility of proposed Chinese measures restricting the participation by Foreign Invested Enterprises (FIEs) in distribution services.

A trade team led by Janet Whittaker produced a legal opinion that: (a) explained relevant WTO law and the operation of the GATS to the client; (b) analysed China's commitments in its Schedule of Specific Commitments on Services in order to assess the WTO compatibility of the proposed Chinese measures; (c) assessed the relevant product classification under the World Customs Organisation's (WCO) Harmonized System; and (d) provided the client with a description of potential avenues for challenging the proposed measures at the WTO.

A key element underpinning our advice involved determining whether the relevant product category could potentially be considered a "like" product to a more general product category— this was relevant because China had carved out distribution services in relation to this more general product category from the scope of its market access and national treatment commitments. In our analysis, we took account of the possibility that the WCO could change the classification of the relevant product category in its updates to the Harmonized System (scheduled to enter into force in 2022) and recommended requesting further guidance on this point from the WCO. This multifaceted approach allowed our client to prepare the ground for a potential challenge to the proposed measures by a WTO Member.

DOMESTIC LAW OF DIFFERENT JURISDICTIONS IN THE CONTEXT OF INTERNATIONAL TRADE AND/OR DISPUTES

Summary of experience and expertise

As experienced international trade lawyers, our combined trade team has worked closely with numerous domestic law experts in an extensive number of jurisdictions around the world in order to better understand domestic trade measures and applicable governing legislation. We have previously advised on financial services regulatory equivalence in the UK and EU, as well as other relevant jurisdictions. Our trade remedies experts have deployed local counsel and economists to analyse domestic anti-dumping investigations and administrative law in both national court challenges and WTO/FTA disputes. In addition to Clifford Chance's network of 32 offices in 27 countries, we have engaged local counsel to advise us on the laws of a further 49 jurisdictions. Clifford Chance has recent experience of managing such a large team of local counsel through its work on domestic environmental protections for the United Nations Special Rapporteur .

Relevant work highlights

- We advised HM Treasury on a range of issues in support of their work during the UK's exit negotiations with the EU.
- We advised a **UK industry representative group** on the application of services obligations under the GATS and EU FTAs, and the potential implications of future UK FTAs on domestic regulations.
- We assisted **DIT** in drafting legal instruments to implement rules of origin from continuity agreements into UK domestic law.
- We also recently gave evidence to the **House of Lords Services subcommittee** in relation to post-Brexit professional and business services arrangements between the EU and UK, subject to applicable **UK and EU laws**.
- We advised **HMG** on issues relating to the UK's post-Brexit procurement law regime.
- We advised an airline on the impact of Brexit on the regulations and restrictions around airline ownership and other licensing matters under **EU, UK** and other relevant domestic regulations.
- We advised **several UK exporters** on **Peruvian, EU and WTO government procurement rules**, involving analysis of the procurement chapter of the EU-Andean Community Comprehensive Trade Agreement.
- In the context of WTO disputes, members of our team completed an extensive review of domestic economic regulations in rebutting allegations of non-market economy conduct (for example, **DS464: US—Large Residential Washers (Korea)** and **DS471: US— Anti-Dumping Methodologies (China)**).
- Our business and human rights team regularly advises **global manufacturers** on domestic legislation in the implementation of international human rights standards in FTAs, including analysis of domestic modern slavery statutes and their consistency with the United Nations Guiding Principles on Human Rights, OECD Guidelines etc.
- We are advising a **major global financial institution** that is currently in the midst of OSFI enforcement action for a large number of potential violations in relation to UK sanctions on Russia.
- We advised an international food company on an investigation by HMRC into the preferential origin of packaged tuna. The case involved matters of EU, English and US law, including reviewing evidence in a US Court.
- CLK lawyers have worked on all major US trade legislation since the Trade Act of 1974, and have extensive experience on Canadian domestic trade law.
- We advised a **sovereign state** on the implications of the export control powers granted to the US President under the **US Defense Production Act** in relation to supply of coronavirus vaccines, and on the legal implications of proposed related domestic legislation.
- Our CLK colleagues have worked with numerous US respondents in domestic trade remedies investigations, conducting detailed reviews of local law regulations in **China, Mexico, Brazil, Australia, Chile and Israel**.

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DOMESTIC LAW OF DIFFERENT JURISDICTIONS IN THE CONTEXT OF INTERNATIONAL TRADE AND/OR DISPUTES

(CONTINUED)

Case study

Overview

Clifford Chance led a global project for the UN Special Rapporteur on human rights and the environment (UNSR), Dr David Boyd. The project led by Janet Whittaker involved conducting a global survey to advise on which of the 193 UN Member States recognise a human right to a healthy environment at either the national or sub-national level under domestic law.

Our advice was incorporated into a report by the UNSR, titled "Right to a healthy environment: good practices", presented to the UN Human Rights Council in Geneva. The report set out in detail the domestic law, regulations and practices enacted by UN Members in implementing the procedural and substantive elements of the right to live in a safe, clean, healthy and sustainable environment, if any.

Key points

1. Global Collaboration

The project demonstrated our team's expertise in coordinating a truly global project, involving navigating the domestic laws of more than 150 countries. To achieve this, we leveraged our own local law expertise from 32 Clifford Chance offices across five continents and supplemented this through collaboration with over 100 other specialist local law firms in different jurisdictions. The project involved extensive analysis, both by us and our partner firms, of domestic legislation, regulations, policies and judicial decisions. This highlights our ability to identify and coordinate domestic law advice across multiple jurisdictions, which we also apply in other contexts, including trade negotiations and disputes.

2. Quality Control and Management of Deadlines

The core team leading the project ensured that the work conducted by partner firms was undertaken to the highest standards of accuracy, and was presented in a format easily utilised by the UN Special Rapporteur. To achieve this, the team developed a standardised questionnaire format to ensure consistency of response and output. The core team also worked closely with local law firms to test proposed legal conclusions and seek follow-up relevant information. Our team case managed the project to the above quality standards on an ambitious deadline of several months.

3. Efficient Team Management

In addition to utilizing prompt and effective legal expertise from across our global network, our team included trainees, paralegals, legal project managers and members of the Clifford Chance Best Delivery team. This allowed for a multi-faceted approach to delivery of our advice, ensuring that we most efficiently and effectively managed resources and met deadlines, in particular so that lawyers were able to remain focused on the key deliverables of legal analysis and advice.

4. Innovative and outcomes focused delivery approach

In collaboration with our team of Best Delivery professionals, our team prepared an interactive online map of UN Members recognising the right to a healthy environment. This resource graphically represented the views of the UNSR that more than 80 per cent (156 out of 193) of UN Members recognise a right to a healthy environment, providing an effective 'at a glance' illustration for decision makers of one of the key outputs from the project. This served to assist stakeholders in advocating for ensuing UN-led policy initiatives. UN Special Rapporteur Dr Boyd noted: "*The results [of the Report] provide strong support for the United Nations to pass a pioneering resolution recognizing that everyone, everywhere, has a fundamental human right to live in a healthy environment.*"

CONDUCTING ADVOCACY IN WTO DISPUTES

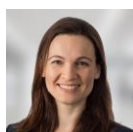
Summary of experience and expertise

Members of our team have conducted advocacy in international trade disputes since before the creation of the WTO and the Dispute Settlement Understanding, including at the WTO Appellate Body. In *Thomas R. Graham and Robert C. Cassidy*, our combined team boasts of two of the founding members of the international trade bar, both advocates in GATT, NAFTA and WTO disputes. Thomas R. Graham later utilised his experience as an advocate in delivering questions from the bench as a Member of the Appellate Body for 8 years. Michel Petite has a similar depth of advocacy experience with the European Commission as Director of DG-Legal, having represented the EU in the opening number of its seminal series of WTO disputes with the US concerning subsidies for large civilian aircraft. Several other members of our team have conducted advocacy in hearings before WTO panels and the Appellate Body, in addition to NAFTA hearings. Clifford Chance can also draw on its advocacy experience in investment treaty arbitration, with Jessica Gladstone having delivered oral arguments before numerous international tribunals.

Relevant work highlights

- Thomas R. Graham is one of world's preeminent international trade law advocates, having representing the US in the early, high-profile GATT dispute (***United States Income Tax Legislation (DISC)***, L4422 (1976), then founding the trade/ WTO practice at one of the largest global law firms, heading the international trade practice at another global law firm and participating in more than 40 appeals as **Member and Chair** of the **WTO Appellate Body**.
- Members of our team currently represent regional governments and private companies as part of **Canada's** counsel team in several WTO disputes relating to US CV duties applied to softwood lumber.
- Christopher Cochlin has represented **Canada** in over 20 WTO proceedings, including at the Appellate Body and other ad hoc sectoral trade and investment proceedings.
- Michel Petite has represented **the European Union** at hearings before WTO panels and the Appellate Body in over several disputes. In ***EU – Large Civil Aircraft (DS316)***, Michel Petite led the EU's counsel team at several hearings in Geneva, successfully appealing several Panel findings.
- In a prior role in government, a member of the team appeared for New Zealand as complainant in Panel and Appellate Body proceedings in ***Indonesia – Import Licensing Regimes (DS477)*** and as a third party in ***Indonesia – Chicken (DS484)***.
- In prior roles, members of our team have worked with counsel in several Appellate Body and WTO panel hearings, including as part of a team representing the Dominican Republic in ***Australia – Tobacco Plain Packaging (DS441)***, the People's Republic of China in ***US – Antidumping Methodologies (China) (DS471)*** and the Russian Federation in ***Russian – Pigs (EU) (DS475)***.

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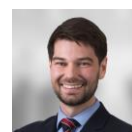
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- Jessica Gladstone has significant experience as counsel in appellate courts and international tribunals, including appearing before the **UK Privy Council** on behalf of a State in a politically sensitive public law challenge, on the counsel team in *Singapore v Malaysia* (PCA) and acting as advocate in several international arbitrations.
- Mary Jane Alves advised USTR's WTO litigators, for example, in ***US – Hot-Rolled Carbon Steel from India (DS436)***.

CONDUCTING ADVOCACY IN WTO DISPUTES

(CONTINUED)

Case study

Indonesia – Import Licensing Regimes (DS477)

Overview

In a prior role as senior trade law adviser to a sovereign state, a member of the Clifford Chance team conducted oral advocacy in the Panel and Appellate Body proceedings on behalf of the complainant state—including responding in real time to complex questions from Appellate Body Members about the interpretation of the applicable WTO Covered Agreements and the factual nature of the challenged measures. The Appellate Body upheld the complainant's claims that all 18 of the import restrictions challenged were inconsistent with WTO obligations.

Key Points

1. Diplomatic approach to advocacy, consistent with WTO Appellate Body practice

It was critical for oral advocacy to be conducted in a way that protected the strong diplomatic relationship between the disputing parties, while also ensuring that points of law and fact crucial to success were emphasised to the Appellate Body Members. This required a carefully balanced approach to oral advocacy, for example by maintaining a collegial rather than adversarial tone throughout the hearing.

2. Collaboration with other WTO Members

The sovereign state was a co-complainant with another WTO Member in the Appellate Body hearing, meaning it was critical to maintain consistency in argumentation between the complainants (and also, the third parties in support). This was necessary in maximising the impact of oral advocacy. The state's team achieved this through liaising with the other counsel teams on a regular basis and developing a deep understanding of other WTO Members' objectives and perspectives. This allowed the co-complaints to deliver oral arguments in a way that did not detract from the approach taken by other parties.

The vast majority of Appellate Body appeals involve contributions from several WTO Members, requiring excellent communication between counsel teams. Our team's extensive experience and contacts in the international trade bar puts us in an excellent position to assist the UK in this regard.

3. Liaising with local counsel and case management

When responding to questions from the Appellate Body on complex points of WTO law, it was critical for the team to develop a clear and exhaustive understanding of all of the relevant issues and possible strengths and weaknesses of the complainant's case in advance of the hearing. To ensure the team was equipped to respond to these questions in real time, significant preparation was undertaken in simulating questions that may be asked by the Appellate Body division. This preparation allowed the team to respond confidently but carefully to novel questions raised by the Appellate Body.

In instructing our team, the UK may prepare for appellate hearings, whether before a WTO or an MPIAA panel, with the advice and input of a former Chair of the WTO Appellate Body, Thomas R. Graham, alongside numerous advocates with decades of WTO Appellate Body experience. This rigorous approach to testing the UK's case will greatly benefit oral advocacy at later hearings and assist with capacity building at DIT.

INTERNATIONAL INVESTMENT LAW

Summary of experience and expertise

Clifford Chance has extensive experience of representing states in arbitral claims brought under FTAs, Bilateral Investment Treaties and multilateral instruments such as the Energy Charter Treaty. Our expert counsel have acted as advocates in hearings before tribunals governed by the ICSID Convention, UNCITRAL Rules and the rules of various arbitration institutions, such as the ICC. We have also acted for States in inter-state arbitrations under UN treaties, including in defending a claim brought by Malta under the UN Convention on the Law of the Sea (UNCLOS).

Relevant work highlights

- Representing the **Government of Iraq** in investment arbitration proceedings under the Jordanian-Iraqi treaty and the ICSID Convention in relation to damage caused by armed violence by ISIS.
- Representing **Waterloo Investment Holdings Ltd:** British Caribbean Bank and Prize Holdings International in respect of a claim against the Government of Belize for breach of the UK-Belize Bilateral Investment Treaty relating to the refusal to grant permissions to develop the Port of Belize in Belize City.
- We are representing an **Eastern European State** (Respondent), the Claimant alleged denial of justice and due process violation regarding administrative and court proceedings concerning a decision rejecting an environmental impact assessment.
- We are representing **Republic of Serbia** (Respondent) in an ICSID arbitration where allegations were raised of due process violations in relation to the decision on designation of the land and related court proceedings for compensation.
- We are representing **Republic of Slovenia** (Respondent) in an ICSID arbitration where the Claimants made due process objections regarding non-transparency, arbitrariness, discrimination and unfairness by Slovenia's Environmental Agency.
- We represent **Abu Dhabi's sovereign wealth funds**, IPIC and Aabar, in a USD 6.5 billion arbitration (and related court claims) against 1MDB and the Malaysian Ministry of Finance.
- We represented the **Government of Albania** in successfully dismissing USD 113 million of ICC claims brought by GBC Oil for alleged breach of investment contracts in the oil sector.
- Janet Whitaker advised a **Central American government** on drafting and negotiating investment agreements.
- We have extensive experience of environmental policy-related disputes, representing **STEAG** in its Energy Charter Treaty claims against Spain over revoking certain feed-in tariffs in the renewables sector.

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- We acted for **Kingsgate Consolidated Limited** in an UNCITRAL Rules arbitration under the Australia-Thailand Free Trade Agreement administered by the Permanent Court of Arbitration at The Hague (PCA Case N° 2017-36/AA684).
- We have represented a **syndicate of international financial institutions** in an UNCITRAL arbitration against India, brought under several BITs concerning the cancellation of the Dabhol Power Project, and conducted subsequent negotiations on the implementation of various domestic investment law measures.
- Members of our team have published widely on issues of treaty interpretation under BITs and other relevant investment agreements. Team member Romesh Weeramentry's text, 'Treaty Interpretation in Investment Arbitration', is regularly cited by international investment arbitration tribunals and practitioners alike.
- We advised a major international energy company on human rights issues associated with a prospective new investment in a disputed territory, including indigenous rights and rights to self-determination, and strategies for responding to external stakeholder concerns.

INTERNATIONAL INVESTMENT LAW

(CONTINUED)

Case study

Mercuria Energy Group Limited v. The Republic of Poland (representing a State in Investor-State Arbitration)

Overview

We represented the Government of Poland in investment treaty arbitration governed under the Rules of Stockholm Chamber of Commerce (SCC) against the Mercuria Energy Group, a global trading company, for alleged breaches of the Energy Charter Treaty (ECT). Mercuria's claims concerned allegations that administrative fines imposed by the energy regulator on its Polish subsidiary for a failure to maintain mandatory fuel oil stocks constituted a breach of the fair and equitable treatment obligation under Article 10(1) of the ECT and that such conduct discriminated against the investments of Mercuria in Poland.

Key Points

1. Preliminary Advice

We first prepared preliminary advice on the viability of Poland's defences, including tailored legal opinions on specific issues, assessing Mercuria's claims under ECT provisions, general principles of public international law and prior jurisprudence. During this process, we worked closely with various Government ministries as stakeholders in the dispute and ensured advice was promptly delivered in a succinct and easily understandable manner.

2. Gathering Evidence and Case Management

Our team liaised with numerous officers and departments across Government in preparing the detailed evidentiary basis for written submissions, including witness statements and documentary support. As part of this workstream, we reviewed thousands of documents concerning the background and status of existing regulations in Poland, the regulator's prior decisions and ordered document production from Mercuria in relation to the fines. We kept key instructing clients updated at all times with strategic advice

3. Advocacy before an International Tribunal

Our lean team of three expert counsel conducted a two week hearing before a tribunal composed of three of the most eminent international arbitrators. During the course of the hearing, the team cross-examined several witnesses and experts, presented detailed oral opening and closing submissions and contested numerous issues of law with opposing counsel. A team of four Government lawyers attended the hearing with us, allowing our team to receive real time instructions and seamlessly adapt strategies to new circumstances. This close cooperation went some way towards successfully defending all USD 400 million of Mercuria's claims, with the tribunal awarding Poland all of its costs, later reimbursed in full.

TRADE REMEDIES INVESTIGATIONS

Summary of experience and expertise

Our global team includes lead counsel in hundreds of domestic trade remedy investigations and litigation across multiple jurisdictions, including the US, EU, Canada, Brazil, Mexico, Korea, South Africa, Australia, Chile and Israel.

Several members of our team have previously served in lead legal adviser roles in establishing and developing trade remedy investigation regimes, including government departments of influential WTO Members such as: the US (USDOC, the US International Trade Commission (USITC), USTR); (ii) the EU (EU Legal Services, European Commission); and (iii) Canada (the Trade law division of the Canadian Department of Global Affairs). Together, lawyers at CLK and Clifford Chance have been involved in over 300 AD and CV duties investigations, safeguard reviews and ensuing litigation before domestic and international courts, including at the WTO.

Relevant work highlights

- We have acted for dozens of foreign exporters and EU importers in AD duty investigations and reviews undertaken by **the European Commission**, including:
 - Nippon Seiko KK (NSK) in several cases in relation to duties on ball bearings imported from Japan;
 - Allied Colloids in relation to chemical products from Korea;
 - Conduven in relation to welded steel tubes from Venezuela;
 - Sharp, Minolta, Epson and others in relation to a number of investigations involving printers and copiers from Japan;
 - M.R Export in relation to bed linen and cotton products from Pakistan; and
 - Colakoghu in relation to wire rods from Turkey.
- We have advised on several EU state aid investigations and ensuing challenges, including the restructuring of **British Energy** and related wind/ solar and other renewable energy issues.
- We have represented applicant companies in 15 separate proceedings before the **European Court of Justice** challenging trade remedy and state aid determinations by **the European Commission** (e.g. Case C-245/95P on behalf of NSK).
- Members of our team have represented clients in more than half of the 40 active Canadian AD/CV duties orders in force today, having been successful in 12/13 of our most recently initiated cases.

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- The CLK team has 40-plus years of experience representing importers-respondents, exporter-petitioners, governments and industry coalitions in hundreds of trade remedy investigations and many appeals to **US courts** and to the GATT and WTO, including the following recent examples:
 - Sugar from Mexico (**USDOC cases A-201-845 and C-201-846**).
 - Large Residential Washers from Korea (USDOC cases A-201-842, A-580-868, C-580-869, A-570-033, TA-201-076), later representing Whirlpool in the ensuing WTO litigation in **DS464**.
 - Biodiesel from Argentina and Indonesia (USDOC cases A-357-820, C-357-821, A-560-830, and C-560-831), resulting in a set of significant WTO disputes originally initiated by the EU, with the US as a third party (**DS473** and **DS480**).
 - Certain Uncoated Paper from Australia, Brazil, China, Indonesia, and Portugal (**USDOC case A-471-807**), resulting successfully reducing an assigned rate from 37.34% to 1.63%.

TRADE REMEDIES INVESTIGATIONS

(CONTINUED)

Case study

USDOC Investigation and Determination in *Large Residential Washers (A-201-842, A-580-868, C-580-869, A-570-033, TA-201-076)* and *United States – Anti-Dumping and Countervailing Measures on Large Residential Washers from Korea* (WTO complaint by Korea (DS464))

Overview

Our colleagues in CLK represented Whirlpool Corporation by bringing a petition for the imposition of AD and CV duties against imported residential washing machines from Korea and Mexico. This case was the first of successive rounds of litigation between Whirlpool and Samsung and LG, resulting in a successful follow-on antidumping order against China, and culminating in the imposition of a global safeguard remedy against imported washing machines to address Samsung's and LG's "country-hopping" behavior.

The CLK team was involved throughout all stages of the USDOC and USITC investigations, filing the petition and engaging in ensuing litigation. The effect of these cases was to incentivize Samsung and LG to invest in U.S. manufacturing to mitigate trade risks.

In imposing antidumping duties on washers from Korea, the US pivoted away from its traditional "targeted dumping" methodology and instead developed a "differential pricing" analysis to effectuate "zeroing" in a manner that put the United States on new—and arguably better—footing at the WTO.

In imposing countervailing duties, the US found two tax programs to confer significant benefits to Samsung's washer production – a research and development tax credit and a tax credit for production facilities outside of the Seoul metropolitan zone. These challenges implicated both the WTO AD Agreement and SCM Agreement.

In the ensuing WTO dispute, USTR treated CLK as a legal advisor as CLK brought the original petition, leaning heavily on its lawyers for reviewing drafts and providing citations to the record. In doing so, CLK had to navigate the competing demands of winning dispute settlement (the US' objective) and maintaining the antidumping and countervailing duty orders against Korean washers (Whirlpool's objective).

Key points

1. Detailed factual analysis for Petition to USDOC

The investigations focused on the injurious impact of washer imports from Samsung and LG, which had waged a predatory campaign to grab U.S. market share through cut-rate pricing – from various countries. The AD claims focused on "targeted dumping"; the CV claims addressed preferential tax programmes. In addition to duties of about 50%, a "global" safeguard remedy was imposed to preclude Samsung and LG dodging country-specific duties.

2. Managing Government's and Petitioner's interests

The dispute presented an existential threat to Whirlpool's viability as a domestic producer of washing machines. Having an adverse decision from the WTO without having fully defended the appeal and identifying a compliance plan to maintain the order would have resulted in the continued dumping of washers into the United States. CLK navigated the policy considerations of identifying a new test to apply (and resulting methodology) with advancing our client's interests in maintaining this antidumping duty order.

3. Liaising with counsel and administering authority

The CLK team provided white papers to USTR for litigation and, at the same time, worked with USDOC as the administering authority to identify ways to comply with any adverse Panel decision or Appellate Body report that might be issued. Litigation work included identifying legal arguments, case precedent, and negotiating history concerning the AD Agreement provisions at issue.

Compliance work included developing new methodologies that would preserve the AD duty order, which was Whirlpool's objective. That said, we needed to square that objective with USDOC's overarching goal to identify a new methodology that could be applied legally under domestic and international law and across cases including imports of products as diverse as steel, chemicals, finished goods, semi-finished goods, and raw materials.

RECOGNITION AGREEMENTS AND ARRANGEMENTS, PARTICIPATION AGREEMENTS, AND WIDER TRADING ARRANGEMENTS, RELATIONSHIPS OR INSTRUMENTS

Summary of experience and expertise

Clifford Chance has broad experience advising on the negotiation and implementation of a wide range of trade-related international instruments. We have experience advising on financial services arrangements, directives and agreements—including in relation to equivalence and mutual cooperation. Members of our team have also advised on the negotiation of agreements on customs cooperation, environmental protection, air services and other forms of mutual recognition and equivalence. We also have experience engaging with WTO committees—including on market access barriers and broader multilateral negotiations. We regularly advise States and corporate clients on complex international law issues—including those with a trade and international regulatory element.

Relevant work highlights

- Clifford Chance advised Monaco on its **Association Agreement negotiations with the European Union**, including a sector-by-sector assessment of the market access implications of the agreement.
- We also represent the government of **Gibraltar** in relation to bespoke treaty arrangements with the EU.
- Advising **HM Treasury** on a range of issues in support of their work during the UK's exit negotiations with the EU.
- We advised a sovereign state in relation to **financial services equivalence** arrangements with the EU.
- We advised a sovereign state in relation to a proposed international **treaty on insurance services**.
- Jessica Gladstone, as former legal adviser to FCDO, advised on the negotiation of several multilateral treaties, with specific expertise in **mutual cooperation, environmental protection, air services and dispute settlement provisions**.
- In a prior role in government, a member of our team advised a sovereign state in relation to its agreement with the European Union on **Cooperation and Mutual Administrative Assistance in Customs Matters**.
- Advising a **government** on a digital trade agreement with another State.
- conducting a compliance review for a **government agency** on the consistency of trade and investment regulations and incentive programmes obligations under a range of international treaties, including FTAs, BITs, GATT and GATS.
- Advising a **government** on the drafting of a mutual recognition agreement in the services sector.

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Case study

Monaco – EU Association Agreement

The proposed agreement is a bespoke treaty designed to deal with the non-recognition of Monaco by several parties to EU FTAs, on the basis that Monaco is not a distinct EU member, and its trading relationship as part of the EU is governed solely by its bilateral treaty with France. This creates a number of export difficulties for Monaco, in the same way as other non EU States benefitting from bilateral trade agreements with the EU (for example, Norway and Iceland). We worked closely with the government of Monaco and various departments, setting out preliminary advice, proposing text and attending negotiations in an advisory capacity, offering legal advice in real time.

We provided innovative advice on crucial sticking points for Monaco, including restrictions on the provision of certain professional services by Monaco nationals. We proposed revisions to chapters of EU treaties establishing the Internal Market in their application to Monaco, and developed a bespoke dispute settlement provision.

We assisted lawyers in the Monaco government in developing trade law and negotiation skills for future dealings with the EU and France.