
THE
INTERNATIONAL
TRADE LAW
REVIEW

SECOND EDITION

EDITORS

FOLKERT GRAAFSMA AND JORIS CORNELIS

LAW BUSINESS RESEARCH

THE
INTERNATIONAL
TRADE LAW
REVIEW

Second Edition

Editors

FOLKERT GRAAFSMA AND JORIS CORNELIS

LAW BUSINESS RESEARCH LTD

PUBLISHER
Gideon Robertson

SENIOR BUSINESS DEVELOPMENT MANAGER
Nick Barette

BUSINESS DEVELOPMENT MANAGER
Thomas Lee

SENIOR ACCOUNT MANAGERS
Felicity Bown, Joel Woods

ACCOUNT MANAGERS
Jessica Parsons, Adam Bara-Laskowski, Jesse Rae Farragher

MARKETING COORDINATOR
Rebecca Mogridge

EDITORIAL ASSISTANT
Sophie Arkell

HEAD OF PRODUCTION
Adam Myers

PRODUCTION EDITOR
Caroline Herbert

SUBEDITOR
Janina Godowska

CHIEF EXECUTIVE OFFICER
Paul Howarth

Published in the United Kingdom
by Law Business Research Ltd, London
87 Lancaster Road, London, W11 1QQ, UK
© 2016 Law Business Research Ltd
www.TheLawReviews.co.uk

No photocopying: copyright licences do not apply.

The information provided in this publication is general and may not apply in a specific situation, nor does it necessarily represent the views of authors' firms or their clients. Legal advice should always be sought before taking any legal action based on the information provided. The publishers accept no responsibility for any acts or omissions contained herein. Although the information provided is accurate as of September 2016, be advised that this is a developing area.

Enquiries concerning reproduction should be sent to Law Business Research, at the address above. Enquiries concerning editorial content should be directed to the Publisher – gideon.roberton@lbresearch.com

ISBN 978-1-910813-25-6

Printed in Great Britain by
Encompass Print Solutions, Derbyshire
Tel: 0844 2480 112

THE LAW REVIEWS

THE MERGERS AND ACQUISITIONS REVIEW

THE RESTRUCTURING REVIEW

THE PRIVATE COMPETITION ENFORCEMENT REVIEW

THE DISPUTE RESOLUTION REVIEW

THE EMPLOYMENT LAW REVIEW

THE PUBLIC COMPETITION ENFORCEMENT REVIEW

THE BANKING REGULATION REVIEW

THE INTERNATIONAL ARBITRATION REVIEW

THE MERGER CONTROL REVIEW

THE TECHNOLOGY, MEDIA AND
TELECOMMUNICATIONS REVIEW

THE INWARD INVESTMENT AND
INTERNATIONAL TAXATION REVIEW

THE CORPORATE GOVERNANCE REVIEW

THE CORPORATE IMMIGRATION REVIEW

THE INTERNATIONAL INVESTIGATIONS REVIEW

THE PROJECTS AND CONSTRUCTION REVIEW

THE INTERNATIONAL CAPITAL MARKETS REVIEW

THE REAL ESTATE LAW REVIEW

THE PRIVATE EQUITY REVIEW

THE ENERGY REGULATION AND MARKETS REVIEW

THE INTELLECTUAL PROPERTY REVIEW

THE ASSET MANAGEMENT REVIEW

THE PRIVATE WEALTH AND PRIVATE CLIENT REVIEW

THE MINING LAW REVIEW

THE EXECUTIVE REMUNERATION REVIEW

THE ANTI-BRIBERY AND ANTI-CORRUPTION REVIEW

THE CARTELS AND LENIENCY REVIEW

THE TAX DISPUTES AND LITIGATION REVIEW

THE LIFE SCIENCES LAW REVIEW

THE INSURANCE AND REINSURANCE LAW REVIEW

THE GOVERNMENT PROCUREMENT REVIEW

THE DOMINANCE AND MONOPOLIES REVIEW

THE AVIATION LAW REVIEW

THE FOREIGN INVESTMENT REGULATION REVIEW

THE ASSET TRACING AND RECOVERY REVIEW

THE INSOLVENCY REVIEW

THE OIL AND GAS LAW REVIEW

THE FRANCHISE LAW REVIEW

THE PRODUCT REGULATION AND LIABILITY REVIEW

THE SHIPPING LAW REVIEW

THE ACQUISITION AND LEVERAGED FINANCE REVIEW

THE PRIVACY, DATA PROTECTION AND CYBERSECURITY LAW REVIEW

THE PUBLIC-PRIVATE PARTNERSHIP LAW REVIEW

THE TRANSPORT FINANCE LAW REVIEW

THE SECURITIES LITIGATION REVIEW

THE LENDING AND SECURED FINANCE REVIEW

THE INTERNATIONAL TRADE LAW REVIEW

THE SPORTS LAW REVIEW

THE INVESTMENT TREATY ARBITRATION REVIEW

THE GAMBLING LAW REVIEW

THE INTELLECTUAL PROPERTY AND ANTITRUST REVIEW

www.TheLawReviews.co.uk

ACKNOWLEDGEMENTS

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

ATSMUI & SAKAI

BUNDJAMIN & PARTNERS LAW OFFICES

CROWELL & MORING LLP

DUA ASSOCIATES

PINHEIRO NETO ADVOGADOS

PORZIO RÍOS GARCÍA

SKRINE

TRADE RESOURCES COMPANY

VAN BAEL & BELLIS

VÁZQUEZ TERCERO & ZEPEDA

VERMULST VERHAEGHE GRAAFSMA & BRONCKERS (V V G B)

WIENER-SOTO-CAPARRÓS

CONTENTS

Editors' Preface	v
<i>Folkert Graafsma and Joris Cornelis</i>	
Chapter 1 WORLD TRADE ORGANIZATION	1
<i>Philippe De Baere</i>	
Chapter 2 ARGENTINA	16
<i>Alfredo A Bisero Paratz</i>	
Chapter 3 BRAZIL	26
<i>Mauro Berenholc</i>	
Chapter 4 CHILE	37
<i>Ignacio García and Andrés Sotomayor</i>	
Chapter 5 EURASIAN ECONOMIC UNION	44
<i>Elena Kumashova</i>	
Chapter 6 EUROPEAN UNION	54
<i>Folkert Graafsma and Joris Cornelis</i>	
Chapter 7 INDIA	84
<i>Shiraz Rajiv Patodia and Ashish Singh</i>	
Chapter 8 INDONESIA	97
<i>Erry Bundjamin and Adhindra Kurnianto Anggoro</i>	
Chapter 9 JAPAN	111
<i>Yuko Nihonmatsu and Fumiko Oikawa</i>	
Chapter 10 MALAYSIA	122
<i>Lim Koon Huan and Manshan Singh</i>	

Chapter 11	MEXICO	134
	<i>Adrián Vázquez Benítez and Emilio Arteaga Vázquez</i>	
Chapter 12	TURKEY	146
	<i>Bulent R Hacioglu, Özlem Canbeldek and Tanil Akbaytogan</i>	
Chapter 13	UNITED STATES	157
	<i>Alexander H Schaefer, Charles De Jager and Benjamin Blase Caryl</i>	
Appendix 1	ABOUT THE AUTHORS.....	173
Appendix 2	CONTRIBUTING LAW FIRMS' CONTACT DETAILS.....	181

EDITORS' PREFACE

Ancient wisdom has it that 'anything can happen' in this year of the 'Fire Monkey'.¹ And indeed, while some of this year's events could have been foreseen, such as the impending expiry of part of China's Protocol of Accession, other remarkable incidents such as the Brexit vote have confirmed ancient wisdom. Such events – and the issues and challenges they present – have helped to further propel international trade law from a niche area of interest to a select few onto a stage with a larger and more captive audience.

Brexit has illustrated that a domestic decision can have unexpected and far-reaching international ramifications. And while the world is still struggling to fully comprehend its economic and trade impact, the trading relationship of a number of economies with China continues to attract attention. Notably, it remains to be seen how certain WTO members will respond to the impending expiry of part of China's Protocol of Accession. The relevant part of Section 15 of the Protocol has thus far permitted investigating authorities to derogate from regular calculation methods to determine domestic prices and costs for Chinese products. This impending expiry, set for 11 December 2016, has already stirred up debates ranging from diverse places such as the European Parliament to the *Global Trade and Customs Journal*.

Moreover, the recent findings of the Panel in *Argentina – Biodiesel*, prohibiting investigating authorities from deviating from actual cost records of an exporter in regular market-economy anti-dumping proceedings, has further raised the stakes of the impending expiry of part of the Protocol. Although this Panel Report is currently still under appeal, the additional consequence of this Report is that, while on 11 December part of the Protocol will expire, the previously used alternative cost calculation methods for 'regular' market economies will likewise no longer be permitted towards China after that date. As a result of

1 The Chinese calendar contains horoscope signs based on a yearly categorisation. According to this horoscope, the first day of the Red (Fire) Monkey started on 4 February 2016. The year 2016 is counted per the Gregorian calendar, and (more or less) equals the 4,713th year counted per the Chinese calendar. As a trivial fact it can be noted that famous 'monkeys' include Justin Timberlake and Leonardo Da Vinci.

these combined constrictions, certain jurisdictions have felt compelled to initiate a flurry of anti-dumping proceedings right now, as currently they can still deviate from local Chinese costs and prices without controversy.

We are therefore deeply grateful for the continued participation and support from the following authors who were willing to share their profound knowledge and expertise in this field: Phillipe De Baere from Van Bael & Bellis for the WTO chapter, Alfredo A Bisero Paratz at Wiener Soto Caparros for the Argentine chapter, Mauro Berenholc at Pinheiro Neto Advogados for the Brazilian chapter, our friend and colleague Elena Kumashova for the Eurasian Economic Union Chapter, Shiraz Patodia at Dua Associates for the Indian chapter, Adrian Vázquez at Vázquez Tercero y Zepeda Abogados for the Mexican chapter, Bulent Hacioglu at Trade Resources Company for the Turkish chapter, and the undersigned for the European Union chapter.

And we are even more pleased and honoured to welcome onboard new and acclaimed contributors. Thanks to their in-depth know-how and contributions, this book brings together an even broader set of rich experiences: Ignacio Garcia at Porzio, Rios, Garcia & Asociados Abogados for the Chilean chapter, Erry Bundjamin at Bundjamin & Partners for the Indonesian chapter, Yuko Nihonmatsu and Fumiko Oikawa at Atsmui & Sakai for the Japanese chapter, Lim Koon Huan at Skrine for the Malaysian chapter and, last but not least, Alex Schaefer and Jeff Snyder at Crowell & Moring LLP for the US chapter.

We are indebted to all these outstanding practitioners, who in spite of their demanding schedules, have taken the time to preserve and pass on their insights, gained as the result of years of practice in the field of international trade. We hope and trust therefore that readers find their chapters both useful and insightful.

Folkert Graafsma and Joris Cornelis

Vermulst Verhaeghe Graafsma & Bronckers (V V G B)

Brussels

September 2016

Chapter 4

CHILE

*Ignacio García and Andrés Sotomayor*¹

I OVERVIEW OF TRADE REMEDIES

Chile has been widely recognised as one of the global leaders in economic freedom, constantly fostering international trade. Chile is a party to the Marrakesh Agreement and was one of the founding members of the WTO and has since become an active promotor of free trade.

Therefore, trade defences are exceptional mechanisms that have only been activated after thorough investigations and in consideration of technical arguments.

Except for a few cases, all imports are subject to a most-favoured-nation duty of 6 per cent *ad valorem*, and used goods shall pay an extra 50 per cent of that duty. In addition, a value added tax of 19 per cent is charged over *ad valorem* (CIF) value of products. Preferences are granted only in consideration of country of origin and tariff classification of certain product. Exports, on the other hand, do not pay any tax or duty.

Importers are not subject to any licensing. However, if FOB value of the importation is more than US\$1,000, customs clearance shall be made through a customs agent, which is an auxiliary of the public service, in particular the National Customs Service, licensed to represent third parties in the clearance of the imported goods.

Restrictions on certain goods are applicable only based on health, international obligations (such as the Montreal Protocol) or national security reasons.

As a consequence of the above, and other measures implemented by the Chilean authorities, the system effectively promotes worldwide international trade.

However, in order to prevent actual or imminent severe damage to domestic industry and production, safeguards, anti-dumping and countervailing duties are applicable as trade remedies after a regulated proceeding.

Those mechanisms are included in free trade agreements, following WTO Agreement principles, with minor adjustments on a case-by-case basis.

¹ Ignacio García is a partner and Andrés Sotomayor is a senior associate at Porzio Ríos García.

Currently, for example, in Chile a safeguard duty of 38.9 per cent is applicable for six months over wide rod importations. Additionally, an ongoing investigation is being conducted by the National Commission in Charge of Investigating the Existence of Price Distortions on Imported Goods (the Commission) in relation to steel bars for reinforced concrete importations, and a preventive anti-dumping measure has been established, equivalent to 13.1 per cent. There are no measures currently effective concerning countervailing duties.

The procedure to adopt safeguards, anti-dumping or countervailing duties is properly regulated and in accordance with WTO principles.

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

A complaint for dumping or subsidies shall be submitted by the industry of domestic production, whose collective production represents more than 50 per cent of the total production of the similar product. For safeguards, the request shall be submitted by the industry of domestic production affected by serious injury or threat thereof, that is all producers of similar or competitive products, or those whose collective production of similar or directly competitive products constitutes a major proportion of the total domestic production.

In exceptional cases, an investigation may be initiated *ex officio* by the Commission, when there are grounds to initiate it.

Complaints and requests must be addressed to the President of the Commission and submitted to the Technical Secretariat of the Commission, providing evidence to support that there is:

- a* a distortion on prices causing significant actual or imminent damage to the domestic industry, in case of dumping and subsidies; or
- b* an increase of imports and how it causes or threatens to cause damage to the similar or directly competitive domestic production, in case of safeguards.

Upon receipt of the claims, the Commission reviews the evidence and determines whether there is sufficient merit to initiate an investigation, publishing an abstract of it in the Official Gazette if declared admissible. Otherwise, the inadmissible decision is notified to the complainant.

Once the Commission has decided to initiate an investigation, it should be notified to the government of the country involved and to the accused companies in case of dumping; to the government of the country involved in case of subsidies; and to the Safeguards Committee of the WTO and to the countries with which Chile has signed trade agreements in case of safeguards.

Investigations of dumping and subsidies must be concluded within one year, and in any event within 18 months, except in exceptional circumstances. On the other hand, the Commission must conclude safeguards investigations within 90 days.

During the investigation, the Commission can recommend to the President of the Republic, through the Minister of Finance, the application of provisional measures. These measures are implemented through the enactment of a presidential decree. Likewise, anti-dumping and countervailing duties may be implemented after 60 days from the date of initiation of the investigation, and they cannot exceed four months, or six months in qualified cases. Safeguard measures may be implemented within the first 30 days from the start of the investigation, and they cannot exceed 200 days.

During the course of the investigation, the Commission sends a questionnaire to the interested parties with details of the information required and how answers should be structured. Moreover, the Commission may require additional information from the complainant or petitioner, and other interested parties, which may submit additional information for a better resolution of the case.

The Commission shall protect confidential information provided during the process, if there are grounds to grant that status. To disclose such information, the Commission shall request express permission of the party that has provided it.

Public hearings may be organised whenever the parties request to present arguments, expose opinions and discuss the information provided by other parties. However, any information given orally must be submitted in writing and made available to other interested parties.

In dumping or subsidies investigations, and in accordance with Annex 1 of the Article VI GATT Agreement and Annex VI of the Subsidies and Countervailing Measures Agreement, the Commission may carry out investigations in a foreign territory to verify information provided or to obtain further details, if the foreign country authorises it.

Based on the information collected during the investigation, the Secretariat prepares a technical report, which is confidential, that provides the necessary elements for the Commission decision regarding the existence of price distortions or increased imports and how they affect domestic production. In addition, specialised studies may be requested if necessary.

To allow participation and for transparency purposes, the Commission will publish every preliminary decision, but without affecting confidential treatment of the relevant information.

To conclude the investigation, the Commission may recommend not to apply a measure because there is no distortion or excess of imports. In this scenario, the Commission issues a resolution ending the investigation, which is published in the Official Gazette. On the contrary, if the Commission recommends the application of a definitive measure, it should submit its recommendation and its background to the President of the Republic, through the Minister of Finance, for a decision. The President, if in agreement with the recommendation, shall enact a presidential decree instructing the implementation of the recommended measure, publishing it in the Official Gazette.

Regarding the duration of measures, it depends. Anti-dumping and countervailing duties cannot exceed one year from the publication of the presidential decree in the Official Gazette. Moreover, the recommended measure cannot exceed the margin of distortion. On the other hand, safeguard measures cannot exceed two years from the publication of the presidential decree in the Official Gazette, and are renewable for a maximum of two years. If provisional measures were applied during the investigation, the period of two years is counted from the date of publication of the decree that ordered such measures.

There is no specific appeal procedure against trade remedy decisions. However, general administrative regulation applies, according to which the affected party has several available actions to dispute the measure.

First, there are administrative actions to be submitted before the Commission or its superior, the Minister of Economy. Both actions (*recurso de reposición* and *recurso jerárquico*, respectively) may consider legal or policy issues and must be submitted within five days of the publication of the measure. Another administrative action would be a presentation made by

anyone before the General Comptroller (an independent entity) in order to discuss the legality of a resolution. It is a short procedure where the controller agency requests information from the affected agencies and renders a decision.

It is also possible to exercise jurisdictional actions. The *recurso de nulidad de derecho público* is an action before a civil judge (Ordinary Courts of Justice). The trial will follow the rules of the general procedure, and is therefore a long discussion that could take years. However, the plaintiffs may ask for precautionary measures in order to avoid the effects of the contended act.

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

The *recurso de protección* is a claim before a Court of Appeals for a breach of some the constitutional rights established in Article 19 of the Chilean Constitution. The claim must be filed within 30 days after the publication of the administrative act. This is a simple and short procedure where the Court decides after receiving the report of the affected agency.

Finally, it is possible to file a *recurso de amparo económico* within six month of an act's publication before a Court of Appeals, claiming an infringement of the constitutional right to develop legitimate economic activities established in Article 19 No. 21 of the Constitution.

All of the above-mentioned actions (except for the one before the General Comptroller) require an affected right or a legitimate interest of the plaintiff.

II LEGAL FRAMEWORK

Customs procedure and rules can be found mainly in the Customs Ordinance, the Chilean Customs Rules Compendium and the Chilean Tariff Code, which is based on the Harmonised Commodity Description and Coding System.

On the other hand, the legal framework on trade defence is based on the WTO agreements. Moreover, Supreme Decree No. 16 enacted in 1995 incorporated into Chilean legislation the Anti-dumping Agreement, the Safeguards Agreement, the Agreement on Subsidies and Countervailing Measures, and GATT Articles VI and XIX.

In addition, the main Chilean legislation includes Law No. 18,525 on Importation of Goods enacted in 1986, and its subsequent amendments of 1999, 2001, 2003 and 2011.

Moreover, Decree No. 1314 of 2012, of the Ministry of Finance, regulates the procedure to claim and request safeguards, anti-dumping and countervailing measures.

Finally, Chile is part of 25 trade agreements where trade remedies are included, and those agreements, once approved by the Congress, will be incorporated in the Chilean legal system.

III TREATY FRAMEWORK

Considering the necessity of having clear rules and principles of international trade, Chile is a founding member of the WTO and the Marrakesh Agreement was adopted through Decree No. 16. In addition, Chile is member of other WTO agreements such as the Trade Facilitation Agreement (which has been recently approved by Congress) and the Agreement on Government Procurement.

On the other hand, Chile has subscribed to four categories of commercial agreements, which differ in coverage and in the degree of commitment. The first kind of agreement would be the partial scope agreement, which refers to a limited group of goods with preferential tariff treatment, which is the case of the agreement with India. The second group is the economic complementation agreement, which liberalises trade in goods and has deeper obligations, such as the case of the agreements with Bolivia, Ecuador and MERCOSUR, among others. The third kind of agreement is the free trade agreement, which aims at establishing a free trade zone between countries, which is the case of the agreements with United States, Canada, Thailand, China and Mexico, among others. Finally, there are strategic association agreements in which other matters are included besides trade, such as social and technological cooperation and this is the case of the agreements with the European Union and Japan.

Chile has subscribed to commercial agreements with the following countries: Australia, Bolivia, Canada, China, Colombia, South Korea, Cuba, Ecuador, Hong Kong, India, Japan, Malaysia, Mexico, Panama, Peru, Thailand, Turkey, the United States, Venezuela and Vietnam. Moreover, Chile has concluded negotiations for another partial scope trade agreement with India, and is currently conducting negotiations for a strategic association agreement with Indonesia.

Furthermore, Chile is member of the following regional agreements:

- a* Centro América (Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua);
- b* EFTA (Iceland, Liechtenstein, Norway and Switzerland);
- c* Mercosur (Argentina, Brazil, Paraguay, Uruguay and Venezuela);
- d* P4 (Brunei Darussalam, New Zealand and Singapore);
- e* European Union (Austria, Belgium, Bulgaria, Cyprus, Croatia, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Latvia, Lithuania, Luxemburg, Malta, Netherland, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the United Kingdom); and
- f* Pacific Alliance (Colombia, Mexico and Peru).

IV RECENT CHANGES TO THE REGIME

Law No. 18,525, enacted in 2011, which refers to trade remedies, has recently been amended, as well as the new regulation for trade remedies proceedings, established in Decree No. 1314, which replaced Decree No. 575 of 1993 for anti-dumping and countervailing duties, and replaced Decree No. 909 of 1999 for safeguard measures.

The amendment to Law No. 18,525 increased the period of time in which a safeguard may be implemented. The WTO Agreement establishes a maximum period of eight years, considering extensions. Formerly, Law No. 18,525 allowed only for one year with an extension for the same period (i.e., two years maximum). Currently, safeguards may be implemented for two years, renewable for two more years.

Regarding the regulation, the new Decree No. 1314 systematised the rules for trade remedies, giving more certainty to interested parties; and improved the proceedings for adopting measures and the faculties of the Commission.

V SIGNIFICANT LEGAL AND PRACTICAL DEVELOPMENTS

As of 2010, specialised courts were implemented in Chile for tax and customs disputes. The new Tax and Customs Courts seek to benefit private investors through the possibility of disputing Tax or Customs Authority resolutions, in an independent and expert court.

Proceedings are regulated to be transparent, efficient and modern, in order to provide justice effectively.

Another significant legal development relates to the transfer pricing approach by Chilean authorities. Transfer pricing is gaining increasing relevance in Chile, especially after 2012's tax reform which strengthened the existing rules on methods to calculate values in related-party transactions, in accordance with OECD rules and principles. The Tax Authority is consistently investigating and requiring information in order to apply transfer pricing adjustments, which includes import valuation investigations too.

One of the improvements of the tax reform was the inclusion of the advance pricing agreement (APA) mechanism, which consists in an agreement with the Tax Authority or with the Customs Authority in case of imported goods, on the determination of price, value or regular market profit in said operations with related parties. This agreement lasts for three years and may be renewed.

The transfer pricing regulation will certainly bring more control and audits by the authority, but the system of specialised and independent courts improves the chances of a fair defence of taxpayers, importers and exporters.

VI TRADE DISPUTES

Chile has been involved in several WTO disputes. In particular, it has been involved in 10 disputes as a complainant, 13 as a respondent and 43 as a third party.

In these disputes, a regular counterparty is Argentina and the products involved are those related to agriculture such as milk, wheat, wheat flour and edible vegetable oils. Often, Argentine industries participate in the Commission of Distortions investigation proceedings, expressing their disconformity with the eventual measures to be proposed and declared by the government. On the other hand, Argentina is one of the countries that has implemented more measures that may affect foreign commerce according to the Global Trade Alert.²

One of the most prominent cases between Chile and Argentina related to a price band system maintained by Chile. According to such scheme, the tariff rate for wheat, wheat flour, sugar and edible vegetable oils from Argentina could be adjusted if the price fell below a lower price band or rose beyond an upper price band.

This scheme was challenged by Argentina before the WTO and before the Panel and the Appellate Body.³

The Appellate Body reversed two Panel findings. The first one was referred to a matter brought by Argentina that was not raised in its panel request, depriving Chile of its due process rights under the Dispute Settlement Understanding, Article 11. The second reversed finding was related to Panel's understanding of Chile's price band system as an ordinary custom duty, assessed on the basis of exogenous price factors.

2 www.globaltradealert.org/site-statistics/table/3.

3 DS 2017, *Price Band System and Safeguard Measures Relating to Certain Agricultural Products*.

Notwithstanding the above, the Appellate Body concluded that Chile's price band system was inconsistent with Article 4.2 of the Agreement on Agriculture and upheld the Panel's finding that it was a border measure that is similar to variable import levies and minimum import prices.

Chile amended its price band system, and the total amount of duties imposed on imports of wheat, wheat flour and sugar would vary in two ways: through the imposition of additional specific duties or through the concession of rebates on the amounts payable. When the reference price determined by the Chilean authorities fell below the lower threshold of a price band, a specific duty was added to the *ad valorem* tariff. On the contrary, when the reference price was above the upper threshold of the price band, imports would benefit from a duty rebate.

Argentina referred to the Original Panel to claim for the insufficient measures adopted by Chile. The Panel concluded that Chile had failed to implement the recommendations and rulings of the Dispute Settlement Body in the original dispute, and that the system, even with the amendment, continued to be a border measure similar to a variable import levy and a minimum import price, inconsistent with Article 4.2 of Agreement on Agriculture. For judicial economy, the Panel considered that an additional finding based on GATT Article II:1(b) and WTO Agreement Article XVI:4 was not necessary. The Appellate Body upheld the finding of the Panel.

The system will be phased out by Chile in 2016.

VII OUTLOOK

One of the major issues to come is the effectiveness of the Trans-Pacific Partnership Agreement (TPP), which includes Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, the United States and Vietnam. This agreement involves 812 million people and represents 38 per cent of the world economy and more than 3,100 products.

Among other issues, the TPP seeks to ease customs proceedings, establishing a set of common origin, sanitary and technical rules. Hence, the TPP will allow the creation of global value chains, strengthening commerce between the parties.

The TPP has already been signed by the countries involved, and now they are in the process of ratification of the Agreement in accordance with each country's legislation. In Chile, the President of the Republic has to request the approval of Congress for the ratification of the Agreement, and it should occur during 2016.

Another relevant upcoming change is a new legislation proposed by the government regarding customs processes that is now being discussed in Congress.

This new set of rules includes the incorporation of the authorised economic operator in relation to the WCO's SAFE Framework of Standards; the improvement of the outward processing temporary admission regime; the possibility of releasing goods upon a warranty of payment of tariff and taxes; and other rules provided to modernise the system and ease international trade. The new legislation is expected to enter into force by early 2017.

This new legislation, in addition to the TPP, the Pacific Alliance (which includes Chile, Peru, Colombia and Mexico) and the entry into force of the Facilitation Trade Agreement will benefit importers, exporters and international trade in general.

Appendix 1

ABOUT THE AUTHORS

IGNACIO GARCÍA

Porzio Ríos García

Ignacio García is a partner at Porzio Ríos García. His professional practice is focused on the areas of corporate and labour law, as well as international trade and customs law. He advises the firm's national and international clients, in a wide range of matters including corporate, labour, litigation, immigration, social security, pensions, transfers of executives, downsizing and union negotiations. He is also a recognised expert in private international law matters, contracts and international trade, customs law, trade defence, WTO law and customs disputes.

He was previously a partner at a Global 20 international law firm from 1999 to 2014, where he headed the firm's labour and employment and international trade and customs practice areas.

Mr García obtained his bachelor's degree from the Pontifical Catholic University of Chile in 1993 and his master's degree from Heidelberg University in 1998. He is a professor at the School of Law (graduate and postgraduate programmes) of the Pontifical Catholic University of Chile and the University of Los Andes.

He acted as arbitrator for the dispute resolution system of the Economic Complementation Agreement Chile-Mercosur and is an arbitrator for the Chamber of Commerce of Santiago.

Mr García has written articles on specialised areas including foreign trade, customs law, labour law and international law. He is a frequent speaker at international seminars. He is an editorial board member of Thomson Reuters for the collection of codes of Chile.

Mr García is also the appointed representative of the State of Chile before Unidroit.

ANDRÉS SOTOMAYOR

Porzio Ríos García

Andrés Sotomayor is a senior associate at Porzio Ríos García. From 2010–2014 he was legislative adviser and legislative coordinator of the Legislative and Judicial Division, Ministry

of the General Secretariat of the Presidency for the Government of Chile. In 2009–2010 he was an attorney at Puga Ortiz and between 2007 and 2009 he was head of the legal department at Illustrious Municipality of Coyhaique.

His professional practice is focused on counselling the firm's clients in the areas of corporate and commercial law, customs law and international trade, as well as regulatory, natural resources and administrative law in general.

Mr Sotomayor obtained his bachelor's degree from the Pontifical Catholic University of Chile in 2007 and his master's degree from Georgetown University in 2015.

PORZIO RÍOS GARCÍA

Cerro El Plomo No. 5680, piso 19

Santiago

Chile

Tel: +56 2 27290600

igarcia@porzio.cl

asotomayor@porzio.cl

www.porzio.cl