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RM6183 Trade Law Panel

Lot 1: International Trade and Disputes

VBB Prospectus

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Introduction

Van Bael & Bellis (VBB) has the trade law expertise and experience to support the UK Government on virtually all its needs under the International Trade and Disputes lot of the RM6183 Trade Law Panel. In doing so, we will build on our near 40-year track record of supporting sovereign governments in navigating challenging, often politically sensitive, trade and investment issues and disputes as well as our involvement over the past four years in advising the UK Government on a variety of complex trade-related matters.

Our multicultural 30+ lawyer trade and customs team, operating in Brussels, Geneva and London, is the largest in Europe. We are recognised globally for our expertise in the field, advising in all major jurisdictions and with extensive experience in working on matters at the intersection of trade and public international law.

In addition to our strengths across all key trade disciplines, we also advise on a range of novel issues arising in the context of international trade law and policy, including an increasing focus on sustainable development. For example, our lawyers have expertise in questions related to climate change, carbon border adjustments, human rights, labour and environmental protection, digitalisation and data protection, essential medicines and new medicinal products in the context of international trade and investment obligations under WTO law and free trade agreements.

Our team speaks more than 20 languages and understands the subtleties of working across multiple jurisdictions and different cultural environments. Our legal advice always takes account of wider geopolitical and other considerations.

As an adjunct to our internal bench strength, we can call upon a network of 'tried and tested' local counsel in jurisdictions around the world. As a result, we can handle the largest and most complex cases and can put forward exactly the right team for a matter.



Philippe De Baere
Framework Manager
Partner

Philippe has been advising on a wide range of major EU and international trade matters, including WTO issues, trade remedies, customs, and sanctions, for the past 30 years. He has vast experience of representing clients on major trade cases before the European Commission, the EU Courts, WTO Panels and the WTO Appellate Body.



Joanna Redelbach
Deputy Framework Manager
Counsel

Joanna represents government and private sector clients on complex EU and international trade matters including trade disputes and trade-related regulatory matters. Joanna has particular expertise in WTO dispute settlement proceedings, ongoing trade negotiations and FTAs, including the UK-EU Trade and Cooperation Agreement. She also counsels clients on regulatory issues at the intersection of trade and sustainability.

MANDATORY SPECIALISMS

A. Advice and support for international trade disputes, incl. acting on behalf of government

We have vast experience in handling international trade disputes before both international and national courts and tribunals, including the WTO dispute settlement bodies, the Court of Justice of the European Union (CJEU) and arbitral bodies established under free trade agreements (FTAs).

CJEU cases include representing clients in several annulment proceedings concerning EU restrictive measures adopted in the context of the European Common Foreign and Security Policy and handling the first case in which a non-EU State has directly challenged before the EU Courts restrictive measures adopted by the EU in the context of its external policy. Several of our lawyers have previously worked at the

WTO Appellate Body Secretariat and Legal Affairs Secretariat, as well as at other courts and tribunals adjudicating trade disputes. Our lawyers' understanding of international trade dispute settlement builds on our extensive experience in multi-jurisdictional litigation and in finding solutions tailored to clients' offensive or defensive interests.

Our team also advises governments on negotiating new, or reforming existing, dispute settlement procedures under trade agreements as well as alternative methods of dispute resolution and dispute prevention.

Notable assignments include:

- **advising a sovereign client on the potential offensive dispute** with its largest trading partner in respect of SPS measures being applied on imports of key agricultural products, including a comprehensive evaluation of the best choice of forum between the WTO and a recently signed FTA
- **arbitration under the Agreement on Government Procurement (GPA):** advising a government in the first GPA arbitration procedure related to procurement of essential medicines, medical devices and personal protective equipment goods
- **remedies under the sustainability chapters of EU FTAs:** advising an EU institutional stakeholder on the design of remedies under the sustainability chapters of EU FTAs, tailored to inducing compliance with labour and environmental provisions
- **advising a sovereign client on the effectiveness of enforcement mechanisms** under trade and sustainable development chapters of FTAs
- **multi-jurisdictional challenge of EU anti-dumping duties on biodiesel:** representing and assisting Argentinean biodiesel producers in challenging the EU anti-dumping duties imposed on biodiesel from Argentina, including before the EU Courts and in DS473, *EU – Biodiesel (Argentina)*
- **multi-jurisdictional challenge of a trade embargo:** representing a government in challenging a trade embargo and other trade restrictive measures before domestic courts, in parallel to that government's WTO challenge of the same measures



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Case Study 1: EU-Korea FTA dispute on labour standards

This was the first dispute resulting in the establishment of a Panel of Experts under the sustainability chapters of the European Union (EU)'s free trade agreements. It focused on the labour-related provisions in the sustainability chapter of the EU-Korea FTA.

With no past practice or fully developed procedural framework for the operation of panel proceedings available, our team used its deep expertise in dispute resolution under international law to respond swiftly to procedural issues which arose during the dispute and put forward practical and effective solutions.

In close collaboration with the Korean government and local counsel, we designed a defence strategy focusing on both the jurisdiction of the Panel of Experts and the merits of the EU's claims. The jurisdictional challenge raised the threshold question of whether any alleged failure to comply with fundamental freedoms or to ratify fundamental ILO Conventions could be submitted to the Panel of Experts or whether matters falling within the scope of the Panel's jurisdiction were limited to "trade-related aspects of labour".

The response to the EU's claims focused on the interpretation of the parties' commitments to respect, promote and realise the principle concerning the freedom of association and to make continued and sustained efforts towards ratifying the fundamental ILO Conventions.

Key workstreams included preparing a strategic memorandum, assisting with the drafting of the written submission, preparing hearing notes and responding to the Panel's questions.

Impact

- The report of the Panel of Experts sets a precedent in respect of how the relationship between sustainable development and trade can be characterised, at a time when FTAs are increasingly used to guarantee a level playing field in respect of standards of labour and environmental protection.
- The report signals that sustainability chapters in FTAs can be a tool to enforce labour and environmental obligations under other international agreements.
- The outcome of this dispute has renewed calls for stronger remedies to induce compliance with sustainability obligations under FTAs.

Case Study 2: First WTO dispute challenging the EU's climate policy measures

VBB successfully represented Indonesia in the first significant challenge to the WTO compatibility of the EU's Green Deal climate policy measures.

Our team, in cooperation with local counsel, advised and represented Indonesia as a complainant in DS593, *EU – Palm Oil (Indonesia)* (and as a third party in the concurrent DS600, *EU and Certain Member States – Palm Oil (Malaysia)*). Indonesia challenged the EU's restrictions on high Indirect Land Use Change (ILUC)-risk biofuels, which disproportionately impacted Indonesian and Malaysian palm oil-based biofuels, and France's TIRIB measure which excluded palm oil from tax incentives granted to other biofuels.

We secured critical findings that the EU's administration of its ILUC-related measures was inconsistent with WTO rules and that France's TIRIB measure was discriminatory against Indonesian palm oil-based biofuels.

The case involved a novel "combined" defence of its measures by the EU, under three different subparagraphs of Article XX of the GATT 1994. We used our extensive knowledge of WTO jurisprudence and employed a skilled interpretation of the law in order to overcome this defence, ultimately demonstrating that the EU and France's biofuel measures unfairly discriminated against Indonesian palm oil to the benefit of European rapeseed and soybean-based biofuels and imposed arbitrary restrictions without implementing a fair and effective certification process.

The case was significant in terms of both the length of the proceedings and extent of the evidentiary record, taking over four years from the date of initial consultations to the circulation of the Panel Report and comprising over 700 exhibits submitted by the parties.

Our team assisted Indonesia with each step of the panel proceedings, including drafting the consultations and panel requests and all submissions, answering questions from the Panel at the hearings, and assessing the interim and final reports of the Panel and options for appeal. We dealt expertly with numerous procedural and administrative issues (such as requests for *amicus curiae* submissions and enhanced third-party rights) which arose during the course of the proceedings.

Impact

- We have applied learnings from the valuable experience gained in managing large-scale, evidence-intensive intergovernmental disputes in collaboration with external experts when advising WTO Members on dispute settlement, both in ongoing cases and in assessing the feasibility of initiating a WTO dispute.
- The Panel Report set a key precedent for the WTO consistency of climate policy measures under the EU's Green Deal, clarifying the limits of Article XX justifications and the use of "combined" justifications.

MANDATORY SPECIALISMS

B. Advice on all stages of international trade disputes/Conducting advocacy in WTO disputes

VBB has built up an impressive track record in WTO dispute settlement proceedings, having successfully handled 35 WTO disputes, including many landmark cases. Our assistance covers all stages of the proceedings, from consultations to implementation, as well as alternative methods of dispute resolution. We help clients design effective litigation strategies, advising on substantive and procedural points throughout the dispute. We collaborate closely with other expert advisers, including economists and scientific experts, where required.

Our lawyers are recognised for their understanding of the practice of WTO dispute settlement and their experience in oral advocacy at both panel and Appellate Body hearings. The team has assisted numerous

WTO Members acting as complainant, respondent or third party in panel and Appellate Body original and compliance proceedings. We also assist with retaliation proceedings and have experience with the novel appeal arbitration mechanism. Our experience extends to disputes across a wide range of WTO agreements and covers issues from anti-dumping, subsidies, and safeguards to technical barriers to trade, sanitary and phytosanitary measures, customs valuation and classification, and trade-related investment measures.

Advice on WTO dispute settlement also forms an important part of the VBB pro bono programme: our lawyers assist developing countries, and in particular least-developed countries, with building capacity in that context.

Notable assignments include:

- representing Indonesia in DS593, *EU – Palm Oil (Indonesia)*, the first WTO dispute to challenge the WTO compatibility of the European Union’s climate policy measures as well as EU Member States’ implementing measures, under the TBT Agreement, the GATT 1994 and the SCM Agreement
- representing a WTO Member in its successful WTO challenge of the US Section 232 measures on steel and aluminium, in which the Panel rejected the US defence under the essential security exception under Article XXI of the GATT 1994
- representing Türkiye in DS595, *EU – Safeguard Measures on Steel (Turkey)*, a dispute successfully challenging EU safeguards on steel products
- representing Japan in DS518, *India – Iron and Steel Products*, a dispute brought by Japan, under the GATT 1994 and the Agreement on Safeguards, against the safeguard measures imposed by India on steel products
- representing China in the original and Article 21.5 compliance proceedings in DS397, *EC – Fasteners (China)*, challenging, under the Anti-Dumping Agreement and the GATT 1994, the non-market economy provision in the EU Basic Anti-Dumping Regulation and the EU anti-dumping measures on certain iron or steel fasteners and obtaining an unprecedented finding that the EU Basic Anti-Dumping Regulation was “as such” in violation of the Anti-Dumping Agreement
- representing Argentina in DS473, *EU – Biodiesel (Argentina)*, challenging, under notably the Anti-Dumping Agreement and the GATT 1994, the EU’s measures affecting the importation and marketing of biodiesel
- representing Ukraine in DS499, *Russia – Railway Equipment*, a dispute in which Ukraine challenged, under the GATT 1994 and the TBT Agreement, several measures imposed by the Russian Federation on the importation of railway equipment and parts thereof
- assisting Japan and Taiwan in DS376 and DS377, *EC – IT Products*, disputes involving challenges, under the GATT 1994, against the EU tariff treatment of certain IT products in light of the obligations resulting from the 1996 Information Technology Agreement
- advising Japan as a third party in DS400 and DS401, *EC – Seal Products*, disputes brought by Canada and Norway challenging, under the TBT Agreement and the GATT 1994, the European Union’s measures affecting the importation and marketing of seal products



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Case Study 1: First WTO dispute on Article XXI of the GATT 1994

The VBB team advised and represented Ukraine in DS512, *Russia – Traffic in Transit*, in which Ukraine challenged multiple restrictions imposed by Russia on traffic in transit from Ukraine through Russia to third countries. Russia defended the measures as being justified on essential security grounds.

This was the first WTO dispute in which a Panel was asked to interpret and apply Article XXI of the GATT 1994 and establish whether it had jurisdiction to consider an allegedly security-related dispute. It also was the first case focusing on traffic in transit.

Apart from managing an extensive and complex evidentiary record, our team was the first to develop a comprehensive interpretation of Articles V and XXI of the GATT 1994 and design a strategy for responding to a defence on essential security grounds, keeping in mind horizontal questions regarding each party's burden of proof and the Panel's standard of review. The Article XXI defence raised complex questions at the intersection of trade law and other areas of international law.

We assisted Ukraine with each step of the panel proceedings, from drafting the consultations and panel requests, commenting on panel composition and various procedural issues, responding to requests for preliminary rulings, drafting written submissions, preparing the evidentiary record, drafting opening and closing statements, answering questions from the Panel, to assessing the interim and final reports of the Panel and appeal options.

Impact

- The Panel Report has set the analytical framework for other WTO panels' rulings on defences under Article XXI of the GATT 1994, and specifically their jurisdiction and the applicable standard of review.
- Learnings in this case have been applied in advising other WTO Members in security-related disputes and assisting clients in assessing a wide variety of actions taken on essential security grounds, including sanctions and export control measures.

Case Study 2: First Article 25 DSU appeal arbitration

Our team advised and represented Türkiye in DS583, *Turkey – Pharmaceutical Products (EU)*. Before the WTO Panel, the EU challenged multiple measures concerning the production, importation and marketing of pharmaceutical products, including a localisation requirement, under various provisions of the GATT 1994, the TRIMS Agreement, the TRIPS Agreement and the SCM Agreement. Türkiye defended the measures, including under Article III:8(a) of the GATT 1994 and subparagraphs (b) and (d) of the general exception set out in Article XX of the GATT 1994.

At the time the final Panel Report was issued to the parties, the Appellate Body was not able to hear appeals under Articles 16.4 and 17 of the DSU. As an alternative, Türkiye and the EU mutually agreed to enter into *ad hoc* appeal arbitration pursuant to Article 25.2 of the DSU, after having agreed to suspend the work of the WTO Panel.

We assisted Türkiye with each step of the panel proceedings, and notably with the strategy, negotiation and conduct of the Article 25 *ad hoc* appeal arbitration proceedings. This included assisting Türkiye in the negotiation of the first mutually agreed Article 25 DSU *ad hoc* arbitration procedures with the EU at the WTO, the selection of Arbitrators and drafting the notice of recourse to Article 25 DSU arbitration. We also assisted with drafting Türkiye's appellate submission, opening and closing statements for the hearing, assessing various procedural questions raised by the Arbitrators, answering substantive questions from the Arbitrators and assessing the Arbitrator's award and options for the implementation of their rulings.

At the centre of this dispute was the interpretation of the government procurement derogation in Article III:8(a) of the GATT 1994 and its application to the supply of pharmaceutical products for governmental purposes. In that regard, the Arbitrators upheld the interpretation put forward by our team that Article III:8(a) applies to purchase transactions entered by non-governmental entities so long as the products at issue are procured by a governmental agency and are purchased for governmental purposes.

Impact

- This was the first *ad hoc* appeal arbitration under Article 25 of the DSU and thus set a precedent for similar arrangements in other disputes, in particular for WTO Members that are not parties to the Multi-Party Interim Appeal Arbitration Arrangement (MPIA)
- Our team's work on this case has deepened the firm's expertise in advising and representing other WTO Members in appeal arbitration proceedings and assisting clients in navigating the procedural complexities of Article 25 appeal arbitration, as opposed to the – now unavailable – appellate review of trade disputes.

MANDATORY SPECIALISMS

C. Prevention of international trade disputes

Leveraging our extensive experience in WTO litigation, we provide strategic guidance on minimising the risk of international trade disputes. We advise governments and multinational corporations on trade negotiations and assist governments in evaluating the compliance of domestic legislation with WTO agreements and FTAs, as well as drafting new, compliant measures. We also help clients manage dispute risk, through comprehensive risk assessments and litigation mitigation strategies, and support governments in exploring mutually agreed solutions within the WTO dispute settlement framework.

We carefully assess all available options, including constructive dispute resolution approaches aligned with policy objectives. For WTO Members seeking to enforce their rights and obligations, we provide strategic advice on the implementation and enforcement of WTO and FTA commitments, aiming to achieve a resolution to the dispute without resorting to litigation where possible.

Our team is experienced in helping governments with novel and cross-cutting legal issues which entail risk of international trade disputes, including in the context of trade and environment (e.g. carbon border tax adjustments), trade facilitation and government procurement.

Notable assignments include:

- advising a WTO Member on a potential offensive/defensive dispute, under a recently signed FTA, related to agricultural product licences with a close trading partner, including potential countermeasures which could be applied by each party, and recommending strategies to prevent the escalation of the dispute
- advising on the compatibility of border tax adjustment measures with WTO law and EU FTAs and potential solutions for accommodating them within the WTO framework
- advising a WTO Member on the WTO-consistency of its draft domestic measures promoting investments in the offshore wind sector and the changes required to mitigate the risk of legal challenge
- advising a WTO Member on the likelihood of a successful WTO challenge against another Member's trade embargo and the cost-benefit analysis of such action
- advising a WTO Member on designing its legislation on foreign investment screening to mitigate litigation risks under Article XX of the GATT 1994
- advising several WTO Members on their compliance with the notification obligations under Article 16 of the Agreement on Trade Facilitation (pro bono)
- assisting UK company Cambi with questions concerning the implementation of the EU-Korea FTA, and in particular the status of "approved exporter", which enables a company to benefit from preferential duties
- advising an industry association on the availability of retroactive claims for preferential treatment under the EU-Japan FTA
- advising a WTO Member on proposals for new WTO obligations regarding trade in environmental goods and services
- assisting China, the Dominican Republic, Egypt and Kazakhstan, among others, in the drafting of trade remedies regulations in line with WTO rules
- advising on the design and implementation of a national business promotion programme in line with the SCM Agreement
- advising on the design and implementation of national policies relating to selling arrangements (duty free shops) and their compatibility with the WTO agreements and EU FTAs
- advising a sovereign client on enforcement and compliance strategies of the EU human rights sanctions
- advising a sovereign client on the scope and interpretation of labour and corporate social responsibility (CSR) provisions in an FTA with the EU and assessment of risk of potential disputes under the dispute settlement chapter of that FTA



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Case Study 1: Assessing EU carbon border adjustment mechanism (CBAM)

VBB advised several WTO Members on the EU Carbon Border Adjustment Mechanism (CBAM) and its compliance with WTO law and certain EU FTAs.

Our advice focused on the WTO compliance of different elements of the CBAM, including compliance with the GATT 1994 and the TBT Agreement.

We also examined whether the CBAM could be justified under Article XX(b) as a measure necessary to protect human, animal, and plant life or health, or Article XX(g) as a measure relating to the conservation of exhaustible natural resources.

We analysed whether exemptions from the CBAM under FTAs comply with the most-favoured nation obligation under the GATT 1994 or whether such exemptions could be justified under Article XXIV of the GATT 1994.

In addition, we advised on whether and to what extent the proposal for a collective WTO climate waiver is supported by WTO Members and what the specific terms and conditions of such a waiver could be.

Impact

- CBAM proposals are at the forefront of the trade policy of many WTO Members. Our team's work on this project has strengthened the firm's expertise to advise governments on the design of trade measures in the context of climate change mitigation which minimises the risk of legal challenges to such measures.

Case Study 2: Finding a mutually agreed solution in an offshore wind dispute

VBB represented Taiwan in WTO consultations initiated by the EU with respect to the alleged local content requirements for investments in offshore wind installations in Taiwan (DS625). We also advised Taiwan during the bilateral negotiations for a mutually agreed solution.

We examined Taiwanese legislation relating to offshore wind investments and assessed the strength of the claims put forward by the EU in its request for consultations.

We also analysed potential counterarguments and defences available to Taiwan and, on that basis, developed a strategy for the consultations meeting with the EU.

Following the consultations, we explored different actions that could be taken by Taiwan to address the EU's concerns and reach a mutually agreed solution while preserving the policy objectives of the Taiwanese support measures in the offshore wind sector.

Impact

- By negotiating a mutually agreed solution, Taiwan was able to preserve its policy objectives, while avoiding prolonged and costly WTO litigation and the related risk of undermining its close relationship with the EU.

MANDATORY SPECIALISMS

D. Trade remedies

VBB advises on all aspects of trade remedies law. We have advised governments, including China, the Dominican Republic, Egypt and Kazakhstan, on the drafting of WTO-consistent trade defence regulations. We have also assisted WTO Members, including Bangladesh, Egypt and South Africa, in establishing authorities to investigate unfair trade practices. We regularly advise governments on wider matters concerning trade remedies, including the practical aspects of implementing internal trade

regulations, and have trained the anti-dumping and anti-subsidy units of several WTO Members on the practical and legal intricacies of trade remedies.

Our team also assists private clients and governments at all stages of trade remedy cases, including anti-dumping, anti-subsidy and safeguard investigations, in numerous jurisdictions. We regularly represent clients before domestic and EU courts in challenging trade defence measures.

Notable assignments include:

- advising governments and corporate clients on compliance of EU and UK safeguard measures on steel products, imposed in response to the US Section 232 duties, with the WTO Agreement on Safeguards
- advising governments on the use of rebalancing measures under Article 8 of the Agreement on Safeguards in the context of the EU safeguard measures on steel products
- advising on compliance of EU foreign subsidy control measures with WTO law
- advising governments on the EU anti-dumping methodology for calculating normal value and its consistency with WTO law
- advising governments in the context of consultations under Article 12 of the Agreement on Safeguards
- assisting WTO Members, including Bangladesh, Egypt and South Africa, with establishing authorities to conduct anti-dumping, anti-subsidy and safeguard investigations
- assisting Taiwan throughout the initial EU safeguard investigation concerning imports of steel products, initiated in 2018 in response to the US Section 232 duties on steel and aluminium products, and the subsequent reviews
- representing Jushi Egypt for Fiberglass Industry S.A.E., the sole exporting producer of glass fibre reinforcements in Egypt, as well as the EU association of importers and users in the EU anti-dumping proceeding concerning imports of glass fibre reinforcements originating in Egypt. The investigation was terminated without the imposition of anti-dumping measures
- assisting China at all steps of the EU anti-subsidy investigations on imports of e-bikes and stainless steel (AS646 and AS660). The AS660 investigation is the only anti-subsidy investigation against China which was terminated without the imposition of measures since 2014



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Case Study 1: Challenge against EU anti-dumping and countervailing duties on biodiesel

VBB advised Argentina and the Argentinean biodiesel industry on all aspects of anti-dumping (AD) and anti-subsidy (AS) measures imposed by the EU on imports of biodiesel from Argentina. Our assistance covered proceedings before the European Commission, the General Court and the Court of Justice of the European Union (CJEU) as well as WTO dispute settlement proceedings.

- **Trade remedies investigations:** our team represented the Argentinean biodiesel producers in an AD investigation initiated by the Commission in 2012 and in two AS investigations initiated in 2012 and 2018, respectively. The AD duties imposed as a result of the 2012 investigation were subsequently challenged before the General Court and a WTO panel. Our work included preparing injury submissions and questionnaire responses as well as assisting during the on-the-spot verifications. Throughout the proceedings we ensured close coordination between Argentinean biodiesel producers and the Argentinean government.
- **General Court and CJEU proceedings:** we represented the Argentinean biodiesel producers and the Argentinean Chamber of Biofuels (CARBIO) in their legal challenges against the AD duties imposed by the EU on imports of biodiesel from Argentina, which led to the annulment of the EU regulation imposing the AD duties.
- **WTO proceedings:** we assisted Argentina in its WTO challenge against the EU AD duties on imports of biodiesel from Argentina (DS473), both at the panel stage and the appeal stage. The Appellate Body upheld the Panel's findings that the challenged EU AD duties violated the Anti-Dumping Agreement and the GATT 1994.
- **Undertaking:** We successfully negotiated a price undertaking with the Commission on behalf of Argentinean biodiesel producers and CARBIO during the 2018 AS investigation – an important achievement given the Commission's reluctance to accept such measures. This agreement enabled continued exports to the EU at a minimum import price, avoiding countervailing duties. We also support ongoing adjustments due to market developments, including Brexit, and assist with compliance monitoring and verifications by the Commission.

Impact

- The undertaking allowed Argentinean biodiesel producers to maintain their access to the EU market.

- Our ability to assist clients in trade remedy investigations and related proceedings before the EU Courts and the WTO enabled continuity of legal advice and successful implementation of a comprehensive strategy to challenge unlawful trade defence measures across multiple fora.
- The WTO Appellate Body's findings relating to the EU practice of cost adjustment have far-reaching implications for other AD proceedings and have already resulted in a change to the EU Basic Anti-Dumping Regulation.

Case Study 2: WTO challenge against EU safeguard measures on steel products

VBB successfully represented Türkiye in its challenge to the EU's safeguard measures on certain steel products.

Our team represented Türkiye in DS595, *EU – Safeguard Measures on Steel*, where Türkiye contested the EU's justification for imposing safeguard duties and tariff-rate quotas on steel imports. The EU claimed that unforeseen developments, such as global steel overcapacity and US Section 232 measures, had led to increased imports threatening its domestic industry. Türkiye argued that the EU's measures violated multiple provisions of the Agreement on Safeguards and the GATT 1994.

The case addressed legal questions concerning the application of EU safeguard measures on key products, particularly the EU's methodology in defining product scope, and the extent to which an investigating authority is required to explain aspects of its decision, particularly regarding its assessment of unforeseen developments. While some of Türkiye's claims were not upheld, we secured critical findings that the EU had failed to demonstrate a causal link between the alleged unforeseen developments and the increase in imports. Additionally, the Panel found that the EU's assessment of serious injury was not properly based on facts, reinforcing the need for stronger evidentiary standards in safeguard investigations.

Impact

- We played a crucial role in developing Türkiye's legal strategy, including drafting all related documentation, focusing on the systemic implications of the EU's safeguard measures and their broader impact on global steel trade.
- Our ability to identify and successfully argue for WTO inconsistencies reinforced our reputation as a leading firm in international trade litigation.
- Our team seamlessly handled the conduct of dispute settlement proceedings during a global pandemic (including virtual Panel hearings). Building on that experience, we are confident in our ability to work virtually with clients around the globe on most complex of matters.

MANDATORY SPECIALISMS

E. International law relating to trade

VBB helps clients to successfully address compliance with WTO law, preferential trade agreements and domestic legislation implementing those agreements. With extensive experience advising both governments and the private sector, our team combines in-depth legal expertise with practical insights gained from direct engagement with domestic authorities and a comprehensive knowledge of global supply chain issues.

Our team has a deep understanding of public international law and vast expertise in matters at the intersection of trade law and other areas of international law. Our work is at the forefront of developments linking trade to sustainable development. We assist clients with negotiations, litigation and compliance management in that area. We also advise industry associations and corporations on the implications of FTAs, international sanctions, and multilateral export controls, ensuring they remain compliant and competitive in an evolving regulatory landscape.

Notable assignments include:

- advising on compliance with the conditions for claiming preferential tariff treatment under EU FTAs
- advising on compliance of EU and UK safeguard measures with the WTO Agreement on Safeguards
- advising an industry association on cumulation and rules of origin affecting market access for electric vehicle batteries under UK-EU-EFTA trade
- advising on compliance of the envisaged EU foreign subsidy control measures with WTO law
- advising on the termination and suspension of EU FTAs and countermeasures in case of human rights violations
- advising on the WTO fisheries subsidies negotiations and compliance with fisheries agreements
- advising on the implications of Brexit on compliance with existing EU FTAs and transitional measures governing relations between the European Union and the United Kingdom
- advising on compliance with tariff rate quotas under EU FTAs, taking account of Brexit
- representing clients in CJEU annulment proceedings concerning EU restrictive measures
- advising on proceedings before the CJEU concerning food labelling requirements and the need to state whether foodstuffs are produced in a manner that violates international law
- representing the government of Belgium in a dispute involving the implementation of UN and EU sanctions taken against Libya and advising the government of Belgium on its position before UN bodies
- representing the Confédération marocaine de l'agriculture et du développement rural (Comader) in CJEU proceedings concerning the territorial scope of application of treaties concluded between the European Union and Morocco and whether those treaties apply to Western Sahara



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Case Study: Advising on claiming preferential tariff treatment

VBB advised an industry association on design of an effective strategy for complying with the conditions for claiming preferential tariff treatment under the EU-Japan Economic Partnership Agreement (EPA).

Our advice focused on the conditions for retroactively claiming preferential tariff treatment.

We advised an industry association on whether the EU was justified in requiring that preferential tariff treatment under the EU-Japan EPA be claimed at the time of importation into the EU and that, as a result, no subsequent claims of preferential treatment could be made in the context of an application for repayment of duties paid that were not due, or in any other type of customs procedure.

Our advice focused on:

- how exporters may benefit from the right to claim preferential tariff treatment after importation under EU customs law
- the conditions for making a claim for preferential tariff treatment
- the resolution of conflicts between EU customs law and the EPA, and the manner in which domestic courts would take into account the EU obligations under the EU-Japan EPA
- EU compliance with its non-discrimination obligation under Article I:1 of the GATT 1994

(most-favoured-nation treatment) and the conditions laid down in Article XXIV of the GATT 1994 (the formation of a free trade area)

- the practice of the EU Member States in implementing the EU-Japan EPA
- strategy-oriented solutions for the industry association and its members to obtain greater legal certainty regarding the conditions for benefiting from preferential treatment guaranteed by the EU-Japan EPA

Impact

- Our advice was essential to the protection of the export interests of the industry association and its members. It applied to all sectors benefiting from preferential tariff treatment under the EU-Japan EPA, even if questions arose in the context of a particular sector.
- The outcome was that exporters can now claim preferential tariff treatment post-importation.

MANDATORY SPECIALISMS

F. Domestic law of different jurisdictions in the context of international trade and/or disputes

With a team of lawyers from more than 20 countries, we are able to assess the domestic law of numerous jurisdictions, including nearly all EU Member States. We have particular expertise in the areas of customs, sanctions and export control, foreign direct investment control, data protection and regulatory law. Where required, we also work with local counsel on domestic law issues arising in the context of trade disputes and advisory work.

We have extensive experience in advising on, and challenging, the domestic law of different jurisdictions in the context of WTO disputes. Notably, we have successfully challenged certain elements of the EU and Canadian domestic trade defence legislation, which led to their amendments.

Our expertise in advising on domestic law in different jurisdictions includes:

- **customs law:** we advise on tariff classification, preferential and non-preferential origin issues, tariff quota and duty suspensions, customs valuation, special customs procedures and requests for repayment and remission. We have successfully handled numerous disputes before the European Commission, the OLAF, the EU Courts, the WCO, the WTO and domestic customs authorities and courts. We have advised companies and governments on the mitigation of the customs implications of the United Kingdom's withdrawal from the European Union.
- **sanctions and export control:** led by our UK Head of Trade who has 20+ years' sanctions experience, we help clients with all steps of the compliance process for all types of operation (export, re-export, brokering, transfer or transit), products (goods, software or technology), end-use (military, dual-use, nuclear or otherwise), or intended country of destination (intra or extra-EU). We also represent clients before national and international courts.
- **foreign direct investment (FDI) control:** we assist clients with regulatory scrutiny of cross-border transactions, including the identification and compliance with foreign investment notification and authorisation requirements.
- **EU data protection law:** we assess the impact of EU data protection rules on our clients activities, including the legality of data transfer flows outside the European Economic Area (EEA) or access from non-EEA authorities to personal data located in the European Union and advise on the extraterritorial application of the General Data Protection Regulation (GDPR).
- **regulatory matters affecting international trade,** ranging from circular economy legislation, food safety and labelling requirements to chemicals regulations.

Notable assignments include:

- representing the government of China in DS397 *EC – Fasteners (China)*, where we obtained a finding that certain provisions of the EU's Basic Anti-Dumping Regulation were "as such" inconsistent with the Anti-Dumping Agreement
- assisting Brother International Europe Ltd in the submission of requests to the customs authorities of the United Kingdom, France, Spain, Austria, and Italy for the repayment of duties paid upon importation of multifunctional printers
- assisting Canon in a dispute with the customs authorities of an EU Member State concerning the implementation of the expansion of the WTO Information Technology Agreement (ITA), which reduces tariffs on a number of IT products
- assisting Pride Mobility Products Corp, a manufacturer and importer of mobility scooters for the disabled, in disputes concerning the tariff classification of their products throughout the EU
- representing various producers of multifunctional machines before the UK, Spanish, Italian, French and Dutch authorities concerning the repayment of import duties
- representing a number of TV set manufacturers before the Spanish customs authorities and courts concerning a decision to retroactively collect antidumping duties

- advising a Swiss company on Swiss and Belgian export control rules applicable to military goods and related technology
- advising on conformity assessment and acceptance and Good Manufacturing Practices (GMP) certification for medical cannabis products in the EU and individual EU Member States, and preferential market access under EU FTAs
- representing an insurer of sunk vessel in engagement with the UK's Export Control Joint Unit to obtain a licence under the UK's Russian sanctions to allow the provision of insurance services relating to wreck removal and oil pollution prevention activities
- advising multiple clients on the implications of national FDI screening legislation



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Case Study 1: Swiss export control compliance

VBB advised a newly established Swiss company – engaged in trading military goods – on compliance with applicable Swiss export control rules and obtaining the required export licences.

We developed an effective and practical export control compliance programme and a manual on export control compliance procedures, based on the best practices of Switzerland and of selected EU Member States. Both documents were tailored to the internal business processes of the client. We also helped our client in its dealings with the Swiss export control authority to obtain a decision on the classification of its goods as well as export licences.

Impact

- We enabled the client to obtain the required licences for trading military goods and to start its operation in Switzerland in compliance with Swiss export control rules.

Case Study 2: Successfully challenging domestic anti-dumping legislation in Canada

VBB represented Taiwan in DS482 *Canada – Welded Pipe*, challenging the anti-dumping measures imposed by Canada on steel pipes. The dispute included “as such” claims arguing that certain provisions of Canada’s Basic Anti-Dumping Act were “as such” inconsistent with the Anti-Dumping Agreement and the GATT 1994.

We successfully demonstrated that certain provisions of Canada’s Basic Anti-Dumping Act concerning the treatment of exporters with *de minimis* margins of dumping were “as such” inconsistent with several provisions of the Anti-Dumping Agreement and the GATT 1994. To do so we analysed Canada’s domestic legislation and practice and developed persuasive arguments before the WTO Panel.

Impact

- The findings of “as such” inconsistency led to amendments to Canada’s legislation and therefore had major systemic implications for the Canadian anti-dumping system going beyond this particular case.

OPTIONAL SPECIALISMS

G. Trade remedies investigations

We have handled more EU trade remedies (anti-dumping, anti-subsidy and safeguard) investigations than any other Brussels firm. These include around 500 anti-dumping cases and most of the anti-subsidy proceedings initiated by the European Commission. We also have extensive experience in trade remedies investigations launched by non-EU countries. Our experience covers a wide variety of products including steel and aluminium, biofuels, fertilisers, glass, food, textiles and pharmaceuticals.

We handle all aspects of trade remedies investigations, from drafting questionnaire responses to commenting on provisional and final disclosures, to attending on-the-spot verifications and representing

clients at hearings. This accumulated experience gives us a comprehensive understanding of how best to frame and run trade remedies cases, from using the procedural rules strategically to structuring arguments to optimum effect. We advise clients who wish to set up dumping monitoring schemes or to participate in interim and sunset reviews or in anti-absorption and anti-circumvention investigations. We also provide strategic advice to clients who wish to prepare for future anti-dumping, anti-subsidy or safeguard actions or who wish to manage the aftermath of a trade remedies measure, including refund applications.

Notable assignments include:

- representing the largest producer of steel tubes in Belarus, Mogilev Metallurgical Works, in the first ever transition review initiated by the UK Trade Remedies Authority, aimed at determining whether the United Kingdom would continue to collect anti-dumping duties on imports of welded tubes from, inter alia, Belarus once it started applying its own trade defence policy at the end of the transition period
- representing Habas, one of the leading Turkish steel producers, CIB, the Turkish Steel Exporters' Association, as well as Marcegaglia Specialties S.p.A., the largest user in the EU of the product concerned, in anti-dumping proceedings concerning imports of certain hot-rolled flat products of iron, non-alloy or other alloy steel (HRFS) originating in Türkiye
- advising the Italian government on the countervailing duty investigation initiated by the US Department of Commerce concerning imports of forged steel fluid end blocks (FEBs) from China, Germany, India and Italy, on the basis of a petition filed on behalf of the domestic producer of FEBs, alleging that the governments of those countries are providing countervailable subsidies to national producers of FEBs, exporting to the US
- representing in both the anti-dumping and anti-subsidy proceedings concerning imports of stainless steel hot-rolled (SSHR) flat products originating in China, Indonesia and Taiwan, the Tsingshan Holding Group Co., Ltd., the sole Indonesian exporting producer of SSHR, as well as Marcegaglia Specialties S.p.A., the main user in the EU of the product concerned. We also represented the government of China in both investigations as well as Duferco, a major importer
- assisting Egypt in the first EU anti-subsidy investigations (AS656 and AS657) against Egypt
- representing exporting producers, importers and industrial users in the largest safeguard investigation ever initiated by the European Commission. The investigation was one of three measures announced by the EU in response to US restrictions on imports of steel and aluminium, covering 26 steel product categories



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Case Study 1: Advising China in EU anti-subsidy investigation

VBB advised China in two anti-subsidy (AS) investigations initiated by the European Commission concerning imports of electric bicycles and stainless steel hot-rolled (SSHR) flat products originating in China.

In close collaboration with the government of China and local counsel, our team designed a defence strategy focusing on both the lack of injury to the EU domestic industry and the lack of subsidisation.

In light of the findings of subsidisation made by the Commission in previous investigations, our team focused on demonstrating that these findings were no longer valid and should be updated in light of evolutions in the legal framework in China.

Key workstreams included preparation of responses to the questionnaire, comments on injury and Union interest and on the lack of subsidisation and representing and assisting the client during several hearings with the Commission as well as verification visits.

Impact

- The Commission closed its AS investigation into SSHR flat products originating in China without the imposition of countervailing measures. This was the first time since 2014 that it had terminated an AS investigation against products from China.

Case Study 2: Representing electric vehicles producer in EU anti-subsidy investigation

VBB represented a prominent EU electric vehicle (EV) producer in the EU anti-subsidy investigation concerning imports of EVs from China. The European Commission self-initiated the AS investigation on 4 October 2023, which resulted in the imposition of countervailing duties of 7.8%–35.3% in October 2024. VBB is also representing its client in an ongoing application for annulment of the countervailing duties before the General Court.

Beyond its political and economic significance, the case raised key procedural and substantive legal issues.

The Commission deviated from its usual practice by not sampling Tesla, the largest Chinese exporter, instead selecting companies based on subsidy eligibility and spare capacity. The Commission also eventually determined an individual duty for Tesla following the acceptance of Tesla's individual examination request, another highly exceptional development. The Tesla individual duty was, however,

excluded from the calculation of the average duty applicable to non-sampled cooperating exporters. Notably, duties were imposed based on a threat of injury rather than material injury finding (something quite unusual in the EU's practice), and preliminary negotiations on a price undertaking to replace countervailing duties ultimately failed.

To help navigate the atypical aspects of this investigation and defend our client's interests we adopted a very proactive approach, keeping constant pressure on the Commission. This included quickly reacting to any relevant developments in the investigation case file and holding multiple hearings with the Commission case team. Our advice and strategic planning also took into account the highly political nature of the case, which required consideration of implications on different political spheres – China, the EU, and individual Members States.

Many of these issues are now being challenged by our team before the General Court, allowing the latter to address concepts that have not yet been the subject of extensive judicial interpretation such as a “clearly foreseen” and “imminent” change in circumstances, creating a situation in which the subsidy would cause injury to the domestic industry, a necessary element for a positive “threat of injury” finding.

Impact

- The AS probe into Chinese EVs is among the EU's most politically charged and legally complex recent trade cases. Our team has been involved in all stages of this matter, from contesting the *ex officio* initiation of the investigation, to the negotiation of a possible price undertaking commitment and now the annulment application before the General Court. Our team's work required balancing various interests and dealing with highly political proceedings, ultimately leading to a successful mitigation of our client's exposure to countervailing duties.
- In the context of the annulment proceedings, by leveraging our expertise in WTO and EU trade defence law, our involvement will contribute to the development of case law by refining key concepts that have not been extensively examined by the EU courts.

OPTIONAL SPECIALISMS

H. Recognition agreements and arrangements, participation agreements, and wider trading arrangements, relationships or instruments

VBB has substantive experience in advising governments and the private sector on agreements relating to mutual recognition of conformity assessment with technical regulations and sanitary and phytosanitary measures, in particular in the context of preferential trade agreements. Our lawyers also advise on bilateral and multilateral arrangements related to equivalence recognition of data protection regulations and free flow of data.

Notable assignments include:

- advising governments on recognition of equivalence under EU and WTO law (SPS and TBT Agreements) relating to trade in various agricultural products
- advising various governments and the private sector on mutual recognition agreements, bilateral trade facilitation agreements, the Pan-Euro-Mediterranean (PEM) Convention on rules of origin, and the grandfathering of existing trade agreements
- advising a global meat products manufacturer on the operation of recognition agreements of certifying bodies
- advising a Ukrainian company on the REACH registration of manganese and manganese containing substances and its participation in a consortium agreement, comprising also EU importers and manufacturers
- advising governments on the (extra-)territorial application of the General Data Protection Regulation 2016/679 (GDPR) with regard to their processing of personal data and the possibility of transferring personal data outside the EU
- advising clients on the implications of the invalidation of the EU-US Safe Harbour and adequate protection for international data transfers
- advising a US email provider on US government access to information stored in the EU in the context of US court proceedings
- advising on the annual review of the (reciprocal) EU and Japan adequacy decisions on data protection (pro bono)
- advising various governments and the private sector on the implementation of multilateral export control arrangements
- advising on the inclusion of offsets/industrial return obligations in tenders for public-private partnership projects which the European Investment Bank finances



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Case Study 1: Advising on EU and Japanese data transfer arrangements

VBB advised on the EU-Japan reciprocal adequacy findings in respect of personal data protection.

As part of the EU-Japan FTA framework, the EU and Japan initiated procedures to assess the adequacy of each other's legal protection of personal data. On 23 January 2019, the European Commission adopted an "adequacy finding" for Japan. On the same day, Japan declared that the EU provided an adequate level of protection under the Japanese Act on the Protection of Personal Information (APPI). This adequacy finding is reviewed annually. Through the Japanese Nomura Research Institute, our team was asked to provide an assessment of these reciprocal adequacy findings and their effect on EU businesses.

Our tasks included research into the level of compliance of GDPR in businesses in various EU Member States as well as the enforcement activities of supervisory authorities. In addition, our data protection team identified challenges facing organisations, in terms of compliance and regulatory diversity among EU Member States.

Our data protection team consulted with stakeholders to assess the impact of the reciprocal adequacy findings and consulted with the Japanese Personal Information Protection Commission. That work also covered the implementation of the Schrems II judgment of the CJEU, in the context of adequacy findings.

Impact

- Our advice was used in consultations between Japanese authorities and the European Commission and has served to facilitate compliance with and the annual review of the adequacy finding.

Case Study 2: Advising on equivalence recognition in the context of trade in organic products

VBB advised a government of an Asian country on the legal means available to improve access of its organic agricultural products to the EU market, including through the recognition of equivalence provided for under the EU Organic Regulation.

We assessed the mechanism for equivalence recognition under the EU Organic Regulation as well as the possibility of concluding an agreement on trade in organic products with the EU. In that context, we analysed the past practice of the EU and prepared arguments that could be used in bilateral discussions. We also analysed the EU's obligations under the WTO TBT Agreement and how they could be used in support of our client's position.

Impact

- Our advice was used to guide our government client in its engagement with the EU regarding market access for organic products.