THE LAWREVIEWS

The International Trade Law Review - Edition 4

Ukraine

Published: September 2018

Author

Anzhela Makhinova

Sayenko Kharenko

I OVERVIEW OF TRADE REMEDIES

Trade defence instruments (anti-dumping, countervailing and special (safeguard)[2] measures) have been applied in Ukraine since 1999 when the Law of Ukraine on Protection of Domestic Producer against Dumped Imports (the Anti-Dumping Law), the Law of Ukraine on Protection of Domestic Producer against Subsidised Imports (the Anti-Subsidy Law) and the Law of Ukraine on Application of Special Measures to Imports into Ukraine (the Safeguard Law) entered into force.

Thereafter, trade defence instruments have been applied by domestic industries quite often. As of July 2018,[3] the following anti-dumping investigations and reviews are conducted in Ukraine related to imports that originate in:

a. Russia – related to imports of glass containers for medical purposes up to 0.15 litres and cement;
b. Belarus – related to imports of salt, electric incandescent lamps, cement-asbestos boards, bars and cement;
c. India – related to imports of syringes;
d. Turkey – related to imports of syringes;
e. China – related to imports of syringes and medical gum plugs and caps;
f. Poland – related to imports of medical gum plugs and caps; and
g. Moldova – related to imports of bars and cement.

At the same time, the following trade defence remedies are applied to imports of such products as originating in:

a. Russia:
    - 10 anti-dumping duties in respect of:
        - crossing points;
        - fibreboards;
        - ammonium nitrate;
        - glass containers for medical purposes up to 0.15 litres;
        - abrasives;
        - certain nitrogen fertilisers;
        - certain types of chocolate products and other cacao-containing products;
        - caustic soda;

        - certain urea-formaldehyde products; and
        - rebars and wire rods; and
    - one countervailing duty in respect of passenger cars;
b. China – three anti-dumping duties in respect of incandescent lamps; articles made from ferrous metal; and seamless pipes;
c. Belarus – two anti-dumping duties in respect of fibreboards and cement-asbestos boards;
d. Kyrgyzstan – one anti-dumping duty in respect of incandescent lamps; and
e. two safeguard measures in respect of flexible porous plates, blocks and sheets of polyurethane foam, sulphuric acid and oleum notwithstanding the country of origin and export.

Under Ukrainian law, the following state authorities are involved in trade defence proceedings:

a. the Interdepartmental Commission on International Trade (the Commission) is responsible for adoption of key decisions in the course of proceedings. This includes: on initiation of investigations; on positive/negative conclusions on existence of dumping, specific subsidies or surge in imports and their amounts; on positive conclusions on existence of injury; on termination of proceedings with or without trade defence remedies;
b. the Ministry of Economic Development and Trade of Ukraine (MEDT) is responsible for procedural issues, including registering interested parties; collecting answers to questionnaires; holding hearings and consultations; and drafting preliminary and definitive reports following preliminary or final results of investigations with the relevant recommendations to the Commission on the decisions to be adopted; and
c. the Ministry of Finance of Ukraine and the State Fiscal Service of Ukraine is responsible for providing the MEDT with all relevant statistics related to proceedings.

Irrespective of the type of investigation, the proceedings are very similar for all of them and include the following stages:

a. submission by a domestic industry of an application for initiation of the relevant investigation;[4]
b. initiation by the MEDT of an anti-dumping/anti-subsidy procedure to verify sufficiency of evidence of dumping/non-legitimate subsidy, injury and causal link in the application. Following the results of the anti-dumping/anti-subsidy procedure, the MEDT drafts a report with the relevant recommendations for the Commission either to initiate investigation or not;
c. adoption by the Commission of a decision on investigation initiation or on refusal to initiate. Usually, the above decision shall be adopted within 30 days of submission of an application to the MEDT's registry;
d. publication of an official notification on investigation initiation in Uryadovyy Kuryer, the governmental newspaper – Ukrainian law is silent on the exact deadlines. In practice, the relevant term differs considerably from case to case and may vary from three to 14 days. The date of the notification publication is considered as the date of official investigation initiation;
e. conducting an investigation by the MEDT, including:
    - registration of interested parties in the investigation – usually the relevant requests shall be submitted within 20 to 30 days of the investigation initiation;
    - submission by the interested parties of their commentaries on an investigation's initiation, including on application of the domestic industry – usually 45 to 60 days after the investigation initiation;
    - submission by the interested parties of their answers to the questionnaires. There are no special deadlines for the MEDT to send questionnaires to the interested parties. In practice, such terms differ considerably from case to case and may vary from two to five months after the investigation's initiation. Initially, the MEDT grants 37 days to answer questionnaires. However, the said term may be extended for a period of not more than four weeks based on a duly substantiated request;

- on-the-spot verifications to be conducted by the MEDT. As of now, such verifications are only conducted in Ukraine on the premises of related importers (if it involves foreign producers and exporters) and of the domestic producers;
- hearings are usually conducted at the final stage of the investigation. Under Ukrainian law, hearings are only conducted if they are duly requested within terms set forth by the MEDT in the notification on investigation initiation. Following the results of the hearings, all interested parties shall submit post-hearings submissions in writing within five to 10 days of the hearings. Otherwise, their oral statements will be not taken into account; and
- comments by the interested parties on the draft definitive report of the MEDT with conclusions on the results of the investigation. Under Ukrainian law, any draft report shall be sent, as a rule, one month prior to adoption by the Commission of a definitive decision. However, in practice, such terms differ considerably from case to case and may be from two days to one month;

f. adoption by the Commission of a definitive decision based on the definitive report of the MEDT either on application of trade defence remedies or termination of investigation without application thereof. The relevant decision shall be published in Uryadovyy Kuryer. If trade defence remedies are applied, they will be imposed only within a certain period after the relevant notification publication. Previously, measures were applied 30 days after publication of any decision on application of measures. However, there are now more and more cases with longer periods of 45 to 60 days;
g. challenging the Commission's decision before the court not later than one month after imposition of the relevant remedies;
h. reviews. The Anti-Dumping Law stipulates reviews, including sunset, interim, newcomer and accelerated reviews. The Anti-Subsidy Law stipulates the following types of reviews: sunset, interim and newcomer reviews. The Safeguard Law sets forth a review for interim liberalisation of safeguard measures applied;
i. anti-circumvention investigation is conducted in case of unfair trade practices of foreign producers and exporters aimed at avoiding the application of anti-dumping and countervailing measures; and
j. renewal of investigation under Anti-Dumping Law in cases when the application of anti-dumping duties has not changed import prices or changed them insignificantly.

Under Ukrainian law, all documents submitted in the course of an investigation shall be in Ukrainian or accompanied by Ukrainian translation. In case of violation of the above requirement, the relevant information and documents shall not be taken into account by the MEDT. In practice, such an obligation may be very burdensome for the interested parties, especially in case of submission of answers to questionnaires. Since the MEDT does not conduct on-the-spot verifications on the premises of foreign producers and exporters, it usually requires lots of supporting documents to be submitted together with the answers to the questionnaire, all of which shall be duly translated into Ukrainian.

In the absence of an electronic database of all investigation-related documents, in order to ensure transparency, Ukrainian law obliges all interested parties to send all their submissions to other interested parties to the investigation for commentaries by post. No unsent documents and information shall be taken into consideration by the MEDT.

Pursuant to Ukrainian law, any documents shall only be regarded as submitted in time if they are provided by the end of the working hours of the MEDT and duly registered by the MEDT's registry with the relevant date. In practice, in order to respect the relevant deadlines, it is highly advisable to submit documents to the MEDT's registry at least one working day prior to the deadline. Otherwise, there is a risk that the MEDT's registry will not register the documents in due time. In such cases, the delayed documents will not be taken into account by the MEDT.

II LEGAL FRAMEWORK

In Ukraine, the trade defence instruments are regulated by:

a. the international treaties duly ratified by the Parliament of Ukraine and constituting the national legislation of Ukraine under the Law of Ukraine on International Treaties of Ukraine, specifically:
    - GATT 1994;
    - Agreement on Application of Article VI of the GATT 1994;
    - Agreement on Safeguards; and
    - Agreement on Subsidies and Countervailing Measures; and
b. the special national legislation consisting of:
    - Anti-Dumping Law;
    - Anti-Subsidy Law;
    - Safeguard Law and
    - Law of Ukraine on Foreign Economic Activity (Article 31 establishing deadlines for challenging the Commission's decisions before the court).

Even though the above Laws were adopted during Ukraine's accession to the WTO and were declared as fully compliant/based on the relevant WTO agreements, there are some discrepancies. For instance, the Safeguards Law does not stipulate a requirement to establish

unforeseen developments in the course of safeguard investigations. The Anti-Subsidy Law still divides subsidies into legitimate subsidies (for such subsidies it is not allowed to apply countervailing measures) and illegitimate subsidies (which may be subject to countervailing measures), contrary to the Agreement on Subsidies and Countervailing Measures, which since 2000 has not addressed non-actionable subsidies.

III TREATY FRAMEWORK

i Free trade areas

Since its accession to the WTO in 2008, Ukraine has made persistent efforts to strengthen economic ties with its trade partners and to create new business opportunities by establishing free trade areas (FTAs). To date, Ukraine has FTA Agreements with the European Union, European Free Trade Association (EFTA), the Commonwealth of Independent States (CIS) and a number of other states. For the purposes of this review, we will focus only on the provisions of the FTAs in respect of trade defence instruments.

ii EU–Ukraine FTA (DCFTA)[5]

Safeguards

The DCFTA provides for separate rules for safeguards in general and safeguards on passenger cars. In the part containing general rules on safeguards, the respective WTO obligations are reaffirmed and additional certain provisions on transparency and due process are added, as well as a clause that the parties shall endeavour to impose safeguards in a way that least affects their bilateral trade. Additionally, Ukraine may apply a safeguard measure in the form of a higher import duty on passenger cars originating in the EU if certain conditions are met. Notably, safeguards and safeguards on passenger cars shall not be applied simultaneously.

Anti-dumping and countervailing measures

The parties reaffirmed their respective WTO obligations and envisaged the provisions on:

a. transparency, for example, disclosure of all essential facts and considerations concerning application of measures immediately after provisional measures and before final determination. Interested parties shall be given 10 days to comment on the final disclosure;

b. due process, for example, provisional anti-dumping or countervailing measures may be applied by the parties only if a preliminary determination has shown the existence of dumping or subsidy causing injury to a domestic industry;
c. consideration of the public interests prior to imposition of the measures; and
d. lesser duty rule.

DCFTA provisions on dispute settlement are not generally applied to the trade remedies chapter, subject to some exceptions.

iii CIS (Armenia, Belarus, Kazakhstan, Kyrgyz Republic, Moldova, Russia, Uzbekistan)–Ukraine FTA[6]

Safeguards

The parties agreed to impose safeguards in line with WTO provisions. The parties agreed as well to exclude other parties from application of safeguards if import of the product concerned from such parties does not cause injury to domestic industry, that is, if the following conditions are simultaneously met:

a. the other party to the FTA is not among the top five exporters of the product concerned to the country imposing the measures for the past three years;
b. for the past three years the volumes of import from the other party decreased or increased by lower volumes (in absolute and comparative figures) than from other states; and
c. the level of prices for imported products from the other party is equal to or less than the level of prices of the domestic producer of like or directly competitive products.

The party intending to impose safeguard measures shall inform the parties to the FTA of such intention. The parties hold consultations to find a mutually acceptable solution.

Anti-dumping and countervailing measures

The parties reaffirmed their respective WTO obligations and agreed to disclose essential facts and conclusions not later than 30 days after the end of the investigation. The parties to the CIS FTA shall have adequate possibility to hold consultations before the end of the investigation.

iv EFTA–Ukraine FTA[7]

Safeguards

The EFTA–Ukraine FTA sets out separate provisions for global safeguard measures and bilateral safeguard measures.

As to the former, the parties reaffirmed their respective WTO obligations and added that a party taking a safeguard measure under the WTO provisions shall, to the extent consistent with obligations under the WTO, exclude imports of an originating good from another party if such imports are not a substantial cause of serious injury or threat thereof.

Bilateral safeguard measures could be taken if, owing to reduction or elimination of customs duty under the EFTA–Ukraine FTA, a product originating in a party to the agreement is being imported into the territory of another party in such increased quantities that it constitutes substantial cause of serious injury or threat thereof to domestic industry. Bilateral safeguard measures may only be taken in case there is sufficient evidence of the above facts and to the extent necessary to eliminate the injury.

Anti-dumping measures

The parties agreed to non-application of anti-dumping measures, as provided in the respective WTO Agreements in relation to products originating in another party. It is also mentioned that this non-application provision could be reviewed in a five-year period.

Countervailing measures

The parties reaffirmed their respective WTO obligations. However, they also added a clause requiring parties to seek a mutually acceptable solution before initiation of the investigation. It provides that the party considering initiating an investigation shall notify in writing the party whose goods are subject to investigation and allow for a 60-day period with a view to finding a mutually acceptable solution. The consultations shall take place in the Joint Committee if any party so requests within 30 days of the receipt of the notification.

v Canada–Ukraine Free Trade Agreement (CUFTA)[8]

Emergency actions

The parties reaffirmed their obligations under the respective WTO provisions and added a clause allowing a party under certain conditions to take emergency actions (e.g., suspend the further reduction of a rate of duty or increase a rate of duty).

Emergency actions may only be taken during the transition period and only if reduction or elimination of duties pursuant to the CUFTA resulted in a significant increase in imports of a certain product that causes or threatens to cause serious injury to the domestic industry.

A party shall maintain an emergency action only to the extent necessary to prevent or remedy serious injury, for a period not exceeding three years or within the transition period.

CUFTA also includes a non-cumulation clause in relation to safeguards and emergency actions. A party shall not adopt or maintain, with respect to the same good and at the same time, an emergency action under the terms of CUFTA and a safeguard measure under WTO provisions.

Anti-dumping and countervailing measures

The parties reaffirmed their obligations on anti-dumping and countervailing measures under the respective WTO provisions.

Dispute settlement mechanisms under CUFTA shall not be applied in relation to anti-dumping and countervailing measures.

vi Other FTAs

Ukraine also has FTA Agreements with Azerbaijan, Georgia, Macedonia, Montenegro, Tajikistan, Turkmenistan and Uzbekistan, which also provide for preferential trade conditions and trade cooperation.

FTA with Montenegro

Safeguards

The Montenegro–Ukraine FTA provides for separate provisions for global safeguard measures and bilateral safeguard measures.

As to the former, the parties reaffirmed their respective WTO obligations. Additionally, they added a provision on transparency: any party intending to impose safeguard measures at the request of another substantially interested party shall immediately provide *ad hoc* written notification of all pertinent information on the initiation of the safeguard investigation, the provisional findings, and the final findings of the investigation.

Bilateral safeguard measures can be imposed if reduction or elimination of customs duty under the Montenegro–Ukraine FTA results in increased quantities of imports of such goods, causing serious injury or threat thereof to the domestic industry.

A party shall take bilateral safeguard measures upon clear evidence and to the minimum extent necessary to remedy or prevent injury.

Anti-dumping and countervailing measures

The parties reaffirmed their respective WTO obligations. They also added additional clauses on application of a lesser duty rule and certain rules concerning transparency: full disclosure of all facts after the provisional measures and before the final measures, provision of a 10-day period to comment on the final disclosure, etc.

FTA with Macedonia

Safeguards

Under the Macedonia–Ukraine FTA, initiation of safeguard procedures shall be preceded by notification of the opposite party to the FTA and consultations between the parties with a view to finding a mutually acceptable solution. The safeguards may be adopted if the Joint Committee fails to find such solution within 30 days.

Anti-dumping and countervailing measures

The parties reaffirmed their respective WTO obligations without introduction of new legislative provisions.

IV RECENT CHANGES TO THE REGIME

In the past year, Ukrainian legislation in the field of trade defence instruments remained without change.

However, we consider it necessary to point out the following recent practices introduced in 2017 and the first quarter of 2018:

a. participation of customers in investigation proceedings: since 2017, customers have participated in investigation proceedings more and more actively. This was not typical in previous years. In order to avoid situations when customers do not submit any evidence and then request termination of investigation without any measures, the MEDT has started to send questionnaires to customers and associations thereof;
b. final determination in safeguard investigations: the Safeguard Law does not stipulate an obligation of the MEDT to disclose its final determination to interested parties. Thus, the interested parties have been deprived of the opportunity to analyse whether the decision has been adopted in full compliance with the Agreement on Safeguards or the Safeguard Law, or both. The said determinations have only been disclosed through initiation of court proceedings. However, in the course of the safeguard investigation related to imports into Ukraine of sulphuric acid and oleum,

the MEDT changed its approach and disclosed the final determination to the interested parties prior to adoption of the relevant decision. This was done in response to requests submitted by the interested parties with reference to the panel report in Japan v. Ukraine – Passenger Cars;

c. recent case law in the field of safeguard measures: as indicated above, instead of using internationally recognised terms such as 'safeguards' and 'safeguard investigations', Ukrainian law operates using the terms 'special measures' and 'special investigations'. Such difference in terminology resulted in a court decision whereby special measures applied to flexible porous plates, blocks and sheets of polyurethane foam that were adopted under the Safeguards Law are not to be considered as safeguards under the Agreement on Safeguards. Thus, the court has concluded that neither GATT, nor the Agreement on Safeguards shall be applied.[9] This issue has already been raised by the EU during the meeting of the Committee on Safeguards on 23 April 2018;[10]
d. recent case law in the field of anti-dumping measures: Ukrainian courts have recently adopted several landmark decisions:
    - the courts have clarified the position in respect of terms within which it is allowed to challenge decisions of the ICIT on application of anti-dumping measures. Specifically, it was confirmed that decisions can be challenged within one month of the application of the relevant measures, irrespective of any further suspension thereof;
    - for the first time in the history of trade defence remedies in Ukraine, the Ukrainian courts have appointed court expert examination to double-check the correctness of dumping margin calculations made by the MEDT;
    - for the first time in the history of Ukraine, Ukrainian courts have requested in one case all confidential documents and information, and in another case a full confidential version of the definitive report. This is quite dangerous because Ukrainian law does not stipulate any special treatment for confidential information submitted by the parties in the course of court proceedings. Under general procedural rules, all such information is available to all participants of the court proceedings – usually domestic industry workers and foreign producers, exporters and importers with conflicting interests; and
e. access to case materials: as indicated above, the transparency of investigations in Ukraine is currently ensured by the obligation of all interested parties to send all their submissions to other interested parties to the investigation for commentary by post. In 2017, the MEDT facilitated this process and allowed interested parties to send copies of all documents by email. However, this has resulted in undue dispatch of the documents and further impossibility for the interested parties to confirm dispatch thereof. Therefore, in practice, to be on the safe side, parties have continued to send documents by post. Moreover, the MEDT used Google Dropbox to ensure access to materials in some investigations. However, in practice this option has not been very helpful because, in the absence of strict rules for operation of the relevant databases, there have been problems with the frequency of disclosure of documents.

V SIGNIFICANT LEGAL AND PRACTICAL DEVELOPMENTS

One of the urgent issues related to trade defence instruments in Ukraine is the quite old-fashioned legislation adopted in 1998 that does not implement recent developments as set forth in WTO jurisprudence. The Commission and the MEDT are not able to improve their practice or fill in the gaps by applying the relevant new developments because under Article 19 of the Constitution of Ukraine, so both the Commission and the MEDT shall act only in a way as directly set forth by law.

Ukrainian law does not precisely define all stages of investigation with specific time limits, as well as not addressing documents to be issued by the MEDT etc., which in practice results in non-transparency and can even be detrimental to securing the rights of interested parties. For instance, Ukrainian law does not directly allow for conducting any consultations between the MEDT and interested parties even in order

to clarify certain important issues (e.g., controversial PCN coding, problems with dumping margin calculations).

According to the business community, the investigation procedure as currently set forth by the law is not transparent as it does not provide that the MEDT discloses its position on all important issues, except for sending its final determination to the interested parties at the close of investigation. Therefore, even though interested parties usually submit lots of different documents to the MEDT and address all its requests, they are not able to identify the approach taken by the MEDT and to understand the MEDT's relevant position in due course, leaving this until the end of the investigation when it is usually too late to clarify or improve submissions.

Another problem arises from the stipulation in Ukrainian legislation in the field of trade defence instruments of certain inoperative provisions, to name but a few:

a. the law sets as a mandatory precondition for the initiation of an anti-circumvention investigation, newcomer review, and accelerated review, the placement of the deposit for the customs authorities and introduction of a procedure for contract registration. However, Ukrainian law does not establish the procedures for deposit placement and contract registration, which is a stumbling block for initiation of the above procedures in Ukraine;
b. the Safeguard Law stipulates the possibility to reconsider a decision on application of safeguard measures upon the request of the State Fiscal Service of Ukraine, the domestic industry or other state authorities within 30 days of publication of the relevant decision. Following the results of this reconsideration, the said decision may be either terminated, amended or left as it is. However, in the absence of the relevant detailed rules, it is questionable whether this option could be applied in practice; and
c. the anti-circumvention mechanism may be engaged in very limited cases – only in case of increase of imports of the products subject to anti-dumping/countervailing duties from the third countries or in case of assembling of the products in issue in Ukraine from the imported parts. At the same time, the most frequently used type of anti-dumping/countervailing duties circumvention, such as minor changes to the products and their further importation under different customs code, cannot be addressed by an anti-circumvention investigation.

Another problem is connected with the enforcement by the Commission and the MEDT of the relevant court decisions. In case of full invalidation of the Commission's decision on application of trade defence instruments, the situation is clear because such decisions are invalidated automatically. However, the situation is absolutely unclear when the Commission's decision is invalidated partially in respect of a certain foreign producer or exporter subject to individual anti-dumping/countervailing measures. In practice, in the absence of specific instructions of the court to the Commission and the MEDT, the latter is not in a position to reopen the proceedings (e.g., recalculate dumping margin or reinvestigate injury).

In Ukraine, there is also an issue with implementation of reports of panels and the Appellate Body adopted in the course of the WTO dispute settlement procedure; Ukrainian law does not specifically address this issue. Ukraine has only one example of practical implementation of such reports, namely the panel report in Ukraine – Passenger Cars. In this case, the panel has established that Ukraine has not duly established all relevant circumstances allowing application of safeguard duties as well as seriously infringed procedural rules. As a result, in view of the nature of violations, the Commission has adopted a decision to invalidate the relevant safeguard duties with reference to national interests. However, it is unclear how Ukraine will be able to implement reports that are not so straightforward when, for instance, reopening of the procedure will be required.

The Commission and the MEDT were criticised for practice on initiation safeguards. Initially, domestic industries preferred to request safeguard measures rather than anti-dumping and countervailing. As a

result, despite the extraordinary nature of safeguards, there were years when safeguards prevailed over anti-dumping measures. This was easily explained because the domestic producers were able to submit import statistics demonstrating an increase in imports (even not so recent, significant and unexpected) without any further analysis of unforeseen developments, non-attribution requirements, etc., while the subject of proof in anti-dumping/anti-subsidy investigations is evidently more difficult. After accession by Ukraine to the WTO, the situation began to improve and several safeguard investigations (i.e., in respect of ferroalloys, certain oil and gas products, refrigerators, freezers and fertilisers) were terminated without application of safeguard measures.

VI TRADE DISPUTES

Ukraine has been involved in seven disputes as a complainant, four as a respondent and 19 as a third party. A brief description is as follows:

a. Ukraine v. Armenia – Measures Affecting the Importation and Internal Sale of Cigarettes and Alcoholic Beverages (DS411)[11] – on 25 October 2010 the DSB deferred the establishment of a panel;
b. Ukraine v. Moldova – Measures Affecting the Importation and Internal Sale of Goods (Environmental Charge) (DS421)[12] – on 17 June 2011 the DSB established a panel; however, a panel has not been composed;
c. Moldova v. Ukraine – Taxes on Distilled spirits (DS423)[13] – on 20 July 2011 the DSB established a panel; however, a panel has not been composed;
d. Ukraine v Australia – Certain Measures Concerning Trademarks and Other Plain Packaging Requirements Applicable to Tobacco Products and Packaging[14] – on 28 May 2015 Ukraine requested the panel to suspend its proceedings in accordance with Article 12.12 of the DSU 'with a view to finding a mutually agreed solution'. On 30 May 2016, the panel's jurisdiction lapsed because it had not been requested to resume its work within 12 months of the suspension of the panel proceedings.
e. Japan v. Ukraine – Definitive Safeguard Measures on Certain Passenger Cars (DS468)[15] – on 30 October 2013 Japan requested consultations with Ukraine regarding the definitive safeguard measures imposed by Ukraine on imports of certain passenger cars. On 20 June 2014, the Panel was composed by the Director General. On 26 June 2015, the panel report was circulated to members. The Panel found that Ukraine acted inconsistently with Article XIX:1(a) of the GATT 1994, Articles 2.1, 4.2(a), 4.2(b), 8.1, 4.2(c), 12.1, 12.2 and 12.3 of the Agreement on Safeguards. On 20 July 2015, the DSB adopted the panel report. On 6 October 2015, Ukraine informed the DSB that it had revoked the safeguard measures on imports of passenger cars;
f. Russia v. Ukraine – Anti-Dumping Measures on Ammonium Nitrate from Russia (DS493)[16] – on 7 May 2015 Russia requested consultations with Ukraine regarding anti-dumping measures imposed by Ukraine on imports of ammonium nitrate. Russia claimed that the measures were inconsistent with:
    - Articles 1, 2.1, 2.2, 2.2.1, 2.2.1.1, 2.4, 5.8, 6.1, 6.2, 6.4, 6.5.1, 6.6, 6.8, 6.9, 9.2, 9.3, 11.1, 11.2, 11.3 and 18.1, and Annex II of the Anti-Dumping Agreement; and
    - Article VI of the GATT 1994.

    On 29 February 2016, Russia requested the establishment of a panel, which was composed on 2 February 2017 by the Director General. On 20 July the WTO circulated the panel report;
g. Ukraine v. Russia – Measures affecting the importation of railway equipment and parts thereof (DS499)[17] – the panel was composed on 2 March 2017. On 30 July the WTO circulated the panel report;
h. Ukraine v. Russia – Measures Concerning Traffic in Transit (DS512)[18] – on 6 June 2017 the Director General composed the panel;

i. Russia v. Ukraine – Measures relating to Trade in Goods and Services (DS525)[19] – on 19 May 2017, Russia requested consultations with Ukraine with respect to alleged restrictions, prohibitions, requirements and procedures adopted and maintained by Ukraine in respect of trade in goods and services as well as transit; and
j. Ukraine v. Russia - Measures Concerning the Importation and Transit of Certain Ukrainian Products (DS532).[20]

VII OUTLOOK

It goes without saying that Ukrainian legislation in the field of trade defence instruments shall be completely revised to fully implement well-established WTO jurisprudence. During 2016–2017, the MEDT, together with the legal and business community, elaborated the relevant draft laws aimed at improvement of the current regulations. Eventually, on 17 July 2017,[21] the MEDT presented five draft laws considerably changing the legal environment in the field of trade defence instruments and eliminating many problems currently faced by the Commission, the MEDT, and the interested parties of investigations. As of today, the draft laws are considered by the Parliament of Ukraine. It is expected that the above draft laws will be adopted by the end of 2018.

Footnotes

[1] Anzhela Makhinova is a partner at Sayenko Kharenko. The author expresses her gratitude to Ivan Baranenko, associate at Sayenko Kharenko, for assistance in drafting Section III of this chapter.

[2] Instead of internationally recognised terms 'safeguards, safeguard investigations', Ukrainian law operates with the terms 'special measures, special investigations'. To avoid any misunderstandings, we use the terms 'safeguards, safeguard investigations' for the purposes of this chapter.

[3] According to the official database of the Ministry of Economic Development and Trade of Ukraine – http://me.gov.ua/Documents/Detail?lang=uk-UA&id=2d92511f-c6fa-468a-97f3-bc353742db15&title=ZakhistInteresivNatsionalnikhTovarovirobnikivNaVnutrishnomuRinku.

[4] Although Ukrainian law allows initiation of trade defence proceedings *ex officio*, there is only one relevant example in Ukraine's history: a safeguard investigation related to imports into Ukraine of certain oil products initiated on the basis of the materials submitted by the Ministry of Energy and Coal Industry of Ukraine.

[5] Provisional application of DCFTA started on 1 January 2016, entered into force on 1 September 2017.

[6] Entered into force on 20 September 2012. Political and economic discrepancies between Ukraine and Russia as well as participation of Ukraine in the DCFTA with the EU led to the unilateral suspension by Russia of the CIS FTA Agreement in regard of Ukraine and imposition of regular customs duties to Ukrainian goods: http://kremlin.ru/acts/bank/40358, http://kremlin.ru/acts/bank/40310. Ukraine, in turn, imposed retaliatory measures of the same nature against Russian goods and agricultural products: http://zakon3.rada.gov.ua/laws/show/1146-2015-%D0%BF. These decisions, however, did not impact the trade regime between Ukraine and other CIS FTA members.

[7] Entered into force on 1 June 2012.

[8] Entered into force on 1 August 2017.

[9] Decision of Kyiv Administrative Court of Appeal (appeal instance) available at: http://www.reyestr.court.gov.ua/Review/67033582; Resolution of District Administrative Court of Kyiv (first instance) available at: http://www.reyestr.court.gov.ua/Review/65966677.

[10] https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S009-DP.aspx?language=E&CatalogueIdList=244716,244496,244354,244355,244356,244331,244332,244333,244335,244327&CurrentCatalogueIdIndex=9&FullTextHash=&HasEnglishRecord=True&HasFrenchRecord=True&HasSpanishRecord=True.

[11] https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds411_e.htm.

[12] https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds421_e.htm.

[13] https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds423_e.htm.

[14] https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds434_e.htm.

[15] https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds468_e.htm.

[16] https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds493_e.htm.

[17] https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds499_e.htm.

[18] https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds512_e.htm.

[19] https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds525_e.htm.

[20] https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds532_e.htm.

[21] http://me.gov.ua/Documents/List?lang=uk-UA&tag=docs_project.