

## Guest Editor's Introduction: Next Generation Trade Lawyers in Brussels

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This double issue of the *Global Trade and Customs Journal* is not intended to be subject-matter specific. Instead, it aims at showcasing and introducing the remarkable talent in the trade law arena that Brussels has to offer. It would not be an understatement to portray these next generation trade lawyers as *faisant bouger* or *bet in beweging brengen* van the Brussels trade world. They form part of a multinational trade community that calls Brussels home, and are brilliant peers and friends in an ever-changing field of law. As young practitioners, they tend to look at what lies ahead, rather than focus on what has happened in the past. As such, this double issue with contributions from next generation trade lawyers in Brussels eventually did end up being somewhat subject-matter specific: all contributions, in one way or another, touch upon next generation trade law issues in Brussels.

They say youth, much like advice, is wasted on the young. We can assure the reader that the practitioners who have kindly agreed to contribute to this project, have wasted neither advice, nor youth, during their (already) impressive careers. Just for us, they have spent precious summer weeks to draft and finalize their contributions, juggled eventful work commitments, and valuable private time during this unusually busy summer for trade law practitioners – precisely when, for once, the much-dreaded Brussels August weather has delivered us *Bruxellois* or *Brusselaars* a most wonderful opportunity to go outside. We do not take their commitment for granted and thank all contributors sincerely for their efforts. We are certain that much more is to come from them as the years progress.

This double issue is also timely, in that this year the European Union celebrates fifty years of trade defence legislation – a journey from Regulation (EEC) No 459/68<sup>1</sup> to Regulation (EU) 2018/825,<sup>2</sup> from ball bearings to electric bicycles, and beyond. While commentators may have diverging views on whether it has aged gracefully, the Union's trade defence legislation certainly remains as relevant as ever. The fiftieth anniversary year also brought about two significant legislative changes to the European Union's basic anti-dumping and ant-subsidy regulations. With Regulations (EU) 2017/2321<sup>3</sup> and 2018/825, the European Union has carried out a significant overhaul of its trade defence legislation. This overhaul introduces, for one, new rules for calculating the dumping margin for imports from WTO members in cases where domestic prices and costs are considered to be significantly distorted as a result of State intervention, and, on the other hand, seek to 'modernize' existing procedures, by, for instance, shortening deadlines, providing for derogations from the 'lesser duty rule', and adding social and environmental standards as yardsticks for certain considerations taken by the European Commission when carrying out investigations.

This anniversary year should also see the creation of the European Trade Lawyers Association ('ETLA'). The ETLA will be open to all European trade lawyers (whether practitioner, in-house lawyer, or academic) with the purpose of improving the exchange of professional information in connection with the practice of international trade law, promoting legal research in the field of international trade law, organizing meetings, conferences and seminars

### Notes

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<sup>1</sup> Regulation (EEC) No 459/68 of the Council of 5 Apr. 1968 on protection against dumping or the granting of bounties or subsidies by countries which are not members of the European Economic Community, OJ L 93, 17 Apr. 1968, at 1.

<sup>2</sup> Regulation (EU) 2018/825 of the European Parliament and of the Council of 30 May 2018 amending Regulation (EU) 2016/1036 on protection against dumped imports from countries not members of the European Union and Regulation (EU) 2016/1037 on protection against subsidized imports from countries not members of the European Union, OJ L 143, 7 June 2018, at 1.

<sup>3</sup> Regulation (EU) 2017/2321 of the European Parliament and of the Council of 12 Dec. 2017 amending Regulation (EU) 2016/1036 on protection against dumped imports from countries not members of the European Union and Regulation (EU) 2016/1037 on protection against subsidized imports from countries not members of the European Union, OJ L 338, 19 Dec 2017, at 1.

about current international trade law topics, and reaching out to, and interacting with the members of the European and international institutions involved in, or handling international trade law matters.

That leaves us with introducing the individuals and their contributions to this double issue.

*Byron Maniatis*' contribution will look at the possibility of class-actions in trade defence investigation cases before the European Courts, arguing that applications for annulment brought by associations on behalf of their members should be welcomed by the trade community and the European courts. *Bregt Natens* addresses how trade in services is captured in European Union Free-Trade Agreements, and why this underdeveloped area of trade should be championed in such agreements particularly by the European Union. *Dylan Geraets* then analyses the prospect of WTO reform based on the European Union's 'TDI Modernization package' that came into effect in June 2018, which, alongside new normal value determination rules of December 2017, seek to update trade defence rules to twenty-first-century challenges.

*Charlotte Van Haute* and others will provide a most timely assessment of the updated EU Blocking Regulation, which seeks to protect against the effects of extra-territorial application of US sanctions legislation against Iran, and the practical effects and effectiveness of this update. *Nicoleta Tuominen* revisits the issue of whether, based on the *Timex* case-law,<sup>4</sup> complainants in EU trade defence investigations have standing in direct actions before the European Courts against measures that result from investigations based on their complaints. *Lorenzo di Maso* examines possible reform options for EU trade defence investigations taking into account certain existing US practices, discussing in particular how an Administrative Protective Order ('APO') system, increased rights of defence, and streamlined procedural rules could assist the efficiency of such investigations in the EU.

*Helene Juramy* subsequently assesses the role of users in trade defence investigations, looking at the current role of the Union interest test and its evolution with the TDI Modernization package, recent case-law on user involvement, and providing guidance for users

to make their voices heard in proceedings. *Gabriele Coppo* then examines the possible countervailability of the EU's Common Agricultural Policy, as illustrated by the Spanish olive and Italian tomato anti-subsidy sagas in respectively the US and Australia, and provides guidance for future investigations on this issue.

*Jérémie Charles* examines the EU and WTO consistency of the recent EU rebalancing measures that were adopted in response to the US's section 232 tariffs on steel and aluminium. He is followed by *Joris Cornelis*, who tackles the task of critically assessing the changes brought about by Regulation (EU) 2018/825, the so-called 'TDI Modernization package'.

*Bartek Czaczerski* subsequently presents the complex procedural set of rules under which the European Commission exercises its delegated powers, the so-called Comitology rules, and their application in trade defence investigations through the prism of the Trade Defence and Appeal Committees. *Anna Claudia Coelho Dias* rounds up the double issue on the question of how to reboot the WTO to address legitimacy concerns and legal certainty and predictability for businesses.

Finally, a few words to someone who has not lost his youthfulness, but could nonetheless not be considered for this double-issue for the simple fact that we chose to geographically discriminate in the selection of contributors. We do not take for granted the trust, patience, and support that Jeffrey L. Snyder, General Editor of the *Global Trade and Customs Journal*, has shown us. A project like this, without direction or a 'real' target audience, would have never taken off without his endless optimism and tireless work for the journal. Not to mention finding time for us in his rock star-like schedules for his occasional visits to Brussels. Thank you, Jeff!

We hope this idea will spark similar issues in other trade centers around the world: Washington DC, Beijing, and Geneva, to name a few, and continue the scholarly and practical discussion that we sought to trigger with the contributions presented herein. We gladly pass the baton to our peers outside of Brussels and look forward to reading your contributions.

## Notes

<sup>4</sup> Judgment of 20 Mar. 1985, Case 264/82 *Timex Corporation v. Council and Commission of the European Communities*, ECLI:EU:C:1985:119.