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## RM6183 Trade Law Panel

Lot 1: International Trade and Disputes

Supplier prospectus

Step toe International (UK) LLP and Step toe LLP

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RM6183 Trade Law Panel: Lot 1

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**Disclaimer:** The use of information provided throughout is not commercially sensitive. We have provided client names in most case studies, though in some instances client names have been anonymised due to confidentiality concerns.

# Introduction

**Our international trade and investment practice offers the full range of mandatory and optional specializations covered by Lot 1.**

Steptoe's lawyers regularly appear on behalf of World Trade Organisation (WTO) Member governments in dispute settlement proceedings. Among the many precedent-setting and high-profile WTO disputes that we have litigated are **Australia – Tobacco Plain Packaging (DS434, DS441, DS458, DS467)**, **Argentina – Financial Services (DS453)**, **US – Anti-Dumping and Countervailing Duties (China) (DS379)**, and **China – Electronic Payment Services (DS413)**, to name a few. We have litigated on behalf of WTO Member governments under nearly all of the WTO covered agreements, including the GATT 1994, the GATS, the TBT Agreement, the TRIPS Agreement, the Agreement on Agriculture, and numerous disputes under all three of the trade remedy agreements.

Our WTO practice also encompasses counselling on WTO compliance issues and the evaluation of potential WTO claims from both an offensive and defensive perspective. We routinely advise WTO Member governments on the consistency of existing or proposed laws with WTO commitments, whether to ensure the Member's own compliance or to evaluate potential claims against the laws of other Members. Our work frequently involves the interplay between international trade law and critical issues in public policy, including trade-related aspects of climate change, tax policy, and cybersecurity. For example, Steptoe advised a WTO Member government to advise in connection with the US' "Section 301" investigation of its Digital Services Tax.

Steptoe's experience on Antidumping and Countervailing Duties (AD and CVD) matters spans five decades and includes over 200 investigations worldwide. This has included advising UK clients in anti-dumping and countervailing duty investigations. Our recent work for UK interests includes representing Her Majesty's Government in the **100- to 150-Seat Large Civil Aircraft from Canada** CVD investigation (which involved alleged subsidies by the UK to a company in Belfast which manufactured wings for the aircraft at issue), Tata Steel in the **Hot-Rolled Steel** and **Cold-Rolled Steel** AD investigations, British Steel in **Carbon and Certain Alloy Steel Wire Rod from the United Kingdom** (amongst other countries) AD investigation, and **Corus Steel in Carbon Steel Wire Rod and Bar Products**.

In addition, we have a long track record in representing both States and investors in investor-State arbitrations and other investment-related matters. We regularly appear before tribunals established under the rules of all major international arbitration institutions in venues across the globe, and we conduct our own advocacy.

Please note that we are also a supplier for Lot 2 (International Trade and Negotiations).

## Key relationship contacts for the UK Trade Law Panel



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

## Advice on all stages of international trade disputes

## Prevention of international trade disputes

We have advised governments and commercial clients at every stage of international trade controversies, from the evaluation of potential claims and risks to the litigation of disputes before WTO panels, the WTO Appellate Body, and tribunals convened under other international trade agreements. Because much of our work in this area has been for governments, we are highly attuned to the special needs and concerns of government clients as they manage international trade disputes. Our work is consistently at the leading edge of how critical issues in public policy interact with international trade rules.

### Case studies

- **Advised a WTO Member government in relation to its Digital Services Tax.** We were retained by a WTO Member government to advise in connection with the US' "Section 301" investigation of its Digital Services Tax. Advice encompassed all aspects of the DST issue, including potential negotiated solutions, work at the OECD, consultations with USTR under Section 301, advocacy with the US executive and legislative branches, and assessing the WTO compatibility of national DSTs as well as actions that the US may take against them.
- **Represented the Government of Australia in achieving comprehensive victories in the tobacco plain packaging WTO disputes (DS434, DS441, DS458, DS467).** These disputes implicated critically important questions concerning the relationship between measures to protect public health and the legal obligations of WTO Member governments under the WTO Agreements. We assisted and appeared on behalf of Australia in proceedings before the panel and the Appellate Body.
- **Represented the Government of China in obtaining landmark Appellate Body rulings under the Agreement on Subsidies and Countervailing Measures (DS379).** We obtained rulings from the Appellate Body that the parallel imposition of anti-dumping and countervailing duties on certain Chinese products amounts to the application of a "double remedy" that is inconsistent with Article 19.3 of the SCM Agreement, and that state-owned enterprises are not "public bodies" capable of conferring a subsidy solely by virtue of their majority government ownership.
- **Represented the Government of Argentina in its defence of measures designed to combat tax avoidance and tax evasion (DS453).** We argued on behalf of Argentina before the panel and the Appellate Body and obtained decisions upholding the WTO consistency of measures directed against jurisdictions that do not adhere to international standards of tax transparency. A contrary decision would have gravely undermined multilateral efforts to counteract the erosion of tax bases that results from the use of tax havens, including efforts underway at the OECD.
- **Representing a WTO Member in an ongoing dispute concerning the scope of the WTO's "national security" exceptions (DS544, DS547, DS548, DS552, DS554, DS556, DS564).** The interpretation and application of the WTO's "national security" exceptions, including Article XXI of the GATT 1994, is the most consequential issue currently being litigated in dispute settlement.

- **Represented China in the first WTO dispute relating to trade in financial services in China – Electronic Payment Services (DS413).** This was the first dispute concerning the application of the General Agreement on Trade in Services to trade in financial services, and involved complex issues relating to the classification of certain types of financial services in relation to a Member's market access commitments.
- **Advised a WTO Member government on the consistency of certain US tax legislation with WTO rules.** The US Tax Cuts and Jobs Act, enacted in 2017, contains certain provisions that may be incompatible with WTO rules. On behalf of a WTO Member government, we prepared a comprehensive analysis of the WTO consistency of these provisions.
- **Represented the Canadian Wheat Board in multi-forum litigation concerning the grain trade between Canada and the US (DS276).** We worked closely with the Government of Canada over the course of several years and represented the Canadian Wheat Board in interrelated investigations and litigation that unfolded before US administrative agencies, US courts, binational panels convened under the North American Free Trade Agreement, and the WTO.
- **Advised a WTO Member government on the compatibility of certain cybersecurity-related laws and regulations with its international trade obligations.** We advised on how to craft cybersecurity-related laws and regulations, in part to avoid potential legal challenges under the WTO covered agreements and under bilateral free trade agreements.
- **Prepared a comprehensive analysis for a WTO Member government on trade-related aspects of climate change measures.** We prepared an assessment for a WTO Member government concerning the compatibility with WTO rules of existing and proposed measures to combat climate change. The analysis included an in-depth examination of WTO rules relating to border tax adjustments and how they apply to different forms of carbon taxation.
- **Represented the Canadian softwood lumber industry in all aspects of the dispute between Canada and the US over trade in softwood lumber, over the course of 25 years (DS194, DS221, DS236, DS257, DS264, DS277, DS533).** We have been involved in every aspect of this dispute on behalf of the largest industry player, including representations before US administrative agencies, US courts, binational panels convened under free trade agreements, and dispute settlement proceedings at the WTO.

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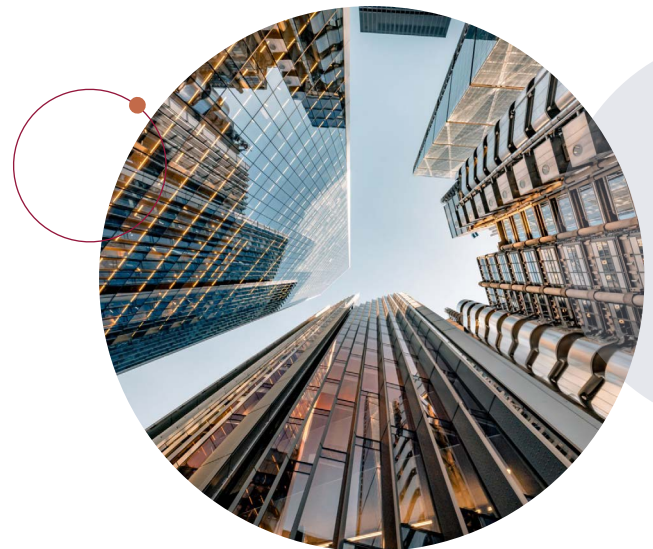


# Trade remedies

Steptoe lawyers have been involved in the development of virtually every aspect of the WTO's rules and jurisprudence relating to trade remedies. Steptoe has litigated WTO disputes relating to the interpretation and application of the anti-dumping Agreement (AD Agreement), the Agreement on Subsidies and Countervailing Measures (SCM Agreement), and the Agreement on Safeguards. Steptoe's experience litigating trade remedy disputes predates the WTO, going back to the GATT era.

## Case studies

- **Represented the Government of China in Anti-Dumping and Countervailing Duties (China) (DS437).** We developed the case and appeared on behalf of China. The reports of the panel and Appellate Body developed important jurisprudence relating to the interpretation of the term "public body" under Article 1.1(a)(1) of the SCM Agreement and the circumstances under which the simultaneous imposition of anti-dumping and countervailing duties on the same product gives rise to an impermissible "double remedy."
- **Represented the Canadian softwood lumber industry in every WTO dispute relating to the US-Canada softwood lumber controversy (DS194, DS221, DS236, DS257, DS264, DS277, DS533).** The long-running dispute between the US and Canada concerning trade in softwood lumber is the single largest source of WTO jurisprudence under the SCM Agreement and has also given rise to jurisprudence under the AD Agreement. We have advised the Canadian softwood lumber industry in connection with every WTO dispute relating to this controversy and, in that connection, have worked closely with the Government of Canada at every stage of these disputes (and in one dispute argued on behalf of Canada before the Appellate Body). Among the many topics that these disputes have addressed, they have established key jurisprudence under Article 14 of the SCM Agreement concerning the selection of benchmarks for determining the existence and amount of a subsidy benefit.
- **Representing a WTO Member government in connection with an ongoing safeguards dispute (DS544, DS547, DS548, DS552, DS554, DS556, DS564).** The "Section 232" tariffs that the US has imposed upon imports of steel and aluminum have been characterized as impermissible safeguard measures by the seven WTO Member governments challenging these tariffs. Steptoe is advising and appearing before the panel on behalf of one of these Members. The disputes raise the basic definitional question of what constitutes a safeguard measure and whether the imposing Member's legal characterization of the measure is determinative. The resolution of this question has important implications for the right of other Members to take re-balancing actions under Article 8 of the Agreement on Safeguards.
- **Represented the Government of South Korea in US – Washing Machines (DS464).** We successfully challenged the US Department of Commerce's so-called "differential pricing methodology," adopted in response to the US' series of losses on the "zeroing" issue. We were instrumental in developing the claim ultimately accepted by the panel and Appellate Body, namely that the differential pricing methodology does not properly establish a "pattern of export prices which differ significantly" within the meaning of Article 2.4.2 of the AD Agreement.



- **Represented the Government of China in US – Countervailing Duties (China) (DS379).** Building on our work in US – Anti-Dumping and Countervailing Duties (China), we devised a successful WTO litigation strategy that began with the investigation phase before the US Department of Commerce (USDOC) and ended with the appeal of the compliance (Article 21.5) panel report to the Appellate Body. Steptoe identified and worked with economic experts to develop a factual record before the USDOC that was critical to the WTO’s ultimate finding that the USDOC had improperly rejected the use of domestic benchmarks for determining the existence and amount of a subsidy benefit. The panel and AB reports in this dispute also established important jurisprudence relating to the specificity requirement under Article 2 of the SCM Agreement.
- **Advised a British steel company in connection with the “zeroing” disputes (DS294).** The question of whether an investigating authority may set to “zero” transactions in which the export price is greater than normal value is the most controversial and heavily-litigated issue in the history of the AD Agreement. Steptoe advised the Corus Group (now part of Tata Steel) in connection with several of the most important WTO disputes challenging this practice. We worked closely with the European Commission to develop successful litigation strategies before panels and the Appellate Body, and in drafting written submissions and oral presentations.
- **Advising WTO Member governments on disputes relating to the meaning of “particular market situation” in Article 2.2 of the AD Agreement.** Steptoe has advised on disputes concerning the meaning of the phrase “particular market situation” in Article 2.2 of the AD Agreement. These disputes have important implications for how investigating authorities determine the margin of dumping. Steptoe’s advice has included the drafting of third-party Member submissions to panels considering this issue.
- **Advised a British steel company in connection with the “privatization” disputes.** The question of whether pre-privatization subsidies continue to exist following the sale of an enterprise for fair market value was the subject of several WTO disputes. Representing the Corus Group, we worked closely with the European Commission to develop legal arguments and strategy that ultimately resulted in a finding that pre-privatization subsidies were extinguished by the transaction.

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# International law relating to trade

**Steptoe lawyers have decades of experience in providing advice to governments around the world on the conformity of proposed legislative, regulatory, or policy measures with existing or newly-proposed international trade and investment obligations, helping to identify and mitigate the likelihood of trade disputes. This includes experience as outside advisors, as well as providing advice on such measures while serving as counsel at government trade ministries.**

We routinely advise WTO Member governments on how to revise domestic laws and regulations that have been found inconsistent with WTO rules. An important objective of this type of advice is to maximize the likelihood that the revised measures will be found consistent with the WTO covered agreements in the event of a “compliance” challenge under Article 21.5 of the Dispute Settlement Understanding. In addition, we have advised a number of WTO Member governments on how WTO rules apply to existing or proposed export control measures and to mechanisms for the review of foreign investments.

## Case studies

- **Advising a WTO Member government in relation to its Digital Services Tax.** We have been retained by a WTO Member government to advise in connection with the US’ ongoing “Section 301” investigation of its Digital Services Tax. Our advice encompasses all aspects of the DST issue, including potential negotiated solutions, work at the OECD, consultations with USTR under Section 301, advocacy with the US executive and legislative branches, and assessing the WTO compatibility of national DSTs, as well as actions that the US may take against them.
- **Advised a WTO Member government on how to craft climate change measures to ensure compatibility with WTO rules.** We recently prepared a comprehensive assessment for a WTO Member of how WTO rules relate to existing and proposed measures to combat climate change.

The assessment included an in-depth examination of how WTO rules relating to border tax adjustments apply to different forms of carbon taxation. The assessment also included an examination of how WTO rules concerning subsidies and local-content requirements apply to measures that are designed to incentivize the use of domestic environmental goods and services.

- **Advised a WTO Member government on how to design cybersecurity-related measures to ensure compatibility with international trade rules.** We advised a WTO Member government on how to design cybersecurity-related laws and regulations so as to avoid potential legal challenges under the WTO covered agreements and under bilateral free trade agreements. The advice included a multi-jurisdictional survey of how other countries have drafted similar types of measures, as well as an examination of how cybersecurity-related topics have been addressed in various bilateral and multilateral trade and investment agreements.
- **Advising a commercial client concerning its country’s accession to the WTO.** The advice includes an evaluation of the WTO compatibility of existing laws and regulations that affect the operations of the company. We are working closely with the acceding government as part of this representation.

## Our team’s prior government experience

- **Advised the US on the conformity of a range of proposed legislative and regulatory measures with WTO and other international obligations.** As a member of USTR’s Office of General Counsel and Office of WTO and Multilateral Affairs, Steptoe partner Jeff Weiss regularly provided advice over a seven-year period on the conformity of a multitude of proposed US federal legislative and regulatory measures with WTO and other international trade obligations, with a view to eliminating or mitigating trade frictions and dispute settlement risks arising out of such proposed measures.



He advised on proposals to strengthen consumer product safety rules for children's products, introduce minimum quality requirements on a variety of agricultural products, provide specific authorizations for the production of distilled spirits, require the development of energy efficiency standards for white goods, and augment testing and certification requirements for lithium ion batteries for transport on aircraft.

- For legislative proposals, this involved providing USTR input to Statements of Administration Policy that were conveyed by the White House Office of Management and Budget (OMB) to Congress while legislation was under consideration.
- For regulatory proposals, this involved providing comments and edits to OMB's Office of Information and Regulatory Affairs (OIRA) while proposed regulations were under White House review and working with OIRA and the relevant regulatory agency to resolve any concerns before the regulations were published.

After his time at USTR, he subsequently served as Associate Administrator (the deputy to the head of the agency) at OIRA, which provided him with a deep understanding of the factors at play in how the US develops and evaluates regulations and how international trade considerations interplay during the US regulatory process.

- **Advised Canada on the conformity of a range of proposed legislative and regulatory measures with NAFTA and WTO obligations.** As Deputy Director of the Services and Investment section of Canada's Trade Law Bureau, Steptoe partner Christophe Bondy advised over an eight-year period on the conformity of proposed Canadian federal legislative and regulatory measures with NAFTA, WTO and other international trade and investment obligations with a view to eliminating or mitigating dispute risks arising out of such proposed measures, with particular emphasis on GATS and investment and services obligations of Free Trade Agreements to which Canada is a party.

- Specific examples included advising on proposals to introduce plain packaging for tobacco products; advising on withdrawal of or amendments to existing subsidy programmes; and advising on national energy policy.
- For legislative and regulatory proposals, this involved liaising with the federal government department (for example, Health Canada) on proposed measures and inputting into risk assessment elements of memoranda to Cabinet in relation to proposed measures, particularly from a litigation risk perspective. The work also included considering the potential risks arising from proposed measures of sub-national (provincial) Canadian governments.

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

When representing governments on actual or pending international trade disputes, our lawyers regularly analyse and coordinate the provision of advice on the domestic measures of multiple jurisdictions. We use both our in-house capacity covering the laws of multiple jurisdictions, and in partnership with local counsel. Our lawyers also performed this work during prior careers in government service.

- Steptoe Domestic Law Capabilities: **the UK, the US, Canada, France, Belgium, and Germany.**
- We worked with State lawyers and local counsel on actual or potential trade disputes regarding measures adopted or proposed under the laws of Argentina, Australia, Brazil, Canada, China, the EU, France, India, Israel, Mexico, South Africa, South Korea, Vietnam, the US, and the UK.
- In international investment disputes, with the support of local counsel we have provided advice on the conformity of laws and regulations of Armenia, Australia, Barbados, Bosnia and Herzegovina, Colombia, Croatia, Dominican Republic, the EU, Egypt, The Gambia, Germany, Guatemala, Jordan, Mongolia, Montenegro, Nigeria, Russia, Serbia, Switzerland, Tanzania, Venezuela, and Zimbabwe, among others, with international investment treaty obligations.

## Case studies

- **Advice on domestic law in connection with WTO disputes, working alongside local law experts.** All WTO disputes, by definition, concern the meaning of domestic law in relation to international trade obligations. We routinely work with lawyers in our offices around the world, local counsel, and local law experts to determine the meaning of domestic law in relation to WTO obligations. For example, in *US – Anti-Dumping and Countervailing Duties (China)* (DS379), we retained and worked with a professor at Harvard Law School who submitted expert evidence to the WTO panel on the principle of non-retroactivity under US law. In many other disputes, we have worked side-by-side with local counsel to establish the meaning of the particular domestic law that is the subject of a WTO dispute.

- **Advice on domestic law in the context of CVD investigations.** When representing a respondent in a CVD investigation, the core of our analysis is the conformity of domestic law and the provision of subsidies in the context of that country's international trade obligations, and specifically its obligations under the WTO SCM Agreement. For example, for the UK portion of the Aircraft CVD investigation, we analysed UK law and the operation of that law in the context of US CVD law and the WTO SCM Agreement. We worked with Linklaters on those aspects which required UK analysis.
- **Advised a WTO Member government on the consistency of certain US tax legislation with WTO rules.** The US Tax Cuts and Jobs Act, enacted in 2017, contains certain provisions that may be incompatible with WTO rules. On behalf of a WTO Member government, we prepared a comprehensive analysis of the WTO consistency of these provisions.
- **Advised a WTO Member government on the compatibility of certain cybersecurity-related laws and regulations with its international trade obligations.** We advised on how to craft cybersecurity-related laws and regulations, in part to avoid potential legal challenges under the WTO covered agreements and under bilateral free trade agreements.
- **Prepared a comprehensive analysis for a WTO Member government on trade-related aspects of climate change measures.** We recently completed a comprehensive analysis for a WTO Member government on the compatibility with WTO rules of existing and proposed measures to combat climate change. The analysis included an in-depth examination of WTO rules relating to border tax adjustments and how they apply to different forms of carbon taxation.

## Our team's prior government experience

**Legal advice on legal barriers to market access outside the trade negotiation context.** While serving as the lead negotiator and lead lawyer for Technical Barriers to Trade at USTR over a seven-year period, Steptoe partner Jeff Weiss worked to resolve market access barriers to US products associated with other nation's regulation of: chemicals and hazardous substances, medical devices, pharmaceuticals, toys, ICT products, automotive products, nanotechnology, cosmetics, wine and distilled spirits, solar panels, batteries, lawnmowers, appliances, organic products, cheese, piping, snack foods, biotechnology, and other products. His role involved:

- review of the relevant laws, regulations, and other measures in various jurisdiction (e.g., Brazil, Canada, China, EU, France, India, Israel, Korea, Mexico, South Africa, and Thailand) and analysed them for developing potential WTO claims, statements to be delivered at meetings of the WTO Committee on Technical Barriers to Trade, talking points and questions for use during bilateral meetings to discuss the measures, and correspondence from the USTR to foreign counterparts; and
- analysis of the proposed US laws and regulations for WTO compatibility when international counterparts raised trade concerns with US measures bilaterally or at the TBT Committee, and sought to address the concerns through the US interagency process or with relevant congressional committee staff.

After his time at USTR, he subsequently served as the Associate Administrator (the deputy to the agency head) of the White House Office of Information and Regulatory Affairs (OIRA), where he gained deep understanding of the factors at play in US government consideration of proposed regulations and how international trade considerations interplay with the US regulatory process.

- **Represented the Government of the US as the lead USTR lawyer in a WTO dispute relating to Turkey's measures affecting the importation of rice.** While working at USTR's Office of General Counsel, Steptoe partner Jeff Weiss analysed Turkey's domestic laws and regulations that applied to the importation of rice with respect to their WTO compatibility. He then worked with the US rice industry, the US Department of Agriculture, the US Embassy in Ankara, and importers of rice in Turkey to develop a robust factual record demonstrating that Turkey's measures were effectively blocking the importation of US rice. As a result, the Panel found that Turkey's measures were inconsistent with Article 4.2 of the Agreement on Agriculture and Article III:4 of the GATT 1994. Turkey did not appeal the panel decision.

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# Conducting advocacy in WTO disputes

Step toe lawyers have argued on behalf of WTO Member governments in over 35 different hearings before panels and the Appellate Body, and have provided support to government advocates in numerous other hearings. We have supported Member governments during WTO hearings under every conceivable type of arrangement: we have frequently argued the entire case, in some cases we have argued certain issues while government advocates have argued other issues, in some cases we have played a non-speaking supporting role “in the room” during the hearing, and in still other cases we have worked behind the scenes to help government advocates prepare for hearings that we have not attended. We have provided below certain examples of our dispute settlement work on behalf of sovereign (and occasionally private) clients, but many disputes have been omitted for reasons of brevity or client confidentiality.

## Case studies

- **Represented the Government of Australia in connection with the tobacco plain packaging WTO disputes (DS434, DS441, DS458, DS467).** We played a “behind the scenes” role during the panel phase of these disputes, drafting submissions and assisting government lawyers in preparing for panel hearings. During the appeal phase of these disputes, we argued key issues before the Appellate Body while simultaneously supporting government lawyers in their presentation of other important issues. We assisted, with other government advocates, the Solicitor-General of Australia in presenting argument before the Appellate Body. We also worked closely with Australia’s economic experts in their development and presentation of complex econometric evidence before the panel and the Appellate Body.
- **Represented the Government of Argentina in a case that upheld Argentina’s use of defensive tax measures against countries that do not adhere to international standards of tax transparency (DS453).** This dispute amounted to a collateral attack by Panama on the types of defensive tax measures that many OECD members have adopted to combat tax evasion. We argued the case for Argentina before the panel and the Appellate Body, obtaining a comprehensive victory at both stages. Among other issues in the dispute, this was the first dispute to concern the interpretation and application of the “prudential carve-out” under the Annex on Financial Services.
- **Represented the Government of China in the first dispute arising under the General Agreement on Trade in Services relating to trade in financial services (DS413).** This dispute concerned the classification of certain types of payment card services in relation to China’s market access obligations under its Schedule of Specific Commitments. We argued the case for China before the panel. (The report of the panel was not appealed.) This case remains the only case to have adjudicated issues relating to complex financial services under the General Agreement on Trade in Services.



- **Represented the Government of Brazil in relation to complaints by the EU and Japan against the principal elements of Brazil's industrial policy (DS472).** This dispute concerned the relationship between permissible domestic production subsidies and impermissible domestic content requirements under the GATT 1994, the SCM Agreement, and the TRIMs Agreement. We drafted submissions for Brazil and assisted government lawyers in arguing the case at both the panel and Appellate Body stages. The issues involved in this dispute remain highly topical as governments continue to explore the available policy space for incentivizing domestic manufactures.
- **Represented the Government of China in a dispute challenging the retroactive application of certain US laws to imports from China (DS449).** This dispute concerned issues of due process, and in particular the principle of non-retroactivity as set forth in Article X of the GATT 1994. It involved the complex interplay between US domestic law, including US judicial decisions, and the international legal obligations of the US. We argued the case for China before the panel and the Appellate Body. The Appellate Body agreed with China's interpretation of the rule against retroactivity.
- **Represented the Government of Canada in a dispute challenging the affirmative injury determination in a countervailing duty investigation of softwood lumber imports (DS277).** We have been involved in every WTO dispute relating to the perennial controversy between Canada and the US over softwood lumber imports. In this particular dispute, we were retained to argue on behalf of Canada before the Appellate Body during the compliance (Article 21.5) phase of the dispute. The report of the Appellate Body in this dispute remains one of the leading cases on the standard of review that panels should apply when reviewing national trade remedy determinations.
- **Represented the Government of China in its first defensive case at the WTO (DS339, DS340, DS342).** This dispute concerned China's tariff treatment of imported auto parts and, in particular, the question of when a Member may classify a collection of imported parts as equivalent to the fully assembled article. We argued this case for China before the panel and the Appellate Body. As part of this representation, we worked closely with the Government of China to determine the modalities of China's participation in the WTO dispute settlement process, including the nature of the working relationship between government and outside counsel.
- **Worked side-by-side with the Government of Canada on behalf of a commercial client (DS276).** This dispute concerned Canada's treatment of imported grain and the disciplines that apply to state-trading enterprises (STEs) under Article XVII of the GATT 1994. On behalf of our client the Canadian Wheat Board (the STE in question), we drafted with the Government of Canada written submissions and prepared government lawyers for appearances before the panel and the Appellate Body. This dispute illustrates that while most of our WTO advocacy work is for Member governments, we also work with commercial clients that have an interest in the outcome of a dispute. Our extensive experience before panels and the Appellate Body allows us to work collaboratively with the Member government in these circumstances.

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# International investment law

Steptoe has an extensive history of representing both States and investors in disputes arising under investor-State treaties and a busy ongoing multi-lawyer practice in this specialist area. Our lawyers include the former lead State counsel to Canada in its NAFTA investment treaty counsel group. We handle investment treaty cases before tribunals established under the rules of all major international arbitration institutions, in venues across the globe. We pride ourselves on doing on own advocacy.

Our direct engagement in the negotiation of landmark investment treaties and multiple appointments of our lawyers as arbitrators in investor-State disputes provides us insight and authority in investment treaty disputes. We have documented experience working closely with State counsel in the pursuit of successful outcomes. Given our extensive State experience, we are sensitive to the policy implications of positions taken in claims and of the need to ensure policy consistency and balance in the State's approach of its defence.

## Case studies

- **Nord Stream 2 AG v. EU.** External Counsel to the EU in an Energy Charter Treaty investment treaty arbitration brought by a Gazprom subsidiary relating to the regulation by the EU of the operation of a major new oil and gas pipeline entering EU territory via subsea in the Baltic. The matter raises significant geopolitical issues, and issues regarding the scope of remedial jurisdiction of investment tribunals. The Claimant in this matter seeks a permanent injunction against application of EU competition law provisions as a primary remedy, or in the alternative in the range of €10B in compensation. It is the first investment treaty case to proceed to a full hearing against the EU. PCA Case No. 2020-07. The case is ongoing.
- **NiQuan Energy LLC v The Republic of Trinidad & Tobago.** Lead counsel to the Republic of Trinidad and Tobago in regard to an alleged breach of the US-Trinidad & Tobago bilateral investment treaty. Concerns the provision of gas to a gas-to-liquids plant. ICSID Arbitration. ICSID Case No. ARB/24/17. The case is ongoing.
- **Alpene Ltd. v. Republic of Malta.** Counsel to Alpene, a Hong Kong company, in an ICSID arbitration arising from the interference in the management, and eventual expropriation of a banking enterprise. ICSID Case No. ARB/21/36. The case is ongoing.
- **Vercara, LLC (formerly Security Services, LLC, formerly Neustar, Inc.) v Republic of Colombia.** Counsel to a US telecommunications company in an investor-State dispute against Colombia arising from Colombia's termination of the investor's concession. The proceeding is being brought pursuant to the US-Colombia Trade Promotion Agreement. ICSID Case No. ARB/20/7. The case is ongoing.
- **Koch Industries Inc. and Koch Supply & Trading, LP v. Government of Canada.** Counsel to the investors in an ICSID arbitration under NAFTA Chapter Eleven arising out of the summary cancellation without compensation of Ontario's greenhouse gas emissions control program. The matter raises systemic issues regarding State management of climate change policies. ICSID Case No. ARB/20/52.
- **InterOcean v. Government of Nigeria.** Counsel to Nigeria in an ICSID case brought pursuant to Nigeria's domestic investment protection law by international investors claiming State interference in their shareholding of a Nigerian oil development company. Claims dismissed in their entirety with costs to the State. ICSID Case No. ARB/13/20.
- **Philip Morris Asia Limited v. The Commonwealth of Australia.** Counsel (while in the Attorney-General's Department) to Australia in claims brought by Philip Morris relating to marketing regulations of Australia. The claims were dismissed on jurisdictional grounds with no liability to Australia. In addition, Australia was awarded its legal fees and costs. PCA Case No. 2012-12.
- **Eli Lilly and Company v The Government of Canada.** Lead Counsel to Canada (while in its Trade Law Bureau) in a NAFTA Chapter Eleven dispute involving issues of international intellectual property law (patents) and related claims of expropriation/ violation of the international minimum standard of treatment. Claims dismissed entirely with costs to the State. ICSID Case No. UNCT/14/2.

- **St. Marys Cement VCNA v. Canada.** Lead Counsel to Canada (while in its Trade Law Bureau) in this NAFTA Chapter Eleven dispute involving claims of expropriation and national treatment violations in relation to the environmental designation of lands acquired for a quarry development. Claims withdrawn with acknowledgement of lack of jurisdiction after document production evidenced intent to manufacture jurisdiction post-dating dispute. UNCITRAL arbitration.
- **Chemtura (Crompton) v Government of Canada.** Counsel to Canada (while in its Trade Law Bureau) in a NAFTA Chapter Eleven dispute involving claims of expropriation, national treatment and minimum standard of treatment violations in relation to the imposition of a ban on the pesticide Lindane. Another Steptoe lawyer served as external advisor to Canada in this matter. Claims dismissed entirely with costs to the State. UNCITRAL arbitration.
- **Mesa Power Group, LLC v Government of Canada.** Counsel to Canada in connection with an enforcement proceeding for an investor-State award that had been rendered in Canada's favour. The proceeding resulted in the successful enforcement of the award with ongoing execution proceedings. Case No. 1:16-cv-01101-JDB (DDC). Enforcement proceedings.
- **Peter A. Allard v The Government of Barbados.** Counsel to Barbados in an arbitration brought under the Canada-Barbados bilateral investment treaty concerning alleged breaches of investment protections flowing from alleged State environmental mismanagement of a protected site owned by the investor. Claims dismissed entirely with costs to the State. UNCITRAL arbitration. PCA Case No. 2012-06.
- **United Parcel Service of America v The Government of Canada.** Advised Canada in relation to its defence of a claim brought under the NAFTA by the United Parcel Service of America. Canada was successful in defending UPS's claims, which were for damages of over \$160 million, in their entirety. UNCITRAL arbitration.
- **Edmond Khudyan and Arin Capital & Investment Corp. v Republic of Armenia.** Counsel to the Republic of Armenia in an ICSID arbitration arising from a property investment in Yerevan. The claimants allege that Armenia failed to protect their investment from fraud and bankruptcy issues. ICSID Case No. ARB/17/36. The case is ongoing.
- **Edenred SA v Hungary.** Counsel to Hungary in an action brought by a French investor related to an incentive program issued by the Government. The investor received a fraction of the damages claimed in the proceeding. ICSID Case No. ARB/13/21.

## Key contacts



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# Trade remedies investigations

Over the past five decades, our lawyers have represented clients in more than 200 US AD/CVD cases and in more than 60 EU AD/CVD cases. Our team has defended our client's interests when named as a respondent in investigations, and we also have brought petitions on behalf of domestic companies seeking relief.

## EU Case studies

- **AD proceeding concerning Pins and Staples from China.** On behalf of a major Chinese producer we successfully obtained termination of the investigation, thus allowing our client to resume its exports to the EU, which represents the majority of its business.
- **Steel Road Wheels from China.** Steptoe delivered the total exclusion of our client's products from the scope of AD duties concerning Steel Road Wheels from China. As our client is the largest exporting producer of steel road wheels, it is able to import into the EU free from AD duty while other subject exporters face duties higher than 50%.
- **AD proceeding concerning the imports of High Tenacity Yarns of Polyester from China.** We represented one major Chinese producer in the new EU anti-dumping investigation targeting that company only, and another sampled Chinese producer in the parallel interim review investigation of the anti-dumping measures imposed on the same product from China since 2010. We obtained single-digit duty level for both companies, much lower than the average one received by other companies in the Chinese industry (of more than 17%).
- **AD proceeding concerning Solar Glass from Malaysia.** We achieved termination of the investigation into our client, a Malaysian glass manufacturer, and the sole respondent from Malaysia. We were able to establish that our client was not dumping, and thus our client was able to continue its glass exports to the EU without any additional duty.
- **Purified Terephthalic Acid (PTA) from Korea.** Steptoe represented Lotte Chemical Corporation and its subsidiary in the UK and successfully established a lack of requisite injury resulting in termination of AD proceedings concerning Purified Terephthalic Acid (PTA) from Korea.

## US Case Studies

- **Represented DIT in the CVD investigation into 100-150 Seat Civil Aircraft from Canada conducted by the US Department of Commerce.** We (along with Linklaters) represented Shorts, the Northern Ireland subsidiary of Canadian respondent Bombardier which supplied wings to the Canadian-built planes subject to the US investigation. We prepared and presented full data and legal arguments as to subsidies alleged to have been bestowed on Shorts by HMG and the Government of Northern Ireland. In the International Trade Commission injury investigation, we represented the Government of UK during which the UK Ambassador to the US presented testimony to the USITC which helped secure a "no-injury" finding and victory for the UK.
- **Represented UK and Dutch steel producer Tata Steel in antidumping investigations before the Department of Commerce (DOC) and the US International Trade Commission (ITC).** Steptoe recently achieved rare complete victories for both Tata Steel UK and Tata Steel IJmuiden in the antidumping investigations of Tin Mill Products from the United Kingdom and Tin Mill Products from the Netherlands. Steptoe obtained a zero percent dumping margin for each client, successfully undergoing verifications conducted by the DOC, and proving that neither company is selling its tin mill products to the United States at unfair prices. Steptoe also represented Dutch steel producer Tata Steel IJmuiden before the Department of Commerce (DOC) in reviews of the dumping order on Hot-rolled Steel from the Netherlands. We also successfully advised Tata Steel Europe on the transition reviews in the UK with respect to a number of steel products that were under order in the EU that were in the process of transitioning to UK orders as well, including the transition review for cold rolled flat steel. Steptoe also assisted Tata with their applications for reconsideration with respect to the steel safeguard order and the welded tube and pipes order. These applications were accepted by the Trade Remedies Authority.

- **Secured a rare preliminary phase win before the ITC in AD investigation on Polyethylene Terephthalate (PET) Sheet from Korea, Oman, and Mexico.** We were able to convince the ITC that Mexican imports were so negligible that they were unable to cause material injury to the US companies that brought the action. The task was made difficult by the highly imperfect data set, requiring the group to perform a complex analysis of both US import data and Mexican export data. As a result of the ITC's negative determination, the antidumping investigation has been terminated with respect to all Mexican producers, thereby allowing them to trade freely without having to go through an intensive and expensive government investigation and the potential addition of antidumping duties.
- **Bottom Mount Combination Refrigerator-Freezers from Korea and Mexico from the Republic of Korea.** We represented LG Electronics, one of the two largest respondent exporters, in the AD and CVD investigations conducted by the US Department of Commerce, and in the injury investigation conducted by the US International Trade Commission. The cases ultimately resulted in a unanimous negative (i.e., no injury caused by the imports) determination by the ITC, where we were lead counsel for the respondent companies.
- **Urea Ammonium Nitrate (UAN) from Russia and Trinidad & Tobago.** Achieved a unanimous final negative injury determination from the ITC for our client, the sole producer/exporter of UAN in Trinidad & Tobago, in a high profile US AD/CVD investigation.
- **Wood Mouldings and Millwork Products from Brazil.** Achieved a rare final negative determination from the US Department of Commerce in the AD investigation of the case, allowing our client to avoid the imposition of an antidumping duty order altogether.
- **Represented the petitioning company Centrus, formerly USEC, in the AD and CVD investigations covering Uranium from Russia, France, Germany, the UK and the Netherlands.** This case presented a core issue of what is a "good" (and thus subject to antidumping laws) vs. a "service" (which is not subject to AD law). The case was eventually appealed to the US Supreme Court, where Steptoe and its client prevailed. This was the only AD case ever heard by the Supreme Court.

## Key contacts



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# Recognition agreements and arrangements, participation agreements, and wider trading arrangements, relationships or instruments

Steptoe advises on mutual recognition agreements, arrangements, and other alignment mechanisms to facilitate trade. This includes “in the room” negotiating experience and behind the scenes legal drafting and counselling experience in bilateral, regional, and multilateral contexts covering a variety of goods and services.

## Our team’s prior government experience

- **The lead US negotiator for the Technical Barriers to Trade (TBT) Chapter of the Trans-Pacific Partnership Agreement.** In his role as the TBT negotiator at USTR, Steptoe partner Jeff Weiss conceptualized, drafted, cleared interagency, and negotiated annexes on sectoral regulatory alignment. The text included provisions on the APEC Mutual Recognition Arrangement for Conformity Assessment of Telecommunications Equipment of May 8, 1998 (MRA-TEL) and the APEC Mutual Recognition Arrangement for Equivalence of Technical Requirements of October 31, 2010 (MRA-ETR). The text also included reliance on other international instruments for alignment, such as:
  - the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH) Common Technical Document (CTD);
  - definitions of medical device terminology from the Global Harmonization Task Force; and
  - the Codex Alimentarius Guidelines for Design, Production, Issuance and Use of Generic Official Certificates (in the context of certification of wine).
- **Legal analysis of the US conformity assessment system, including with regards to US experience with mutual recognition agreements, for the British Embassy in 2019.** Steptoe partner Jeff Weiss drew on his experience as the lead USTR negotiator and counsel for Technical Barriers to Trade to provide an analysis of US conformity assessment on a sector-by-sector basis, which covered government-to-government mutual recognition agreements (MRAs), mutual recognition arrangements (which are private sector agreements), and other initiatives in which US agencies and departments participate with the goal of aligning technical regulations (e.g., UNECE Working Party 29, the International Medical Device Regulators Forum). Covered sectors included: autos, pharmaceuticals, medical devices, telecommunications equipment, laboratory accreditation, and consumer goods. The report provided advice on the potential negotiation of a mutual recognition agreement with the US.
- **The lead US negotiator for the WTO Non-Agricultural Market Access (NAMA) negotiations with respect to TBT-related sectoral regulatory alignment during the Doha Round.** In his role as the TBT negotiator at USTR, Steptoe partner Jeff Weiss conceptualized, drafted, cleared interagency, and negotiated US text for several sectoral proposals. The US proposal on automotive sectoral regulatory alignment relied on mutual recognition of automotive safety standards through the 1998 Agreement on UN Global Technical Regulations under UNECE Working Party 29.



- **Counsel in the negotiation of the Agreement on Mutual Recognition Between the US and the EEA EFTA States.** In his role as Assistant General Counsel at USTR, Steptoe partner Jeff Weiss advised USTR's Office for Europe and the Middle East in connection with negotiation of this MRA, which covers telecommunications equipment, electromagnetic compatibility, and recreational craft. In this regard, he familiarized himself with the six-sector MRA that USTR signed with the EU in 1998 and assisted the USTR negotiator in structuring provisions of US negotiating proposals and the final agreement text.
- **Counsel in the negotiation of the Agreement Between the US and the EEA EFTA States on the Mutual Recognition of Certificates of Conformity for Marine Equipment.** In his role as Assistant General Counsel at USTR, Steptoe partner Jeff Weiss advised USTR's Office for Europe and the Middle East in connection with negotiation of this MRA. In this regard, he familiarized himself with the MRA on marine equipment that USTR signed with the EU in 2004 and assisted the USTR negotiator in structuring provisions of US negotiating proposals and the final text of the agreement.
- **Counsel on participation agreements negotiated by the US.** In his role as Assistant General Counsel at USTR, Steptoe partner Jeff Weiss advised USTR negotiators on the drafting of numerous Trade & Investment Framework Agreements (TIFAs) with developing country trading partners. Such agreements, as described by USTR, "serve as a forum for the US and other governments to meet and discuss issues of mutual interest with the objective of improving cooperation and enhancing opportunities for trade and investment."
- **Senior counsel to Canada in the negotiation of the Mutual Recognition Agreement provisions of the Canada - EU Comprehensive Economic and Trade Agreement (CETA).** In his role as Senior Counsel to Canada in the CETA negotiations, Steptoe partner Christophe Bondy advised Canada in connection with negotiation of the chapter on Mutual Recognition of Professional Qualifications. In this regard, he was directly involved in policy discussions regarding the aims and parameters of this aspect of the CETA and related challenges connected to the negotiation of such agreements and their ultimate enforceability. He helped structure provisions regarding the role of the Joint Committee charged with overseeing the adopting of MRAs and their incorporation into the CETA text going forward.

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