

IN-DEPTH

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SAUDI ARABIA



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In-Depth: International Trade Law (formerly The International Trade Law Review) provides an incisive overview of the current state of global trade law and practice. With a focus on recent developments, it analyses the key features of the national and international legal frameworks governing trade, including trade remedies; investigation and review procedures; applicable treaties; trade disputes; and an outlook for future developments.

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Saudi Arabia

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Introduction

Saudi Arabia is a member of Gulf Cooperation Council (GCC), which was established on 25 May 1981 in Riyadh between Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the United Arab Emirates to focus on common objectives in light of the countries' similar customs, religion, geographical positions, and political and economic systems.^[1] Initially, the economies of the GCC countries were heavily dependent on hydrocarbons, primarily crude oil and natural gas. Approximately 80 per cent of GCC countries' economies relied on these resources. Recognising the need to diversify and reduce their dependence on hydrocarbons, the GCC Member States adopted the Unified Strategy of Industrial Development for the GCC Member States (the Unified Strategy). The Unified Strategy is part of the GCC Economic Agreement 2001, specifically stipulated in Article 8(1) of the GCC economic agreement, and aims to promote economic diversification and industrialisation in GCC countries. By focusing on developing various industries, the Unified Strategy seeks to enhance economic stability and sustainability. This approach not only aims to mitigate the risks associated with the volatile nature of the global oil market, but also to create employment opportunities and stimulate economic growth across multiple sectors. To achieve this objective, the GCC implemented the Common Customs Law on 1 January 2002 and established the Customs Union on 1 January 2003, pursuant to which a common external tariff of 5 per cent was levied on all foreign imports to the GCC region.^[2]

As the rise of industrialisation has resulted in import substitution, industries were injured due to emerging imports, which resulted in the need for trade remedy measures. As such, GCC Member States adopted the Common Law on Anti-dumping, Countervailing and Safeguard Measures.^[3] Under this Law, the GCC established a separate authority, the Technical Secretariat of Anti-dumping, now the Bureau of Technical Secretarial on Anti-injurious Practices in International Trade (TSAIP). The TSAIP started its trade remedies journey with the initiation of safeguard investigations into imports of uncoated paper and paperboard in rolls or sheets into the GCC market, which were notified through Notice No. 1/2009 dated 7 November 2009. To date, the GCC authority has conducted 17^[4] trade remedy investigations involving anti-dumping and safeguard measures.

The GCC's Common Law on Trade Remedies posed certain challenges to the implementation and conduct of trade remedies investigations. To overcome these challenges, some GCC Member States promulgated their own laws on anti-dumping, countervailing and safeguard measures, including Saudi Arabia and the United Arab Emirates.

Saudi Arabia, individually, has been a member of the World Trade Organization (WTO) since 2005,^[5] pursuant to which Saudi Arabia has also established a permanent mission to the United Nations.^[6] However, despite such steps being taken, Saudi Arabia had not adopted any anti-dumping and countervailing laws until 31 December 2022, as it relied on the GCC's Common Law on Anti-dumping, Countervailing and Safeguard measures.^[7] Considering the need to expedite its trade remedies process in line with its industrialisation goals envisaged in its 2030 plans, the country promulgated its own trade remedies law in December 2022: the Law on Trade Remedies in International Trade, with the Executive Regulation being issued in March 2023. Saudi Arabia, through its Council of Minister Resolution No. 211 dated 1 January 2019, Saudi Arabia established a public entity for

foreign trade: the General Authority of Foreign Trade (GAFT), which has financial and administrative independence.^[8] GAFT, under the Law of Trade Remedies in International Trade, has been entrusted with conducting anti-dumping investigations. Under this Law, any domestic industry of Saudi Arabia affected by imports can lodge complaints with GAFT if they experience harm from unfair trade practices or a surge in imports into Saudi Arabia. The governor has the authority to:

- initiate investigations;
- terminate investigations without imposing measures;
- initiate reviews; and
- submit recommendations to the chair to impose, extend or terminate the measure; amend the amount, form and scope of the measures; and refund provisional and definitive measures or part thereof.

These investigations are expected to be completed within 12 months, with a possible extension to a maximum of 18 months.^[9]

Currently, GAFT is conducting the following anti-dumping investigations^[10] under the relevant Saudi anti-dumping laws and regulations (i.e., the Law of Trade Remedies in International Trade):

1. AD-23-1: an investigation into sulphonated naphthalene formaldehyde-SNF imported from China and Russia;
2. AD-23-2: an investigation into textiles or fabrics coated in PVC imported from China and South Korea; and
3. AD-24-1: an investigation into longitudinally welded circular cross-section pipes made of stainless steel imported from China and Taiwan.

In addition to the anti-dumping investigations initiated by GAFT, Saudi producers are also applicants in anti-dumping investigations initiated by the TSAIP, before which three cases are ongoing investigations as at June 2024.^[11] These include:

1. an anti-dumping investigation against dumped imports of ceramic sinks and wash basins, wash basin pedestals, baths, bidets, water closet pans, flushing cisterns, urinals and similar sanitary fixtures imported from China and India;
2. an anti-dumping investigation into electrical connectors, switches, sockets and plugs for a voltage not exceeding 1,000 volts imported from China; and
3. an investigation against the dumped imports of painted or coated, or both, flattened or grained aluminium alloy plates, sheets, strips or coils of a thickness of 0.2mm but not exceeding 8mm (rectangular or square in shape) imported from China.

Under the GCC's Common Law on Trade Remedies, many investigations have already been concluded, and anti-dumping duties and safeguard measures have been imposed. These include:

1. a definitive anti-dumping duties on dumped imports of automotive batteries with a capacity of between 35 and 115 amperes imported from South Korea;

2. a definitive anti-dumping duty on seamless pipes and tubes of iron or steel of a kind used in the exploration for and transportation of petroleum, oil or natural gas of an outside diameter not exceeding 406.4mm imported from China;
3. a definitive anti-dumping duty on paper and paperboard (fluting or test liner), in rolls or sheets (container board) imported from Spain and Poland;
4. a definitive anti-dumping duty on ceramic tiles imported from China and India;
5. a definitive anti-dumping duty on all types of cement including clinker imported from Iran;
6. a definitive anti-dumping duty on aluminium alloys imported from China;
7. a definitive anti-dumping duty on automotive batteries with a capacity of between 32 and 225 amperes imported from Türkiye, Spain and India;
8. a definitive anti-dumping duty on super absorbent polymers imported from China, Belgium, Singapore, South Korea and France^[12];
9. a definitive anti-dumping duty against dumped imports of semi-chemical fluting paper, fluting paper and test liner made from recycled fibre (cardboard), imported from Germany, India and France;
10. a definitive anti-dumping duty against dumped imports of super absorbent polymers, imported from Germany, India and France;
11. safeguard measures against all types of hydrated cement, including un-ground agglomerated cement called clinker, even if coloured, imported from Iran;
12. safeguard measures against increased imports of flat products of iron or non-alloy steel, of a width of 600mm or more, painted, varnished, coated with plastics or otherwise (coloured iron flats);
13. safeguard measures against increased imports of iron silicon manganese product;
14. safeguard measures against increased imports of preparations added to cement, mortar or concrete (chemical plasticisers); and
15. safeguard measures against increased imports of some iron products.

Pursuant to the WTO's Trade Policy Review 2021, Saudi Arabia's reliance on oil has resulted in certain structural weaknesses, evident in issues such as the high unemployment rate among Saudi nationals. In response to these challenges, the country launched its Vision 2030 plan in 2016, a comprehensive strategy aimed at modernising and diversifying the Saudi economy. Vision 2030 includes a broad array of policies designed to create more private sector jobs for Saudi nationals; increase women's participation in the workforce; support small and medium-sized enterprises; boost investment in non-oil sectors; and promote non-oil exports. The plan also aims to enhance domestic production and procurement through local-content measures; privatise state-owned assets and government services; deregulate the energy market; reform energy and water prices; improve the business environment to attract both foreign and local investment; and develop new infrastructure.^[13] Changes to the structure of the government have been ongoing since the last Trade Policy Review, many of which related to Vision 2030, including, for example, the creation of GAFT as a separate public entity to take over all responsibilities related to foreign trade, previously carried out by the Ministry of

Commerce. GAFT is concerned with all duties and work related to developing policies and strategies with respect to foreign trade, along with supporting Saudi economic development by maximising foreign trade gain. Its strategic goals include empowering local sectors through trade policies.

In the past, Saudi Arabia relied on imports, but with the rise in industrialisation and the imposition of trade remedy measures, Saudi imports have witnessed a significant decline. The latest data suggests that Saudi Arabia had a total export value of US\$286 billion and an import value of US\$153 billion, leading to a positive trade balance of US\$133 billion. Saudi Arabia's exports of goods and services as a percentage of gross domestic product (GDP) is 32.98 per cent, and imports of goods and services as a percentage of GDP is 24.52 per cent.^[14]

The imposition of trade remedy measures have reaped positive benefits for domestic Saudi industries, an example of which is the Saudi ceramic industry. After the imposition of the definitive anti-dumping duties on tile imports, local production witnessed a strong surge, resulting in better sales and higher profits for the domestic industry (evident from the profits reported by a Saudi ceramic producer depicting a surge to 77.7 million Saudi riyals in 2020 from 7.2 million riyals in 2019. The increased productivity of the company enabled it to pay its debts as well).^[15]

Legal framework

The Common Law on Anti-dumping, Countervailing and Safeguard Measures was issued by a decision of the Supreme Council in its 24th session held between 21 and 22 December 2003 in Kuwait. An amendment was made to the Common Law pursuant to a decision of the Financial and Economic Cooperation Committee in its meeting No. 86 held on 6 November 2010 in Kuwait, which was approved by the Supreme Council in its 31st session held between 6 and 7 December 2010 in Abu Dhabi. The latest amendment to this Common Law, along with its Rules of Implementation, were published in Volume 6 of the Gazette notification on 18 February 2016.

The TSAIP has been conducting trade remedies investigations since 2009. Between 2009 and 2023, the TSAIP initiated 13 investigations with respect to anti-dumping measures^[16] and four investigations with respect to safeguard measures. Three anti-dumping investigations initiated by the TSAIP are currently in process and are likely to be concluded later in 2024.

As stated above, to overcome the challenges and complexities posed by the Common Law involving all GCC Member States, Saudi Arabia, to protect its domestic industry, promulgated the Law of Trade Remedies in International Trade that was issued by virtue of Ministerial Council Decision No. 60 on 23 November 2022.^[17] Following the issuance of this Law, its Executive Regulation was issued by the GAFT Board of Directors Decision No. 55 on 1 March 2023. The Law aims to protect Saudi domestic industries from any injury caused by dumped and subsidised products or surges in imports. By imposing anti-dumping, countervailing duties and safeguard measures, and initiating investigations in this regard, an increase in imports shall be avoided and domestic industry shall grow.

The agreement on the implementation of Article VI of the General Agreement on Tariff and Trade 1994 (the WTO Anti-dumping Agreement) governs the trade remedy laws of all WTO Member States. All local laws concerning trade remedies should be consistent with and adhere to the principles set out in the WTO Anti-dumping Agreement.

Like the laws of other WTO Member States, the Saudi Law on Trade Remedies in International Trade is also in line with the principles set out in the WTO Anti-dumping Agreement. However, Saudi Arabia has made certain additions to its Law that are not provided in the WTO Anti-dumping Agreement. These include, among others, detailed provisions on the requirements and procedures for public interest and anti-circumvention investigations. The concept of public interest is covered in Chapter VIII of the Law. Under Article 19 of the same Chapter, a public interest person may make themselves known to be part of the investigation carried out within the stipulated time period. The public interest person may submit information on the subject with the help of any supporting documents and evidence to the authority concerning the effects of the imposition of measures on the public interest, and whether imposing or extending (or not) the anti-dumping measures is beneficial to the public interest. Such public interest persons shall have access to the public file that is to be maintained by the authority. The Law on Trade Remedies in International Trade also thoroughly covers the circumvention of anti-dumping duties and provides detailed guidance on the procedure for anti-circumvention measures.

The Law on Trade Remedies in International Trade also sets out the provisions for judicial reviews that challenge final decisions in trade remedies investigations. Under the provisions of Article 24, any interested party that participated in an investigation by GAFT and is affected by the final decision may submit its grievance to the chair (who is usually the Minister) within 30 days of the issuance of the final decision. The chair has to decide the grievance within 60 days of the date of submission. If the grievance is not decided within 60 days, it will be considered rejected. The Law provides for a judicial review in Article 25 in addition to the submission of a grievance with the chair. This judicial review claiming for the cancellation of the chair's decision can be filed within 60 days of the decision or the expiry of a 60-day period if no decision is made by the chair before the competent administrative court.

To discourage imports, through Ministerial Decision No. 3852 dated 2 July 2021 on local rules of origin, Saudi Arabia set out the different eligibility criteria for goods to be imported from other GCC countries.^[18] Pursuant to this Decision, all goods made in the free trade zones shall not be categorised as being locally made products. Furthermore, Saudi Arabia shall also exclude from the GCC tariff agreement all goods made by companies with a workforce made up of less than 25 per cent of local people and industrial products with less than 40 per cent value added after their transformation process.^[19]

Treaty framework

Saudi Arabia has concluded various trade agreements for the facilitation of free trade, as follows:

1. The Agreement on Liberalisation of Trade in Services among Arab States, in effect as of 14 October 2019, the purpose of which is to liberalise trade in services among

the members of the Agreement on a progressive basis; to promote the interests of the parties on the basis of mutual benefit; to achieve a balance of rights and duties; and to take into account the situation of the least developed Arab states.

2. The GCC Free Trade Agreement with European Free Trade Association (EFTA) Countries, in effect as of 1 July 2015, which aims to liberalise trade in goods by removing or reducing tariffs while excluding some industrial goods from exemption for religious, environmental or health reasons. The GCC Free Trade Agreement with Singapore, in effect as of 1 September 2013, has the same aims
3. The GCC Economic Agreement, in effect as of 1 November 1981, the objective of which is economic integration among GCC Member States in the trade of goods and services, industry, and government procurement; and to remove all customs duties and restrictions on intra-GCC trade and apply unified customs tariffs on GC imports.^[20]
4. The Agreement on Facilitating and Developing Inter-Arab Trade (Major Arab Free Trade), in effect as of January 1981, under which full exemption is granted on all commodities, both agricultural and industrial. Most Arab countries are parties to this Agreement, with the exception of Somalia, Djibouti, the Comoros and Mauritania.^[21]

The GCC has been negotiating a free trade agreement with the government of Pakistan, which is intended to increase trade and investment between the GCC countries and Pakistan by eliminating tariffs on goods and expanding access to services.^[22]

The GCC is working towards finalising a free trade agreement with the United Kingdom by 2024. This agreement aims to enhance economic cooperation, boost trade, and strengthen investment opportunities between the GCC Member States and the United Kingdom.^[23]

¹ Furthermore, in 2023, the GCC signed a free trade agreement with South Korea. South Korea will eliminate tariffs on nearly 90 per cent of all items, including liquefied natural gas and other petroleum products. In return, the GCC states will remove tariffs on 76.4 per cent of traded products and 4 per cent of traded goods.^[24] Moreover, since July 2004, China and the GCC have been negotiating a free trade agreement between themselves.^[25]

Saudi Arabia is a party to the following regional trade agreements:

- the EFTA–GCC Free Trade Agreement and Economic Integration Agreement;^[26]
- the GCC Custom Union;^[27]
- the GCC– Singapore Free Trade Agreement and Economic Integration Agreement;^[28] and
- the Pan-Arab Free Trade Area Agreement.^[29]

Year in review

Recent changes to the regime

Following the announcement of Vision 2030, Saudi Arabia took the initiative to support the small and medium-sized enterprises, privatisation and investments in new industries to enable such businesses to provide jobs to Saudi nationals.^[30] Rather than competing uniformly across the board, Saudi Arabia has concentrated on its national strengths and areas that will bring about leadership status. To support this, Saudi Arabia has already supported major national companies, which have gained a leading market share, by promoting their products and services regionally and globally, especially in the fields of oil, petrochemicals, banking telecommunications, food, healthcare and retail. Saudi Arabia also seeks to support Saudi companies by promising growth opportunities to enable them to develop into new regional and global leaders.^[31]

As previously discussed, as Saudi Arabia is a member of GCC, most of the country's the anti-dumping investigations have been initiated and concluded under the Common Law on Anti-dumping, Countervailing and Safeguard Measures. The Common Law comes into play once any GCC Member State faces any injury to its domestic industry due to dumped imports from non-Member States. To further protect its domestic industry and to align its domestic industry growth with Vision 2030, Saudi Arabia has promulgated its own law: the Law of Trade Remedies in International Trade.^[32]

To regulate the Law of Trade Remedies in International Trade, Saudi Arabia has established GAFT, which regulates all investigations. GAFT has also launched the Trade Remedies Electronic System (TRES),^[33] which was developed as an interactive electronic platform to manage complaints, investigations and reviews in trade remedies in accordance with the Law of Trade Remedies in International Trade.

TRES has been established as the primary electronic communication platform between GAFT and all domestic industries, interested parties and public stakeholders involved in investigations and reviews. It facilitates direct communication with representatives of these parties who have registered accounts on TRES, allowing them to submit required information before specified deadlines and access non-confidential information related to the investigation.^[34] TRES also hosts a number of sample forms of complaints that are to be used by domestic industries for guidance when filing anti-dumping complaints.

The Department of Export Defence,^[35] established under the GAFT, protects Saudi Arabia's interests and ensures unrestricted access for its exports in the event of any trade remedy investigation being initiated by another country. Through the Department, the Trade Remedies Deputyship (TRD) collaborates with domestic producers and exporters, and coordinates with relevant authorities. The TRD actively participates in investigations and provides the necessary technical defence.^[36] In addition to the defence of exports, the TRD also receives complaints from domestic industries injured by dumped or subsidised imports, or by an increase in imports, and provides technical assistance to domestic industries when submitting complaints.^[37]

Special considerations

Significant legal and practical developments

The development of Saudi Arabia's Law on Trade Remedies in International Trade (which operates parallel to the GCC's Common Law on the topic) was a significant development. It has been noted that, even after the establishment of GAFT, trade remedy investigations are being conducted by both GAFT and the GCC. However, it is maintained, as provided in Article 28 of the Law on Trade Remedies in International Trade, that the same product will not be subject to anti-dumping, countervailing or safeguard investigations under the GCC Common Law and Saudi Arabia's own Law. Article 8 of the Law states that:

The domestic industry has the right to submit a trade remedies complaint against an imported product from specific sources either under this Law or under the Common Law. It is not permissible to examine complaints and conduct investigations targeting the same imported product from the same specific source in parallel under both laws.

Measures shall not be imposed concurrently under this Law and the Common Law on imports destined to the Kingdom against the same product and from same sources to remedy the same case of dumping or specific subsidy or the increase in imports.

However, both Laws do not specifically address the requirement for qualification of cases that can be brought before the two authorities under their respective Laws.

Because the Law on Trade Remedies in International Trade is new and GAFT has just started conducting investigations under it, the major development is the promulgation of the Law itself. Practical developments in trade remedies by Saudi Arabia will become evident as investigations move forwards and new investigations are initiated.

Trade disputes

To comply with international trade laws and as a member of the WTO since 2005, Saudi Arabia has been an active participant in trade disputes, both as a complainant and as a respondent.

As a complainant

Saudi Arabia has been complainant in only one case before the WTO: European Union–Saudi Arabia, Provisional anti-dumping duty on mono-ethylene glycol from Saudi Arabia (DS606).

On 17 August 2021, Saudi Arabia requested consultations with the European Union with respect to the European Union's provisional anti-dumping duty on imports of mono-ethylene glycol originating in Saudi Arabia. Saudi Arabia claimed that the measures at issue appear to be inconsistent with:

1. Articles 1, 2.1, 2.2, 2.2.1.1., 2.2.2, 2.3, 2.4, 3.1, 3.2, 3.3, 3.4, 3.5, 5.2, 5.3, 5.4, 5.8, 6.1, 6.5, 6.5.1, 6.8, and 18.1, and Annex II of the WTO Anti-dumping Agreement; and
2. Articles VI:1 and VI:2 of the General Agreement on Tariffs and Trade 1994 (GATT 1994).^[38]

As a respondent

Saudi Arabia, Measures concerning the protection of intellectual property rights (DS567)

A complaint was filed by Qatar in which it requested consultations with Saudi Arabia concerning the latter's alleged failure to provide adequate protection of intellectual property rights held by or applied for entities based in Qatar.

Qatar claimed that the measures appear to be inconsistent with Articles 3.1, 4, 9, 14.3, 16.1, 41.1, 42 and 61 of the TRIPS Agreement.

Saudi Arabia informed the Dispute Settlement Body (DSB) that it had suspended appellate proceedings in this dispute, in accordance with the Al-Ula Declaration signed on 5 January 2021. In its communication, Saudi Arabia also confirmed the suspension of any further proceedings to adopt the panel report in this dispute, as per the Declaration. On 31 December 2021, Qatar notified the DSB that it had received Saudi Arabia's letter dated 29 December 2021, which requested a suspension of the appellate proceedings in this dispute. Qatar agreed to the proposed suspension of the appellate proceedings based on the terms of the Al-Ula Declaration. Qatar also confirmed the suspension of its submission to the appeal dated 17 August 2020, and of any further proceedings to adopt the panel report, while the mutually agreed suspension remains in effect.^[39]

On 21 April 2022, Qatar notified the DSB that it had agreed to terminate this dispute, and that it would not seek the adoption of the panel report.

Saudi Arabia, Measures relating to trade in goods and services, and trade-related aspects of intellectual property rights (DS52)

On 31 July 2017, Qatar requested consultations with Saudi Arabia with respect to measures relating to trade in goods, trade in services and trade-related aspects of intellectual property rights from Qatar. Qatar claimed that the measures appear to be inconsistent with:^[40]

1. Articles I:1, V:2, X:1, X:2, XI:1, and XIII:1 of the GATT 1994;
2. Articles II:1, III:1, III:2, III:3, and XVI of the General Agreement on Trade in Services; and
3. Articles 3 and 4 of the TRIPS Agreement.

As a third party

Saudi Arabia has participated as a third party in 54 cases before the WTO.

Outlook and conclusions

Saudi Arabia's Vision 2030 outlines certain plans for diversification in the country's economy, focusing on the development of its non-oil sectors such as:

1. manufacturing goods and products, and increasing exports;
2. profiting from Saudi mining resources;
3. developing tourism to increase related revenue;
4. investing in renewable energy sources; and
5. encouraging technological advancements and innovation.

Saudi Arabia is actively pursuing foreign investment to reach its industrialisation objectives. Saudi Arabia provides various incentives, including tax breaks, land grants, and a favourable regulatory environment, to attract both domestic and international investors. These measures make it an appealing destination for businesses. With the increase in industrialisation, it is foreseeable that the country's nascent industries will face competition from low-priced dumped and subsidised imported products.

Within its first year of establishment, GAFT has initiated three investigations against dumped imports from different states. As Saudi Arabia is accelerating its industrialisation to meet goals laid down by Vision 2030, it is estimated that more anti-dumping investigations will be initiated to protect domestic industries from unfair competition and to ensure that local manufactures are not undercut by imported goods. Saudi Arabia aims to encourage fair competition by penalising unfair trade practices (i.e., by imposing the anti-dumping duty), which will eventually help domestic industries by creating jobs and will also give domestic industries a push to emerge as competitive industries in the global economy).

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