



The Indian Society of International Law NEWSLETTER

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Editorial



The Katowice Climate Change Conference was convened from 2-15 December 2018 in Katowice, Poland. The Conference, also the 24th Conference of the Parties meeting to the United Nations Framework Convention on Climate Change (UNFCCC), was tasked with delivering a “rule book” for the Paris Agreement 2015 (hereinafter PA). The latter lays down a mixture of hard and soft obligations to the Parties to the agreement. The bedrock of the PA is the nationally determined contributions (NDCs), the self-determined obligations by the Parties to the agreement. Each party shall prepare, communicate and maintain NDCs. The Parties to the PA have to revise it at the end of every five years. The PA does not specify the details to be given in the NDCs. The Katowice Climate Change Conference produced a package that facilitates countries' efforts to implement the Paris Agreement. In a first major decision, the Conference decided that the Parties communicating its NDCs are required to provide the “information

necessary for clarity, transparency, and understanding” (ICTU), in accordance with the Paris COP decision and any future decisions of the Conference of the Parties serving as Meeting of the Parties to the Paris Agreement (CMA).

In pursuance of Article 4.13 of the PA, which promotes environmental integrity and prevention of double counting, the Parties have to provide information on their own accounting methodology if their NDC cannot be accounted for using methodologies covered by the Intergovernmental Panel on Climate Change (IPCC) guidelines.

Article 9.7 requires developed countries to report biennially on support for developing countries they have provided or mobilized. In pursuance of the provision, it was decided that the Secretariat starting from 2021 will prepare compilations and syntheses of the information communicated and organize biennial in-session workshops. The Paris COP decision states that, prior to 2025, the CMA will set a “new collective quantified goal” for climate finance higher than the current goal of mobilizing \$100 billion a year by 2020. The issue of new collective quantified goal will be taken up for deliberations in-session workshop in 2020.

Article 13 of the Paris Agreement establishes an enhanced transparency framework consisting of two reporting requirements and two review mechanisms. Pursuant to the Paris COP decision, all parties are to provide the required information in biennial transparency reports (BTRs), except for least-developed and small-island countries (LDCs and SIDs), which may submit the required information at their discretion. Each party has a legally binding obligation under Article 13.7(a) to regularly provide a national inventory report “prepared using good practice methodologies accepted by the [IPCC] and agreed upon by the [CMA].” In light of this, the guidance adopted in Katowice says that each Party shall use the 2006 IPCC guidelines and any subsequent version or refinement agreed by the CMA. In order to further enhance transparency, the Katowice decision provides that each party shall: (i) provide a description of its NDC, against which progress will be tracked. (ii) identify quantitative and/or qualitative indicators to track and provide current information for each of these indicators. As per the Katowice guidance, the information provided under Article 13.7(b) is to be subjected to technical expert review. The Global Stock Take (GST) is to be done every five years under Article 14 of PA. The Katowice decision also confirms it and says it will be done in accordance with equity and the best available science in a party-driven and cross-cutting manner.

Thus, the rule-book produced at Katowice has made it possible to assess the effectiveness of the Paris Agreement.

Pravin H. Parekh

RECENT ACTIVITIES / DEVELOPMENTS

RECENT ACTIVITIES

16th V. K. Krishna Menon Lecture by Hon'ble Shri Pranab Mukherjee, Former President of India

In the memory of Shri V. K. Krishna Menon, former President and founder of ISIL, the ISIL organized its 16th V. K. Krishna Menon Memorial Lecture on 5 October 2018 at its premises. Shri Praveen H. Parekh, President, ISIL introduced the Hon'ble Chief Guest Shri Pranab Mukherjee, Former President of India. Shri Mukherjee delivered lecture on "Sovereignty, International Law and Diplomacy". Prof. Manoj Kumar Sinha, Vice President, ISIL highlighted the achievements and contribution of the Chief Guest in the field of international law. Prof. Dabiru Sridhar Patnaik, Treasurer, ISIL proposed the vote of thanks.

Two-day Workshop on E-Commerce: International and National Perspective

The Indian Society of International Law (ISIL) organized a Two-day Workshop on E-Commerce: International and National Perspective on 10-11 November 2018 at its premises. 60 delegates comprising law faculty members, researchers, students and lawyers from different parts of the country and representatives from several embassies and the ministries participated in the Conference. Hon'ble Ms. Justice

Indu Malhotra, Judge, Supreme Court of India, inaugurated the Workshop. She highlighted the importance of topics of the Conference. She wished the Workshop a great success. Shri Praveen H. Parekh, President, ISIL welcomed the Chief Guest and the participants. Shri M. K. Rao, EC Member, ISIL also spoke on the occasion. Dr. Anupma Jha, EC Member, ISIL briefly outlined the scheme of the Workshop and proposed a formal vote of thanks.

The Workshop was conducted on the following sub-topics, Introduction to E-Commerce; UNCITRAL Model Law on E-Commerce and India; E-Commerce and Contract; Data Protection and Consumer Privacy; Cloud Computing; E-Commerce and Taxation; and E-Commerce and IPR. Eminent policy makers, academicians, practitioners and legal advisors namely Dr. Surendra Kumar, Associate Professor, PGDAV, DU; Dr. Sai Ramani Garimella, Assistant Professor, SAU, New Delhi; Dr. Gaurav, Assistant Professor, TERI University, Delhi; Shri Suhaan Mukherjee; Shri Rodney Ryder, Advocate, Delhi High Court; Shri Shashwat Sharma, Nishith Desai Law Firm and N. Mathivanan, Partner, Lakshmikumaran Firms delivered the lectures. Besides, the classes above mentioned, two Panel Discussions were also organized: Panel Discussion on Legal Issues Related to E-Commerce; Panel Discussion Challenges to Governance of E-Commerce and in which Dr. Sunil

Agarwal, NSC; Shri Senthil Kumar, MEA, Govt of India and Shri Pavan Duggal, Advocate, Supreme Court of India were the panelists and witnessed lively interactions and discussions by the participants.

Visit of Students

54 students of LLB three years course and five years course of final semester 2018 of Durgapur Institute of Legal Studies, Burdwan, West Bengal visited ISIL on 9 October 2018.

26 students of LLB final year from Law College, Burdwan, affiliated to the University of Burdwan, West Bengal visited the ISIL on 26 November 2018.

Monthly Discussion Forum

Monthly discussions were organized on the following topics:

"Augmented Soldier and International Law" by Dr. U. C. Jha, Former Wing Commander, on 2 November 2018.

"Globalization in Times of Trade War-Wither Away Free Trade", by Shri Sudhir Kumar, Former Member, CAT on 8 October 2018.

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Union of India (Appellants) v. Hardy Exploration and Production Inc. (Respondents) India CIVIL APPEAL NO. 4628 OF 2018

In its recent decision in *Union of India v Hardy Exploration and Production*, the Supreme Court of India on 25 September 2018 found that a contractual clause stipulating Kuala Lumpur as the 'venue' of arbitration did not amount to a choice of juridical seat. While the Indian courts' jurisdiction to hear set-aside applications will be excluded if the seat of the arbitration is outside India, the Supreme Court found that in this case there was no chosen seat (and the tribunal had not determined a seat), notwithstanding the choice of Kuala Lumpur as the venue for the arbitral



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proceedings, and the fact that the award was signed in Kuala Lumpur.

Earlier on 2 February 2013, Hardy Exploration and Production (India) Inc ("Hardy") obtained an arbitration award (the "Award") in excess of £70 million against the Union of India ("UoI"). The dispute arose from a production sharing contract dated 19 November 1996 (the "PSC"), and related to oil and gas exploration rights in Indian territorial waters. Union of India challenged the Award by filing a set-aside application under Section 34 of the (Indian) Arbitration and Conciliation Act 1996 (the "Act") before the Delhi High Court. Hardy resisted this application on the basis that the Indian courts did not have jurisdiction to decide the set-aside application as the seat of the arbitration was Kuala Lumpur, Malaysia. Article 33 of the PSC contained the arbitration agreement, and Article 33.12 provided that: "The venue of conciliation or arbitration proceedings pursuant to this Article unless the parties otherwise agree, shall be Kuala Lumpur...". Union of India argued that Kuala Lumpur was merely the physical venue where the arbitration was conducted and the award was signed, and the application of Part I of the Act (which includes Section 34) was not excluded by the parties. The Delhi High Court on 27 July 2016 found that since the Award was

made and signed at Kuala Lumpur, and there was no indication of any dispute between the parties regarding the seat of the arbitration, it could be inferred that Kuala Lumpur was the seat. As a result, the Delhi High courts were found to have no jurisdiction under the Act. Union of India appealed the decision before the Supreme Court of India.

ICJ Provisional Measure in the Alleged Violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights (Islamic Republic of Iran v. United States of America)

The International Court of Justice (ICJ), on 3 October 2018 delivered its Order on the Request for the indication of provisional measures submitted by Iran in the case concerning Alleged Violations of the 1955

Treaty of Amity, Economic Relations, and Consular Rights (Islamic Republic of Iran v. United States of America). Iran claimed that the re-introduction by the United States of sanctions against it following the latter's withdrawal from the Joint Comprehensive Plan of Action (JCPOA) in May 2018 violates the 1955 Treaty of Amity between the two States. In its request for the indication of provisional measures, Iran sought the Court's order that the US shall, inter alia, suspend its reintroduction of the sanctions, as well as allow transactions already licensed to be implemented.

The Court indicated unanimously, that the United States of America, in accordance with its obligations under the 1955 Treaty of Amity, Economic Relations, and Consular Rights, must remove, by means of its choosing, any impediments arising from the measures announced on 8 May 2018 to the free exportation to the territory of the Islamic Republic of Iran of (i) medicines and medical devices; (ii) foodstuffs and agricultural commodities; and (iii) spare parts, equipment and associated services (including warranty, maintenance, repair services and inspections) necessary for the safety of civil aviation'. The Court, unanimously also ordered that the US must 'ensure that licenses and necessary authorizations are granted and that payments and other transfers of funds are not subject to any



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restriction' where they relate to the goods and services noted above, and that both parties 'refrain from any action which might aggravate or extend the dispute before the Court or make it more difficult to resolve.'

The 2018 Agreement to Prevent Unregulated High Seas Fisheries in the Central Arctic Ocean

On 3 October 2018, the five Arctic Ocean coastal States (Canada, Denmark (acting on behalf of Greenland and the Faroe Islands), Norway, Russia, and the United States – the 'A5') together with China, the European Union (EU), Iceland, Japan, and South Korea (which together with the A5 form the so-called 'A5+5') signed the Agreement to Prevent Unregulated High Seas Fisheries in the Central Arctic Ocean (CAOF Agreement or CAOFA) in Ilulissat, Greenland. Unregulated fishing in the high seas of the central Arctic Ocean is prohibited for 16 years following entry into force of CAOFA. Sedentary species are not included. One of the objectives of CAOFA is the moratorium imposed by it which is in fact on 'unregulated' commercial fishing, not on commercial fishing per se.

Obligation to Negotiate Access to the Pacific Ocean (Bolivia v. Chile)

On 1 October 2018, the International Court of Justice issued its Judgment on the Merits in *Obligation to Negotiate Access to the Pacific Ocean (Bolivia v. Chile)*, found, by 12 votes to 3, that Chile "did not undertake a legal obligation to negotiate sovereign access to the Pacific Ocean" for Bolivia and rejecting all other submissions of Bolivia. In light of the historical and factual background, the Court observed that Bolivia and Chile have a long history of dialogue, exchanges and negotiations aimed at identifying an appropriate solution to the landlocked situation of Bolivia following the War of the Pacific and the 1904 Peace Treaty. The Court is, however, unable to conclude, on the basis of the material submitted to it, that Chile

has "the obligation to negotiate with Bolivia in order to reach an agreement granting Bolivia a fully sovereign access to the Pacific Ocean". Accordingly, the Court cannot accept the other final submissions presented by Bolivia, which are premised on the existence of such an obligation. Nevertheless, the Court found that it should not be understood as precluding the Parties from continuing their dialogue and exchanges, in a spirit of good neighbourliness, to address the issues relating to the landlocked situation of Bolivia, the solution to which they both have recognized to be a matter of mutual interest. With willingness on the part of the Parties, meaningful negotiations can be undertaken.

The State of Palestine Instituted Proceedings against the United States of America

On 28 September 2018, Palestine instituted proceedings against the United States of America before the International Court of Justice, claiming that the US violated the Vienna Convention on Diplomatic Relations by moving its embassy in Israel from Tel Aviv to Jerusalem. It is recalled in the Application that, on 6 December 2017, the President of the United States recognized Jerusalem as the capital of Israel and announced the relocation of the American Embassy in Israel from Tel Aviv to Jerusalem. The American Embassy in Jerusalem was then inaugurated on 14 May 2018. Palestine's contended that, it flows from the Vienna Convention that the diplomatic mission of a sending State must be established on the territory of the receiving State. According to Palestine, in view of the special status of Jerusalem, "the relocation of the United States Embassy in Israel to . . . Jerusalem constitutes a breach of the Vienna Convention". As basis for the Court's jurisdiction, the Applicant invokes Article 1 of the Optional Protocol to the Vienna Convention concerning the Compulsory Settlement of Disputes. It notes that Palestine acceded to the Vienna Convention

on 2 April 2014 and to the Optional Protocol on 22 March 2018, whereas the United States of America is a party to both these instruments since 13 November 1972.

At the end of its Application, Palestine "requests the Court to declare that the relocation, to the Holy City of Jerusalem, of the United States embassy in Israel is in breach of the Vienna Convention". It further requests the Court "to order the United States of America to withdraw the diplomatic mission from the Holy City of Jerusalem and to conform to the international obligations flowing from the Vienna Convention". Finally, the Applicant "asks the Court to order the United States of America to take all necessary steps to comply with its obligations, to refrain from taking any future measures that would violate its obligations and to provide assurances and guarantees of non-repetition of its unlawful conduct".

By an Order dated 15 November 2018, the International Court of Justice (ICJ), the principal judicial organ of the United Nations, decided that the written pleadings in the case concerning the Relocation of the United States Embassy to Jerusalem (*Palestine v. United States of America*) would first be addressed to the question of the jurisdiction of the Court and that of the admissibility of the Application. It fixed 15 May 2019 and 15 November 2019 as the respective time-limits for the filing of a Memorial by the State of Palestine and a Counter-Memorial by the United States of America.

ICJ Judges' Decided to no Longer Participate in Investor-State Arbitration or in Commercial Arbitration

On 25 October 2018, in the annual address of the President of the International Court of Justice on the occasion of the 73rd Session of the UN the General Assembly, President Abdulqawi A. Yusuf, announced that the Court had

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decided to adopt new restrictions on its sitting Members acting as arbitrators in inter-State and mixed arbitration. He said: "The Court is cognizant of the fact that, while the judicial settlement of disputes offered by the Court is enshrined in the Charter, States may, for several reasons, be interested in settling their disputes by arbitration. In such instances, Members of the Court have sometimes been called upon by States to sit on the arbitral tribunals in question dealing in some cases with the inter-State disputes while in others with investor-State disputes – a testament, of course, to the high esteem in which the Court's Judges are held by the international community. Over the years, the Court has taken the view that, in certain circumstances, its Members may participate in arbitration proceedings. However, in light of its ever-increasing workload, the Court decided a few months ago to review this practice and to set out clearly defined rules regulating such activities. As a result, Members of the Court have come to the decision, last month, that they will not normally accept to participate in international arbitration. In particular, they will not participate in investor-State arbitration or in commercial arbitration." President Yusuf elaborated that while sitting judges would no longer be allowed to arbitrate in mixed proceedings, they would be permitted to do so in 'exceptional' circumstances in inter-State disputes, provided that their judicial activities are given 'absolute precedence': "... in the event that they are called upon, exceptionally, by one or more States that would prefer to resort to arbitration, instead of judicial settlement, the Court has decided that, in order to render service to those States, it will, if the circumstances so warrant, authorize its Members to participate in inter-State arbitration cases. Even in such exceptional cases, a Member of the Court will only participate, if authorized, in one arbitration procedure at a time. Prior authorization must have been granted, for that purpose, in accordance

with the mechanism put in place by the Court. Members of the Court, will, however, decline to be appointed as arbitrators by a State that is a party in a case pending before the Court, even if there is no substantial interference between that case and the case submitted to arbitration." With this development, issue of difference in approaches taken between inter-State and mixed arbitration presumably reflects that the significant jurisdictional and substantive overlaps between the Court's activities and many inter-State arbitrations — especially under Annex VII UNCLOS — and the comparatively smaller pool of eligible arbitrators to fill these roles, may be addressed. But, on the other hand, this loss of expertise in arbitral proceedings may have negative effects.

General comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life: Extra-territorial Application of ICCPR

On October 31, 2018, the Human Rights Committee (HRC) adopted General Comment no 36 on the right to life (GC36) to the International Covenant on Civil and Political Rights (ICCPR/the Covenant). This general comment replaces earlier general comments No. 6 (16th session) and 14 (23rd session) adopted by the Committee in 1982 and 1984, respectively. The Comment includes a number of measures including, the introduction of the right to life as the 'supreme' right, and the relationship between the right to life and the environment. GC36 represents an important development that is likely to shape future practice under Art. 6 of the ICCPR. First, it permits the Committee to address certain issues with greater ease, such as targeted killings. Second, Para. 67 seems to envisage the application of Art. 6 to the conduct of hostilities under International Humanitarian Law (IHL), which could indicate that the Committee is prepared to engage actively with questions of compliance with IHL in order to determine arbitrary deprivations of life.

WTO Members Discuss Implementation of Information Technology Agreement in India

Participants in the WTO's Information Technology Agreement (ITA) met on 28-30 October 2018 to discuss implementation issues related to the ITA and to report the work on non-tariff measures. Implementation issues concerning India and China were flagged once more at the Committee meeting. The United States, the European Union, Japan, Norway, Canada, Switzerland, Chinese Taipei, Korea, Singapore and Thailand expressed concerns about the import duties that India has introduced on mobile phones and their parts, which members consider to be covered by the ITA. They also expressed concern about India's latest rectification notification, which sought to "unbind" the duties relating to these products. They felt that the Indian proposal would alter the scope of India's concessions and thus, could not be considered rectification of a purely formal character. Members also sought clarifications from China on the new tariffs on certain semi-conductor products covered by the ITA. Members urged India and China to bring their trade measures in line with the ITA and to grant duty-free market access for those products. Under the work programme on non-tariff barriers, Switzerland updated the Committee on the work of the informal group of members, which is focusing on issues such as conformity assessment, transparency and e-labelling. In response to reporting to the Committee on behalf of the ITA Expansion group, Canada said it was pleased to note that all 26 participants (representing 55 WTO members) in the ITA Expansion have now submitted their ITA Expansion commitments under the 1980 Decision for Modification and Rectification of Schedules of Tariff Concessions.

The Information Technology Agreement (ITA) was concluded by 29 participants at the Singapore Ministerial Conference in

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December 1996. Since then, the number of participants have grown to 82, representing about 97 per cent of world trade in IT products. The participants are committed to completely eliminating tariffs on IT products covered by the Agreement. The ITA Expansion was concluded at the Nairobi Ministerial Conference in December 2015, with 26 participants representing 55 WTO members. Trade under the ITA Expansion covers an additional 201 products valued at over \$1.3 trillion per year. The benefits of concessions under both the ITA and ITA Expansion are being extended to all 164 WTO members, meaning they all enjoy duty-free access to the markets of the members eliminating tariffs on these products.

UN General Assembly Adopts the United Nations Convention on International Settlement Agreements Resulting from Mediation

The United Nations General Assembly adopted the United Nations Convention on International Settlement Agreements on 20 December 2018. As authorized by the General Assembly, the Convention will be open for signatures at signing ceremony to be held in, August 2019 in Singapore and will be known as "Singapore Convention on Mediation".

Adoption of GCR and GCM

The UN General Assembly (UNGA), on 17 December 2018, has adopted the Global Compact on Refugees, following a consultation process including a series of thematic discussions and meetings in 2017, and formal consultations on successive drafts between February and July 2018.

The refugee compact was adopted today by a recorded vote of 181 in favor to two against (United States and Hungary), with three abstentions (Eritrea, Libya, Dominican Republic). Seven countries did

not vote: North Korea, Israel, Micronesia, Nauru, Poland, Tonga and Turkmenistan. Several countries that were undecided finally made the plunge and voted yes.

At a previous meeting on 13 November 2018, the Social, Humanitarian and Cultural (Third) Committee of the UN General Assembly approved the resolution that affirms the refugee compact with overwhelming majority. The Committee approved the draft resolution by 176 states voted in favor to one against (United States), with three abstentions (Eritrea, Liberia, Libya). Thirteen countries did not vote: Barbados, Bhutan, Congo, North Korea, Dominica, Grenada, Kyrgyzstan, Nauru, Saint Kitts and Nevis, Saint Lucia, Switzerland, Tonga, and Turkmenistan.

In July 2018, all of the 193 members agreed to the UN pact on migration except the United States. But, only 164 countries formally signed the UN migration deal in Marrakech on 10th December 2018. Among those who refused to adopt the deal - in addition to the United States - were Hungary, Austria, Italy, Poland, Slovakia, Chile and Australia.

Charles Michel has resigned from the post of the Prime Minister of Belgium on 19th December 2018. The resignation came as a result of his government being under immense pressure from the opposition over his government's support for the UN global compact on migration. Charles Michel's, who became the Prime Minister of Belgium in 2014, was the country's youngest prime minister since 1841.

DS567: Saudi Arabia — Measures concerning the Protection of Intellectual Property Rights

On 1 October 2018, Qatar requested consultations with Saudi Arabia concerning Saudi Arabia'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. On 12 October 2018, the

Russian Federation requested to join the consultations. On 9 November 2018, Qatar requested the establishment of a panel. At its meeting on 4 December 2018, the DSB deferred the establishment of a panel. At its meeting on 18 December 2018, the DSB established a panel. Australia, Bahrain, China, the European Union, India, Japan, Korea, Mexico, Norway, Russia, Singapore, Chinese Taipei, Turkey, the United Arab Emirates and the United States reserved their third-party rights.

In June 2017, Saudi Arabia imposed a scheme of diplomatic, political, and economic measures against Qatar. Such measures impacted, inter alia, the ability of Qatari nationals to protect intellectual property rights in Saudi Arabia. The multiple Qatari companies severely impacted by these measures include beIN Media Group LLC and affiliates ("beIN"). Saudi Arabia has prohibited beIN from broadcasting its content in Saudi Arabia. Among Saudi Arabia's measures is a 19 June 2017 Circular, issued by the Saudi Ministry of Culture and Information together with the General Commission of Audio and Visual Media. This Circular states that distribution of beIN media content and charging of related fees in Saudi Arabia "shall result in the imposition of penalties and fines and the loss of the legal right to protect any related intellectual property rights". Soon thereafter, in early August 2017, a sophisticated broadcast pirate named "beoutQ" emerged, taking beIN's copyrighted media content (along with beIN's trademarks) without authorization, and making it accessible on beoutQ platforms, via the Internet and satellite broadcasting. beoutQ's unauthorized satellite broadcasts are transmitted via satellites of the Saudi based Arab Satellite Communications Organization ("Arabsat") to beoutQ's subscribers. To enable receipt of the satellite broadcasts, beoutQ (an entity based in Saudi Arabia) has sold, and continues to sell, set-top decoder boxes

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throughout Saudi Arabia. As a result, beoutQ's unauthorized Internet and satellite broadcasting of beIN's content has been available on a commercial scale. In addition, the beoutQ set-top boxes allow users to install Internet Protocol Television ("IPTV") applications; such applications enable illegal access via the internet to hundreds of proprietary television channels and thousands of on-demand programming hours, including channels and programs from beIN and many other broadcasters from around the world. Despite extensive evidence of involvement of Saudi nationals, entities and facilities in the distribution of beoutQ throughout Saudi Arabia (and beyond), the Saudi authorities have refused to take any effective action against beoutQ. Instead, the Government of Saudi Arabia (including both the central and municipal governments) has supported beoutQ, including by denouncing beIN's requests to investigate and prevent the pirate's unauthorized broadcasts, and by promoting public gatherings with screenings of beoutQ's unauthorized broadcasts. The Saudi authorities' support of beoutQ has also taken the form of restrictions on, or other acts or omission that frustrate, beIN's ability to pursue civil actions before the Saudi courts. Through a variety of means, including by effectively preventing independent Saudi legal counsel from representing beIN in Saudi courts, the Saudi authorities have prevented beIN from accessing enforcement procedures against infringement of its intellectual property rights.

The copyrighted materials captured by beoutQ's unauthorized broadcasts encompass not only works created by beIN itself, but also works created by content providers from around the world, including the United States, the European Union and its Member States, and Switzerland, many of which have provided exclusive licenses to beIN for the Saudi Arabian market. In addition, the IPTV

applications on beoutQ set-top boxes provide access, in the territory of Saudi Arabia, to hundreds of television channels and thousands of on-demand programs from around the world, without the authorization of the intellectual property right holders.

DS518: India — Certain Measures on Imports of Iron and Steel Products

India filed an appeal on 14 December 2018 concerning the WTO panel report in the case brought by Japan in "India — Certain Measures on Imports of Iron and Steel Products" (DS518). The panel report was circulated to WTO members on 6 November 2018.

This dispute between Japan and India concerned a safeguard measure imposed by India on imports of certain steel products. Japan claimed that the measure at issue was inconsistent with various provisions of the Agreement on Safeguards and the GATT 1994. Japan challenged different aspects of the Indian competent authority's determination relating to: unforeseen developments and the effect of GATT obligations; increased imports; the definition of domestic industry; serious injury or threat thereof; causal link between increased imports and serious injury caused to the domestic industry; other factors causing injury to the domestic industry simultaneously with increased imports; the level of duties imposed; and the duration of the safeguard measure. Japan also made procedural claims regarding the obligation to notify the WTO Committee on Safeguards and to provide an adequate opportunity for prior consultations. In addition, Japan claimed that the measure at issue was inconsistent with Article I of the GATT 1994 and Article II:1(b), second sentence, of the GATT 1994.

As a preliminary matter, the Panel addressed India's request that since the measure at issue had expired, Japan's complaint was incompatible with Article 3.7 of the DSU. The Panel found that in the circumstances of the present case, the

expiry of the measure after the establishment of the Panel did not excuse the Panel from exercising its function under Article 11 of the DSU to make findings with respect to the matter raised by Japan, as well as to make recommendations to the extent that the measure continued to have any effects.

Before addressing Japan's substantive and procedural claims, the Panel considered whether the measure at issue constituted a safeguard measure within the meaning of Article XIX of the GATT 1994 and the Agreement on Safeguards. The Panel considered that the measure resulted in a suspension of India's obligations under the GATT 1994, namely Article II:1(b), second sentence, and was designed to remedy an alleged situation of serious injury to the domestic industry brought about by an increase in imports of certain steel products. The Panel thus concluded that the measure at issue constituted a safeguard measure and that the provisions of Article XIX of the GATT 1994 and the Agreement on Safeguards were applicable to the dispute.

With respect to Japan's substantive claims, the Panel's main findings were: India acted inconsistently with Article XIX:1(a) of the GATT 1994, by failing to demonstrate that the unforeseen developments and the effect of GATT obligations resulted in an increase in imports of the product concerned causing or threatening to cause serious injury to the relevant domestic industry in India.

India acted inconsistently with Articles 2.1 and 4.2(a) of the Agreement on Safeguards and Article XIX:1 of the GATT 1994, by failing to evaluate the rate and amount of the increase in imports on the basis of objective data, when it analysed the increase in imports at least partly on annualized data, and by failing to objectively examine the trends in imports.

Japan did not demonstrate that India failed to meet the requirement of "a major

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proportion” of the total domestic production of the product concerned under Article 4.1(c) of the Agreement on Safeguards, when it defined the domestic industry.

India acted inconsistently with Articles 4.1(a) and 4.2(a) of the Agreement on Safeguards, by failing to properly evaluate and sufficiently explain the changes in import prices and their effect on the domestic industry's prices and therefore on profitability. The Panel, however, rejected Japan's arguments that the Indian competent authority failed to assess the captive segment of the market, when it evaluated the share of the domestic market taken by increased imports. The Panel also rejected Japan's argument that India failed to provide any explanation regarding the positive trends in certain injury factors.

India acted inconsistently with Articles 4.1(b) and 4.2(a) of the Agreement on Safeguards, because its finding of a threat of serious injury was not adequately addressed or analysed in the Final Findings.

India acted inconsistently with Article 4.2(b) of the Agreement on Safeguards, by failing to demonstrate the existence of a causal link between the increased imports and serious injury suffered by the domestic industry, and by failing to conduct a proper non-attribution analysis.

India acted inconsistently with Articles 3.1 and 4.2(c) of the Agreement on Safeguards, by failing to provide reasoned conclusions on all pertinent issues of fact and law.

With regard to procedural claims, the Panel's main findings were:

Japan did not demonstrate that India acted inconsistently with Articles 12.1(a), (b) and (c) and 12.2 of the Agreement on Safeguards, with respect to the notifications to the Committee on Safeguards of the initiation of a safeguard investigation relating to serious injury or

threat thereof, the findings of serious injury in the investigation, and the decision to apply a definitive safeguard measure.

India acted inconsistently with Article 12.2 of the Agreement on Safeguards, by failing to provide the Committee on Safeguards with a precise description of the product involved and a precise description of the proposed measure.

India acted inconsistently with Article 12.3 of the Agreement on Safeguards, by failing to provide Japan, and other Members with a substantial export interest in the product subject to the proposed safeguard measure, with an adequate opportunity for prior consultations with a view to reviewing all pertinent information.

India acted inconsistently with Article 12.4 of the Agreement on Safeguards, by failing to notify the Committee on Safeguards before taking the provisional safeguard measure at issue.

The Panel exercised judicial economy on several claims, including Japan's claim on Articles 5.1 and 7.1 of the Agreement on Safeguards with respect to the duration of the safeguard measure and the level of the duties imposed.

(This news seeks your attention to a meeting of WTO's Safeguard Committee on 22 October 2018 where WTO members raised concerns on Safeguard actions on steel. Most of the members taking these actions referred to current global overcapacity in steel and certain measures imposed by other members. Importantly above panel report was indicated on 6 November 2018.)

WTO Members Adopt Roadmap for Reducing Technical Barriers to Trade

WTO members achieved a breakthrough at a 14-15 November 2018 meeting of the Committee on Technical Barriers to Trade (TBT) by agreeing on a list of recommendations that aim at reducing obstacles to trade and improving implementation of the WTO's TBT Agreement. Members also discussed 62

specific trade concerns at the committee meeting, including eight new concerns. In addition, the committee welcomed a new “best practices” guide for national TBT Enquiry Points.

President Trump Signed the Music Modernization Act of 2018 Into Law

On October 11, 2018, the Orrin G. Hatch–Bob Goodlatte Music Modernization Act (“the Act”) was signed into law by President Donald Trump. The bill, as updated and passed unanimously by the Senate and then the House, revises the Copyright Act (17 U.S.C. § 115) in several major ways. This Act aims to modernize copyright law in order to incorporate the digital delivery of content. It proves to be very useful for copyright holders by presenting a mechanism for raising the royalty rates to reflect fair market rates and terms in order to accommodate the changes in the market and also to the streaming services by safeguarding them from infringement lawsuits for past infringements. This Act

FORTHCOMING EVENTS

Eighth Winter Course on International Migration and Refugee Law, 1-5 January 2019.

48th Annual Conference of the Indian Society of International Law, 4-5 May 2019.

“Critiquing Katowice Climate Change Conference Outcome (COP 24)” by Dr. Vijeta Rattani, Programme Manager, Climate Change Division, Centre for Science or Science and Environment and Environment Dr. Anwar Sadat, Senior Assistant Professor, ISIL, on 8 February 2019.

Special Lecture on “Role of Special Rapporteur in the field of Human Rights”, by Dr. Kishore Singh, Former Special Rapporteur on Right to Education, on 8 February 2019.

Visit of Participants of the 34th International Training Programme in Legislative Drafting Organized by the Bureau of Parliamentary Studies and Training, Lok Sabha Secretariat, on 29 January 2019.