

INTERNATIONAL ECONOMIC LAW

I. INTRODUCTION

During 2014 New Zealand completed negotiations towards a new free trade agreement with the Republic of Korea, and agreed amendments to existing trade agreements with China, and with the Association of Southeast Asian Nations (ASEAN)¹ and Australia. Amongst other agreements, negotiations continued towards the Trans Pacific Partnership (TPP), Regional Comprehensive Economic Partnership (RCEP), and the Trade in Services Agreement (TISA). New Zealand also concluded negotiations on the Partnership Agreement on Relations and Cooperation between New Zealand and the European Union, which will provide a platform for New Zealand's ambitions for a free trade agreement with the European Union.

Negotiations for the conclusion of the Doha Development Agenda (DDA) at the World Trade Organization (WTO) stalled for much of 2014, following a deadlock relating to the adoption of a Protocol for the Trade Facilitation Agreement (TFA), which some Members linked politically to what they viewed as slow progress in the implementation of the Bali Ministerial decision on public stockholding for food security purposes. This deadlock also meant that the deadline for the development of a detailed work programme for the remaining issues in the DDA was extended from December 2014 until July 2015. Nonetheless, New Zealand was able to progress its interests in a range of WTO plurilateral and sectoral agreements, including the conclusion of negotiations on the terms of its accession to the Government Procurement Agreement (GPA) and through its participation in negotiations towards the expansion of the Information Technology Agreement (ITA) and the initial rounds of the Environmental Goods Agreement (EGA). New Zealand also remained an active participant in WTO dispute settlement proceedings, as both a complainant and a third party.

II. REGIONAL AND BILATERAL NEGOTIATIONS

A. New Agreements and Concluded Negotiations

1. New Free Trade Agreements

Negotiations for the Free Trade Agreement Between New Zealand and the Republic of Korea (KNZFPA) concluded in November 2014, almost five years after negotiations began, and the text was initialled by lead negotiators on 22 December 2014.² Once in force, the KNZFPA will be of significant value

1 The Members of ASEAN are Brunei Darussalam, Cambodia, Indonesia, Lao PDR, Malaysia, Myanmar, Philippines, Singapore, Thailand and Viet Nam.

2 More information, including the text of the Free Trade Agreement Between New Zealand and the Republic of Korea, can be found at <<https://korea.fta.govt.nz>>.

to New Zealand exporters. Korea is currently New Zealand's sixth largest export destination and in the year to June 2014 total two-way trade between New Zealand and Korea reached NZ\$4 billion. Under the KNZFTA, tariffs will be eliminated over time on approximately 98 per cent of New Zealand's current exports to Korea, with existing tariffs on around 48 per cent of imports eliminated on entry into force, leading to an estimated savings of \$65 million in the first year alone.³

The KNZFTA is a high quality agreement that in addition to goods market access also includes disciplines on customs procedures and trade facilitation, sanitary and phytosanitary measures, technical barriers to trade, trade remedies, cross border trade in services, temporary entry of business persons, investment (including procedures for investor State dispute settlement), intellectual property rights, competition and consumer policy, government procurement, environment, labour, transparency and dispute settlement. It also establishes mechanisms for further cooperation in areas of mutual interest such as agriculture, forestry and fisheries, education, trade facilitation, science and technology, and film and television production.

2. Enhancement of Existing Free Trade Agreements

In addition to concluding negotiations on the KNZFTA, New Zealand has also completed further negotiations under the auspices of existing agreements. On 26 August 2014 New Zealand, along with other Parties to the original agreement, signed a protocol amending the Agreement establishing the ASEAN-Australia-New Zealand Free Trade Area (AANZFTA).⁴ The First Protocol to Amend the Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area does not change the market access preferences under the AANZFTA, but complements them with new procedures to make the AANZFTA more user-friendly, transparent and efficient.⁵ Amongst other things, the Protocol introduces changes to requirements affecting information to be provided on certificates of origin and procedures relating to transposition of tariff and product specific rules of origin schedules following changes to the World Customs Organization Harmonised System tariff classification.

New Zealand also entered into an exchange of letters with the Government of the People's Republic of China to amend the Free Trade Agreement between the Government of New Zealand and the Government of the People's Republic of China, which was originally concluded in 2008.⁶ The exchange of letters

3 Tim Groser "New Zealand-Korea FTA initialled" (press release, 22 December 2014).

4 First Protocol to Amend the Agreement Establishing the ASEAN-Australia-New Zealand Free Trade Area (opened for signature 26 August 2014, not yet in force); Agreement establishing the ASEAN-Australia-New Zealand Free Trade Area [2010] NZTS 1 (opened for signature 27 February 2009, entered into force 1 January 2010). Further information, including the texts, can be found at <www.asean.fta.govt.nz>.

5 Tim Groser "New protocol improves ASEAN-Australia-New Zealand FTA efficiency" (press release, 27 August 2014).

6 Exchange of Letters Amending the Free Trade Agreement between the Government of New Zealand and the Government of the People's Republic of China (signed 20 November 2014, entered into force 20 January 2015); Free Trade Agreement Between the Government of New

adds a new Annex 15 to include a Television Programmes Co-Production Agreement between the Government of New Zealand and the Government of the People's Republic of China as part of the free trade agreement and was signed on 20 November 2014. The Co-production Agreement is expected to help producers access financing, as well as facilitate temporary entry and importation of equipment and will allow approved television projects to gain "official co-production status".⁷ It was welcomed in a Joint Statement as part of the establishment of a "Comprehensive Strategic Partnership" between New Zealand and China, where the two countries also promised to continue to implement the free trade agreement and ensure it remains relevant and current on an ongoing basis.⁸

3. Other Trade and Economic Agreements

New bilateral tax agreements with Viet Nam and Papua New Guinea entered into force in 2014, as did the Agreement between the Government of New Zealand and the Government of the United States of America to Improve International Tax Compliance and to Implement FATCA.⁹ Accordingly, by the end of 2014 New Zealand had 39 double tax agreements in force. Such agreements give greater clarity to treatment of cross-border investment income, reduce compliance costs for investors and promote information exchange between authorities. For this reason double tax agreements are seen to promote trade and investment as well as preventing tax evasion and avoidance, and the government has placed priority on extending and maintaining its network of agreements.¹⁰

Zealand and the Government of the People's Republic of China [2008] NZTS 19 (signed 7 April 2008, entered into force 1 October 2008). The text of the Free Trade Agreement between the Government of New Zealand and the Government of the People's Republic of China, including new Annex 15 Television Programmes Co-Production Agreement between the Government of New Zealand and the Government of the People's Republic of China, can be found at <www.chinafta.govt.nz>.

- 7 Tim Groser, Maggie Barry "New Zealand China television co-production agreement signed" (press release, 20 November 2014).
- 8 John Key "Joint Statement between New Zealand and the People's Republic of China on the Establishment of a Comprehensive Strategic Partnership" (press release, 20 November 2014).
- 9 Agreement between the Government of New Zealand and the Government of the Socialist Republic of Viet Nam for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income (signed 5 August 2013, entered into force 5 May 2014); Agreement between the Government of New Zealand and the Government of the Independent State of Papua New Guinea for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income (signed 29 October 2012, entered into force 21 January 2014); Agreement between the Government of New Zealand and the Government of the United States of America to Improve International Tax Compliance and to Implement FATCA (signed 12 June 2014, entered into force 3 July 2014). The texts of New Zealand's double tax agreements can be found at <www.taxpolicy.ird.govt.nz>.
- 10 Todd McClay "Tax Agreement with Viet Nam now in force" (press release, 7 May 2014); Todd McClay "Tax agreement with PNG now in force" (press release, 10 February 2014).

Two new bilateral air services agreements with Sri Lanka and Jamaica also entered into force in 2014,¹¹ as well as an amendment to an existing agreement with Luxembourg.¹² Negotiations for new or amended air services agreements were also concluded with Finland and Switzerland in 2014,¹³ but had not yet entered into force by the end of the year. This activity reflects the New Zealand government's commitment to the extension and liberalisation of international air services agreements and is consistent with its International Air Transport Policy announced in August 2012.¹⁴

B. Continuing Negotiations

1. TPP Negotiations

Intensive negotiations towards the TPP continued, including a series of meetings at Ministerial level during 2014.¹⁵ In November, Ministers reported to Leaders that sensitive and challenging issues remained in a number of areas including intellectual property, trade and environment, State-owned enterprises and investment.¹⁶ Leaders further noted that "Ministers and negotiators have narrowed the remaining gaps on the legal text of the agreement", and that they remained "committed to ensuring that the final agreement reflects our common vision of an ambitious, comprehensive, high-standard, and balanced agreement that enhances the competitiveness of our economies, promotes innovation and entrepreneurship, spurs economic growth and prosperity, and supports job creation in our countries" in accordance with the instructions Leaders issued in Bali in October 2013.¹⁷ Leaders also noted their commitment to ensuring that the TPP structure is able to include other regional partners, indicating that broader expansion beyond the current twelve Members is envisaged.¹⁸

11 Air Services Agreement between the Government of New Zealand and the Government for the Democratic Socialist Republic of Sri Lanka (signed 8 May 2014, entered into force 22 July 2014); Air Services Agreement between the Government of New Zealand and the Government of Jamaica (19 November 2014).

12 Exchange of Letters constituting an Agreement to Amend the Agreement between the Government of New Zealand and the Government of the Grand-Duchy of Luxembourg on Air Services (21 May 2014); Agreement between the Grand-Duchy of Luxembourg and New Zealand on Air Services, with Annexes (2 November 1992).

13 Air Services Agreement between the Government of the Republic of Finland and the Government of New Zealand (concluded 21 May 2014, not yet in force); Protocol Amending the Air Services Agreement between the Swiss Federal Council and the Government of New Zealand (signed 19 November 2014, entered into force 27 July 2015).

14 Gerry Brownlee "New agreements give Kiwis better global access" (press release, 8 May 2014).

15 Ministers met in Singapore in February and May, Sydney in October, and Beijing in November. TPP negotiations involve Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, United States and Viet Nam.

16 New Zealand Ministry of Foreign Affairs and Trade "Trade Ministers' Report to Leaders" (10 November 2014) <www.mfat.govt.nz>.

17 New Zealand Ministry of Foreign Affairs and Trade "Trans-Pacific Partnership Leaders' Statement" (10 November 2014) <www.mfat.govt.nz>.

18 Above n 17.

2. RCEP Negotiations

Although at a much earlier stage in the process, New Zealand also participated in negotiations towards another large regional trade agreement – RCEP – amongst ASEAN and its existing free trade agreement partners: Australia, China, India, Japan, Korea and New Zealand. The third, fourth, fifth and sixth rounds of negotiations took place in Kuala Lumpur (January), Nanning (April), Singapore (June) and New Delhi (December). In addition to the ongoing work of the Goods, Services and Investment Working Groups, new groups were established to address Intellectual Property, Competition, Economic and Technical Cooperation, and Legal and Institutional issues (including dispute settlement).¹⁹

3. TISA Negotiations

New Zealand continued negotiations towards the TISA for which nine negotiating rounds had taken place by the end of 2014. Market access offers have now been tabled by the majority of participants. Textual discussions have also advanced across a number of sectoral and modal annexes including, amongst other things, in relation to domestic regulation, financial services, telecommunications, e-commerce and the temporary entry of business persons. The joint statement by the TISA participants at its launch in 2012 indicates that they are aiming for an agreement that is comprehensive in scope, with no sector *a priori* excluded, and are seeking market access commitments that correspond as closely as possible to applied settings.²⁰

Although formally outside the WTO, these Geneva-based negotiations build on the GATS framework, keeping open the possibility of future multilateralisation. Liberalisation in trade in services is of interest to New Zealand given the increasingly important role played by services in the New Zealand economy, as well as the rise of global value chains in global trade.²¹ New Zealand's own services sector was ranked amongst the most open in a 2014 survey of 40 countries by the Organisation of Economic Cooperation Development (OECD).²²

4. Other Negotiations

New Zealand continued to pursue ratification of the free trade agreement already concluded with the Gulf Cooperation Council.²³ New Zealand also held its eleventh round of negotiations in February 2014 towards a free trade agreement with Russia and its Custom Union partners, Belarus

19 New Zealand Ministry of Foreign Affairs and Trade “Regional Comprehensive Economic Partnership (RCEP)” <www.mfat.govt.nz>.

20 “Advancing Negotiations on Trade in Services” (Joint Statement by Australia, Canada, Colombia, Costa Rica, European Union, Hong Kong China, Israel, Japan, Mexico, New Zealand, Norway, Pakistan, Peru, Republic of Korea, Switzerland, Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu, Turkey, United States of America, 5 July 2012).

21 Tim Groser “OECD ranks New Zealand's service sector amongst most open” (press release, 7 May 2014).

22 Above n 21.

23 Tim Groser “Minister travels to UAE, Kuwait, North Africa and France” (press release, 24 April 2014).

and Kazakhstan. Despite significant progress, negotiations were suspended following events in Ukraine and the Crimea.²⁴ Three rounds of negotiations towards the Pacific Agreement on Closer Economic Relations Plus (PACER Plus) with Australia and the Pacific Island Forum countries were held in 2014. Ministers recommended Fiji participate in the negotiations at Ministerial level in recognition of Fiji's progress towards elections, a return to parliamentary democracy and the importance of greater regional integration.²⁵ New Zealand also concluded negotiations on the Partnership Agreement on Relations and Cooperation between New Zealand and the European Union. The Partnership Agreement will provide a platform for pursuing New Zealand's ambitions for a free trade agreement with the European Union.²⁶

III. THE WTO

A. WTO Negotiations

1. The DDA Negotiations

The positive momentum from the 2013 Bali Ministerial Conference did not flow through to the ongoing DDA negotiations in 2014 as envisaged. In particular, it proved impossible to fulfil the mandate from the 2013 Ministerial Conference to adopt a Protocol for the TFA to be incorporated into Annex 1A of the WTO Agreement by 31 July 2014,²⁷ although the legal review of the TFA was completed by this date. According to the preamble of the TFA, the agreement aims to clarify arts V, VIII and X of the GATT 1994 so as to further expedite "the movement, release and clearance of goods, including goods in transit", while at the same time recognising the needs of developing countries for support and capacity building in this area.

The deadlock arose when India was unable to support the adoption of the TFA Protocol at the July General Council meeting. This was due to what India viewed as slow progress in implementation of a "permanent solution" to ensure that public stockholding for food security in developing countries does not breach those countries' commitments related to trade distorting domestic support under the Agreement on Agriculture, as had been agreed under a separate decision adopted at the Bali Ministerial Conference.²⁸

24 New Zealand Ministry of Foreign Affairs and Trade "New Zealand – Russia-Belarus-Kazakhstan Free Trade Agreement (FTA)" <www.mfat.govt.nz>.

25 Murray McCully "Pacific Islands Forum Ministerial Contact Group - Outcomes Statement" (press release, 15 February 2014). Fiji was readmitted to the Pacific Islands Forum on 22 October 2014.

26 Murray McCully "NZ welcomes landmark agreement with the EU" (press release, 30 July 2014).

27 World Trade Organization *Agreement on Trade Facilitation* WT/MIN(13)/36, WT/L/911 11 December 2013 (Ministerial Decision).

28 World Trade Organization, "Agriculture Negotiations: Fact Sheet: The Bali decision on stockholding for food security in developing countries" <www.wto.org>; World Trade Organization *Public stockholding for food security purposes*, WT/MIN(13)/38, WT/L/913, 11 December 2013 (Ministerial Decision).

Following intensive negotiations, Members were able to agree to clarify that the interim “peace clause” in paragraph 2 of the Bali decision on public stockholding for food security would continue to apply until such time as a “permanent solution” is agreed and adopted, even if Members failed to agree on a permanent solution by the 2017 deadline set out in the Bali decision.²⁹ Members also clarified that the peace clause should be read to mean that Members “shall not challenge” through the WTO Dispute Settlement mechanism such public stockholding programmes for food security purposes, and agreed to prioritise efforts in finding a permanent solution.³⁰

This new clarification of the public stockholding decision allowed Members to finally adopt the Protocol to the TFA on 27 November 2014.³¹ The Protocol will enter into force once two thirds of the Members have deposited their instruments of acceptance, the first of which was deposited by Hong Kong on 8 December 2014.³²

This deadlock also meant that Members had been unable to progress work regarding the development of a clearly defined work programme on the remaining issues in the DDA in the timeframes set out in the Bali Ministerial Declaration.³³ At the 27 November General Council, Members therefore also agreed to extend the deadline for the “Post-Bali Work Programme” until the end of July 2015 and reaffirmed their commitment to prioritising issues where legally binding outcomes could not be achieved, including issues related to least-developed countries.³⁴

2. WTO Plurilateral and Sectoral Agreements

(a) *The GPA*

New Zealand concluded two years of negotiations regarding the terms of its accession to the GPA, which is a plurilateral agreement in Annex 4 to the Marrakesh Agreement Establishing the WTO – meaning that only those WTO Members that join the Agreement are bound by it.³⁵ The GPA includes disciplines such as non-discrimination and transparency, as well as certain procedural requirements, for the government procurement of goods

29 World Trade Organization *Public Stockholding for Food Security Purposes*, WT/L/939, 28 November 2014 (General Council Decision) at [2].

30 At [1], [3]-[4].

31 World Trade Organization *Protocol Amending The Marrakesh Agreement Establishing The World Trade Organization* WT/L/940, 28 November 2014 (General Council Decision).

32 World Trade Organization *Protocol Amending the Marrakesh Agreement Establishing the World Trade Organization Done at Geneva on 27 November 2014, Agreement On Trade Facilitation* WT/LET/1025, 11 December 2014 (Notification of Acceptance by Hong Kong, China).

33 World Trade Organization *Bali Ministerial Declaration* WT/MIN(13)/DEC, 11 December 2013 (Adopted on 7 December 2013) [part III].

34 World Trade Organization *Post-Bali Work* WT/L/941, 28 November 2014 (General Council Decision).

35 World Trade Organization *Accession of New Zealand to the Agreement on Government Procurement* GPA/125, 3 November 2014 (Decision of the Committee on Government Procurement).

and services above thresholds and by specific entities included in each Party's schedule. Ministers welcomed the conclusion of negotiations, noting that once accession processes are complete New Zealand companies will have access to the right to bid for government contracts worth approximately US \$1.7 trillion annually across the GPA membership.³⁶

(b) Expansion of the ITA

New Zealand also participated in ongoing negotiations towards expansion of the ITA, a WTO sectoral agreement focusing on high technology goods such as computers, telecommunication and scientific equipment. Despite significant narrowing of gaps in the negotiations following a breakthrough understanding reached between China and the United States on the product list,³⁷ it was not possible to conclude in 2014. A successful ITA expansion would involve the first tariff cuts negotiation in the WTO for over fifteen years, the results of which would be applied on a non-discriminatory basis to all WTO Members. As such the negotiations are seen as supportive of the multilateral trading system as they demonstrate it is possible to deliver negotiated outcomes that benefit all Members.³⁸

(c) The EGA

New Zealand, along with Australia, Canada, China, Costa Rica, the European Union, Hong Kong, Japan, Korea, Norway, Singapore, Switzerland, Chinese Taipei and the United States participated in the July 2014 launch of negotiations for a sectoral agreement on environmental goods at the WTO. The original 14 Members collectively account for 86 per cent of global trade and the negotiations are open to any WTO member committed to the liberalisation.³⁹ The sectoral agreement will build on the existing list of 54 environmental goods on which APEC Leaders have already committed to reducing applied tariffs to five per cent or less,⁴⁰ and is seen as making a dual contribution to the multilateral trading system as well as the international environmental protection agenda.⁴¹ The negotiations seek to eliminate tariffs on the eventual EGA product list and will be implemented on a most-favoured nation basis at the WTO.⁴²

36 Steven Joyce and Tim Groser "Green light for New Zealand to join WTO GPA" (press release, 30 October 2014).

37 World Trade Organization "Azevêdo hails breakthrough on the WTO's Information Technology Agreement" (press release, 11 November 2014).

38 Above n 37.

39 Tim Groser "New Zealand joins global initiative for free trade in environmental goods" (press release, 9 July 2014).

40 Asia-Pacific Economic Cooperation "ANNEX C - APEC List of Environmental Goods" (Leaders Declaration, 8-9 September 2012) <www.apec.org>.

41 "Joint Statement Regarding Trade In Environmental Goods" Davos Switzerland, 24 July 2014.

42 Above n 41.

B. WTO Dispute Settlement

1. Participation in WTO Dispute Settlement as a Complainant

Following changes to the Indonesian laws and regulations, New Zealand jointly with the United States, again requested consultations with Indonesia on 8 May 2014 regarding Indonesian measures affecting the importation of horticultural products, animals and animal products.⁴³ Although similar in substance to earlier consultations requests,⁴⁴ the request technically initiates a new dispute: *Indonesia – Importation of Horticultural Products, Animals and Animal Products* (DS477). Australia, Canada, the European Union, Chinese Taipei, Thailand and the United States again requested to join the consultations as third parties.⁴⁵ The complainants continue to challenge Indonesia's prohibitions and restrictions on a range of agricultural imports as well as its import licensing and pre-shipment inspection requirements, which they consider to be inconsistent with Indonesia's obligations under the WTO covered agreements, in particular the GATT 1994 and the Agreement on Agriculture.⁴⁶

2. Participation in WTO Dispute Settlement as a Third Party

New Zealand reserved its third party rights in *European Union – Measures on Atlanto Scandian Herring* in February 2014, however the parties came to a mutually agreed solution before a panel was composed.⁴⁷ New Zealand also requested to join the consultations in *Indonesia – Measures Concerning the Importation of Chicken Meat and Chicken Products* (DS484) as a third party in October 2014, citing its substantial trade interest as an exporter of agricultural products to Indonesia that are also subject to the measures at issue.⁴⁸

43 World Trade Organization *Indonesia – Importation of Horticultural Products, Animals and Animal Products* WT/DS477/1, 15 May 2014 (Request for Consultations by New Zealand); World Trade Organization *Indonesia – Importation of Horticultural Products, Animals and Animal Products* WT/DS478/1, 15 May 2014 (Request for Consultations by the United States).

44 See World Trade Organization *Indonesia – Importation of Horticultural Products, Animals and Animal Products*, WT/DS455/1, 14 January 2013 (Request for Consultations by the United States); World Trade Organization *Indonesia – Importation of Horticultural Products, Animals and Animal Products* WT/DS465/1, 9 September 2013 (Request for Consultations by the United States); and World Trade Organization *Indonesia – Importation of Horticultural Products, Animals and Animal Products* WT/DS466/1, 9 September 2013 (Request for Consultations by New Zealand).

45 World Trade Organization *Indonesia – Importation of Horticultural Products, Animals and Animal Products* WT/DS477/8, 13 June 2014 (Acceptance by Indonesia of the Requests to Join Consultations).

46 World Trade Organization *Indonesia – Importation of Horticultural Products, Animals and Animal Products* WT/DS477/1, 15 May 2014 (Request for Consultations by New Zealand).

47 World Trade Organization *European Union – Measures on Atlanto-Scandian Herring* WT/DS469/3, 25 August 2014 (Joint Communication from Denmark in Respect of the Faroe Islands and the European Union).

48 World Trade Organization *Indonesia – Measures Concerning The Importation Of Chicken Meat And Chicken Products* WT/DS484/3, 3 November 2014 (Request To Join Consultations, Communication from New Zealand).

There was also some progress in a number of disputes in which New Zealand had previously reserved its third party rights. For example, a panel was composed by the WTO Director-General on 5 May 2014 to hear the tobacco plain packaging disputes brought against Australia by Ukraine,⁴⁹ Honduras,⁵⁰ Dominican Republic,⁵¹ Cuba⁵² and Indonesia.⁵³ These disputes challenge Australian laws and regulations requiring plain packaging for tobacco products, with the complainants arguing that such measures are inconsistent with Australia's obligations relating to the protection of intellectual property (in particular trademarks and geographical indications), technical barriers to trade and non-discrimination.⁵⁴ The Panel has announced that it does not expect to issue its report before the first half of 2016.⁵⁵

A compliance panel was composed in a long running dispute brought by Mexico against the United States in which New Zealand has participated as a third party; *United States – Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Products* (DS381). The Panel was however unable to issue its report by the end of 2014 as originally envisaged.⁵⁶

The report of the compliance panel in another long-running dispute involving the Agreement on Technical Barriers to Trade (TBT Agreement) in which New Zealand was a third party, *United States – Certain Country of Origin Labelling (COOL) Requirements*, was issued in October 2014.⁵⁷

49 World Trade Organization *Australia – Certain Measures Concerning Trademarks and Other Plain Packaging Requirements Applicable to Tobacco Products and Packaging* WT/DS434/13, 6 May 2014 (Constitution of the Panel Established at the Request of Ukraine).

50 World Trade Organization *Australia – Certain Measures Concerning Trademarks, Geographical Indications and Other Plain Packaging Requirements Applicable to Tobacco Products and Packaging* WT/DS435/18, 6 May 2014 (Constitution of the Panel Established at the Request of Honduras).

51 World Trade Organisation *Australia – Certain Measures Concerning Trademarks, Geographical Indications and Other Plain Packaging Requirements Applicable to Tobacco Products and Packaging* WT/DS441/17, 6 May 2014 (Constitution of the Panel Established at the Request of the Dominican Republic).

52 World Trade Organization *Australia – Certain Measures Concerning Trademarks, Geographical Indications and Other Plain Packaging Requirements Applicable to Tobacco Products and Packaging* WT/DS458/16, 6 May 2014 (Constitution of the Panel Established at the Request of Cuba).

53 World Trade Organization *Australia – Certain Measures Concerning Trademarks, Geographical Indications and Other Plain Packaging Requirements Applicable to Tobacco Products and Packaging* WT/DS467/17, 6 May 2014, Constitution of the Panel Established at the Request of Indonesia).

54 See for example World Trade Organization *Australia – Certain Measures Concerning Trademarks, Geographical Indications and Other Plain Packaging Requirements Applicable to Tobacco Products and Packaging* WT/DS467/1, 25 September 2013 (Request for Consultations by Indonesia).

55 See for example World Trade Organization *Australia – Certain Measures Concerning Trademarks and Other Plain Packaging Requirements Applicable to Tobacco Products and Packaging* WT/DS434/14, 14 October 2014 (Communication from the Chairperson of the Panel).

56 World Trade Organization *United States – Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Products, Recourse to Article 21.5 of the DSU by Mexico* WT/DS381/22, 17 April 2014 (Communication from the Panel).

57 World Trade Organization *United States – Certain Country of Origin Labelling (COOL) Requirements - Recourse to Article 21.5 of the DSU by Canada and Mexico* WT/DS384/RW, WT/DS386/RW, 20 October 2014 (Reports of the Panel).

The dispute relates to cattle and hogs from Canada and cattle from Mexico that are imported to the United States and the country of origin labelling requirements for muscle cuts of meat under the United States' amended measure, which defines origin based on where an animal was born, raised and slaughtered. New Zealand had both systemic and trade interests in the dispute and made submissions to the Panel addressing a range of issues, including the relationship between regulatory grace periods and the calculation of the reasonable period of time under the Dispute Settlement Understanding, the framework to assess legitimate regulatory distinctions and determining whether a measure is more trade restrictive than necessary under the TBT Agreement, as well as the relationship between the national treatment obligations under the TBT Agreement and the GATT 1994.⁵⁸ The Panel found that the amended measure, like the original measure, was in violation of the non-discrimination obligations in art 2.1 of the TBT Agreement but not art 2.2, for which the complainants had failed to establish a prima facie case in the Panel's view.⁵⁹ The Panel also found a violation of art III.4 of the GATT 1994.⁶⁰ The Panel's report was appealed and cross-appealed by the parties.⁶¹

IV. DOMESTIC LEGISLATION

Also of note in 2014 was the passage of the Trade (Safeguards) Measures Act 2014, which aims to "to enable New Zealand to apply safeguard measures and provisional safeguard duties at its border in accordance with [the WTO Agreement]."⁶² The Act states that such measures and duties are intended to provide temporary protection to a domestic industry from serious injury caused by increased imports and to facilitate adjustment by a domestic industry to increased competition.⁶³ Amongst other changes from the previous legislation, the Act introduces guidelines for assessing whether applying a safeguard measure will be in the public interest. Relevant considerations in determining whether imposing or extending a safeguard is in the public interest include the likely effectiveness of the safeguard in assisting

58 World Trade Organization *United States – Certain Country of Origin Labelling (COOL) Requirements – Recourse to Article 21.5 of the DSU by Canada and Mexico* WT/DS384/RW/Add.1, WT/DS386/RW/Add.1, 20 October 2014 (Reports of the Panel) at [C-26 to C-29].

59 World Trade Organization *United States – Certain Country of Origin Labelling (COOL) Requirements - Recourse to Article 21.5 of the DSU by Canada and Mexico* WT/DS384/RW, WT/DS386/RW, 20 October 2014 (Reports of the Panel) at [7.285, 7.613].

60 At [7.643].

61 World Trade Organization *United States – Certain Country of Origin Labelling (COOL) Requirements - Recourse to Article 21.5 of the DSU by Canada And Mexico* WT/DS384/29, WT/DS386/28, 2 December 2014 (Notification of an Appeal by the United States); World Trade Organization *United States – Certain Country of Origin Labelling (COOL) Requirements - Recourse to Article 21.5 of the DSU by Canada* WT/DS384/30, 16 December 2014 (Notification of an Other Appeal by Canada).

62 Trade Safeguard Measures Act 2014, s 3.

63 Trade Safeguard Measures Act 2014, s 3.

a domestic industry, possible alternatives, the likely effect on the market (including consumers), the strategic importance of the domestic industry and New Zealand's international relations and trade goals.⁶⁴ Other changes include extensions to the timeframe for investigations and the authority responsible for undertaking such investigations. Despite New Zealand's most recent safeguard investigation taking place in 1995, the Minister for Commerce and Consumer Affairs noted the continued importance of having such emergency measures available in times of increasing globalisation and competition from imported products.⁶⁵

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64 Trade Safeguard Measures Act 2014, ss 13 and 22.

65 Paul Goldsmith "Bill to modernise New Zealand's trade rules passes third reading" (press release, 4 November 2014).