

# Regulating for Globalization

Trade, Labor and EU Law Perspectives

## Dispatches from the roaring forties\*

Tracey Epps (Trade Law Consultant, Chapman Tripp, Wellington, New Zealand) · Monday, December 9th, 2019

I am not going to get involved in the discussions that have followed the blog post by Jorge Miranda and Manuel Sanchez-Miranda, or even to speculate on what is likely to happen after December 10<sup>th</sup> when the World Trade Organization (WTO) no longer has a functioning Appellate Body. Instead, I want to reflect briefly on what the WTO, and more particularly, the dispute settlement system, means to a small, highly trade-dependent country of approximately 5 million inhabitants in the path of the ‘roaring forties’ at the bottom of the world.

In short, it means a lot. New Zealand places enormous importance on multilateral rules and institutions, including the WTO. While we have a growing network of bilateral and regional trade agreements with our main trading partners, it is the multilateral system that underpins everything we do. Like other small- and medium-sized nations, we benefit greatly from an international rules-based system that allows us to play a role that we could never hope to replicate in a system based primarily on power politics. As was put so eloquently by Singapore’s Prime Minister Lee Hsien Loong at the 74<sup>th</sup> Session of the United Nations General Assembly this year, *“for small countries like Singapore, multilateral institutions, systems and laws are critical for our survival. These give us a stake in the global commons, and a means to defend and advance our interests. A rules-based system imposes responsibilities on all countries, and creates a stable environment for all.”*

As a founding member of the General Agreement on Tariffs and Trade (GATT), New Zealand has long been closely involved in seeking to shape the international trading system and has earned a reputation as a respected and honest broker in international trade policy. Through the years, a distinguished list of New Zealanders have held positions of influence, including as successive chairs of the WTO’s Agriculture Committee (the Hon. Tim Groser, Crawford Falconer, David Walker, Vitalis Vangelis and John Adank), an original member of the Appellate Body (Christopher Beeby, 1995-2000), Director-General of the WTO (Mike Moore, 1999-2002), and most recently, Chair of the Dispute Settlement Body (David Walker, 2018-present).

The dispute settlement system is of particular importance to New Zealand. We have initiated 9 cases (all successfully) since conclusion of the Uruguay Round, and been involved as a third party in over 60. We have not been involved as a respondent during this time. For New Zealand, the system has been a great leveller, aiming as it does for equitable treatment of WTO Members, irrespective of their size or power.[1] The system has allowed us to challenge measures maintained by the likes of the United States, European Union, Canada and Indonesia, all whilst maintaining strong bilateral relations with the Member countries in question.

The dispute settlement system is highly valued by New Zealand's business community. There is a recognition that it provides a level of certainty that allows them to pursue critical global strategies knowing that – should the worst happen – the government will have their back. A good example of this is the recent complaint brought against Indonesia over market access restrictions for beef and horticultural products. Prior to bringing the complaint, New Zealand beef exports had fallen by over 80 percent into what was previously our second-largest beef export market by volume, worth \$180 million in trade per year. There is also a real sense that, at the end of the day, the availability of an enforcement mechanism plays an important role in creating a shared sense of obligation which also helps to build business confidence.

With this background, it is not surprising that New Zealand is stepping up its efforts to ensure the future of the multilateral system. We are one of 13 Members involved in the Ottawa Group which is actively seeking to find constructive solutions on WTO reform and improvements to the system. We are active in the WTO fisheries subsidies negotiations (as a member of the “friends of fish” group) aiming to agree rules on harmful fisheries subsidies. We are also actively involved in the recently-launched e-commerce initiative. And our Permanent Representative to the WTO, Ambassador David Walker, is facilitating the ongoing informal process to solve the Appellate Body impasse in Geneva.

New Zealand has much to lose if the multilateral system starts to fray. But we are not alone. The system's shortcomings system aside, it is difficult to disagree that it has also had enormous benefits for many countries both large and small. That is why our officials are continuing to work so hard and why it is so critical that all WTO Members are equally as seized of the urgency of the task ahead of us.

\* As explained at [www.waymarking.com](http://www.waymarking.com), the Roaring Forties is a name given, especially by sailors, to the latitudes between 40°S and 50°S, so called because of the boisterous and prevailing westerly winds. This parallel of latitude passes through New Zealand, Chile and Argentina.

[1] David Evans and Penelope Ridings, “A Decade of WTO Dispute Settlement: New Zealand's Experience” (2006) 3 New Zealand Yearbook of International Law 1.

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