

SUMMER RESEARCH 2024/25

PROJECT ABSTRACT



THE UNIVERSITY OF
WAIKATO
Te Whare Wānanga o Waikato

PROJECT # 3

SUPERVISOR/S:	Dr Alberto Alvarez-Jimenez
PROJECT TITLE:	New Zealand and International Trade Litigation: Enhancing Access to NZ Dairy Industry in Canada under the Comprehensive and Progressive Agreement for Trans-Pacific Partnership
FIELD:	International trade adjudication; Free trade agreements; Market access to NZ's dairy industry
DIVISION/SCHOOL:	ALPSS - Law, Politics and Philosophy
PROJECT LOCATION:	Hamilton
EXTERNAL PARTNER:	Flower

PROJECT ABSTRACT:

New Zealand has very rarely relied on international adjudication to secure access to foreign markets for its domestic industries under free trade agreements. The country mostly uses bilateral negotiations to settle trade disputes. A recent exception is the dairy dispute for access to Canada's dairy market. After the negotiations failed, New Zealand started litigation under the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) claiming that Canada was not complying under its market-access obligations in the CPTPP.

In its final report in Canada – Dairy Tariff Rate Quota Allocation Measures (CDA-NZ-2022-28-01), the CPTPP panel rendered a divided decision on 5 September 2023. The majority of the panel sided with New Zealand on two major claims, and with Canada on the two others. The dissenting panel member disagreed with the conclusions favouring Canada, therefore agreeing with New Zealand. Both countries issued statements indicating that they had won the case. (New Zealand Herald, "NZ wins CPTPP trade dispute with Canada over unfair dairy access" (<https://www.nzherald.co.nz/nz/politics/nz-wins-cptpp-trade-dispute-with-canada-over-unfair-dairy-access/XBK6EGRHHRHZZPQF5HQWH7EJ4I/>); and Globe and Mail, "Canada says panel rules in its favour over New Zealand dairy complaint", <https://www.theglobeandmail.com/business/article-canada-says-panel-rules-in-its-favor-over-new-zealand-dairy-complaint/>)

Despite the adjudication, the trade dispute is still ongoing since New Zealand is arguing that Canada's new regulations adopted to comply with the CPTPP panel report remain inconsistent with the CPTPP. (New Zealand Herald, "Canada dairy trade dispute rolls on as changes fail to comply with rules, minister says" 2 May 2024. <https://www.nzherald.co.nz/nz/canada-dairy-trade-dispute-rolls-on-as-changes-fail-to-comply-with-rules-minister-says/JAYEBQDZ2VD7VILJ6YV7S77D3U/>)

New Zealand is not alone in its complaint against Canada. The United States has a parallel dispute under the United States, Mexico, Canada Free Trade Agreement (USMCA). Two USMCA panel reports have been issued in 2021 and 2023: one favourable to the United States and the most recent to Canada.

This research project will carry out a legal analysis of the CPTPP panel report and of its dissenting opinion. It will also explore the market access implications for New Zealand's dairy industry of the claims that were rejected by the panel; and what is next in light of the recent statement that Canada remains in violation of the CPTPP. The research project will also look at the adjudication of the United States/Canada dispute under the USCM Agreement and explore any potential favourable indirect impact on access to Canadian market by the New Zealand dairy industry.

STUDENT SKILLS:

- Excellent analytical skills.
- Excellent writing skills.
- Discipline
- Dedication

PROJECT TASKS:

1. Read and summarize the panel reports under the CPTPP and USMCA agreements.
2. Identify and summarize comments on the panel reports.
3. Prepare a draft on these materials to be used in other assessments of this litigation.

EXPECTED OUTCOMES:

- Student's Research Poster (as per clause 6 of the [Scholarship regulations](#))
- An article to be submitted to an international peer-reviewed publication.
- A presentation of the research project at national and international conferences.