

WORLD TRADE ORGANIZATION

*Panel established pursuant to Article 6 of the Understanding on Rules and Procedures
Governing the Settlement of Disputes*

Indonesia — Importation of Horticultural Products, Animals and Animal Products

(WT/DS477)

**CLOSING STATEMENT OF NEW ZEALAND AT THE SECOND SUBSTANTIVE
MEETING OF THE PANEL WITH THE PARTIES**

14 April 2016

CLOSING STATEMENT OF NEW ZEALAND

1. New Zealand would like to thank the Panel, as well as the Secretariat, for your considerable preparation for this hearing. Your insightful questions have yet again been conducive to a targeted and constructive discussion with all three Parties.
2. We would also like to thank you for your travels to Geneva, your time, and your attention during the entirety of these panel proceedings. You have digested a significant number of written submissions and engaged with the Parties, and third Parties, over four days of oral hearings. We very much appreciate your commitment to this process.
3. We would also like to thank our colleagues from the Governments of Indonesia and the United States, as well as their legal advisors, for travelling here today. Yet again, the manner of our engagement during these proceedings confirms that we are friends.
4. Nonetheless, even friends can have occasional disagreements and, in our opening statement at the very first hearing in March, we explained why New Zealand has, after numerous bilateral and diplomatic efforts, been forced to bring this issue to the World Trade Organization.
5. We are a small country heavily reliant on our agricultural export sector. In 2010, Indonesia represented New Zealand's second largest market for beef and offal exports by volume. Unfortunately, since the introduction of the measures at issue in these proceedings, those exports have fallen by 84 percent. Our horticulture exports have also been held back. The accumulated, year-on-year trade impact for our beef sector alone is now estimated to be between 0.5 and 1 billion New Zealand dollars. The impact of the measures at issue on New Zealand producers and farmers is real, documented and dramatic.
6. For these reasons, New Zealand very much welcomed the opening statement by Indonesia's head of delegation yesterday that the "current administration in Indonesia is taking steps to further streamline the process for importers" and that "Indonesia's President, Joko Widodo, is pressing for greater deregulation concerning importation" of agricultural products. New Zealand applauds Indonesia's commitment, at the highest levels of Government, to respect its WTO obligations. As we have demonstrated in these proceedings, however, further reform is still required to the measures at issue to achieve conformity with WTO commitments.
7. Ultimately, when all is said and done, the purpose of WTO proceedings is to seek a positive and durable solution to trade disagreements. For New Zealand, that solution requires a predictable WTO-consistent import regime that would translate into increased New Zealand

trade and very different graphs and statistics to those presented to the Panel in these proceedings demonstrating declines since 2010.

8. In New Zealand's view, new trade and agriculture import policies consistent with Indonesia's WTO commitments can protect, and even promote, Indonesia's legitimate policy objectives such as food safety and public morals. Imports can be part of a food security plan.

9. In some WTO disputes, a panel is required to rule on new *legal* issues in order to resolve the matter before it. This is not such a dispute. While Indonesia has raised a number of novel *legal arguments* in these proceedings, this Panel does not need to opine on all those matters in its report. For instance:

- First, whether the burden of proof under Article XX of the GATT 1994 unexpectedly *reverses* for claims under Article 4.2 of the Agreement on Agriculture (provided the Panel commences its analysis with Article XI:1);
- Second, any need to reformulate the carefully-crafted "limiting effect" legal test under Article XI:1 of the GATT 1994 when we already have tried-and-tested WTO jurisprudence on this question and the facts demonstrate that the standard is satisfied; and
- Third, any need to rule on whether each component, as well as Indonesia's licensing regimes as a whole, are "automatic" or "non-automatic" licensing procedures under the ILA as this question is not relevant to determining whether the legal standard is satisfied under Articles XI:1 or 4.2.

10. To the contrary, this dispute can be decided on the basis of established jurisprudence. In our view, the issues before you are largely *factual* and there is no need to develop new *legal* conclusions to provide a positive solution to this matter.

11. To conclude, New Zealand looks forward to responding to the Panel's questions in writing. We wish everyone safe travels home.

12. Thank you.