

In Memory of Dr Frieder Roessler

Dr Frieder Roessler, who passed away at the age of eighty-five in July 2024, was one of the foremost legal scholars of international economic law of his generation. After a distinguished career in the GATT, the WTO, and academia, in 2001, Dr Roessler accepted the invitation to serve as the first Executive Director of the Advisory Centre on WTO Law (ACWL). At the time, the ACWL was a novel pro-development project in international law – a legal aid centre designed to level the playing field in the WTO's rules-based multilateral trading system by providing legal assistance to developing and least developed countries that would otherwise be severely disadvantaged in their participation in the complex world of international trade law to enable them to access and benefit from that system. Given his longstanding vocation of service, Dr Roessler did not hesitate to accept the challenge. And he was an excellent choice for that position.

Dr Roessler's leadership ensured that the ACWL not merely survived, but thrived. His professional ethics, his reputation for excellence, his probity, his gentlemanliness and, in a word, his presence, gave instant credibility to this new project and helped the ACWL gain a reputation as a centre of excellence working for developing and least developed countries. Even though Dr Roessler retired in 2013, the ACWL's reputation still rests in large part on the qualities he imparted. He truly is the rock on which the ACWL was built. For us and our colleagues – past and present – at the ACWL, however, Frieder was foremost an excellent boss, colleague, mentor and friend. We miss him.

We therefore very much appreciate the invitation of the Global Trade and Customs Journal, through its Chief-Editor Jeff Snyder, to guest-edit this edition of the Journal as a tribute to Dr Roessler. In his many publications on international economic law, Dr Roessler was a lucid, meticulous, and always insightful analyst of his subject. His writings have always been an invaluable resource for all of us when we need to go back to the founding principles of GATT and WTO law and to understand the basis for our current rules.

In this edition, we and our colleagues pay tribute to his intellectual legacy. We review a selection of Dr Roessler's articles and discuss them in the light of more recent developments in the law or in the multilateral trade context. As we think the reader will agree, this review

shows the robustness and ongoing relevance of Dr Roessler's academic work to the analysis of WTO and trade law more generally.

In *'The Principles of the WTO Dispute Settlement System: Commentary on Frieder Roessler's Article 'The cobra effects of the WTO panel selection procedures'*, Mme. Olga Falgueras describes some of Dr Roessler's critiques of the WTO dispute settlement system as insightful and highly relevant even two decades later. She highlights that Dr Roessler's focus on removing the remnants of the diplomatic origins of the system – such as mandatory consultations, confidentiality, and ad hoc panellist selection – was aimed at enhancing adjudicatory legitimacy and efficiency. She contrasts this with current reform efforts, which she argues might be ideologically divergent, emphasizing limits on judicial independence rather than structural improvement. She contends that revisiting Dr Roessler's proposals, particularly his advocacy for transparency and a permanent panellist body, could restore coherence and trust in the WTO's adjudicative processes during its ongoing crisis.

In *'Resolving National Security-related Disputes under the WTO Non-Violation Remedy: Fit for Purpose?'*, Dr Vitaliy Pogoretsky focuses on Dr Roessler's significant contributions to understanding the WTO's non-violation remedy, particularly its origins, purpose, and limitations. Dr Roessler viewed this remedy as an exceptional tool intended to address unforeseen measures impairing negotiated trade benefits, emphasizing its careful and cautious application to avoid destabilizing the balance of rights and obligations within the WTO framework. Dr Pogoretsky underscores Dr Roessler's warnings against broad interpretations that could incorporate unregulated issues into WTO law, which would risk undermining the system's legitimacy. He further notes Dr Roessler's pragmatic insights on using the remedy as a diplomatic instrument for renegotiating trade concessions, suggesting this approach could help address modern challenges like national security measures without compromising the multilateral trading system's foundational principles.

In *'Dr Frieder Roessler's Approach to the Constitutional Function of the GATT/WTO'*, Mr Niall Meagher explains Dr Roessler's view that the primary constitutional function of the GATT/WTO system is to resolve conflicts not between governments but within WTO Members'

domestic systems by providing a set of rules to assist in making decisions related to trade policy. In Dr Roessler's view, this role did not unduly impede on governments' ability to achieve their domestic policy goals or create a conflict between trade policies and policies in other areas, such as environmental policies. This vision of the WTO's role remains relevant as WTO Members consider whether and how to incorporate new areas – such as e-commerce and climate change-related measures — into WTO law. Dr Roessler's insights remain very valuable in guiding us on how to move ahead most effectively with these new challenges.

In '*Special and Differential Treatment Provisions in the DSU and Current Reform Discussions*', Mme. Leah Buencamino explains how Dr Roessler prioritized access to legal expertise over procedural advantages as the most effective form of Special and Differential Treatment (S&DT) for developing countries in WTO dispute settlement. Dr Roessler observed that while S&DT provisions, such as extended deadlines and developing-country panelists, can ease the burdens of participation, they do little to address the primary challenge: enabling developing countries to access the system in the first place. He highlighted the critical role of initiatives like the ACWL in empowering developing countries with high-quality legal advice, ensuring they can effectively utilize the dispute settlement system. As the article notes, Dr Roessler's insights remain central to ongoing discussions about reforming the WTO, where the focus is shifting towards enhancing accessibility through capacity building, technical assistance, and reducing litigation costs for developing Members.

In '*Institutional Balance in the WTO: Frieder Roessler's Critique of the Appellate Body's Approach to Overlapping Jurisdictions*', Dr Jan Bohanes discusses Dr Roessler's emphasis on maintaining the institutional balance within the WTO, particularly the distinct roles of its political and judicial organs. Dr Roessler critiqued decisions by WTO panels and the Appellate Body that expanded judicial authority into areas traditionally managed by political bodies like the Balance-of-Payments Committee and the Committee on Regional Trade Agreements. Dr Roessler argued that this undermined the intended division of labour, in which it was contemplated that political bodies would address complex, systemic trade issues, leaving the adjudicatory bodies to rule on the legality of individual measures. His perspective, deeply rooted in GATT 1947 practices, emphasized judicial restraint and intellectual humility, advocating for deference to the political bodies' expertise in broader trade policy assessments. Dr Bohanes

highlights Dr Roessler's profile as a thoughtful and principled advocate for preserving the multilateral trading system's foundational institutional balance.

In '*Resolving the Banana Trade Wars: Evidence that ADR Can Settle Major Trade Disputes*', Hunter Nottage narrates the history of the resolution of one of the WTO's longest-running trade disputes, the twenty-year-long and highly contentious banana trade wars. He credits Dr Roessler with inspiring the use of alternative dispute resolution as a means to resolve the *EC – Bananas* dispute, which shifted the approach ultimately from adversarial litigation to reconciliation of interests. These efforts culminated in the Geneva Agreement on Trade in Bananas in 2009, demonstrating the effectiveness of ADR in addressing complex, politically sensitive trade issues.

In *Frieder Roessler's Enduring Legacy: Bridging Divergent Policies Through GATT's Unified Multilateral Vision*, Dr Pierola reflects on Dr Frieder Roessler's insights into the multilateral trading system, which emphasize the balance between maintaining market access commitments and preserving national policy autonomy. According to Dr Roessler, the system allows WTO Members to adopt domestic policies freely, provided they align with core principles like non-discrimination and the protection of competitive conditions in trade. However, in his reflections, Dr Pierola highlights how evolving global challenges, such as climate change, digital trade, and geopolitical tensions, demand reconsideration of this framework. He notes shifts toward harmonized approaches, as seen in agreements such as the Agreement on Fisheries Subsidies, while acknowledging the risks of regulatory fragmentation without deeper multilateral cooperation.

This issue contains also a bibliography of Dr Roessler's academic writings on international trade law, detailing his extensive contributions to the field in many books, articles, book chapters, reviews, and other writings over several decades. Dr Roessler's writings offer a comprehensive understanding of the legal frameworks underpinning global trade systems. We hope this bibliography will be a valuable asset to academics, students, and practitioners that are interested in further research on these topics.

Finally, we hope this edition will serve as a fitting memorial to Dr Roessler's academic and intellectual legacy and as a useful guide to newcomers to his work.

Niall Meagher,
Executive Director,
Fernando Pierola, Senior Counsel,
Advisory Centre on WTO Law.
Email: Niall.Meagher@acwl.ch.