

***AUSTRALIA'S RELATIONSHIP
WITH THE
WORLD TRADE ORGANISATION***

***ACCI SUBMISSION
TO THE
JOINT STANDING COMMITTEE ON TREATIES
PARLIAMENT OF AUSTRALIA***

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Introduction

Australia's national interests are best served by a robust, open, rules-based multilateral trading system operating under the auspices of the World Trade Organisation (WTO).

The multilateral, rules-based trading system has come a long way since it was formally instituted as the General Agreement on Tariffs and Trade (GATT) half-a-century ago. Global tariffs have fallen from an average of around 40 per cent at the end of the 1940s to around 4 per cent today.

The economic, commercial and social dividends of these successive liberalisation initiatives have included stronger economic growth and development, more and better quality employment and investment opportunities, and more efficient and competitive enterprises and economies.

Australian Governments, of both major political persuasions, continue to be strong advocates of trade and investment liberalisation, in both domestic and international fora.

While there are nuances of difference in the trade policy platforms of the two major parties, and in the sequencing of policy priorities, both recognise the necessity of more open markets, at home and abroad.

Speaking for the Howard Government, the Minister for Trade, the Hon Mark Vaile MP has said: "Australia's future depends on open markets and free trade." ("Australia: Getting the Economic and Trade Policy Framework Right", Address, 2 February 2000).

Speaking for the Beazley Opposition, Shadow Trade Minister, Senator the Hon Peter Cook (himself a former Trade Minister) has said of the ALP trade policy: " ... it is a policy for free trade not as an end in itself but as a means to greater global prosperity and a better outcome for the people of Australia." (Remarks to the ALP Conference, 1 August 2000).

Commerce and industry welcomes this bipartisan support for free world trade, and remains committed to working with governments of both political persuasions in Australia's national efforts to advance this essential agenda.

The ACCI, and Trade and International Affairs

The Australian Chamber of Commerce and Industry is generally recognised as this country's leading business organisation actively engaged in trade and international affairs.

The Chamber movement represents some 350,000 enterprises, large and small, across the nation. Around 20 per cent of these firms - or around 70,000 business - are directly or indirectly engaged in international trade and commerce.

We have substantial and significant international linkages which may not be well-known.

We are, for example, an active member of the International Chamber of Commerce framework.

Many people are unaware the ICC ostensibly writes the rules of international trade and commerce in areas ranging across international financial transactions, intellectual and industrial property, and transportation, and is turning its mind to the most appropriate framework for electronic commerce.

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The ICC maintains close, direct relations with the United Nations system and the World Trade Organisation, amongst a broad range of international organisations.

The ACCI is also the Australian national member business organisation of the Business and Industry Advisory Committee to the OECD, through which we seek to influence the policy analysis and recommendation, and increasingly treaty-making, work of that institution.

As a national chamber of commerce and industry, we are also part of the global family of chambers of commerce and industry - of which there are more than 240 around the world. And, that's without counting sub-national chambers, such as States/Provinces/Territories and the large army of local chambers which play a much under-recognised role in the trade-matching and promotion aspects of international trade.

From our experience, it is like having at least 240 - if not many hundreds of - affiliated offices across the globe. An extensive and valuable asset by any measure, and one which we are seeking to better utilise to Australia's national advantage.

The Chamber also has close working relationships with a sizeable number of bilateral and regional business councils and chambers of commerce, which are effective vehicles for promoting Australia's commercial interests with those countries.

We also belong to a number of regional business organisations which are making contributions to the development of regional integration, in Asia Pacific and elsewhere.

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The Chamber is the Australian national member of the Confederation of Asian Chambers of Commerce and Industry (CACCI), which brings together 21 national chambers from around the Asia Pacific region. CACCI is working hard to ensure an effective business voice into the Asia Pacific Economic Co-operation (APEC) initiative.

The Chamber movement is also the Australian business representative in the Indian Ocean Rim Association for Regional Co-operation (IORARC) which, as its name suggests, is working quietly but soundly towards building co-operation in a region which has traditionally not had any shared sense of regional identity or co-operation.

We have also participated in endeavours to develop a grouping of national chambers of commerce from the British Commonwealth, and have looked at some form of outreach arrangement with the national chambers of Latin America.

The Benefits of Trade Liberalisation

The benefits for Australia from further bold, comprehensive trade liberalisation are likely to be substantial.

The Organisation for Economic Co-operation and Development (OECD) has estimated the economic dividends of the long-running Uruguay Round are likely to exceed \$US 200 billion (\$A 330 billion) annually.

Research commissioned by the Australian Department of Foreign Affairs and Trade (DFAT) found halving trade barriers would be expected to produce economic dividends worth around \$US 400 billion (\$A 660 billion) annually.

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These latter estimates were regarded as conservative, recognising they did not fully value the potential benefits from services trade liberalisation, nor taken into account the dynamic effects of trade reform (such as on productivity and interest rates).

More directly for ordinary Australians, it is not widely recognised amongst the Australian community that fully one job in five in Australia - or 1.7 million jobs - is dependent upon exports: that is, access to foreign markets and consumers.

Over two-thirds of Australia's farm production is exported, while the figure for minerals exceeds 90 per cent. Services exports are also growing strongly.

A liberal trading environment is also important for our manufacturing industry, and its employees: export-related jobs in manufacturing pay, on average, 20 per cent more than those in non-export manufacturing.

The WTO with some 135 members, and a further 30-odd in the process of making their applications for membership, clearly has a critical role to play in promoting global economic growth and development.

The Millennium Round Agenda

The ACCI made an substantive submission to the public consultation process organised by DFAT in advance of the Seattle Ministerial meeting.

The core themes of the Chamber's formal, written submission (reinforced in the subsequent public consultation processes) were: the need for full and timely implementation of Uruguay Round commitments; action to carry forward the so-called 'built-in agenda'; and, the treatment of the so-called 'new trade issues'.

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On the implementation of Uruguay Round commitments, the Chamber argued an essential platform for further trade liberalisation must be effective and faithful implementation in full and on-schedule of existing commitments to trade liberalisation.

This issue is particularly important for some developing and transitional economies who have yet to deliver on some outstanding commitments, most notably in the reduction and/or elimination of tariff and non-tariff barriers.

Australia could usefully offer 'economic and technical co-operation' style of assistance to such economies amongst our closer neighbours to accelerate their efforts in meeting their outstanding Uruguay Round commitments.

Effective implementation of the Uruguay Round outcomes will also require continued adherence to, and strengthening of, the Dispute Settlement Mechanism (DSM).

Equal access and treatment under the rule of law, implicit in the DSM, has been a notable feature of the post-Uruguay Round experience under the WTO. Early experiences with the DSM augur well for its future, and the rule of law in the multilateral trading system.

On the so-called 'built-in agenda', commerce and industry argued while the Uruguay Round of trade liberalisation negotiations made substantial progress across a broad range of issues (including new disciplines in agriculture, services, investment and intellectual property), a large body of work remains to be completed.

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Without attempting an exhaustive listing of, and a detailed exposition of the outcomes sought from, the 'built-in agenda' commerce and industry would observe, in the area of:

. *agriculture*, there is a need to build on the initial Agreement on Agriculture negotiated during the Uruguay Round, pursuing the objective of a market-driven agricultural trading system through delivery of further reductions and transparency in agricultural protection and support mechanisms;

. *industrial products*, ensuring reductions in tariffs are delivered as scheduled, both in quantum and in time, with meaningful negotiations to reduce both tariff peaks and rates of escalation;

. *services*, there is a need to expand and improve the quality of commitments to market access and national treatment under the General Agreement on the Trade in Services (GATS).

Elements of the services sector where further progress is required include basic telecommunications, information technology, professional services and transport services (both aviation and maritime, where much more substantial commitments are required); and,

. *government procurement*, which should produce a comprehensive multilateral agreement on government, delivering transparency, openness, due process and national treatment, as well as broader governmental (ie sub-national, and governmental agencies) and sectoral coverage, and wider membership.

On the so-called 'new trade agenda', commerce and industry observed the WTO had identified a series of 'new trade issues' which will need to be considered within the wider context of the multilateral, rules-based trading system.

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Ministerial and other high-level meetings of the WTO have identified these issues as: trade and the environment; trade and labour; trade and investment; trade and competition policy; the simplification of trade procedures (also known as trade facilitation); electronic commerce; and, the movement of natural persons.

Without attempting an exhaustive listing of the many issues inherent within each of the elements of the 'new trade agenda', commerce and industry would observe, in the area of:

. *trade and the environment*, there remains considerable disagreement over the nature and extent of linkages, if any, between these two areas, and particularly between WTO rules and the trade-measures in multilateral environmental agreements (MEAs).

Any linkages between trade and the environment must not compromise the integrity of the multilateral, rules-based trading system, or create the potential for protectionist or trade-disruptive measures;

. *trade and labour*, the WTO acknowledges it does not have competence in international labour matters, which more properly resides within the International Labour Organisation. There is legitimate concern that some advocates of linkages between trade and labour standards may be implicitly advancing protectionist agenda.

Continued demands by some developed countries for WTO engagement in trade and labour issues could threaten ongoing commitment by developing and transitional economies to the rules-based, multilateral trading system;

. *trade and investment*, there are clear and obvious linkages, and a demonstrable need for a comprehensive and robust framework of global rules on cross-border investment.

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The existing WTO Agreement on Trade-Related Investment Measures (TRIMs) represents a starting point for negotiations of a discrete and substantive discipline on investment, being informed by the work of the OECD on the Multilateral Agreement on Investment (MAI);

. *trade and competition*, where there are also clear linkages. However, given the need for further exploratory, analytical work in this complex area, the time does not yet appear ripe for robust multilateral negotiations on substantive issues.

In this regard, the preparatory work being undertaken by the WTO Working Group on the Interaction between Trade and Competition Policy should be mandated to continue;

. *simplification of trade procedures (trade facilitation)*, further preparatory work is required to more clearly define an agenda, the outcomes sought and the value-adding role which could be played by WTO mechanisms.

Any efforts by the WTO in this area, in particular, must be undertaken in close consultation with commerce and industry, represented at the multilateral level on this matter by the International Chamber of Commerce;

. *electronic commerce*, international trade and commerce is increasingly being conducted by electronic means. In simple terms, just as the trade in goods and services is securing broader coverage by the multilateral, rules-based system, so also must the means by which this trade and commerce takes place.

Multilateral rules for the conduct of electronic commerce is best formulated, and the expansion of this important platform for trade and commerce best advanced, by a comprehensive and robust stand-alone Agreement on Electronic Commerce. Harmonisation of Articles on electronic commerce within separate WTO disciplines is, at most, a 'second-best' result; and,

the movement of natural persons, is likely to become an increasingly important issue in coming years, as the decision to engage in trade often involves the necessary positioning of natural persons in destination markets. Such matters are particularly important for the trade in services, and cross-border investment.

While the time is not yet ripe for fully-fledged negotiations on the movement of natural persons, the issue warrants consideration and exploration through a Working Party designated for this purpose.

Public Consultation Process

The Chamber movement was an participant in the extensive public consultation process which was undertaken by the Australian Government in advance of the Seattle Ministerial.

While commerce and industry sees merit-in-principle in a pluralist democracy in engaging the community in matters of national importance, we would question the net benefit/value-added to our trade policy and strategy making of some of these consultations.

Such comments must not be (mis)construed as reflecting adversely upon DFAT, who undertook these consultations in good faith and in a professional manner.

The Chamber understands DFAT received some 200 written submissions, and engaged in 13 public consultation hearings across the nation (8 in metropolitan centres, and 5 in regional Australia).

Rather, the Chamber would question the depth and quality of the intellectual contribution made by some of the participants, many of whom, to our direct observation, demonstrated a distinct lack of informed understanding of the World Trade Organisation purpose, objectives, structures and operations.

The Chamber also actively participated in the 'Team Australia' mission (which included representatives from the Howard Government, the Beazley Opposition and the private sector) which represented Australia at the Seattle Ministerial meeting.

We attended and participated in the Seattle Ministerial as part of our commitment to advancing Australia's national interest in such key international fora.

More specifically, we sought to realise the opportunities which could arise from our wide linkages with our sister national chambers of commerce and like organisations who also attended the Seattle meeting with their respective national delegations.

The Seattle Ministerial Meeting

Commerce and industry remains disappointed at the failure to launch a bold and comprehensive Round of trade and investment liberalisation negotiations (a Millennium Round) from the Third WTO Ministerial Conference held in Seattle, USA, last year.

At most, the failure to launch a new Round from Seattle is a setback for the rules-based, multilateral trading system. It was far from the death-knell suggested by some less-informed commentators.

The Chamber shares the Australian Government's assessment of the main reasons for the lacklustre outcome from the Seattle Ministerial, namely the lack of sufficient preparedness by certain participants, political will and willingness to compromise by many key players. The significance attributed to the street demonstrations, to our mind, has been greatly exaggerated.

We consider many of the experiences, and lessons, from the Seattle Ministerial have been recorded and analysed back in national capitals, and they will productively inform the planning for future Ministerial meetings.

The Post-Seattle Agenda

Contrary to some popular misunderstanding, multilateral trade liberalisation has not completely stalled as a consequence of the Seattle Ministerial meeting.

Importantly, there remains a clear recognition of the benefits of, and need for, comprehensive trade liberalisation, while the differences on how to go forward are, to our mind, not insurmountable.

At the same time the WTO, to use a popular colloquialism, is 'not sitting on its hands', doing nothing in a vacuum awaiting the launch of a new Round.

Rather, the WTO and its members are moving ahead with mandated negotiations on agriculture and services.

The Australian Government's agenda on agriculture, which is endorsed by commerce and industry, is to work with the Cairns Group toward the elimination of trade-distorting agricultural export subsidies, and pursue progressive, substantial reductions in domestic support arrangements.

On the services front, the Australian Government will be pressing for improved market access arrangements in key export opportunity sectors such as finance, telecommunications, professional services and electronic commerce.

While endorsing these sectoral priorities, the Chamber would propose the inclusion of key transport sectors, such as aviation and transport, recognising their complementarity to trade liberalisation - it is incongruous to liberalise trade without comparable liberalisation of the means by which that trade takes place.

The Outlook for a new Round

While we welcome the bipartisan commitment of the Howard Government and the Beazley Opposition for the launch of a new Round at the earliest opportunity, we recognise a number of (not-insurmountable) hurdles remain.

The Chamber concurs with the Australian Government (again supported by the Opposition) that Australia must work to ensure the WTO remains a respected institution delivering a robust and stable framework of rules which led to a more liberal multilateral trading system, whilst also preventing the emergence of new barriers to international trade and commerce.

At the structural level, there will need to be continuing efforts amongst developed countries, and between developed and developing countries to narrow the gap on the breadth and depth of issues to be included on the agenda for a new Round.

Core amongst these challenging issues will be the treatment of agriculture (a sensitive issue amongst some developed countries) and labour standards (a sensitive issue between developed and developing countries).

The coverage and treatment of environmental issues is also an outstanding matter, both as to its inclusion per se and the nature of any treatment within the WTO framework.

Commerce and industry does not share the optimism of some for a bold, comprehensive Round to be launched in 2000.

With the United States, a major player in any multilateral trade liberalisation initiatives, about to enter into its quadrennial Presidential election cycle, a more pragmatic time frame would suggest a new Round being launched around the middle of 2001, at the earliest (with the US agenda, indeed the viability of any new Round, much dependent on the election outcome).

WTO Dispute Settlement Mechanisms

One of the most important outcomes from the long-running Uruguay Round of trade liberalisation negotiations was the strengthening of the WTO's dispute settlement processes.

In particular, the Chamber has in mind the reorientation of the processes for accepting or rejecting a finding by a dispute settlement panel.

Prior to the Uruguay Round outcome, to be adopted a panel finding required the unanimous acceptance of all WTO members. Axiomatically, the losing party to the panel decision had an understandable motivation to exercise their right of veto, regardless of the propriety of the decision.

Following the Uruguay Round, the procedure has been reversed: a panel decision can only be rejected with the unanimous support of all WTO members. Again, self-evidently, the winning party to the panel decision has a clear motivation to exercise their right of veto for any such rejection.

In effect, any reasoned and sound panel decision is likely to stand, and its recommendations (or other rules-based penalties) be enforced.

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Commerce and industry regards the latter approach, arising from the Uruguay Round, as being more compatible with the rule-of-law approach to multilateral trade which we envisage the WTO implementing.

This rule-of-law approach is already becoming evident in the recourse being made to the WTO dispute settlement mechanisms, and in the legal process approaches being adopted by the panel system.

Quite simply, the dispute panel system is already taking on a style resembling a court of competent jurisdiction, albeit one with an 'economic law' perspective.

Australia's engagement with the panel system can be expected to rise in the capacities of appellant, respondent, third party intervener or through amicus curiae ('friends of the court') briefs.

Given the WTO agreements are treaties or the like between governments, prosecution or defence of Australia's interests before WTO panels will be the primary responsibility of the Australian Government.

Within the Australian Government, this responsibility will fall to DFAT, which has primary carriage of WTO matters, including trade negotiations and dispute settlement.

To be effective in this dispute settlement work, DFAT will need to build sufficient skills at suitably senior levels to undertake the strategic management of our national engagement in such complex matters.

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While commerce and industry has high regard for the diplomatic, strategic and trade negotiations skills of senior DFAT officers, the increasing legal complexity of international trade law, and the legal demands of the WTO panel system, may necessitate strengthening the legal skills available to the Department.

Increasing Australian engagement in the WTO's dispute settlement processes will not be solely an inter-governmental affair.

Many of the issues identified for prosecution within the dispute settlement mechanism will be those brought to the attention of national governments by their respective private sectors.

Commerce and industry is usually the first to experience situations where market access is being denied or impaired contrary to WTO agreements, or where governments are 'creatively' self-interpreting their obligations.

In this regard, the Australian Government has quite properly created a WTO Dispute Investigation and Enforcement Mechanism (DIEM), which is intended to encourage greater participation by commerce and industry in prosecuting and enforcing Australia's rights under WTO agreements.

The DIEM will be particularly useful for both newer and/or smaller exporters, and those engaged in trading outside the traditional sectors, who may otherwise feel unable to obtain redress against an improper trade conduct by another WTO member government.

Commerce and industry does not consider the DIEM to be a platform for 'picking fights', but rather one for ensuring our rights under the WTO system are respected, and the obligations of other contracting parties are honoured.

The Chamber has promoted this facility within its extensive domestic trade network, and has from time-to-time referred potential cases to the Department of Foreign Affairs and Trade for discussion.

The WTO and Regional Economic Agreements

The failure of the Seattle Ministerial to launch a bold, comprehensive Round of multilateral trade liberalisation negotiations stimulated discussion of the likely future direction for trade reform.

Some commentators have conjectured the more appropriate, and expeditious, way forward could well be greater reliance on regional economic agreements, in particular regional free trade areas.

The Australian Government has acknowledged these potentialities when the Minister for Trade, the Hon Mark Vaile MP in a Ministerial Statement to the Parliament (8 December 1999) said:

"The delay in a Round launch will no doubt also stimulate attention to other possibilities for regional trade liberalisation and greater economic integration."

He went on to say: "The (Australian) Government is open to concluding free trade agreements where they would give Australia substantial gains in market access which Australia could not get elsewhere in a similar timeframe."

The message sent to the other 134 members of the WTO, including many of our major trading partners and potential interlocutors in any multilateral trade negotiations, is that Australia is willing to look at alternative vehicles to the WTO system.

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Commerce and industry can see both rewards and risks in such a strategy.

On the reward side, such an approach would enable Australia to originate, promote and realise the benefits of any trade liberalisation initiatives which may take place outside the WTO system - for example, the 'WTO-plus' approach of the APEC process.

This diversification approach could be analogous to, in colloquial terms, 'not putting all of one's eggs in the one basket'.

It can also encourage capacity and experience-building by countries, often the lesser developed, with trade and investment liberalisation, before undertaking what may be for them the more strenuous obligations of full membership of the WTO.

On the risk side, such an approach could well legitimise regional economic agreements (REAs) as alternative vehicles for trade reform, at the potential cost of the cohesion and rigour of the WTO. The implicit assumption that such REAs are WTO-compatible or reinforcing should not be taken for granted or remain untested.

Similarly, it could also be seen as a weakening of Australia's commitment to the rules-based multilateral trading system, and diminish our future capacity to 'bat above our weight' in the WTO (as we have in the past, much to the credit of our trade negotiators).

Ultimately, the balance between the rewards and risks in the broadening and deepening of RTAs must be determined by a pragmatic assessment of the real world situation and outlook.

Nevertheless, commerce and industry sees Australia's national and international economic interests being better served by a rules-based, multilateral trading system operating under the effective coverage of the WTO than subject to a patchwork of regional trade agreements of uneven coverage and discipline.

Conclusion

Commerce and industry continues to be a strong supporter, in both domestic and international fora, of the multilateral, rules-based, trade system operating in the form of the World Trade Organisation.

Reliable econometric modelling indicates the dividends of the Uruguay Round reforms will add around \$A 330 billion annually to the world economy, while just halving remaining trade and investment barriers in a prospective Millennium Round will provide double that benefit again.

The failure to proceed with further bold and comprehensive liberalisation will not mean just the loss of the latter dividend, but also the costs resulting from any back-sliding or U-turns which may occur as a consequence.

Commerce and industry recognises the World Trade Organisation (WTO) may not be a perfect organisation (operating, as it does, in an imperfect world).

However, it remains far and away the superior vehicle for effectively advancing and implementing bold and comprehensive, multilateral trade and investment liberalisation.

Any impediments in achieving this most laudable objective are the primary responsibility of the WTO's national-government members, for the WTO is ostensibly the sum of its members' commitment and will. In short, any shortcomings in the WTO are those endowed by its member States.