

**AUSTRALIA’S RELATIONSHIP  
WITH THE  
WORLD TRADE ORGANISATION (WTO)  
SUBMISSION FROM THE DEPARTMENT OF  
AGRICULTURE, FISHERIES AND FORESTRY – AUSTRALIA (AFFA)**

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## TERMS OF REFERENCE

1. The Joint Standing Committee on Treaties is conducting an inquiry into the nature and scope of Australia's relationship with the World Trade Organisation. The Committee's examination includes:

- opportunities for community involvement in developing Australia's negotiating positions on matters with the WTO;
- the transparency and accountability of WTO operations and decision making;
- the effectiveness of the WTO's dispute settlement procedures and the ease of access to these procedures;
- Australia's capacity to undertake WTO advocacy;
- the involvement of peak bodies, industry groups and external lawyers in conducting WTO disputes;
- the relationship between the WTO and regional economic arrangements;
- the relationship between WTO agreements and other multilateral agreements, including those on trade and related matters, and on environmental, human rights and labour standards; and
- the extent to which social, cultural and environmental considerations influence WTO priorities and decision making.

2. In considering these matters, the Committee will pay particular attention to:

- the extent of Australia's influence over the WTO agenda;
- the extent to which the WTO has fulfilled its aims of
  - helping producers of goods and services, exporters and importers conduct their business; and
  - improving the welfare of the peoples of the member countries; and
- the extent to which the Australian community has benefited from participation in the WTO.

## INTRODUCTION

3. Agriculture, Fisheries and Forestry – Australia (AFFA) is charged with “increasing the profitability, competitiveness and sustainability of Australian agricultural, food, fisheries and forestry industries, and enhancing the natural resource base, to achieve greater national wealth and stronger rural and regional communities”.

4. Global competitiveness, and the resulting profitability for portfolio industries, is an important key to Australia's continued economic well being particularly for rural and regional Australia. Australia is an exporting nation with an agricultural sector heavily reliant on exports for a significant proportion of its production. Our agricultural industries and stakeholders have much to gain from open world markets and clearly defined international trading rules – two objectives which are currently encapsulated in the framework and agreements which comprise the World Trade Organisation (WTO).

5. Clearly defined trade rules are necessary to protect the smaller world trade participants from unpredictable trade policies and from unfair or unjustifiable barriers to overseas markets. Open markets however, bring both advantages and challenges and can force change in the way in which agricultural businesses are conducted.

6. Agriculture, fisheries, forestry and food industries are facing a range of challenges, including:

- continuing deterioration in terms of trade for commodities;
- increased globalisation and deregulation;
- the need to balance economic and commercial decisions with changing social and consumer requirements;
- changing environmental conditions, including soil degradation, biodiversity loss, and changes to water availability; and
- continuing need to find overseas markets for the bulk of our agricultural production that cannot be absorbed by the domestic market.

7. Solid economic growth in Australia, improvements in the global economy and diversification of our export markets have improved the outlook for our agri-food exports, but prices for many agricultural commodities remain low. Prices on world markets are a major factor in farm profitability and these can be strongly influenced by the policies employed by our trading partners.

8. The WTO failure to launch a comprehensive new round of multilateral trade negotiations in Seattle in late 1999, has delayed the opportunity to further improve market access and trading opportunities. Nevertheless, the WTO remains the primary vehicle for Australia to advance its trade and market access interests through the current multilateral negotiations on agriculture. Notwithstanding the advantages of multilateral negotiations, Australia has achieved significant market access breakthroughs through strong and persistent representations at the bilateral level.

9. This submission seeks to outline from an AFFA perspective the key elements of Australia's relationship with the WTO.

## IMPORTANCE OF THE WTO TO AGRICULTURE AND FOOD

### **.....the WTO provides an effective framework for agriculture and food trade**

10. The WTO was established to promote mutually beneficial trade between nations through elimination of all forms of trade discrimination including tariffs and non-tariff barriers. The preamble to the *Marrakesh Agreement Establishing the World Trade Organisation* states that the parties to the WTO recognise that trading activities should be conducted with a view to raising standards of living. A large and steadily growing volume of real income and effective demand, full employment and increased trade in goods and services are all recognised as desirable outcomes. These are balanced against the objective of sustainable development and the realisation that nations are at different stages of economic development.

11. The multilateral trading system has achieved great progress in liberalising trade in manufactured products contributing to economic growth in developed countries. Successive rounds of GATT multilateral trade negotiations have reduced industrial tariffs to low levels in OECD (Organisation for Economic Co-operation and Development) countries. The most-favoured nation (MFN) principle in particular has ensured that tariff concessions between the major economies are available to all WTO members.

12. However, under the GATT, agriculture was considered to be a special case and had been subject to various waivers and exemptions from the general rules, for example on export subsidies and quantitative restrictions on trade. This led to distortions in agricultural markets caused by the agricultural subsidisation policies in certain rich developed economies becoming entrenched. These policies caused huge stocks to overhang world markets, depressed and destabilised market prices and increased use of export subsidisation.

13. The Uruguay Round outcome in 1994 brought agriculture within the rules-based multilateral trading system for the first time. This represented a major step forward in the reform of agricultural trade. The Cairns Group of countries under Australian leadership was instrumental in getting agriculture onto the Uruguay Round agenda. The WTO Agreement on Agriculture provides the framework for advancing the process of progressively reducing agricultural support and protection. The key benefits contained in the Agreement include

- disciplines introduced on the use of export subsidies;
- limits on domestic support;
- reductions and binding of all tariffs;
- elimination of non-tariff barriers;
- expanded market access through tariff quotas;
- minimum access levels to previously closed or restricted markets;
- access to a dispute settlement mechanism with teeth; and
- a system of monitoring and review of commitments.

14. The Uruguay Round also recognised that this was only a start and agreed the need for continuation of the reform process. Members undertook to commence new agricultural negotiations in 2000 under the WTO framework and mandated agricultural negotiations commenced as scheduled in March 2000.

**.....without the rules-based framework agriculture would remain highly protected**

15. In the lead up to the Uruguay Round in the mid-1980's, global agricultural markets were in crisis, characterised by low world prices, historically high stock levels, increasing protectionism and high levels of subsidisation. These problems were caused by a combination of a decrease in growth in demand, increasing production due to very generous agricultural support schemes in many OECD producing countries and continuing increases in productivity. Trade distortions arising from agricultural support

policies was exacerbated by market conditions as countries attempted to halt the decline in farm incomes and producers took advantage of higher support levels to increase output.

16. In an international environment without multilateral trading rules, there would be no restraints on the level of protectionism a country could adopt. Smaller trading nations would have limited capacity to influence the agricultural policies of large rich economies. The MFN principle would not operate and discrimination would be rife. As an export driven nation, Australia could find itself excluded from major markets without warning and without justification. Our trading partners would be at liberty to increase tariffs to unlimited levels, significantly increase costs and restrict access for Australian products.

17. These scenarios of unrestricted protectionism would be devastating to Australian primary producers and Australian agricultural industries. The WTO provides a basic level of security against these types of trading practices and ensures a more equitable trading framework for all member countries. Tight rules and disciplines and binding commitments on tariffs and domestic support levels ensure some degree of fair competition. At the same time there is a long way to go to achieve a level playing field for agriculture. Most importantly, the WTO is a forum through which Australia and the Cairns Group can pursue further international agricultural reform through the mandated negotiations on agriculture.

18. Becoming a party to any multilateral treaty does generally entail some loss of sovereignty. In the case of the WTO it is widely accepted that the benefits have significantly outweighed any costs. It is a case of assessing what might have happened without the GATT or the WTO. Without access to continuing multilateral reforms, agriculture would remain subject to protectionism with associated costs to the economies of both importing and exporting countries.

## IMPLICATIONS OF RELEVANT WTO AGREEMENTS TO AUSTRALIAN AGRICULTURE AND FOOD INDUSTRIES

19. The key WTO agreements of importance for AFFA portfolio industries are the Agriculture Agreement, the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement) and the Dispute Settlement Understanding (DSU). The Agreement on Agriculture sets out the rights and obligations of WTO members concerning trade in agriculture and food products. The Agriculture Agreement provides coverage for portfolio agricultural commodities, processed foods and beverages, but does not cover trade in fisheries and forestry products. The SPS Agreement sets out the rules underpinning quarantine and technical market access. The DSU provides the mechanism for enforcement of commitments under all WTO agreements.

20. Notwithstanding AFFA's primary interest in these agreements, it should be noted that there are a range of other agreements that impact on portfolio industries. These deal with the basic principles under GATT 1994, rules of origin, trade and environment, technical

barriers to trade, intellectual property rights, subsidies and anti-dumping and countervailing measures and safeguard actions.

### **The WTO Agreement on Agriculture**

21. Notwithstanding the Uruguay Round Agriculture Agreement high levels of support and protection continue to exist, especially in the major developed countries. On the other hand, developing countries continue to argue that the Uruguay Round agricultural reforms have not resulted in benefits to them. ABARE research over a number of years<sup>1</sup> has demonstrated that the greatest beneficiaries of agricultural reform would be those developed countries with the highest levels of agricultural support and protection, that significant benefits will accrue through further agricultural policy reform and that the developing countries will be significant beneficiaries from agricultural trade liberalisation. The main provisions of the Agriculture Agreement are provided in Annex A.

### **The WTO Sanitary and Phytosanitary Agreement (SPS Agreement)**

22. Australia has benefited from the SPS Agreement through greater access or better access conditions for Australian agricultural exports as a result of the disciplines this Agreement has placed on governments in some of our export markets. The SPS agreement provides scope to protect our animal, plant and human health status and for protection against disease emergencies. Unlike tariff agreements, SPS measures being based on science, cannot be used as bargaining tools or otherwise compromised during trade negotiations. Annex B provides a summary framework of the SPS Agreement.

### **.....Australian agricultural industries have much to gain from the WTO**

23. Market access is a two-way street and Australia cannot reject or indefinitely defer consideration of access requests from our trading partners. Nor is it possible to adopt a zero risk approach; one critical result would be to deprive industry of productivity enhancing imports. It would also expose Australian exporters, including those in unrelated sectors, to costly retaliation either through the WTO or of a more surreptitious nature.

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<sup>1</sup> See for example Roberts, I., Podbury, T., and Hinchy, M. 2001, *Reforming Domestic Agricultural Support Policies through the World Trade Organisation*, ABARE Research Report 01.2, RIRDC Publication no. 01/07, Canberra.

Freeman, F., Melanie, J., Roberts, I., Vanzetti, D., Tielu, A., Beutre, B. 2000, *The impact of Agricultural Trade Liberalisation on Developing Countries*, ABARE Research Report 2000.6, Canberra;

Podbury, T., and Roberts, I. 1999, *WTO Agriculture Negotiations: Important Market Access Issues*, ABARE Research Report 99.3, Canberra;

Roberts, I., Podbury, T., Freeman, F., Tielu, A., Vanzetti, D., Andrews, N., Melanie, J. and Hinchy, M. 1999, *Reforming World Agricultural Trade Policies*, ABARE Research Report 99.12, RIRDC Publication no. 99/96, Canberra;

Roberts, I. 1997, *Australia and the Next Multilateral Trade Negotiations for Agriculture*, ABARE Research Report 97.6, Canberra.

24. Australia cannot keep out otherwise permitted imports simply because they are cheap or because we also produce or have ample supplies of the same product. The WTO is a market-based system where competitive forces and consumer choice govern ultimate success in the market place. If we were to keep out overseas product for these reasons, except in the case of dumping or subsidisation, not only would this be in breach of our international commitments but our trading partners would retaliate against our exports. In such a game, we would come out on the losing end overall.

25. Australia, with its relatively unsubsidised farm sector, has much to gain from a freer and fairer world trading environment. Our rural sector is fundamentally dependent on exports to survive and it relies on overseas markets for the sale of around 65 per cent of production. The rate of exports varies by industry and in the late 1990s the exported shares of production were 78 per cent for wheat, 65 per cent for barley, 71 per cent for pulses, 88 per cent for cotton, 80 per cent for sugar and 62 per cent for beef. There is no prospect of selling this production profitably on the Australian domestic market and it is therefore extremely important that access to international markets is maintained and increased. In 1999-2000 Australian rural exports were valued at \$23.6 billion. Australia's exports of food and live animals (wool excluded) is over 4 times the level that is imported. During the 1990s the value of food exports increase by an average of \$840 million a year, compared with an estimated rise of around \$230 million a year in the value of food and live animal imports.

26. Employment in agriculture is also a direct beneficiary of increasing exports. Direct employment in agriculture has been increasing from around 360,000 in 1992-93 to an estimated 383,000 in 1999-2000. Employment by sector varies with the greatest growth in dairy (36 per cent increase in 1992-93 to 1999-2000) and horticulture (16 per cent increase in 1992-93 to 1999-2000). Employment in other parts of the rural sector, including services to agriculture, forestry, fishing and aquaculture has also been rising from around 404,000 in 1992-93 to an estimated 438,000 in 1999-2000.

27. The WTO has delivered significant benefits for Australian agricultural industries. Reductions in trade barriers, support levels and export subsidies affecting Australia's key agricultural export markets have been achieved.

28. Australia has had significant wins in terms of increased trade and market access. Most notably for agriculture, the Uruguay Round delivered access to the previously closed Japanese rice market for Australian rice producers (currently valued at around \$70m per year) and beef quota access to the US market. Significant examples of market access gains over the last 12 months include:

- Tasmanian Fuji apples, easy peel citrus, four additional varieties of mango to Japan
- Australian citrus fruit imports to Korea following an agreement on an import protocol,
- Reduction in Indian import duties on wool top and yarn; Korean import duties on raw wool and top and US import duties on superfine wool
- Reduction in Egyptian tariffs on imported raw sugar and on refined sugar.

## ACCOUNTABILITY

29. It is national governments which make up the WTO membership and which have responsibility for making decisions and for meeting commitments. The Federal Government as the signatory to the WTO treaty is responsible for ensuring that commitments are met and rights are exercised. Our membership of the WTO, and our position on agricultural trade reform is an expression of the interests of stakeholders, taking account of the national interest. This is the role of democratically elected governments.

30. Decisions in the WTO are made by consensus. Following the commencement of the WTO in 1995, new institutional arrangements were established to oversee the activities falling within the auspices of the WTO. A Ministerial Conference of member governments, which assembles every two years and a General Council, which meets several times each year, now guide these arrangements.

31. Within this larger structure is a system of committees and working groups which concentrate on specific agreements or specialised areas, such as trade and environment or trade and development. This WTO committee structure has a significant role in ensuring the effectiveness of the WTO as an organisation focusing not only on trade negotiations and dispute settlement, but also on monitoring and compliance. The committees ensure that all member countries adhere to their commitments as well as international trading rules. In addition, the WTO Trade Policy Review Body periodically conducts peer reviews of the domestic and trade policies of members to monitor their compliance with international obligations.

32. The Agreement on Agriculture established a Committee on Agriculture with responsibility for reviewing and monitoring compliance with agriculture-specific commitments. Reviews are on the basis of annual notifications submitted by WTO members. Country notifications are accessible to the public through the WTO website ([www.wto.org](http://www.wto.org)). A similar SPS notification system exists to facilitate monitoring compliance with sanitary and phytosanitary obligations. In particular, the SPS notification system alerts members to any barriers which may be put in place.

33. AFFA participates directly in the Agriculture and SPS Committees to ensure that portfolio interests are protected. While the Department of Foreign Affairs and Trade (DFAT) has responsibility for trade negotiations, AFFA has a major role in participating in agricultural negotiations.

## TRANSPARENCY

34. While WTO forums are generally restricted to member government representatives, most WTO documents are publicly available. WTO fora allow for observer organisations subject to agreement of the membership. The operations of the WTO are considered to be notably more transparent than those of its predecessor, the GATT, and the structure



and functioning of the WTO is now more open to the scrutiny of all member governments, their constituents and the wider public.

35. With the large and on-going WTO agenda it is not practical for other groups outside governments to be involved in WTO decision making. However, it is appropriate for non-government organisations to provide input through their national governments. In Australia, the Government provides opportunities for portfolio industries to be involved through an extensive process of domestic consultation (see section on domestic consultations).

36. The WTO also provides opportunities for non-government groups representing civil society interests to be involved in the WTO processes. For example, in 1999 the WTO organised separate high-level symposiums on “Trade and the Environment” and “Trade and Development”. These symposiums provided opportunities for non-government groups to be consulted on recent developments and to discuss the key issues.

## OPPORTUNITIES FOR COMMUNITY INVOLVEMENT IN AFFA PROCESSES

37. AFFA values the opinions of its clients and stakeholders and actively seeks their input when conducting its business. Groups with a significant interest in AFFA activities include:

- Government: portfolio Ministers; Parliamentary Secretary; other Commonwealth Ministers; States and Territories; other government organisations (Australian and overseas); international agencies;
- Agricultural, fisheries and forestry and food groups: producer and processor industries and enterprises; rural community groups; rural people; statutory and non-statutory marketing and promotion bodies; research and development bodies; industry organisations;
- Other groups: financial institutions; non-government organisations; indigenous groups; environmental groups; regional communities; importers and exporters; input and service industries; consumer groups; general public; media.

38. AFFA conducts its activities in a transparent manner consistent with meeting its domestic and international laws and obligations. Our mission provides for increasing profitability, competitiveness and sustainability of our portfolio industries as the key to achieving greater national wealth and stronger rural and regional communities. There is no restriction placed on the general community in terms of access to policy decisions and the policy process in the development of Australia’s domestic and agricultural trade policy. Indeed there are extensive domestic consultation arrangements in place for portfolio industries which have a commercial stake in the outcome of trade negotiations. For example, in the import risk assessment process extensive stakeholder consultation occurs in the development of biosecurity policies; and extensive use of external scientific expertise during the risk analysis process.

## DOMESTIC CONSULTATIVE ARRANGEMENTS

39. Government and industry work in partnership for a better outcome on agricultural trade reform for agricultural producers and exporters. Australian industry input to defining priority markets and commodities and provision of other practical information is crucial in helping the government identify Australia's specific objectives in the negotiations. The partnership between government and industry played a key role in ensuring a favourable outcome for Australia in the Uruguay Round and this model is being used in the current WTO agricultural negotiations.

40. The Agricultural Trade Consultative Group (ATCG), which the Minister for Agriculture, Fisheries and Forestry and the Minister for Trade co-chair, is the peak strategic forum through which government and industry are able to identify Australia's international agricultural trade interests and to develop a coherent government/industry strategy for the WTO negotiations. The ATCG was established to provide a formal, high-level government/industry mechanism for consultation on a range of issues relevant to the Government's approach to agricultural trade reform, particularly through the WTO agriculture negotiations. It is intended to have a strategic focus rather than being involved in sectoral detail for which other regular consultations occur.

41. The ATCG allows industry to provide advice to the Government on their priorities and the key issues of the international agricultural reform agenda which require the Government's attention. It also provides the opportunity to increase industry awareness of the wide and complex range of pressures influencing international agricultural reform.

42. Complementing the ATCG is a more micro industry consultation process, which is covered by officials of AFFA and DFAT. These consultations are held separately with representatives from the grains, meat (meat and livestock, chicken, egg, sheep meat, pork), dairy, wool and cotton, sugar, processed food and horticulture sectors. The aim of these consultations differs from that of the ATCG in that the focus is intended to be at a much more detailed level on a sector specific basis. These discussions are designed to facilitate a two-way flow of information to discuss recent WTO developments and to seek industry views and priorities. Broader consultations were also held prior to the Seattle meeting with public hearings undertaken around the country. Public submissions and hearings as part of this process assisted in the development of a negotiating position reflective of broad-range of stakeholder views.

43. In terms of government, DFAT and AFFA are part of a cooperative team effort into industry stakeholders to advance Australia's multilateral agricultural trade interests. Each has a role to play in trade policy analysis and research work, high level participation in the negotiations and in development of detailed strategies to secure the best possible outcomes for Australia.

44. Despite these intensive efforts with stakeholder groups, there is ample evidence that there is no consensus within rural and regional Australia as to the benefits of trade

reform. While our dependence on overseas markets for the bulk of our rural production and the need for Australia to play by the same rules it expects others to follow appears self evident, and despite the efforts that have been made eg brochures on benefits of agricultural trade reform to regional areas, and the development of the *Exporting for the Future* initiative for secondary schools, more can be done to address the communications challenge. If we do not succeed in selling this crucial message, we risk losing our capacity to continue to exercise international leadership on agricultural trade reform.

## WTO DISPUTE SETTLEMENT

### **Role of Dispute Settlement for Agricultural Industries**

45. The WTO has developed a stronger and more binding dispute settlement mechanism with real enforcement power than previously operated under the GATT. The DSU provides a legal framework for Members to pursue breaches of the international trading rules and to seek remedies from such breaches.

46. The dispute settlement mechanism commences when a country initiates consultations with a view to negotiating a bilateral outcome. If no settlement can be reached, the complainant requests the establishment of a panel to assess the complaint against the legal rights and obligations of the parties. Following a panel decision, an appeal can be heard on questions of law. The country found to be in breach is obliged to implement the legal findings of the panel to bring the measure into WTO conformity. In general, where a member has taken no action within the set deadline, or where in the view of the WTO the remedial action taken has not remedied the breach of commitments, then compensation can be sanctioned against the complainant. Failing the satisfactory negotiation of compensation, the complainant can be sanctioned to implement trade retaliation. Compensation/retaliation is a temporary remedy only and the country found in breach must rectify the breach of its commitments.

47. In cases of retaliation following a panel outcome, the complainant may decide unilaterally the products on which it will impose trade sanctions. In either compensation or retaliation cases, the costs are likely to be borne by industries other than the one involved in the dispute. This means that penalties can be onerous if WTO dispute findings are not addressed or if full implementation of remedies is delayed. Any retaliatory measures cannot be applied pending arbitration on the level of retaliation.

48. Industries affected by retaliation, including industries other than those which were found to be in breach of international commitments, could potentially suffer impacts far beyond the original removal of any concessions, including

- needing to either find new markets or receive lower returns on the domestic market for these goods

- permanent loss of market share in important markets as competitors fill the gap created by the effective removal of Australian product, even if market access is only lost for a short period
- undermining development and expansion into export markets
- short to medium term falls in their profitability and returns with obvious consequences on rural producers could reasonably be expected.

49. All final rulings or decisions are made by the WTO's full membership. No single country can block adoption. The country found to be in breach cannot overturn a ruling. This is the one area where consensus decision making by members does not apply. This is the strength of the dispute settlement mechanism that makes decisions binding and provides the WTO with real enforcement power.

50. This is also one aspect of the WTO which has caused concern for civil society groups. The perception when a government faces retaliation is of a supranational government staffed by an unaccountable bureaucracy dictating rules and meting out punishment which may be in contradiction to adopted national policy. In reality, governments are signatories to the WTO rules-based system which entails both rights and obligations ie it again is a two way street.

51. Although the proceedings of panels are themselves confidential, stakeholders are consulted widely before this stage is reached. This stakeholder involvement is crucial to the successful conduct of proceedings. However, once a panel is established, it is essential that a speedy decision is made. Industry has been closely involved in the preparation of the Australian initiated case on US lamb safeguards and fully supported the Government action to challenge the US restrictions. Meat and Livestock Australia was represented on the delegation for the second hearing of the Panel.

52. The WTO dispute settlement process can be a lengthy and costly process with resolution taking up to two to three years. In the case of Canada's action against Australia on salmon, consultations commenced in November 1995 and were only resolved in 2000. Further inputs by other interested persons or groups, at the panel stage, could seriously delay an already lengthy process. Parties are constrained by the existing resource and time constraints imposed by the WTO rules and by their own resource limitations in negotiating, consulting and preparing for cases which proceed to the panel stage.

### **Lessons from WTO disputes affecting portfolio industries**

53. Australia was recently successful in challenging Korea's restrictive beef import arrangements and is currently defending an appeal by the US against its panel loss in the safeguard action on its lamb imports. [Annex C](#) provides further background information on these cases. Conversely, there have also been rulings against Australia in two recent WTO trade disputes (Howe leather and Canadian salmon). We were found in breach of the same rules that we continue to strongly support and expect others to follow.

54. Where trade arrangements are not consistent with WTO obligations or where countries are not playing by the rules, WTO members have the right to challenge such action through the WTO dispute system. There is no question that the existing rules apply to all members and can be and generally are effectively enforced.

55. The outcome of the long running dispute with Canada on the importation of salmon reinforces in important respects the benefits of WTO membership. In the final analysis, Australia was able to demonstrate that its measures relating to salmonid product and non-salmonid marine finfish were based on a proper scientific assessment of risk and (with the exception of one measure on salmon) met all our obligations under the SPS Agreement.

56. Agreement was ultimately reached with Canada on a set of least trade restrictive quarantine requirements. While restricting trade as little as possible, these ensure that our fish health status is protected. The WTO found that 10 out of 11 new measures introduced by AQIS were consistent with our WTO obligations. In the final analysis, our right to set highly conservative measures against pest and disease risks was supported but we were otherwise required to bring our salmon import regime into full conformity with our obligations. Had we not done so, there would likely have been damage to a number of our other exports due to retaliatory action.

57. The Tasmanian measures banning the import of salmon and non-salmonid products to that State have been put aside in the bilateral settlement, most likely because of the small size of the Tasmanian market. However, the implications of Tasmania's unilateral action should be considered seriously as the State's actions place Australia technically in breach of our WTO obligations. Exporters, including from Tasmania and other states, could face exclusion from important markets in other countries, if retaliatory actions were commenced by Canada or other WTO members.

58. The salmon case highlights the need to ensure that the national interest and maintenance of long term objectives are borne in mind when conducting individual cases. These may be at odds with the views of individual groups or states involved in a dispute but there may be serious wider adverse consequences for our export industries if, as a WTO member, Australia resists complying with the very rules it purports to advance. The case raised practical problems of how to manage quarantine policy in a Federal system, in terms of the international obligations undertaken by the Commonwealth, and of States' rights.

59. Ongoing requests for access to the Australian market are likely to put further pressure on domestic industries and state interests. Australia's national interest rests squarely with ensuring that international agricultural markets remain open to our competitive producers and that we can continue, including as leader of the Cairns Group, to influence further the international agricultural reform process. Domestically we need to act consistently with our international position to maintain credibility and to avoid trade retaliation.

60. The establishment of a WTO Disputes Investigation and Enforcement Mechanism in September 1999 by the Minister for Trade, Mr Mark Vaile, provides a mechanism to facilitate equity of access for exporters to government support and assistance where other

WTO members may not be honouring their WTO obligations. The mechanism ensures that all trade restriction or assistance issues raised will be examined in light of the national interest, policy consistency and potential market value considerations. A structured approach to consideration of cases is also important for agricultural industries to ensure that Australia is able to pursue a WTO challenge where there are significant interests, strong industry support and strong arguments. In addition to problems that are identified by stakeholders, this approach is also required to consider action on systemic issues and whether Australia becomes a co-complainant or third party in cases being pursued by other countries. In the past, this lack of such a structured approach has resulted in Australia not actively being a part of some relevant disputes.

61. AFFA welcomes the recent strengthening of resources for WTO disputes in DFAT through the establishment of a new Trade Law Branch. Australia should use and to be seen to use the tools available in the WTO to take on valid cases for aggrieved agricultural industries. In SPS dispute cases there is a need to ensure appropriate resourcing of technical expertise in AFFA, especially in an environment where our conservative approach to quarantine is increasingly under scrutiny. Would-be exporters to Australia are concerned, as we are concerned in our overseas markets, that the assessment of import access requests is carried out consistent with international obligations, including timely and transparent processes based on genuine scientific risk assessment.

## DOMESTIC CHALLENGES ARISING FROM WTO REFORM

62. Australia's export base is broader and our markets are more diverse than at any time in the past and under WTO rules we automatically enjoy any tariff access gains negotiated by the major economic powers. The viability of our rural areas continues to depend on increasing access to overseas markets. It is for this reason that the Government continues to give a high priority to further multilateral trade negotiations under the WTO with a particular focus on increasing market access.

63. A number of domestic challenges follow from the current trading environment and the WTO framework. The rules have not delivered lower agricultural support levels across the board and yet it is clearly in our interests to pursue a level playing field. At the same time that Australia has used the WTO rules-based framework to open new markets, we need to play by the same rules and when we receive import requests from other countries, this has put pressure on our conservative approach to quarantine and on some domestic industries which have previously not had to contemplate competition from imports.

### **.....continuing high agricultural support levels**

64. Despite the reforms in the Uruguay Round imposing restrictions on the type of support and protection available, the overall level of agricultural support in the rich developed countries has not been reduced and the major subsidising countries have found different ways to support agriculture within the disciplines imposed. At the same time, the levels of the most trade-distorting forms of support have declined as intended.

65. The latest OECD data show that support to farmers in the EU, as measured by the average PSE (producer support estimate: the percentage amount of farm receipts accounted for by government policies and handouts) has risen from 44 per cent in 1986-88 (significant as the starting point used for calculating reductions in domestic support levels) to reach 49 per cent in 1999. In the US the latest average PSE in 1999 of 24 per cent is at about the same level as in 1986-88 (25 per cent), although the PSE declined to a low of 14 per cent in 1997 (a period of high world prices). This compares to the Australian figures of 8 per cent and 6 per cent for 1986-88 and 1999 respectively. The PSEs do not distinguish “green box” support (less trade distorting under the Uruguay Round outcome) from trade-distorting forms of support.

66. All countries had different support and protection profiles from which uniform reduction commitments were undertaken as a result of the Uruguay Round. Even though all countries are bound by the same rules, high support countries at that time are still able to provide higher levels of support than low support countries, although the existing disciplines have placed some restrictions on the support that can be provided. All countries are also able to provide “green box” support, which is allowable provided certain criteria are met.

67. The USA and EU have huge capacities to provide domestic support to their agricultural industries because of the high levels of support negotiated at the starting point of the Uruguay Round reform process. Australia does not have a treasury the size of the US or Europe to match the support provided to their agricultural industries even if it wished to do so. This highlights the weak rules and disciplines on domestic support in the Agriculture Agreement and the need to further address fundamental agricultural reform in multilateral trade negotiations to ensure a truly level playing field.

68. An examination of the levels of support available in the US, for example, shows the capacity of the US to provide domestic support to industry within its WTO commitments (nearly \$US20 billion at the end of 1999), in addition to “green box” support which is largely unconstrained. This domestic support entitlement is largely unspent (latest figure of \$US15.3 billion in 1997), so it is likely that most of its new support through so-called ‘emergency packages’ will be quite ‘legal’ even if it is not “green box”.

69. The challenge is to maintain external pressure for agricultural reform at the same time as maintaining support for continuing reforms from domestic industries. The recent adjustment packages developed for the dairy and sugar industries were developed consistent with WTO obligations. Domestic agricultural industries overall continue to support the Government’s objectives for maintaining the momentum for agricultural trade reforms. The 21<sup>st</sup> Cairns Group meeting held in Banff, Canada last October 2000 highlighted this through the industry forums held concurrently with Cairns Group meetings and at the initiative of Australian industry, eg. Global Sugar Alliance, Cairns Group Farm Leaders. As domestic agricultural industries continue to be affected in world markets by support and protection policies and face pressures from imports, there are a range of responses from individual industries, including calls for temporary

assistance and import bans. Communication of the benefits of trade reform as well as demonstrating the prospect of real progress in reform is a challenge for the Government.

**.....import access requests**

70. On balance Australia, as an exporter of agricultural products, benefits from a multilateral trading framework. Australian exporters have also benefited directly from the opening up of quarantine-related market access opportunities. In 1999/00, 37 new commodity/market combinations were opened up, improved access was gained for 39 commodity/market combinations and over 100 existing markets were protected from possible disruption/closure. The SPS Agreement's disciplines were instrumental in their achievement.

71. While there are some agricultural industries which are concerned about imports, imports have nevertheless played an important role in the development of the agricultural sector as well as consumer food markets. For example, imports have been vital in enhancing rural productivity through improved genetics and in providing consumers with a wider range of competitively priced food products.

72. Since 1993/1994, AFFA has made 173 import policy determinations for animal and plant products. Of these determinations

- 9% have resulted in imports which are in direct competition with products from domestic industry
- 3% have resulted in counter seasonal imports which are not in direct competition at the time of import with domestic product
- 88% have resulted in varying degrees of benefit to the domestic industry and the community and are either strongly supported by industry or not seriously opposed.

73. Of decisions in the final category above:

- 46% allowed the introduction of genetic material for productivity enhancement by Australian industry
- 28% have been at the specific request of Australian industry
- 14% have resulted in a tightening of import conditions and therefore greater restrictions on trade.

74. Requests for new access conditions or revision of existing conditions are addressed by Biosecurity Australia within AFFA through the Import Risk Analysis process, are conducted according to procedures developed in response to the "Nairn Review" of Australia's quarantine policies and procedures in 1997 and contained within the IRA Handbook. Australia is one of few countries to set out its IRA process in detail with highly developed and clearly articulated IRA procedures with a recognised role for stakeholder involvement.



75. The IRA process is currently being reviewed by AFFA in conjunction with the Quarantine and Exports Advisory Council and in consultation with stakeholders, to fine tune procedures in light of operational experience gained during the first two years of operation. Such a review was always intended.

76. While the vast majority of IRAs will not be controversial, a number of recent IRAs have given rise to strong adverse reactions from the domestic industry, State Governments or from overseas governments, for example Canadian salmon, New Zealand apples, Thai durian, US table grapes and bananas from the Philippines. Legitimate sensitivities to imports are likely to arise from genuine concerns about pest and disease entry and its impact on domestic industries, as well as the impact of import competition. Australian Governments have however, consistently adopted a highly conservative approach to risk management, but not a zero-risk approach.

77. The challenge arising from increased market access is increased understanding among stakeholders, including affected industries, policy makers and politicians, of the international framework in which IRAs and risk management operate. Consultation and discussion with affected industries on individual IRAs with a view to informing industry about the rationale and process for risk assessment and risk management options assists in understanding the risk analysis framework. Adversely affected industries will remain concerned about potential imports.

## WTO NEGOTIATIONS

### **.....a comprehensive round is necessary for agrifood industries**

78. World agricultural markets continue to be adversely affected by high subsidy levels and barriers to markets, especially in rich developed countries.

79. Given that it has been six years since the last set of comprehensive trade negotiations were completed, it is vital that countries build on this foundation, consolidate their positions and maintain the momentum for trade reform. New WTO trade negotiations will provide the opportunity to build on the existing rules and impose more rigorous disciplines where required, as well as to substantially improve access to markets for Australian exporters. The challenge for agriculture is to ensure that progressively it becomes subject to the same rules as apply for industrial goods. The Government remains committed to the launch of a new trade round at the 4<sup>th</sup> Ministerial Conference to be held in Qatar in November 2001.

80. Unlike other industry-areas covered by the WTO which require a mandate for multilateral negotiations, in the case of agriculture, agricultural negotiations are already mandated under Article 20 of the WTO Agriculture Agreement and these negotiations have been underway since March 2000.

81. The 3rd WTO Ministerial Conference held in Seattle in late 1999 was expected to formally launch a broader round of multilateral trade negotiations in addition to the already mandated negotiations on agriculture and services. However, Ministers failed to agree to a Ministerial Declaration to launch a new full round. The Declaration was intended to set out in as much detail as possible, objectives, scope and timing of the negotiations.

82. While progress is continuing to be made in the isolated agriculture negotiations, countries can reap greater and more wide-ranging benefits from a comprehensive round. A comprehensive round of negotiations can provide opportunities for trade-offs of concessions and benefits between sectors and industries across the board. A multilateral round brings together a diverse range of interests and facilitates trade reform across different sectors of economic activity. In the absence of a full round, progress on agriculture is likely to be limited.

83. It can be reasonably demonstrated that small or medium sized countries like Australia have made the largest gains in trade through multilateral trade rounds where the same rules apply to all participants regardless of their size and bargaining power. This is the principle of non-discrimination. All WTO members also stand to gain from the concessions won by all other countries, especially the larger economies like the USA and the EU, through the most favoured nation principle.

**.....agricultural negotiations are underway**

84. Despite the failure in Seattle to launch a new WTO round, mandated negotiations on agriculture formally commenced in March 2000. However, expectations for a resolution on difficult substantive issues are not high until a new broad trade round commences.

85. The first phase of the agriculture negotiations for the 12 months until March 2001 focussed on submission and discussion of framework proposals. Most major countries tabled broad proposals. These have been discussed in special sessions in September and November 2000 and in February and March this year.

86. Australia, through its leadership of the Cairns Group, has lodged ambitious proposals for reform, covering the three pillars of export subsidies, market access and domestic support, but also a proposal calling for improved disciplines on export restrictions and taxes

87. Export subsidies are the most trade distorting instrument of support permitting surpluses created by excesses in domestic support and protection to be dumped onto world markets resulting in the burden of adjustment falling onto efficient, non-subsidising exporters. The elimination of export subsidies is the centrepiece of the Cairns Group proposal on export competition.

88. Market access for agriculture is still not treated on the same basis as for industrials which is contrary to the basic purpose of the multilateral trading system. The objective of the market access proposal is to reduce barriers and increase the flow of trade.

89. Levels of domestic support for agriculture remain far in excess of subsidies available to other industries and encourage inefficient production competing unfairly with producers in other countries. The objective of the Cairns Group domestic support proposal is to eliminate trade-distorting support and bring agriculture in line with other goods.

90. Domestic support will be contentious: market price support is the lynchpin for agricultural support and protection in Europe, Japan, Korea and in the US for some products. Negotiating a permanent shift to non-trade distorting support will be difficult, and we need to ensure transitional mechanisms do not distort markets further.

91. We recognise that many of the issues that are being raised, such as rural development, environmental protection and food security are serious non-trade concerns - all countries face difficulties in these areas. Australia and the Cairns Group cannot accept however, that these 'multifunctional' objectives justify the maintenance of high levels of trade distorting agricultural support and protection. The proponents of multifunctionality have been very active internationally in promoting the multifunctional view of agriculture, including through seeking to build support in developing countries through bilateral means as well as within a range of other multilateral fora. We argue that distorting forms of agricultural support are less effective and efficient than targeted policies de-linked from production and trade. To maintain high levels of support and protection will continue to distort world markets. This will merely shift the burden of adjustment to other countries, particularly exporting countries, including developing countries. Rather than through subsidies to agriculture, Australia believes that there is ample scope to develop policies which fit within the existing WTO "green box" categories (ie. non distorting support) and our objective is the immediate reduction and eventual removal of all forms of trade distorting domestic support. However, we need to ensure that all green box support meets the fundamental requirements of being genuinely non-production and trade distorting.

92. The first phase of the work program has been completed and agreement has been reached on a work program for the second phase of agricultural negotiations from March 2001 to March 2002. A list of trade and non-trade issues arising from the first phase of the negotiations will be addressed during the first several meetings of the second phase. These issues include tariff rate quota administration, tariffs, amber box, export subsidies, export credits, state trading enterprises, export restrictions, and three non-trade issues of food security, food safety and rural development.

93. However, it will be difficult to bring about agricultural reform in an environment where other countries are not serious and there is not the capacity for trade offs enjoyed in a broad trade round.

**.....strong Australian advocacy in the WTO**

94. Prior to the Uruguay Round negotiations, many small to medium sized countries with low protection and competitive agricultural sectors realised that they were marginalised in multilateral agricultural trade negotiations. In response, the Cairns Group of agricultural free traders formed in 1986 and established itself as a major player in the Uruguay Round.

95. The Cairns Group currently represents 18 agricultural exporting countries committed to achieving a market-oriented agricultural trading system. Through its efforts, agriculture was brought more fully into the international trading system.

96. Australia continues to be a driving force in the Cairns Group and undertakes policy analysis and research to facilitate the development of negotiating positions and priorities by the Group. Collaboration with developing country members and the development of trade related linkages are part of the Cairns Group agenda. In the face of stiff resistance from protectionist countries, the Cairns Group continues to push for real reforms in agricultural trade.

97. Development of Australia's positions and strategies in each of the key areas of negotiation – market access, export competition and domestic support – is done in consultation with peak industry bodies in each of the major Australian agricultural and food industries. In areas where a Cairns Group consensus can be achieved, Australia's independently conceived goals, such as the resolve to eliminate trade distorting subsidies, can be channelled into a strong message to the major trading countries through the influence of the Group.

98. Cairns Group Ministers in Banff last October expressed unity in the need to remove discrimination against agriculture and processed food by correcting and preventing restrictions and distortions to agricultural trade.

99. The Cairns Group has allowed us to 'punch above our weight' by providing Australia with a seat at the table in agricultural negotiations alongside other influential countries such as the EU, US and Japan. More importantly, it has resulted in Australia having its views on agricultural trade liberalisation heard and for these to remain squarely on the agricultural reform agenda. However, Australia's credentials as a leading advocate of agricultural reform will only continue so long as we are able to demonstrate through our actions that our domestic policies and support levels are fully consistent with our trade policy position. Australia has extended the opportunities for potential influence through membership of the Quint, a regular forum of Agriculture Ministers from the EU, US, Japan, Canada and Australia.

100. We can point to evidence based research supporting Australia's influencing efforts through effectively utilising trade policy analysis and research conducted by ABARE and other research agencies, key academic institutions and also the OECD. Australia provides resources to influence the OECD work program on trade and other WTO related issues. ABARE has played a significant role in WTO-related agricultural

policy research, including in the context of current agricultural negotiations. This research has played a vital role in providing for clear views on all agricultural reform issues and supporting Australia's voice for further reform. It is essential that this research be adequately funded to ensure sound analytical work is undertaken to underpin our agricultural negotiating positions.

101. Due to the importance of trade to the economy and trade reform as a vehicle to increasing returns to Australian farmers, Australia continues to provide significant resources for WTO related activities. Compared with some of our competitors and allies, Australia provides more resources for the WTO agriculture negotiations and supporting activities such as research, consultations with industry and key WTO members, and support for key agricultural trade policy overseas posts. Australia provides a significant level of in-kind support for the activities of the Cairns Group, including the provision of an informal Secretariat.

## CONCLUSIONS

102. As compared to its predecessor GATT, the WTO has provided a more extensive institutional framework to support agricultural reform. There is now greater security and certainty in the agricultural trading system reflected by a more effective dispute settlement process, expanded market access arrangements, disciplines on domestic support and export subsidies and rules for ensuring that sanitary and phytosanitary measures are not used as disguised technical barriers to trade.

103. Australia, as a middle sized economy, highly dependent on agriculture and food exports for improving national income and growth particularly in rural areas, has benefited from the WTO rules-based system. It has provided opportunities for increasing and diversifying our agriculture and food exports. But we need to accept that trade is a two way street and freeing up markets may put adjustment pressures on some domestic industries. The WTO system makes it difficult for countries to use unjustified trade and non-tariff barriers and it has helped Australia defend our own import access decisions.

104. For import proposals, the SPS Agreement recognises the sovereign right of countries to determine their own appropriate level of protection in balancing the pest and disease risk associated with imports and for benefits to be gained from participating in trade. It is important however, that import requests are handled in a transparent and timely way on the basis on sound scientific assessment of risk. It is overwhelmingly in the interests of Australia, as a country highly dependent on agrifood exports, to ensure that the WTO agreements work for us through meeting our WTO obligations, as we expect of other countries. The implications of not meeting our WTO obligations can be costly in terms of compensation and sanctioned retaliation.

105. Australian Governments have been committed to agricultural trade liberalisation and have been successful in improving market access for Australian agricultural industries. AFFA endorses the view that the Uruguay Round outcome provided a beneficial first step

towards comprehensive framework for effective agriculture disciplines. Maintaining strong support for the multilateral trade system and continuing to press for improved trade reforms through the mandated WTO agriculture negotiations and a broad trade round is vital to continuing the reform process. A broad trade round is the only way the entrenched protective agricultural support policies of the major developed countries can be prized open through trade-offs in areas of interest to them. AFFA strongly supports the need for Australia to take a leadership role acting with like minded countries to advance agricultural trade reform, through the Cairns Group and with other developing countries to achieve improved market access opportunities for Australia's agriculture and food industries.

## ANNEX A            WTO Agreement on Agriculture

106. The Uruguay Round established a framework for negotiating reforms in market distorting policies around the so-called “three pillars” of market access, domestic support and export subsidies. It also provided the capacity for future negotiations to reduce agricultural support and protection and for ongoing monitoring and review of commitments. The three pillars were viewed as comprehensive in terms of capturing all forms of agricultural support and protection under at least one of the pillars. Box A provides a description of the main elements contained in the Agriculture Agreement.

107. The Agriculture Agreement assists Australian agricultural interests by providing a framework for progressive reductions in trade-distorting support and protection. The Agreement distinguishes between trade and production-distorting forms of support and other forms which have no, or at least minimal trade and production distorting effects. While high levels of agricultural support and protection continue to be provided, WTO does provide an open, secure and transparent framework for Australian agricultural and food exporters. Using the WTO framework and rules, the Government is actively pursuing the liberalisation of world markets, the improvement of market access and the maintenance of markets where there is a threat to our agricultural and food exports.

108. The WTO Agriculture Agreement contains broad commitments to increase market access to imported agricultural commodities and to reduce domestic support and export subsidies. The central elements of the agreement are binding commitments on market access, domestic support and export subsidies. Reforms for the three pillars were to be implemented over six years by developed country members (commencement date of 1 January 1995 with 2000 the final year for undertaking commitments) and over ten years by developing country members (1995-2004). Following the final year of implementation of reduction commitments in 2000 for developed countries and until new commitments are agreed following finalisation of a new round of trade negotiations, developed country WTO members are expected not to exceed support at the level allowed in 2000 and not roll back support and protection levels. The commitments are summarised below:

### *Market Access*

- Non tariff barriers, for example import quotas, embargoes, discretionary import licensing and voluntary export restraints, to be converted to tariffs. These were to be reduced over time from levels estimated to apply in the 1986-88 base period. Developed country members agreed to cut tariffs by an average of 36% compared with 24% for developing countries, in equal annual instalments, with each tariff line to be cut by a minimum of 15 per cent for developed countries and 10 per cent for developing countries.
- All tariffs to be bound.

- For products whose non-tariff restrictions have been converted to tariffs, governments are allowed to take special emergency actions or safeguards in certain situations to prevent swiftly falling prices or surges in imports from hurting their farmers.
- Minimum access levels of 3 per cent of domestic consumption in the importing country in the 1986-88 base period, increasing to 5 per cent by the end of the implementation period to be available where imports are not significant.
- Special measures also apply for the conversion of certain support systems to tariffs (tariffication) during the implementation period. Greater market access commitments were provided in exchange for a delay in meeting the early tariffication requirements. Japan decided to tariffify its rice regime in 1999 resulting in a reduction in access commitments for 1999 and 2000.

#### *Domestic Support*

- The total value of domestic support for agriculture (aggregate measure of support or AMS) considered to be market distorting or “amber box” to be cut by 20 per cent for developed countries and 13.3 per cent for developing countries from the 1986-88 base period, during the implementation period.
- Domestic support exempt from AMS reduction commitments include measures considered to be minimally market distorting or “green box” such as research, disease control and food security, and certain direct payments to farmers or “blue box” where farmers are required to limit production.

#### *Export Subsidies*

- export subsidies on agricultural products are prohibited unless the subsidies are specified in a member’s lists of commitments. If they are listed, WTO members are required to cut the quantum of expenditure on export subsidies and the volume of exports that receive subsidies,
- developed countries have agreed to cut the value of export subsidies by 36 per cent (24 per cent for developing countries) using 1986-90 averages as the base, and to reduce the quantities of subsidised exports by 21 per cent (14 per cent for developing countries).



## ANNEX B The WTO Sanitary and Phytosanitary Agreement (SPS Agreement)

109. The SPS Agreement sets out a balance of rights and obligations in respect of the use of sanitary and phytosanitary measures. The sovereign right of countries to adopt measures to protect their citizens, plants, animals and the environment from imported pests and diseases is widely recognised by the international community. The WTO SPS Agreement was negotiated during the Uruguay Round to complement the Agreement on Agriculture by ensuring that concessions negotiated on tariffs, for example, are not diminished by unjustified quarantine barriers.

110. Members have an obligation to establish quarantine measures for determining the pest and disease risk associated with imports and for applying appropriate measures to manage that risk based on sound science, consistency, transparency and minimal trade restrictiveness.

111. The SPS Agreement expressly affirms the sovereign right of each WTO Member to determine its own appropriate level of quarantine protection (ALOP), that is, the level of risk we are prepared to accept. This permits Australia to maintain its highly conservative approach to quarantine risk management as long as this is done in a consistent and least trade restrictive manner. It is recognised that Australia's physical isolation and quarantine diligence has ensured that many of the pests and diseases that have a serious impact on agriculture around the world have not become established here. Notable examples include scrapie, foot and mouth disease (FMD) and screw worm fly.

112. Australia has benefited from the SPS Agreement through greater access for Australian agricultural exports and certainty for exporters as a result of the disciplines this Agreement has placed on governments in some of our export markets. The SPS framework ensures that SPS measures are not used as defacto barriers to trade. It underpins our quarantine rules and will continue to play an important role in protecting our industries from unjustified barriers abroad, while together with strengthened WTO dispute settlement procedures, providing leverage to open previously closed markets. Unlike tariff agreements, SPS measures cannot be used as bargaining tools or otherwise compromised during trade negotiations.

113. Following is a summary of the basic rules contained in the SPS Agreement.

- It allows countries to set their own standards. But it also says regulations must be based on science. They should be applied only to the extent necessary to protect human, animal or plant life or health. And they should not arbitrarily or unjustifiably discriminate between countries where identical or similar conditions prevail.
- Member countries are encouraged to use international standards, guidelines and recommendations where they exist. However, members may use measures which result in higher standards if there is scientific justification. They can also set higher

standards based on appropriate assessment of risks so long as the approach is consistent, not arbitrary.

- The agreement still allows countries to use different standards and different methods of inspecting products. So how can an exporting country be sure the practices it applies to its products are acceptable in an importing country? If an exporting country can demonstrate that the measures it applies on its exports achieve the same level of health protection as in the importing country, then the importing country is expected to accept the exporting country's standards and methods.
- The agreement includes provisions on control, inspection and approval procedures. Governments must provide advance notice of new or changed sanitary and phytosanitary regulations, and establish a national enquiry point to provide information. The agreement complements that on technical barriers to trade.

## ANNEX C            Current Disputes

### **Korean Beef**

114. As part of its WTO commitments, it was expected that the Korean market would be fully liberalised by January 2001. Australia became concerned, however, that Korean regulatory requirements would restrict imports and impede this process.

115. The Korean market is Australia's third largest beef market and during the last five years it was valued at approximately \$140 million per year. The regulatory scheme discriminated against imported beef in a number of ways. These included:

- confining sales to specialised stores
- limiting the manner of its display
- imposing an additional markup above retail margins and
- restricting distribution to the market.

116. Australia, in close consultation with the Australian beef industry and only after unsuccessful bilateral discussions at senior levels, decided to bring the matter to a WTO Panel. It was argued that the regulatory scheme was inconsistent with WTO obligations.

117. The panel report was released in July 2000. The WTO Dispute Settlement Panel findings were very positive for Australia. The Panel found against Korea's retail and distribution system for imported beef. Several measures were found to be inconsistent with the WTO Agreement and others, such as minimum wholesale prices and mark-ups, had to be eliminated or otherwise brought into conformity with WTO rules.

118. Korea appealed the decision and the Appellate Body report which was released on 11 December 2000 upheld the previous findings of the WTO Panel. Australia has since undertaken discussions with Korea with the aim of ensuring that the discriminatory measures on the import of beef are removed as soon as possible. Korea has indicated that a timeframe of 6-8 months (by September 2001 at the latest) for removal of Korea's restrictions is likely.

### **US Lamb**

119. Australia's lamb meat exports to the US are valued at around A\$100 million a year. In early 1999, the US International Trade Commission (ITC) announced under Section 201 of the US Trade Act, that it had determined Australian and New Zealand lamb imports to be threatening to cause serious injury to the US lamb industry. This followed petitioning from the American Sheep Industry for protection from imported lamb. Subsequently, the United States decided in mid 1999 to implement a tariff rate quota regime, which was more trade restrictive than the recommendations of the US ITC.

120. The Australian government and industry did not consider the actions of the US government justified or in compliance with WTO obligations. The government was also concerned about the detrimental effects of the restrictions on Australia's lamb exports and the longer term development of the US lamb market for Australia. Following consultations, under the auspices of the WTO rules, between the United States on the one hand and Australia and New Zealand on the other, a Panel was established in November 1999.

121. On 21 December 2000, the WTO Dispute Settlement Panel released a final report, which confirmed that the restrictions are inconsistent with the United States obligations under the WTO. While this is a positive sign for Australia, the report is subject to the normal WTO appeal processes and a final Appellate. Following a US appeal filed on 31 January 2001, the final WTO Appellate Body report is expected on 1 May 2001.