

Australia's Relationship with the World Trade Organisation

A Submission by Meat & Livestock Australia

to

**The Joint Standing Committee on Treaties
Parliament of Australia**

This submission by Meat and Livestock Australia is made in response to the invitation by the Joint Standing Committee on Treaties for public comment on the nature and scope and Australia's relationship with the World Trade Organisation (WTO).

About Meat and Livestock Australia (MLA)

MLA is a producer owned organisation with two primary functions:

- to improve the efficiency and quality of Australia's red meat and livestock production;
- to raise the level of demand for Australian red meat and livestock both domestically and in overseas markets.

Although MLA is a producer owned company, processors and livestock exporters voluntarily contribute to a number of the MLA programs – particularly those programs considered vital to the ongoing prosperity of the Australian industry as a whole. One of the MLA programs to which processors and live exporters contribute is market access – i.e. defending threats to existing rights of access in overseas markets and, where possible, assisting to reduce market access barriers.

MLA consults closely with meat and livestock peak industry bodies and individual meat and livestock producers and exporters regarding market access issues. With six overseas offices, MLA has a close understanding of market access issues, trade impediments and key contacts with importing and distributing organisations.

The Australian Red Meat and Livestock Industry

The red meat and livestock industry is one of Australia's most significant industries.

More than 30,000 Australian farmers specialise in producing red meat, over 20,000 Australians are involved in red meat processing and exporting and about 150,000 Australians are employed in various aspects of red meat wholesaling and retailing.

In total the Australian red meat and livestock industry generates about \$9 billion in export and domestic sales.

Importance of Trade

Australia is the largest exporter of red meats in the world. To an extent not even closely matched by other red meat producing countries, the Australian industry is heavily reliant on export markets.

In 1999 Australia exported 64% of total beef and veal production and 50% of total of sheepmeat production. A large production base, coupled with a small domestic market, means growth in export markets is imperative to the continued success of the Australian red meat and livestock industry.

Australia exports product to a vast variety of countries, over 100 in 1999. The diverse nature of Australia's red meat and livestock exports means that particular importance is placed on multilateral trade negotiations and the disciplines these impose.

Although bilateral negotiations may result in access improvements in key markets, widespread access improvements and greater trading certainty can only be achieved through multilateral negotiations such as those in the WTO.

Certainty of Trade is Vital

Not only does Australia export significant quantities of red meat to a vast number of countries, but these exports are growing.

Between 1980 and 1999 total Australian beef and veal production only increased 29%, yet exports jumped 44%. Similarly, over the same period, lamb production only increased by 14%, yet exports jumped 105%. Production and processing specification has grown in line with this increasing reliance on export markets.

Over the last two decades Australian producers and processing plants have increasingly tailored their activities to specific markets. Many markets have imposed country requirements on meat traded – for example, requirements related to meat production, meat processing, hygiene, religion, carton marking, labeling and documentation. Product produced specifically for one market is often not easily diverted to another market without incurring heavy discounts.

Once an investment is made by a processor to meet specific country requirements, unencumbered access to that market becomes crucial to realising returns on the Investment.

Both increasing reliance on export markets and market specialisation has meant that certainty in trading arrangements has become more important than ever. Certainty in trading arrangements can be enhanced through strong bilateral relationships between Governments and strong multilateral trade rules.

Gains made by the Industry from the Uruguay Round

The Uruguay Round Agreement represented a small, but significant, move in the right direction for red meat and livestock trade reform. Table 1 Lists major market access changes affecting the Australian red meat and livestock industry since the beginning of the Uruguay Round.

Table 1

Market	Changes since Uruguay Round
Japan	<ul style="list-style-type: none"> • Tariff for chilled and frozen beef reduced from 50% to 38.5%.
Korea	<ul style="list-style-type: none"> • Minimum import quota has increased from 123,000 to 225,000 tonnes (boneless). • In 2001 quota converts to a tariff of 41.2%.
United States	<ul style="list-style-type: none"> • Meat Import Law quotas set at 301,600 tonnes in 1994 for Australia were replaced with a 378,000 tonne TRQ. • In July 1998 implementation of a TRQ on lamb imports, with the in quota tariff rate initially set at 9% and out of quota rate at 40% (this TRQ being introduced under the guise of the WTO safeguards clause).
Canada	<ul style="list-style-type: none"> • Relatively free trade until 1995 when a global quota was introduced. • The global quota was replaced with a 42,000 tonne TRQ for Australia in 1996. Australia's allocated TRQ was subsequently reduced to 35,000 tonnes in 1997.
European Union	<ul style="list-style-type: none"> • Subsidised beef exports to decline 26% by 2000. • Andnessen Assurance not to dump meat in Asia-Pacific region reaffirmed.
South East Asia	<ul style="list-style-type: none"> • The Philippines has removed their Minimum Access Volume (MAV) quota system on beef and reduced their across-the-board tariff from 30% to 20%. • Previously the Philippines had a two-tiered tariff for live cattle imports. The tariff for cattle under 330kg was 3% and the tariff for cattle greater than 330kg was 30%. This weight restriction has been removed and currently a 3% tariff rate applies to all cattle imports. • In Indonesia the tariff rate for chilled and frozen beef has reduced from 25% to 5%. • Both the Philippines and Indonesia retain beef and cattle import licensing and licenses have been used to restrict imports

Over the last decade, from the perspective of the Australian red meat industry, the greatest gains in access have occurred in North Asian markets.

Prior to the Uruguay Round Agreement beef quotas in Japan were tariffed, with the tariff subsequently falling from 70% to 50%. Under the Uruguay Round Agreement the tariff was further reduced to 38.5%.

Similarly, prior to the Uruguay Round Agreement beef quotas in Korea were significantly expanded. Under the Uruguay Round Agreement quotas have been progressively lifted and by 2001 removed and completely replaced by a 41.2% tariff.

A further noticeable access improvement under the Uruguay Round Agreement was the replacement of the Meat Import Law into the United States with a TRQ. The quota for Australian beef was initially set at 378,000 tonnes. This quota, in practice, has hitherto been non-binding.

Notwithstanding these moves to trade liberalisation, disappointingly over the last five years (that is, during the implementation period of the Uruguay Round Agreement) access by the Australian meat and livestock industry to overseas markets has either been threatened or temporarily withdrawn on a number of occasions. Recent examples of these are:

- the imposition of quotas and draconian tariffs on Australian lamb into the United States using WTO safeguard clauses and domestic Section 201 legislation;
- the use of licensing arrangements in the Philippines to disrupt beef and cattle imports from Australia.

Furthermore, despite gains in market access as a result of the Uruguay Round Agreements:

- tariffs on Australian beef into Japan and Korea of about 40% continue to choke trade;
- access for Australian beef and sheepmeat exports into the EU remains at negligible levels;
- the EU continues to subsidise significant quantities of beef and sheepmeat exports; and
- the bound tariff rates for beef and sheepmeat of many emerging Asian markets remains in excess of 50%.

In summary, the Uruguay Round Agreement created a foundation for market access improvements in meat and livestock products. The challenge for the Millennium Round is to build substantially on the foundation created by the Uruguay Round Agreement.

Opportunities for Community Involvement in Developing Australia's Negotiating Position on Matters with the WTO

As a significant employer and member of the Australian community, the Australian red meat and livestock industry has been very closely involved in developing WTO negotiating positions.

In establishing targets and negotiating tactics for the Uruguay Round, the Australian red meat industry worked extremely closely with the Department of Foreign Affairs and Trade (DFAT). This collaborative effort culminated in a number of officials from Australian cattle and meat processing organisations being present in Geneva during the final days of the Uruguay Round. This close cooperation between the red meat industry and the DFAT continues to the present time.

In the past two years the red meat industry has been consulted prior to decisions being taken to challenge within the WTO actions the US and Korean Governments impeding trade in Australian meat.

Moreover, consultation has been ongoing throughout these Panel Disputes. On both these cases effectively DFAT, MLA and the wider red meat industry has acted as a team.

MLA, with its industry partners, is also assisting DFAT in the development of negotiating positions for the Millennium Round of the WTO. For the Millennium Round the process of industry and community consultation has been even more open and transparent than for the Uruguay Round. In particular, a public invitation was extended by DFAT for comment regarding the development of a negotiating agenda for this Round. MLA with its industry partners, provided such a submission from the perspective of the Australian red meat industry.

Two other formal consultative mechanisms that have been adopted for the Millennium Round are worthy of comment.

First, in addition to the call for submissions, DFAT held a series of public meetings around Australia. On the basis of one of these meetings, Sydney, a wide cross section of community interests were represented.

Second, the Minister for Agriculture, Fisheries and Forestry Australia (AFFA) and the Minister for Trade have established an agriculture trade consultative committee. Sections of the community represented by these industries have this additional channel for input into Australia's negotiating position for the Round.

To summarise, MLA is extremely satisfied with the level of consultation and cooperation that exists with DFAT (and AFFA) in developing Australia's negotiating positions for the WTO.

The Effectiveness of the WTO Dispute Settlement Procedures and the Ease of Access to these Procedures

The red meat and livestock industry probably has more experience than any other Australian industry on WTO dispute settlement procedures. During the past year the industry has been involved in not one, but two, major panel disputes: the Korean Beef Dispute and the US Lamb Dispute. Additionally, the industry has taken a keen interest in the US/EU HPG Beef Dispute to which Australia was a third party.

US/EU HPG Beef Dispute

For many years the EU has banned beef from cattle treated with HPGs. This is despite the fact that no scientific evidence exists that the use of HPGs in cattle in any way compromises human health. The levels of HPGs in beef are many times lower than those occurring naturally in a number of other products.

Two WTO Panels have now determined that the EU ban on beef from HPG treated cattle is in violation of the WTO Agreement. The EU, however, continues to apply the ban. In retaliation the US has imposed WTO sanction tariff increases against a number of EU products.

The continued application by the EU of a ban on beef from HPG treated cattle might be seen as a failure of the WTO system. To a degree this cannot be denied. However, in defense of the WTO a number of observations can be made:

- it is possible to state with absolute certainty that the EU HGP ban would continued to have been applied if the WTO provisions were not in place – the WTO provisions have not made matters worse;
- clearly the US retaliatory action is placing pressure on the EU to negotiate a settlement of the issue acceptable to the US – continued efforts are being made by EU negotiators;
- almost certainly the WTO ruling has discouraged other countries from applying similar bans to the EU.

Korea Beef Dispute

Despite raising beef quota levels and lowering tariffs and markups, the Korean Government has maintained a number of policy measures which impede the distribution and sale of imported beef.

In March 1999 Australia and the United States, concerned by the range of measures that restrict demand for imported beef, sought Article XXII consultations with Korea through the Dispute Settlement Body of the WTO. The

consultations were unsuccessful, and a Panel was then formed to consider the issue. The Panel has now found in favour of Australia and the United States. In light of its findings, the Panel concluded:

- The following measures are included in the “remaining restrictions” within Note 6(e) of Korea’s Schedule have a transitional period until 1 January 2001. From that date they shall be eliminated or brought in to conformity with the WTO Agreement:
 - SBS markup;
 - Limitations on the participation in the SBS system;
 - The requirement that beef imported by LPMO be distributed only through the wholesale market;
 - LPMO minimum wholesale prices;
 - The existence of a discretionary license system relating to any of the “remaining restrictions” (as distinct from its operation).
- The following issues were concluded to be inconsistent with WTO principles:
 - the dual retail system for beef (including the obligation for department stores and supermarkets to sell imported beef to hold separate display, and the obligation for imported beef shops to bear a sign “Specialised Imported Beef Store”);
 - the requirement that the supply of beef from LPMO’s wholesale market be limited to specialised imported beef stores;
 - more stringent record keeping imposed on those that purchase imported beef;
 - the prohibition of cross-trading between endusers in the SBS system;
 - additional labeling requirements for imported beef;
 - LPMO’s lack of and delays in calling for tenders and its discharge practices between November 1997 and May 1998;
 - LPMO calls for tenders that are made subject to grassfed and grainfed distinctions, they also treat grassfed beef less favourably;
 - Korea’s domestic support for beef for 1997 and 1998 was not correctly calculated and exceeded the de minimus levels;
 - Korea’s total domestic support for 1997 and 1998 exceeded Korea’s commitment levels.

Korea has announced it will appeal the Panel decision. The outcome of the appeal is likely to be known by the end of the year. Rarely are the substantive findings of the original Panel overturned on appeal.

Clearly, the probable further freeing up of the Korean imported beef market could not have been achieved but for the WTO dispute settlement procedures.

US Lamb Dispute

Last year the United States, using the safeguard provisions of the WTO Agreement, introduced a tariff rate quota on imported lamb. Under the TRQ tariffs as high as 40% were imposed on imported lamb. Australia has appealed the introduction of the TRQ to the WTO.

The outcome of this appeal will not be known until November. However, two significant comments can be made now:

- If the WTO provisions had not been in existence the United States would have introduced the TRQ with impunity. Australia had exhausted all avenues of bilateral appeal. Even a telephone conversation between the Prime Minister and the President was unable to prevent these measures from being introduced.
- In the absence of the WTO it is likely that the increased tariffs against imported lamb would have been introduced for a longer period. Indeed they could well have become a permanent feature of the trading landscape. Because the United States used the WTO safeguard provisions to justify these measures they have only been applied for three years.

The US Lamb Dispute has, however, uncovered one serious flaw with the WTO dispute settlement procedures, namely, the delay in achieving an outcome from the process. If the US chooses to take the Panel's finding to appeal, the final Panel decision may not be known until mid 2001 – two years into the three-year life of the TRQ safeguard measures. This is clearly an unsatisfactory situation – the time taken by the dispute settlement process, particularly in safeguard cases, must be shortened.

Australia's Capacity to Undertake WTO Advocacy

The Australian Government does possess the capacity to successfully prosecute WTO cases; however, it is important that sufficient resources are provided to handle the number of cases that are in train and that the system of rotation of DFAT personnel does not limit the development of "trade specialists" with the background and experience necessary to handle WTO cases.

DFAT contains a highly specialised staff group well versed in WTO rules and procedures. The talents of these individuals can be maximised when mixed with the market knowledge of Australian industry participants. MLA has been very satisfied with the speed and efficiency of service and follow up from DFAT in all stages of the Korea Beef and Lamb WTO disputes.

A combined use of DFAT/industry resources was put to great effect in the Korea Beef Dispute. DFAT staff planned and wrote the Panel submissions, but in doing so extensively used technical resources of MLA and the wider meat industry. DFAT regularly provided detailed and highly regarded briefings on the

developments of the case to key Australian meat and livestock representatives. These regular communications provided the opportunity for industry input and feedback – it was a very effective team effort.

The US Lamb Dispute was conducted along similar lines. Due to the more legalistic framework of this dispute, and particularly the focus on U.S. trade law remedies and the inconsistency with the WTO standards, the assistance of MLA's US attorneys in Washington was inserted into the case. In MLA's view, the provision of US based legal advice provided DFAT with US trade law expertise that was helpful in supplementing DFAT and industry resources. The outcome of this case will be known in October 2000, and is expected to be favorable to Australia given the precedent set by the wheat gluten case.

Although the success of the Korean Beef Dispute and the expected favorable outcome for the lamb case clearly demonstrates the capacity for Australia to undertake WTO advocacy, MLA is concerned that the increasing frequency of dispute cases will strain this capacity. Furthermore the increasingly litigious and technical nature of the WTO process means that it is essential that DFAT have the appropriate dedicated staffing resources and in our view, access to outside legal experts, to successfully prosecute WTO cases. In the lamb case, for example, the NZ Government itself drew directly on external legal and economic resources to supplement Government resources in developing their case.

While recognising the dedication and expertise of DFAT's Dispute Investigation and Enforcement Section, consideration should be given to the appropriate funding of external legal experts to expand and strengthen the DFAT team, as required for individual cases. These legal experts need not be located in Australia, and in some cases may be more useful if they are drawn from the opposing country involved in the dispute. For example, the US has a widely developed private trade law practice which reflects in part the litigious nature of the US system, the construction of the system itself, and the number of WTO cases involving the US.

The Involvement of Peak Bodies, Industry Groups and External Lawyers in conducting WTO Disputes

See foregoing commentary.

Conclusion

In this submission MLA has addressed a number of issues under examination by the Joint Standing Committee of Treaties. MLA would be pleased to appear before the Committee to address any other questions Committee members may wish to ask.