

**Submission to the  
Joint Standing Committee on  
Treaties**

**Inquiry into Australia's relations with  
the World Trade Organisation**

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This submission is concerned with the "the effectiveness of the WTO's dispute settlement procedures and the ease of access to these procedures, ... Australia's capacity to undertake WTO advocacy, ... [and] the extent of to which social, cultural and environmental considerations influence WTO priorities and decision making," as set out in the Inquiry's terms of reference.

- a. **It is recommended that Australia should be cautious about referring trade disputes to the WTO Disputes Panel, particularly when a dispute is with the a larger trading economy, as generally this system of settlement does not serve Australia's national interests.**

There is no equality between parties in WTO disputes settlements procedures. The powerful economies can press Australia not to use the WTO Disputes Panel on threat of substantially hurting Australian trade. There was a salutary lesson for Australia in March 1999 when then Trade Minister Tim Fisher announced his intention to take Japan to the WTO Disputes Panel over Japan's 390% tariff on imported rice. Immediately, scheduled negotiations on Australia wheat export to Japan, worth \$350 million, were cancelled. Within days Mr Fisher had to withdraw his formal protest.

- b. **On the other hand, it is recommended that should Australia have to become involved in the Disputes Panel process, it should do so aggressively.**

It is usually local companies who prod their government into taking action at the WTO. Australia was forced to accept a ruling that subsidies given to Howe Leather were in violation of WTO rules. The case was prompted by Howe's US leather competitors, who were also receiving US government subsidies.

Tactically, it is conceivable that had Australia started making loud noises early about subsidies the US government was giving to Howe's US owned competitors, the US government may not have proceeded against Australia at the WTO. The US would not have feared any direct action by Australia, but it may have feared that Australia's loud publicity would stir the powerful European Union into taking on the US over its income tax rebates to US exporters.

- c. **It is recommended that Australian trade policy should be based on the principle of "fair trade" not "free trade."**

Recently, when the US refused to abide by the WTO ruling in favour of Australian lamb having greater access to the US market, it was the US Secretary of the Treasury who said that the US stands for "free and fair trade ... The US has a right to protect its workers."

In those few words the US Secretary of the Treasury made clear that whatever the US rhetoric about "free trade," it regards trade as a matter of pragmatic diplomacy in pursuit of national interests, not blind adherence to the idea of "free trade."

If our major trade competitors operate on the principle that they believe in free trade, so long as their domestic industries are not seriously disadvantaged, then Australia should operate on the same principle.

- d. It is recommended that this Inquiry should recommend against the abolition of nuisance tariffs because of their usefulness as bargaining chips in WTO disputes.**

As in the case of Howe Leather, when a nation like Australia agrees to abide by a WTO ruling in a dispute, it can either have the company retrospectively pay the subsidy or the nation can lower its tariffs in some area of benefit to the aggrieved nation. In this case Australia agreed to lower some of its smaller tariffs, sometimes called nuisance tariffs. They may be called nuisance tariffs, but they are extremely useful as bargaining chips in WTO disputes.

If we had not had them to bargain with in the Howe Leather case, the US would have retaliated by imposing substantial tariffs on Australian wine imports to the US.

- e. With regards agricultural imports and the threat of importing exotic diseases into Australia, it is recommended that Australia should seek to move from “manageable risk” assessment under current WTO rules, to “zero risk” assessment.**

Australia has had the good fortune of being a clean and green island continent. This is now under threat. There are numerous applications to AQIS for acceptance of agricultural goods, currently restricted or banned, into Australia because of the serious threat of disease. Under current WTO rules agricultural goods cannot be excluded on the basis of maintaining zero risk to domestic industries. Goods are to be allowed entry if the risk is manageable.

What constitutes manageable risk? New Zealand apples infected with fire blight, which recently devastated Michigan apple orchards in the US? Pieces disease in California grapes, a disease that is devastating sections of California’s grape vines? It is not inconceivable that the WTO could rule that even foot and mouth disease constituted manageable risk to Australia.

If it is impossible to backtrack on the relevant WTO rules, then Australia needs to “get smart” about using the WTO’s rules. We can stay within the rules but issue appropriate protocols that allow us to still effectively protect our industries. For example, the Japanese do not explicitly exclude apples from fire blight affected countries into Japan, but require that all trees from orchards wishing to export to Japan be tested several times a year for diseases. The cost of such scientific tests alone makes exporting to Japan uneconomic.

To this end we need negotiators and bureaucrats skilled in business diplomacy.

- f. It is recommended that Australia needs to have trained negotiators, skilled in commercial diplomacy in WTO trade negotiations and disputes, and should not be reliant just on economists.**

Other nations have university departments specialising in commercial diplomacy, something sadly lacking in Australia.

WTO treaties need to be rigorously scrutinised by specialists in commercial diplomacy, as well as by the public and politicians. The clearest example of where such scrutiny was lacking was the Multilateral Agreement on Investment (MAI). If signed, the MAI would have meant that Australia could offer no protection (tariffs or subsidies), could grant no preferential contracts to or give any special legal protection to an Australian company over a foreign based multinational.

It took a year of public outcry to achieve a government inquiry that led to the shelving of the MAI. It illustrates how Australia needs experts skilled in commercial diplomacy who are more circumspect about multilateral agreements which extend the reach of foreign economic interest into Australia.

- g. It is recommended that, realising Australia will always have only limited access to the major economic powers with agricultural products, Australia should shift its priority in agricultural trade negotiations from fruitlessly trying to achieve wide ranging multilateral cuts in agricultural protection, to refocusing on bilateral trade agreements.**

The Inquiry is also looking at "the extent of to which social, cultural and environmental considerations influence WTO priorities and decision making."

Australia should recognise that for the EU, USA and Japan, agriculture is considered part of their social and cultural heritage, protected and subsidised like Australia subsidises the arts. For them economic considerations are secondary to social issues, on the matter of agricultural protection.

**Average farm subsidy as a percentage of total farm income**

Country	1990-93 percent*	1999 percent**
USA	19	24
EU	47	49
Japan	58	65
Canada	30	20
Australia	8	6
New Zealand	2	2

Source: \* OECD, report in New York Times, 18.12.99

\*\* *Agricultural Policies in OECD Countries: Monitoring and Evaluation 2000*

It is no use arguing that Australia needs to "give the lead" and keep deregulating our agricultural industries to make them more efficient so as to penetrate foreign markets when foreign markets have no intention of signing multilateral treaties to let foreign products into their markets.

Indeed, the above table shows that our main trading partners are maintaining or increasing the substantial level of subsidies they give to agriculture, and are likely to continue doing so into the foreseeable future.