



Our ref: 2000057180

9 November 2000

AUSTRALIA'S RELATIONSHIP WITH THE WORLD TRADE ORGANISATION

SUBMISSION BY THE AUSTRALIAN GOVERNMENT SOLICITOR

1. The Australian Government Solicitor (AGS) makes this submission to the Treaties Committee inquiry into the nature and scope of Australia's relationship with the World Trade Organisation (WTO). The submission is concerned with those elements of the Committee's terms of reference covering:

- Australia's capacity to undertake WTO advocacy,
- the involvement of peak bodies, industry groups and external lawyers in conducting WTO disputes.

2. This submission is principally concerned to draw the Committee's attention to the capacity of AGS and its willingness to provide legal advice and advocacy services to the Australian Government in relation to WTO disputes.

3. AGS has seen the submissions already made by the Department of Foreign Affairs and Trade and the Attorney-General's Department (AGD). As recognised in paragraph 16 of the AGD submission, AGS has significant international law and advocacy experience. AGS can bring to any legal dispute the forensic skills which come from long experience in litigation and in successfully resolving legal disputes. This experience can be of benefit in developing the shape and content of a legal argument, not just in the domestic legal context but also in an arena like the WTO.

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4. AGS also has been involved in a number of areas of international work relevant to the WTO and has considerable expertise in this regard.

5. For instance:

- AGS' Chief General Counsel Mr Henry Burmester QC, was formerly head of the Office of International Law in AGD. Mr Burmester was briefed to appear for Australia in the *Southern Bluefin Tuna* case against Japan. He has considerable experience in international litigation, and a depth of international law knowledge, as well as the general advocacy skills of an experienced practitioner.
- AGS' Deputy General Counsel Robert Orr QC also has international advocacy skills with experience before international committees.
- AGS' commercial and dispute resolution lawyers have provided advice to AFFA and other areas of government on international trade law issues, including WTO. Issues involving WTO have arisen, for instance, in connection with Australia/EC Wine Agreement, where AGS has provided AFFA with ongoing advice. Foreign investment proposals have involved WTO issues and AGS has provided advice in this context on WTO obligations.
- AGS has international environmental law knowledge and has provided advice on the relationship between WTO obligations and trade related international environmental obligations under multilateral environmental agreements.

6. As recognised in the Legal Services Directions, AGS is one of the approved providers of legal services in relation to public international law, including international litigation and arbitration.

7. AGS is available to be used by DFAT and AGD in WTO work, drawing on the experience and skills outlined above. AGS considers there would be considerable merit in making use of AGS' legal expertise in task forces or other teams set up to handle particular disputes.

8. It is appropriate for DFAT to undertake the day to day monitoring of WTO developments. As indicated above, however, AGS has a variety of experience that may be called upon to strengthen the legal skills available to handle a particular dispute. It is recognised that the skills required may vary depending on the particular issues that arise. Using AGS lawyers familiar with forensic techniques can complement other government officers with international negotiating experience and legal qualifications. As the WTO dispute settlement processes become more legalistic the involvement of lawyers with the skills available in AGS may become of considerable advantage. AGS would welcome opportunities to make a contribution in this regard and to working closely with DFAT and AGD to ensure the best advocacy of Australia's position in WTO dispute settlement bodies.