CORRS
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LAWYERS

SUBMISSION TO THE JOINT STANDING COMMITTEE ON TREATIES

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A ABOUT CORRS CHAMBERS WESTGARTH

Corrs Chambers Westgarth is a nationally-integrated corporate law firm with offices in Sydney, Melbourne, Brisbane, Perth, Canberra and the Gold Coast.

Corrs provides a comprehensive range of services to government, major Australian and international public and private companies. The firm employs over 1,000 people nationally including 120 partners.

Corrs Chambers Westgarth recently established an International Trade Law Practice. The Practice assists clients in industry sectors to ensure that they are compliant with World Trade Organisation ("**WTO**") Agreements and that they are able to obtain assistance from the Federal Government to access to the WTO system.

This work has included:

- partnering with particular industry sectors to identify areas of concern with market accessibility;
- advising upon possible courses of action available to clients when their competitors are seeking access to the Australian market and threatening their interests;
- advising clients in relation to their compliance with WTO Agreements; and
- advising clients seeking Government financial assistance as to the compliance of that financial assistance with WTO Agreements.

Our international trade law practice, led by partner John Denton, Tom Brennan and Special Counsel Lisa Barker, includes practitioners with a breadth of experience, knowledge and capability. In addition to our international law qualifications, our firm provides constitutional and administrative law expertise and integration of complex scientific and technical issues with legal processes where that is required.

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B TERMS OF REFERENCE OF JOINT STANDING COMMITTEE ON TREATIES

The Joint Standing Committee on Treaties terms of reference are to inquire into and report on the nature and scope of Australia's relationship with the WTO, including:

- opportunities for community involvement in developing Australia's negotiation on matters with the WTO;
- the effectiveness of the WTO's dispute settlement procedures and the ease of access to those procedures;
- the involvement of peak bodies, industry groups and private practitioners in conducting WTO disputes;
- Australia's capacity to undertake WTO advocacy;
- the transparency and accountability of WTO operations and decision making;
- 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.

These submissions seek to address only the following of the issues before the Treaties Committee:

- Australia's capacity to undertake WTO advocacy
- the effectiveness of the WTO's dispute settlement procedures and the ease of access to those procedures; and
- the involvement of private practitioners in conducting WTO disputes.

C SUBMISSIONS

1 NEED FOR A MORE AGGRESSIVE APPROACH TO WTO USE

The anti-globalisation claim that the World Trade Organisation ("**WTO**") has required Australia to drop tariff levels and subsidies and open its markets to floods of imports but no other countries are opening their doors to Australian products, is a familiar refrain. It is a refrain which is indicative of the general lack of understanding among industry and the broader community about the possibilities of utilising the WTO. While the lack of understanding is partly a historical hangover, it is also related to industry's level of understanding of trade benefits which can be achieved by use of the WTO, and industry's lack of access to resources to achieve those outcomes.

1.1 Breaking with culture

With international trade negotiations and trade dispute resolution historically being the province of the Federal Government, Australian industry has not been in the habit of taking the initiative in this area. Prior to 1999, when international trade issues arose, industry tended to rely on the Federal Government, through the Department of Foreign Affairs and Trade ("**DFAT**"), to find solutions.

While industries' reliance on the Federal Government and DFAT was possible in the past, changes to international trade since 1994 mean that a more aggressive use of the WTO system, and the additional resources to achieve this are now required.

1.2 Changes since 1994

In 1994 the WTO was created, bringing Member countries into agreement on the conduct of trade related policies and developing a non consensual dispute resolution system which would be the independent arbiter of international trade disputes.

Since 1994 there has been a vast increase in both the number of agreements which bind the WTO Members and the trade areas covered by those agreements. In particular, new commitments have been made in the areas of financial services, telecoms, intellectual property rights, and services which have a significant impact on regulating trade in those markets. While the Seattle meeting was unable to achieve agreement on the commencement of a new Round of negotiations, there is a built in agenda from the Uruguay Round which provides an ongoing forum for reform in some areas, including services and agriculture. Multi-lateral negotiations will continue under the WTO's umbrella.

Since 1994, the number of WTO Members has increased to 137 countries. This number continues to grow with 30 countries presently waiting for membership, including China and Taiwan and another 20 countries expected to apply[1]. The continual expansion of WTO membership to cover significant trading entities such as China and Taiwan will change the balance of world trade considerably.

The non consensual nature of applications to the DSB, the increase in coverage by the WTO Agreements and the increase in Members has resulted in an explosion of litigation before the Dispute Settlement Body ("**DSB**"). Since 1 January 1995, 203 complaints have been notified to the DSB, and 19 cases are currently active. This is approximately fourfold the rate of cases dealt with

[1] Anderson, K. "The Future Agenda of the WTO", From GATT to the WTO: The multi-lateral trading system in the new millennium, Kluwer Law International, 2000.

under the General Agreement on Tariffs and Trade ("**GATT**")[2]. A pattern has developed whereby some countries, primarily the US and the EU are dominating the new arena, opening up new markets and defending their own markets in an extremely aggressive and effective manner.

1.3 Impact of the success of the WTO on Australia

The proliferation of agreements, the increase in WTO disputes and the effective use of the system by some countries means the limited resources of the Federal Government are inevitably overwhelmed by the task of representing the range of Australian industries affected. Clearly there is a greater need for industry to take the initiative in getting themselves into markets, and to seek to protect their interests, by utilising the WTO dispute settlement mechanisms. However the culture of industry self assistance is not strong in Australia, particularly when compared to the US and Canada. This places an impossible pressure on DFAT to be responsible for identification and action in relation to trade barriers in all industries.

These resource pressures and their ability to stifle proactive use of the WTO and the DSB system is at odds with the benefits that Australia can reap through effective use of the WTO. One only has to look at the success of some of the smaller countries in the WTO, to see how the DSB can level the playing field and can be effectively utilised in disputes against trading partners who, by virtue of their size and trade dominance, previously were able to lock smaller countries out of markets. A good example of this is the success of Costa Rica who, in *United States – Restrictions on Imports of Cotton and Man-Made Fibre Underwear*, had US import quotas on cotton underwear and some other textile products declared invalid, thereby gaining access to the US market. Clearly, success in the WTO is not merely a matter of size and resources but also how countries use the WTO and DSB system.

In our view, Australia must become an effective user of the WTO and DSB system in order to continue to profit from the opportunities available from international trade. We propose a number of measures that we believe will enhance Australia's use of the WTO and DSB system. These include:

1 increased use of the WTO and DSB by increasing Australia's capacity to undertake WTO advocacy;

2 providing industry with further education about international trade barriers and how the WTO and DSB can be used to remove these barriers;

3 development of a consultative body which would have a primary role in facilitating a comprehensive approach to WTO issues between Government, industry and private legal practitioners.

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[2] Jackson J.H. "Dispute Settlement and the WTO: Emerging Problems" From GATT to the WTO: The multi-lateral trading system in the new millennium, Kluwer Law International, 2000.

2 AUSTRALIA'S CAPACITY TO UNDERTAKE WTO ADVOCACY.

The international community's confidence in the system is evidenced by the large number of cases that have been and continue to be brought before dispute settlement Panels and the Appellate Body. The WTO Secretariat listings of 10 August 2000 show 203 cases, (160 of which involve distinct matters), which have been brought under the WTO dispute settlement procedures in just 4 years. This is approximately four times the number of cases heard under 50 years of GATT. The length of hearing time for most cases is 6 months, significantly faster than decisions from the International Court of Justice.

2.1 Bringing cases in the WTO

Australia cannot underestimate the inherent value of a functioning international system. While the US and EU remain the most frequent users of the system, the participation of developing nations confirms that the Dispute Settlement Understanding (DSU) is an effective means of resolving disputes fairly and efficiently. 137 countries are now potential users of the dispute settlement system, and this number is only increasing.

By contrast, Australian industry has been slow to recognise the huge changes that the WTO rules based system and the DSB have had on world trade. Our use of the system remains minimal compared to the US, EU and Canada. The table below illustrates Australia's usage of the DSB compared to New Zealand, the USA, the EU and Canada.

	Australia (to June 2000)	**NZ (to June 2000)**	**US (to June 2000)**	**EU (to end 1998)**	**Canada (to June 2000)**
Cases brought against country	6 cases	0 cases	39 cases of which: 8 completed 10 resolved 11 inactive 10 in litigation	30 cases	9 cases
Cases brought by country	4 cases	5 cases	53 cases of which 28 have been concluded	40 cases	16 cases
Total cases as either plaintiff or defendant	10 cases	5 cases	42 cases	70 cases	25 cases
Total cases as third party	14 cases	not available	not available	31 cases	not available

These figures, combined with knowledge of the aggressive approach other countries are adopting in asserting their rights under the Agreements, demonstrate that Australia will not prosper under the WTO unless we start using the system in a more proactive manner.

To some extent proactiveness must be driven by cultural change which sees Australian industry start to view the WTO as an arena for asserting their interests and achieving favourable trade results. Susan Westin, the US General Accounting Office's Associate Director of International Relations and Trade Issues in a speech to Congress in June 2000 noted that the U.S. had gained more than it has lost from its aggressive use of the WTO and the DSB system, because it had led to substantial changes in foreign trade practices with minimal effect on U.S. laws and regulations. Yet what is really notable, is that in the eight completed cases run against the world's only super power and strongest economy, seven of those cases have provided inroads into the US markets, sometimes to the benefit of much smaller players such as India, Costa Rica, Venezuela and Brazil.

In contrast, Australia has not yet embraced the possibilities provided by the WTO to fight above our weight and win. This is evident from the fact that 60% of the cases in which Australia has been actively involved have been defensive. The lessons of the smaller players should be noted by Australia. Clearly, the WTO offers Australia the potential to run cases that can open markets for Australian exporters.

2.2 Defending cases

Even if Australia chooses not to utilise the WTO as a complainant, it is and will be the target of complaints by other countries, particularly in relation to our quarantine procedures.

AQIS' Animal Quarantine Policy Branch currently has approximately 30 import risk analysies ("**IRAs**") under way. An additional 50 to 60 applications for animal IRA's are currently banked up waiting for resolution. Similarly in AQIS' Plant Policy Branch there are currently 19 IRA's under way and 76 applications for plant IRAs yet to be commenced.

There can be no doubt that Australia is being pressed by other countries to change our quarantine standards to lower international standards. While AQIS is doing its best to manage the IRAs, this number of IRAs demonstrates clearly that potentially Australia is on the precipice of a large number of WTO actions.

Just as significantly, the Government is under pressure from industry and the community to ensure that we maintain the very high level of pest and disease free status that we have had by virtue of our isolated geographical position. This requires a vigorous defence of our quarantine procedures when challenged by other countries.

2.3 Conclusions

Australia cannot afford to take a passive approach to the WTO and DSB system. If Australia is to become a proactive player in the WTO and DSB system, there needs to be:

1 cultural change to assist Australian industry to become more aware of, and aggressive about, identifying market conditions about which complaints should be made to the WTO; and

2 adequate resources, both in terms of funding and access to the necessary expertise, to prepare and advocate such complaints.

These issues are discussed further in sections 3 and 4 of these submissions.

3 THE EFFECTIVENESS OF THE WTO'S DISPUTE SETTLEMENT PROCEDURES AND THE EASE OF ACCESS TO THOSE PROCEDURES

3.1 Success of the WTO

The success of the WTO's DSB is reflected both in the increased number of disputes being brought before it and the success in having those disputes enforced at a national level. As previously discussed, in its first 4 years of its operation the WTO heard quadruple the number of cases to those heard in the previous 50 years under GATT. Of these 38 Appellate Body and Panel Reports have been adopted and 34 cases have been settled or remain inactive. 19 cases are currently before the DSB. The success of the DSB is also reflected in the relatively high level of compliance with Panel and Appellate Body Reports, although there is ongoing debate as to precisely what constitutes compliance, and compliance has become a significant issue in several high profile cases. Notwithstanding such difficulties, few would argue with the notion that the WTO dispute settlement mechanisms have been a great leap forward for international trade.

3.2 Access to WTO procedures

Access to WTO procedures, in our view, remains hindered by low levels of awareness among Australian industry and the community, of its benefits. The lack of enthusiasm for the WTO displayed by the Australian public and industry generally could be alleviated if there was more understanding about how the WTO works, how it can be used and what companies can do to assist themselves in breaking down trade barriers.

While the WTO Disputes Investigation and Enforcement Mechanism, implemented on 19 September 1999, was designed to provide exporters with a formal means to request the Government to exercise Australia's WTO rights on their behalf, it is doubtful that there is any real depth of industry awareness of the Mechanism, and whether there are adequate consultation processes which will help build a new culture of aggressive pursuit of Australian trade interests through the use of the WTO.

By comparison, the dominant players in the WTO, the US, the EU and Canada, have particularly strong consultation processes with the general public and industry.

(a) ***Canada***

In Canada consultation and feedback is actively sought, both in trade forums and on a specialised internet site (wwwdfait –maeci.gc.ca/tna-nac/consult-e.asp) on issues ranging from Canada's trade policy agenda, to WTO Panel decisions, bilateral trade negotiations with individual countries and other treaties.

Canadian trade forums include:

(i) Federal – Provincial – Territorial Trade meetings which are held at least once a year at ministerial level.

(ii) Sectoral Advisory Groups on International Trade (SAGITs). Central to the SAGIT process is the open exchange of ideas and information between the SAGIT members and government. There are thirteen active SAGITs representing various industry sectors including Advanced Manufacturing Agriculture, Food and Beverage, Apparel and Footwear, Cultural Industries, Energy, Chemicals and Environmental, Fish and Sea

Products, Forest Products, Information Technologies, Medical and Health Care Products and Services, Mining, Metals and Minerals, Services, and Textiles, Fur and Leather. Each SAGIT is comprised of senior business executives with some representation from industry associations, labour/environment and academia. Members serve in their individual capacities and not as representatives of specific entities or interest groups. Members are appointed, for a two year (renewable) term, by the Minister for International Trade to whom the SAGITs report. Each SAGIT meets three to four times annually. The SAGIT structure is supported by advisers from the Trade Policy Planning Division of the Department of Foreign Affairs and International Trade.

(iii) Team Canada Inc Advisory Board. The 20-member group of private sector individuals is designed to provide counsel on trade policy and market access questions as well as issues related to trade and investment promotion. The Canada Inc Advisory Board's mandate is to review and offer advice on the Government's International Business Development Plan and develop a close partnership between government and the private sector to help Canadian companies succeed in the international marketplace.

(b) ***The United States***

The Industry Consultations Program (ICP) is a program established by Congress to provide the U.S. industry with a voice in international trade policy matters. The ICP is comprised of 17 Industry Sector Advisory Committees on Trade Policy Matters (ISACs) and 3 Industry Functional Committees on Trade Policy Matters (IFACs), with over 500 members. Advisors on these committees develop their industry's specific positions on U.S. trade policy and negotiation objectives and provide advice to officials in the Department of Commerce and the Office of the U.S. Trade Representative. ISAC members are executives and managers of U.S. manufacturing or service companies involved in international trade or are trade association executives. The four IFACs deal with Customs, Standards, Intellectual Property Rights and Electronic Commerce. IFACs represent U.S. firms that trade internationally or support other companies in trade activities. Each ISAC may also select a member to serve on each IFAC so that a broad range of industry perspectives are represented.

It is worth noting that the close partnership between US industry and their trade administrators has resulted in something of 'first mover advantage', whereby the US industry is gaining access to previously closed markets before any of their international competitors and thus are able to obtain a significant share of the market.

(c) ***European Community***

The EU also has both formal and informal consultation mechanisms.

(i) The Trade Barriers Regulation (TBR)

The TBR provides an instrument for individual companies, groupings of companies and trade associations to act against trade barriers affecting their access to third countries' markets that are incompatible with existing WTO rules. EU businesses can submit formal complaints to the European Commission and if it finds that a WTO incompatible barrier

exists which adversely affects the trade interests of an EU company, the Commission will normally take up the issue with the country concerned, and if necessary start a WTO dispute settlement procedure.

(ii) Market Access Strategy programme

The formal TRB processes are supplemented by the more informal Market Access Strategy program. The strategy established specific new tools and provisions, principally a Market Access Database to strengthen co-ordination between the European Commission, Member States and European business and establish a process whereby all trade barriers notified to the Commission are analysed in depth and monitored closely until an acceptable solution is found. This was designed to enable the EU to ensure that its trading partners comply with their international commitments, whether in the World Trade Organisation (WTO) or other fora.

The database at the heart of this strategy consists of five main sections covering sectoral and trade barriers, applied tariffs, WTO bound tariffs, Info-Point on World Trade in Services (GATS Info-Point) and an exporters' guide to import formalities.

The database also provides information on tenders for external consultants and lawyers, procurements, and grants.

In our view these consultation forums foster a level of awareness regarding ways in which the WTO can be utilised to benefit national industry, which would be immensely useful for Australian industry.

3.3 Recommendations of the Senate Rural and Regional Affairs and Transport Legislation Committee

Following the inquiry into the importation of salmon products in August 1999, the *Senate Rural and Regional Affairs and Transport Legislation Committee's Report "An Appropriate Level of Protection: The importation of Salmon Products: A case study of the Administration of Australian Quarantine and the Impact of International Trade Arrangements"* recommended the Government establish a statutory office of international legal adviser, to provide a mechanism for more effective international legal outcomes for Australia[3]. The Committee noted the significance of litigation in international bodies and expressed concern that there had been a failure to appreciate the growing significance of international law. The Committee recommended the creation of a single specialist office with overriding responsibility for dealing with international legal matters, noting its belief that existing quantum and quality of resources is inadequate[4].

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[3] Senate Rural and Regional Affairs and Transport Legislation Committee's Report "An Appropriate Level of Protection: The importation of Salmon Products: A case study of the Administration of Australian Quarantine and the Impact of International Trade Arrangements", recommendations 12, 12 and 14 at page 195.

[4] Senate Rural and Regional Affairs and Transport Legislation Committee's Report "An Appropriate Level of Protection: The importation of Salmon Products: A case study of the Administration of Australian Quarantine and the Impact of International Trade Arrangements", paragraph 7.72 at page 191.

Australia's international trade law responsibilities are currently spread over a number of government departments and agencies. The co-ordination of those responsibilities, between Government departments and agencies, industry interests and private practitioners would facilitate a more effective use of the WTO System, and ensure the development of a larger pool of expertise to make Australia truly competitive.

3.4 Conclusions

1. Efforts must be made to change the current culture by increasing industry's ability to:

   - see the benefit in taking action in the WTO and seek opportunities to do so;
   - identify trade barriers;
   - proactively liase with DFAT officers, lawyers, scientists and other entities who may assist them in analysing their concerns and interests; and
   - prepare submissions on trade flows and material injury to support their case.

2. Stronger consultative mechanisms should be developed between the Government, industry and private practitioners in partnership to ensure:

   (a) the free flow of information on legal trade issues which impact on the ability of industry to access world markets;

   (b) the channelling of industry concerns and 'hot' issues in a forum that promotes the identification of issues across industries and ensures Australian trade policy reflects industry interests within WTO rules; and

   (c) the development of world–class WTO expertise and advocacy among both Government legal practitioners and private practitioners;

3. The development of a consultative body between Government departments and agencies, industry interests and private practitioners to develop and implement coordinated international trade law initiatives.

4 INVOLVEMENT OF PRIVATE LEGAL PRACTITIONERS

With the changes in international trade since 1994, the resources of the Federal Government cannot possibly cover every dispute or potential dispute involving Australia, in this new litigious environment. It certainly cannot defend all of our industries in every one of the 136 other markets also bound by WTO rules.

Private legal practitioners ("private practitioners"), being familiar with their clients' businesses, are able to assist industry to identify potential WTO issues and to work with DFAT to document these. Private practitioners should also be a primary resource for the preparation of WTO disputes including the drafting of submissions, compiling of trade data and developing of strategies in conjunction with their industry clients. This would take pressure off the stretched resources of DFAT and allow DFAT to take a more strategic co-ordination role, as the United States Trade Representative does.

4.1 Approval by the WTO of use of private practitioners

While the parties in WTO proceedings are Member countries, the WTO has given consideration to the role that private practitioners may play, representing a party in those proceedings.

The WTO decision, *EC — Regime for the Importation, Sale and Distribution of Bananas AB-1997-3,* handed down on 9 September 1997 gives support to the use of private practitioners in proceedings. Saint Lucia sought permission to allow non-governmental employees to participate in the Appellate Body's oral hearing. The Appellate Body held:

> *"we can find nothing in the Marrakesh Agreement Establishing the World Trade Organization (the "WTO Agreement"), the DSU or the Working Procedures, nor in customary international law or the prevailing practice of international tribunals, which prevents a WTO Member from determining the composition of its delegation in Appellate Body proceedings. Allow the participation of two legal counsel, who are not government employees of Saint Lucia, in the oral hearing of the Appellate Body in this appeal".*

The Appellate Body also noted that in WTO dispute settlement proceedings, many governments seek and obtain extensive assistance from private counsel, who are not employees of the governments concerned, in advising on legal issues; preparing written submissions to panels as well as to the Appellate Body; preparing written responses to questions from Panels and from other parties as well as from the Appellate Body; and other preparatory work relating to Panel and Appellate Body proceedings.

Likewise in *Indonesia — Certain measures affecting the Automobile Industry handed down on 2 July 1998*, the Panel found that it was appropriate to allow non-governmental members of the Indonesian delegation in meetings of the Panel. The Panel emphasised that all members of parties' delegations – whether or not they were government employees – were present as representatives of their governments, and as such were subject to the provisions of the DSU and of the standard working procedures.

4.2 Use of private practitioners by the EU

The developing countries and the EU have made extensive use of private practitioners. For example a number of law firms in the EU are developing WTO and trade practices to meet increasing demand from clients (both governmental and non-governmental) for a high-quality trade advisory service. These firms have undertaken roles such as advising companies on opportunities arising from China's accession to the WTO, advising companies during antidumping investigations in

relation to exports to the EU, advising exporters on new WTO Agreements that impact on certain industries, and involvement in preparing and defending WTO cases.

4.3 Use of private practitioners by the USA

Private practitioners have long held a significant role in international trade matters in the US. As a result, there are many substantial legal practices specialising in this area, ensuring a ready availability to US industry of high calibre trade expertise and advice. Industry works closely with private practitioners and together they take substantially documented cases to USTR for progression to international negotiation.

Private practitioners are involved and kept informed of trade developments and dispute resolution processes by their inclusion on consultative committees with USTR.

USTR, while having internal resources that are substantially greater than the Australian Federal Government is able to provide for trade dispute settlement, increases its resources enormously by its co-operative working relationship with private practitioners. The relationship is a win-win one for US industry, government and private practitioners as evidenced by the strength of US representation in WTO matters and their extraordinary success in that forum.

4.4 Use of private practitioners by Canada

Canada also has adopted a policy of increasing its resources base by encouraging industry to utilise private practitioners and by engaging in substantial outsourcing of WTO case development to private practitioners.

4.5 Potential for use of private practitioners by Australia

The approach we advocate is a three way partnering between industry, private practitioners and Government to provide Australia with a significantly strengthened ability to represent and defend its industries. In order to increase the resources base for Australian involvement in WTO negotiations and disputes, DFAT should focus on partnering with Australian industry sectors and private practitioners to assist in building that expertise.

As the subjects of international law are countries and the parties before the WTO are countries represented by their governments, it is inherent in the WTO system that much of the information on day to day developments, such as cases pending, cases threatened, procedural issues and preferred practices, is held by the Federal Government. Similarly as the key role in ongoing forward trade agenda negotiations is performed by the Federal Government, the Federal Government has access to information and knowledge not accessible by non-government entities. Australia needs to develop a partnership between industry, private practitioners and Government and reap the benefits of such a partnership, as has been demonstrated by the successful partnership between industry, private practitioners and Government in the US, EU and Canada. One element of such a partnership is a reliable mechanism to ensure that Australia's private practitioners are able to access the information they need to enable them to develop the level of expertise available to industries in other countries.

A key to ensuring the effectiveness of this partnering will be the ability for both industry and their private practitioners to access documentation, government representatives and professionals in order to prepare complaints and defences. These access issues are set out below in more detail.

(a) ***Documents***

At present there is little understanding among industry and the community generally of the breadth and nature of claims that might be brought to the WTO.

Publication of documents including preliminary agreements between Australia and other nations on treaties, submissions to the WTO, analysis of the success or failure of submissions, and reasons for decisions on import restrictions will serve to educate the community and illustrate active steps which industry can undertake to increase its participation in developing Australia's negotiating position on WTO issues.

Publication of preliminary agreements or protocols between Australia and other nations on treaties, such as the Australia-China Bilateral WTO Access Agreement, on the DFAT website will give industry the opportunity to make meaningful comment on issues affecting them arising out of any such treaties.

Publication of submissions to the WTO soon after they are delivered, will assist to clarify for industry the WTO panel process and will increase understanding of the legal issues that disputing countries seek to clarify through resort to the dispute settlement system. Moreover, the public will have an opportunity to closely follow disputes that concern them directly.

Publications of this type are commonplace in other countries such as the US.

(b) ***Government representatives***

Officers of DFAT dealing with WTO issues are a key resource for industry, private practitioners and the community. Their knowledge provides a vital source of information which industry and private practitioners must be able to access if they are to take a more active role in seeking access to markets and preparing for disputes.

Corrs advocates greater contact between DFAT officers, industry, private practitioners and the community, on a regular basis. This might include:

- publishing of up to date lists of contacts within the appropriate DFAT divisions;
- publishing of notes on recent developments and information in relation to pending WTO cases;
- facilitating informal opportunities for private practitioners and DFAT officers to discuss international trade law issues; and
- establishment of a formal consultative body which as part of its function might run a program of regular briefings on current WTO disputes for private practitioners and industry.

(c) ***Professionals***

Industry can be frustrated by the detailed nature of submissions which need to be compiled to successfully conduct WTO disputes and IRA's. Access to appropriately accredited scientists, lawyers and trade experts should be made easier to encourage the efficiency and ease with which such submissions can be prepared and proceed.

4.6 Conclusions

We believe there is an opportunity for Australia to be more proactive in using the WTO by expanding available resources and expertise. This may be achieved through greater utilisation of private legal practitioners, in partnership with industry and government.

The EU and the US use of private practitioners demonstrates that such a partnership can work extremely effectively. To ensure that the Australian partnership is able to have the same sort of effectiveness as the US and EU models, however, there are issues such as access to documents, Government representatives and other professionals that should be addressed.

5 SUMMARY OF RECOMMENDATIONS

Australia must take a more aggressive approach to its use of the WTO and DSB system to ensure Australian industry benefits from the new trading environment, as industry in other countries is doing.

This can be achieved through the following:

1 Facilitation of a change in culture among Australian industry by increased education and access to resources.

2 Development of a consultative body or bodies between Government departments and agencies, industry interests and private practitioners to develop and implement coordinated international trade law initiatives.

3 The use of private practitioners in partnership with Government and industry to increase Australia's resource base to undertake WTO advocacy.