

The Committee Secretary  
Joint Standing Committee on Treaties  
Parliament House  
Canberra ACT2600

*by email to* [jsct@aph.gov.au](mailto:jsct@aph.gov.au)

23 October, 2000

Dear Sir

**SUBMISSION TO THE INQUIRY INTO AUSTRALIA'S  
RELATIONSHIP WITH THE WORLD TRADE ORGANISATION  
(‘WTO’)**

**I. Terms of Reference**

Although the Committee’s terms of reference does not specifically mention animal welfare, it is RSPCA Australia’s submission that the terms of reference do include consideration of such issues. Development and improvement of animal welfare issues are affected the nature and scope of Australia’s relationship with the WTO and the rulings made by the WTO in relation to GATT.

**II. Summary**

Food products derived from animals differ fundamentally from most other traded goods. The essential element in production is a sentient creature capable of physical pain, suffering and distress.

RSPCA Australia’s concern is that WTO considerations are used all too readily as a reason for resisting broad Australian community desire and consensus to improve animal welfare. It is argued that such improvements run foul of the WTO principle of trade without discrimination. Whilst some improvements can be made without an economic cost, many improvements will be at a cost. Local producers of agricultural animal products will be at an economic disadvantage to the producers of those countries that have less onerous requirements in respect of animal welfare. In response, local producers resist improvement to animal welfare and point to WTO obligations and an inability to compete. RSPCA Australia is not convinced that such concerns are always legitimate or that there is no way the existing provisions of WTO obligations can be used to ensure animal welfare standards are protected or improved.

The WTO can also bring pressure for a reduction in Australia’s animal welfare standards. For instance, a country decides to reduce their own animal welfare obligations which improves the competitiveness of their products as imports into Australia. In turn, because of the absence of any means to protect the Australian producers as a result of WTO obligations, demands will be made by Australian producers to also reduce Australian animal welfare standards.

Whilst the Committee’s Inquiry will cover a myriad of important issues, RSPCA Australia’s strongly urges the Committee to carefully consider the impact the WTO has on animal welfare standards in Australia.

## 1. GATT and Interpretation by the WTO.

**The WTO's interpretation of the General Agreement on Tariffs and Trade ("GATT") can prevent it from imposing import restrictions or granting subsidies to domestic producers including in relation to concerns about animal welfare standards in other countries.**

Article XX of the GATT allows for exceptions to those obligations. Articles XX(b) and (g) provide that:

“Subject to the requirements that such measures are not applied in a manner that would not constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures:

...

(b) necessary to protect human, animal or plant life or health;

...

(g) relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption;”.

In applying the exceptions under Article XX, the WTO has confirmed that it will approach interpretation of these exceptions by analysing whether a particular measure to see whether it would fall within one of the subparagraphs to article XX and then analyse the measure against the introductory clause of Article XX. The relevant decisions of the WTO so far on the scope of article XX have generally related to the issue of whether measures can be taken to protect animals where the measures are classed as those to protect animals as an ‘exhaustible natural resource’.

A recent decision concerning the GATT provisions concerned trade measures taken by the United States of America (USA) to protect sea turtles from incidental capture by shrimp trawlers (*United States—Import Prohibition of Certain Shrimp and Shrimp Products*, WT/DS58/AB/R: ‘the US Shrimp case’). The relevant exception of the GATT in that decision was article XX(g). In the USA Shrimp case the WTO Appellate Body found that certain import restrictions imposed by the US to protect sea turtles were permissible under paragraph (g) of article XX. As a general principle, the Appellate Body emphasised that:

“Paragraphs (a) to (j) [of article XX] comprise measures that are recognised as *exceptions to the substantive obligations* established in the GATT 1994, because the domestic policies embodied in such measures have been recognized as important and legitimate in character. It is not necessary to assume that requiring from exporting countries compliance with, or adoption of, certain policies...prescribed by the importing country, renders a measure *a priori* incapable of justification under Article XX.”

However, the WTO Appellate Body found that the USA measures in the shrimp case did *not* fall within the requirements of the introductory paragraph. This was because the application of the USA measures was “arbitrary or unjustifiable discrimination”. For example, there was evidence that the import restrictions applied even to countries which implemented good measures to protect sea turtles. This was because those countries’ measures were not the same as those used in the USA. Another reason was that the USA had approached some, but not other exporting countries to develop multilateral or bilateral agreements for the protection of sea turtles:

The USA Shrimp case illustrates how the WTO, through the Appellate Body, can affect the operation of a country’s laws, including a country such Australia, by the interpretation given.

It should be accepted that, in principle, Australia’s trade obligations under GATT do not prevent the Australian Government from seeking to protect animal welfare. Such measures would not be

inconsistent with Australia's international trade obligations as long as those measures did not create unjustifiable discrimination between countries or amount to a disguised restraint of international trade. Regrettably, this does not appear to be an accepted principle.

## 2. Recent Developments in Europe

**The European Union (EU) has shown its determination to have animal welfare on the agenda with the WTO.** The position of the European Community (EC) and the impact of WTO on animal welfare issues has been stated by the EC as :

“...there is a growing concern along consumers, producers, as well as welfare organisations, that while the WTO is working to enhance the framework for the liberalisation of international trade, which is the primary purpose of the WTO, the WTO does not provide a framework within which to address animal welfare issues. They particularly fear that in the absence of such a framework, animal welfare standards, notably those concerning farm animal welfare, could be undermined if there is no way of ensuring that agricultural and food products produced to domestic animal welfare standards are not simply replaced by imports produced to lower standards. Different countries have varying cultural and ethical attitudes towards animals, and husbandry practices. The impact of high animal welfare standards on the relative competitiveness of their agriculture may be very different. As a consequence, when a country provides for animal welfare standards that go beyond those applied by other trading partners, this can have a number of effects. Consumers may not be provided with coherent information on the welfare standards to which imported products are produced, and domestic producers may be economically disadvantaged. This is why the EC believes that there is a genuine need to discuss animal welfare in the WTO context. ....The EC considers that this issue must be addressed in the negotiations on agriculture within the framework of Article 20, while not excluding that animal welfare should be considered under other aspects of the WTO. Avoiding trade protectionism: The objective of the EC in raising animal welfare issues in the context of the WTO negotiations is not to provide a basis for the introduction of new types of non-tariff barriers. The European Community has been and is often strongly criticised for referring to animal welfare. The EC is accused of hidden protectionism, and yet the EC no more applies its domestic animal welfare rules to imports from other WTO Members than other WTO Members. Where the EC has openly taken a different stance, is in drawing attention to the need to address the question of animal welfare within the WTO.... In practice, our concerns with animal welfare are most acute in relation to highly-intensive and industrialised production methods for certain species, in particular poultry and pigs. This type of production is most often found in developed rather than developing and least developed countries. Several ways of addressing the issue in the WTO framework: The issue of animal welfare is a complex issue, which is at the crossroads of economic, ethical, animal health, public health, food production and legal issues. It is evident that the importance attached to animal welfare varies amongst WTO members. Nevertheless, the fact that animal welfare is an emerging trade issue has been recently acknowledged by the OECD, and the international conventions already in place and ongoing work within the *Organisation des Epizooties* confirm this. We fully recognise the complexity of this issue, and the fact that each WTO member has the right to choose its own animals welfare measures adapted to their own circumstances. Nevertheless, the impact of trade liberalisation on animal welfare, in particular the welfare of farm animals and the transport of live animals, cannot be denied. WTO members should not hamper trade in agriculture and food products because of animal welfare. But equally, it is important to secure the right of those WTO members that apply high animal welfare standards to maintain them. The existing WTO Agreements (Agreement on the application of Sanitary and Phytosanitary measures, the Agreement on Technical Barriers to Trade, and Article XX of GATT, as well as Article 20 of the Agreement on Agriculture) already provide a basis on which some of the issues related to animal welfare can be discussed. However, we are of the view that animal welfare should be globally addressed in a consistent manner within the

WTO. The debate in recent times has shown very clearly the need to establish common ground and understanding on this important issue. That is why the EC wishes to raise animal welfare as an important non-trade concern in the current negotiations.” (Source: WTO Committee on Agriculture Special Session G/AG/NG/W/19 28 June 2000. A copy of this document is enclosed. It is also available at [http://www.wto.org/english/tratop\\_e/agric\\_e/ngw19\\_e.doc](http://www.wto.org/english/tratop_e/agric_e/ngw19_e.doc).)

### ***The Australian Government Response to the EC***

**The Australian Government, appears to have rejected any suggestion that the WTO should set animal welfare standards.** The Minutes of the National Consultative Committee on Animal Welfare (NCCAW) for the meeting of 11 and 12 April 200 at Agenda item 7 record that Mr Dennis Gebbie of Agriculture, Fisheries and Forestry - Australia (AFFA) advised that:

“...the EU is intent on putting animal welfare on the agenda for the upcoming WTO round. He explained that in the view of Australia and New Zealand, the WTO rules do not cover animal welfare and that it is difficult to argue that WTO is the appropriate place for setting animal welfare standards.”

If this is an accurate reflection of the Australian Government’s position then it is a position that RSPCA Australia rejects it. Such a position ignores the point that while the WTO is working to enhance the framework for the liberalisation of international trade, the WTO does not provide a framework within which to address animal welfare issues. In the absence of any such framework there is no way of ensuring that domestic animal welfare standards are not simply replaced by imports produced to lower standards.

### **RSPCA - (United Kingdom) and Eurogroup for Animal Welfare**

Concern about the impact of the WTO on animal welfare has been a concern for the RSPCA UK and Eurogroup for Animal Welfare (‘Eurogroup’) for several years. Two recent joint publications by the RSPCA UK and Eurogroup for Animal Welfare have carefully set out and summarised animal welfare concerns as they relate to the WTO. Those two publications are:

1. “*Conflict or Concord? Animal Welfare and the World Trade Organisation*”; and
2. “*Food for Thought. Farm Animal Welfare and the WTO*”.

Copies of these two documents are enclosed.

RSPCA Australia commends these two documents to the Committee. The first document refers to the conundrum that results where the benefits of trade liberalisation are over-emphasised. RSPCA UK and Eurogroup warn that in such circumstances that the non-trade benefits of such policies may become difficult to realise. If this conundrum is not solved by members of the WTO there will be an increase in animal welfare disputes or censure for the failure of standards to rise. They also warn that if trade liberalisation is allowed to supersede policies to protect people, animals, and the environment, public support for the multilateral trading system may be lost. It refers to article II of the General Agreement on Tariffs and Trade (‘GATT’). GATT which states that “like products” from external sources must be treated the same as domestic goods. This has been interpreted to mean no-product related process and production methods (**PPMs**) (where the process - for example the treatment of animals used in production - is not detectable in the end product) should not be used to distinguish between products. RSPCA UK and Eurogroup point out that if animal welfare measures are to be compatible with WTO rules then new thinking is needed to allow legitimate distinctions to be made on the basis of non-product related PPMs. It then refers to the WTO interpretation of GATT and notes that unless there is a broader interpretation of Article XX (see also discussion below) it is unlikely to provide the solution to animal welfare problems. After noting the limited ability for multilateral agreements to resolve these issues, RSPCA UK and

Eurogroup conclude that the WTO has both a responsibility and an interest in ensuring the application of its rules do not encroach into other legitimate areas of policy making and that the WTO needs to exercise self-discipline, discretion and common sense, and to distinguish between measures taken to secure trade advantage (its primary concern) and trade-related measures taken to secure valid non-trade objectives. The legitimacy of the latter needs to be recognised and accommodated. RSPCA UK and Eurogroup believe it is disingenuous for the WTO to suggest that national governments are free to pursue whatever domestic policies they choose on matters such as those relating to the protection of people, animals and the environment. In practice the WTO, through the narrow application of its rules, is failing to acknowledge the pivotal role of trade in the execution of effective domestic policy measures. A number of recommendations are then made including new political initiative on the relationship between trade liberalisation and measures to protect people, animals and the environment; the involvement of non-governmental organisations to find a solution; a whole rethink on PPMs, review of article XX and the acknowledgement of voluntary labelling rules as compatible with WTO rules and the need for utilisation of mandatory frameworks.

The second document, *“Food for Thought. Farm Animal Welfare and the WTO”*, reiterates the shared concerns of the RSPCA UK and Eurogroup that international trade rules can have a negative impact on domestic animal welfare policies. The document observes that in Europe, several trade-related animal welfare measures have been suspended or reversed due to fears about compatibility with WTO rules. The document sets out the history of how agriculture was only brought within the remit of international trade disciplines after the Uruguay Round and the formation of the WTO. However the Agreement on Agriculture (AoA) reflected, rather than reformed, existing systems of agricultural support. The document describes the steps taken in Europe and the USA to protect their domestic markets, both at considerable cost to the taxpayer, and in the case of Europe, at considerable cost to the consumer.

RSPCA UK and Eurogroup warn that unqualified further reductions in tariffs, together with improved market access pose a potential threat to animal welfare policies. They note that agricultural production does more than simply provide food and other raw materials as it contributes to the viability of rural communities, the environment, biodiversity, landscape, animal welfare, food quality, diet and health. Governments need to be able to encourage, support and maintain non-trade aspects of agricultural production under WTO rules.

RSPCA UK and Eurogroup suggest a number of solutions including that export subsidies be stopped and payments redirected to promote well-managed extensive agriculture; preferred market access for agricultural products of a high animal welfare standard in the form of quotas or preferential tariffs so as to facilitate trade in equivalent products provided these are non-discriminatory and transparent; WTO members could be allowed to introduce border measures to offset extra costs imposed on domestic producers to meet higher animal welfare standards; WTO rules should permit mandatory labelling on the basis of animal welfare; the WTO address the PPM issue and the application of Article XX.

RSPCA UK and Eurogroup conclude that Agricultural production is the largest sector of trade affecting animal welfare, and animal welfare is a genuine concern in agriculture to many sectors. It is therefore appropriate that animal welfare should be discussed as a legitimate non-trade concern in the context of future WTO negotiations on agriculture. Improving animal welfare and increasing trade are not incompatible. There are many solutions including measures that could benefit developing countries. Animal welfare organisations will oppose any attempt to misuse their concerns for trade protectionist purposes. They support the development of an international trading system that will allow consumers and policy makers to make product choices on the basis of animal welfare concerns, while ensuring that nations can maintain and raise their welfare standards without suffering a competitive disadvantage compared to low welfare producers.

**CONCLUSION**

The development and improvement of animal welfare standards within Australia can be clearly be influenced by the nature and scope of Australia's relationship with the WTO. RSPCA Australia urges the Committee to acknowledge this.

It is clear the WTO will consider further agricultural trade liberalization. Improving animal welfare and increasing trade can be compatible objectives. However, it is vital that WTO agreements do not encourage further intensification, prevent nations such as Australia from raising their animal standards or limit the rights of consumers to exercise ethical choices. If such concerns are not adequately addressed, public confidence in the multilateral trading system may be lost and animal welfare may suffer.

Yours sincerely

A handwritten signature in black ink, appearing to read 'H J Wirth', with a stylized flourish at the end.

Dr H J Wirth, AM  
President,  
RSPCA Australia