

Our Ref: 200010848

Mr Andrew Thomson MP
Chairman
Joint Standing Committee on Treaties
Parliament House
Canberra ACT 2600

Dear Mr Thomson

Australia's relationship with the World Trade Organisation (WTO)

Thank you for your correspondence of 20 July 2000 to the Premier seeking Western Australia's contribution to the Inquiry into Australia's relationship with the WTO. I understand a time extension for this submission has been negotiated with the Inquiry secretary.

A Western Australian submission is attached for your consideration. This submission consolidates comments on the operation of the WTO based on the perceptions and experiences of a number of Western Australian Ministers' Offices.

Western Australia would be very interested in being advised of progress with the Inquiry. Further information on this Inquiry could also be directed to Mr Bala Murali, Principal Policy Officer, Federal and Constitutional Affairs Division. Bala can be contacted on 08-9222 9516 or e-mail: bmurali@mpc.wa.gov.au.

Thank you for the opportunity to comment on this matter.

Yours sincerely

Petrice Judge (Mrs)
Assistant Director General
Federal and Constitutional Affairs

September 2000
Att.

AUSTRALIA'S RELATIONSHIP WITH THE WORLD TRADE ORGANISATION (WTO): WESTERN AUSTRALIAN SUBMISSION

Introduction

Western Australia has a strong economy and contributes a disproportionately large share per capita to the national economy. The strengths of the Western Australian economy lie in its resources and agricultural sector and a growing manufacturing and service industry base.

Western Australia, and Australia in general, as a major exporter of agricultural goods, has a lot to benefit from advancing negotiations on agriculture. Australia has to maintain a strong position within the WTO and advance strong arguments on the elimination of exemptions for the agricultural sector. Market distortions in agriculture need to be reduced substantially.

The WTO has touched upon some aspects of fisheries related issues. However, it currently does not provide an adequate international framework for addressing all fisheries related issues, and in particular, those relating to fisheries related subsidies and other non-trade barriers. It would be of significant benefit if the WTO were to support efforts towards resolving these trade issues.

The resources sector has a major interest in the World Trade Organisation (WTO) due to its implications for trade and its impact on the role of Government in assisting major resource projects. The highlights of the contributions of the Western Australian resources sector are as follows:

- 20% of Gross State Product;
- 70% of the State's exports;
- 20% of direct and indirect employment; and
- 50% of the State's new investment.

Western Australia's resources production was \$16.7 billion during 1998/99, equating to around 40% of Australia's total minerals and energy exports. The sector will continue to provide a strong basis for the performance of the State economy with growth forecasts of between 4%-5%. It is therefore important that the interests of Western Australia's resources sector are taken into consideration in determining Australia's relationship with the WTO.

General Comments

Trade Issues

The Western Australian resources sector is world competitive, but faces barriers when it seeks to move into secondary processing due to unfair competition from subsidised operators in other countries. To redress this position and allow the industry to reach its full potential, the issues which need

to be addressed include moves to encourage free trade and the elimination of international trade barriers.

Tariffs on imports of minerals and mineral products by Governments in Asian countries need to be targeted. These tariffs typically escalate with the degree of processing that has occurred. This creates a bias towards the imports of raw materials at the expense of value added products, thereby restricting the export of processed products from Australia and inhibiting our export based manufacturing opportunities.

The use of non-tariff border measures follow a similar pattern, increasing in frequency with the degree of processing. These non-tariff border measures, such as import licence restrictions, foreign exchange controls and import quotas, reinforce the protection provided by the tariff structure against imports of processed commodities.

In Western Australia's November 1999 submission on "Australia's approach to Multilateral Trade Negotiations", it was noted that the minerals and petroleum processing sector faces considerable tariff barriers. Given the opportunities for expansion of this sector, it was noted that it may be worthwhile giving minerals and petroleum processing increased attention in Australia's WTO negotiating strategy.

The elimination of tariffs on processed products is a priority issue. The Commonwealth Government's position to seek the elimination of differentiated tariffs which discriminate against Australian exports of refined petroleum products and minerals is supported. More detail on tariff related issues is attached at *Attachment 1*.

Major Project Assistance

The International Agreement on Subsidies and Countervailing Measures has received a higher profile recently due to recent WTO rulings against the Australian and US Governments. These rulings have effectively eliminated cash grants and similar subsidies to export oriented companies. These decisions have forced a review of the mechanisms used by governments to provide assistance to export oriented projects.

This has had ramifications for the Commonwealth Government's Strategic Investment Coordination Process. For projects of national significance, the expanded process was the Commonwealth response to compensate for taxation reform measures, notably the removal of accelerated depreciation provisions. The current indicative criteria for the process include forms of assistance (eg. Grants and tax relief) that appear to be subsidies as defined by the WTO.

Western Australia has previously expressed concerns to the Commonwealth about the limitations of this assistance. Western Australia is not convinced that investors will see such a selective process as a satisfactory replacement for the broad based incentive and neutrality of accelerated depreciation.

Western Australia is also concerned that the new Commonwealth approach is already being factored into the pre-feasibility studies for projects by potential overseas investors. This may harm the State's efforts to attract international resource processors to Western Australia before the State becomes aware that it is being considered as a potential site for development. The option of locating in Western Australia may be discarded, in favour of locations overseas that offer a more attractive taxation regime for capital investment.

The Western Australian Government is of the view that the best form of assistance that can be provided by Government is world class, competitively priced, multi user infrastructure. This is an approach that has been successful in other countries seeking to attract processing industries, such as Singapore and Trinidad. The recent Western Australian Government decision to support the Burrup Peninsula multi-user infrastructure package with a view to obtaining commitment, initially for Syntroleum's Gas to Liquids project, is a prime example of how Government supports industry development.

Western Australia is pleased with advice from the Commonwealth Department of Foreign Affairs and Trade (DFAT) which indicated that the State's approach to major project assistance is considered WTO compliant. This reinforces the view that the provision of multi-user infrastructure is the preferred mechanism for major project assistance.

The need for communications strategies

There does not appear to be any easy way for a State agency to bring to the attention of the Commonwealth issues that impinge upon actual or potential barriers to trade. There currently appears to be no mechanism for consultation that would allow easy and informal communication of concerns from the State to the Commonwealth level. In Western Australia's view, Australia needs to pressure the WTO to take a more active, interventionist role, instead of merely reacting to international disputes.

The issue of the certification of timber products for sale overseas is something that Australia also needs to bring to the attention of the WTO. A particular form of certification is being demanded by some timber buyers, especially in the United Kingdom. Due to the fact that they belong to a loose trading group that will not accept any other system of certification, Western Australian timber producers are effectively being confronted with a non-tariff barrier to trade.

The situation highlights the demands that some Western Australian timber companies have encountered from buyers in the UK for certification of timber products under the Forest Stewardship Council System (FSC). Thus, if Western Australian timbers were to be certified by the FSC for sale in the UK, it would be the FSC that sets the rules for forest management in Western Australia. The FSC does not acknowledge that Governments have a role in forests management even when the forests are publicly owned.

This is not exclusively a Western Australian, or Australian, problem. It has been discussed at international forums such as the International Forum on Forests (IFF). The IFF has recognised the need for equivalence and mutual recognition between certification systems, but there is currently no international mechanism for this.

The WTO could take a more pro-active role in this matter, accrediting certification systems to resolve this problem.

Relationship between WTO and other multilateral agreements

There is potentially a lack of predictability and legal certainty between the WTO and trade related measures in multilateral environmental agreements (MEAs) such as the Convention on Biological Diversity, the Montreal Protocol on Substances that Deplete the Ozone Layer, and the United Nations Framework Convention on Climate Change. There is a need for urgent international agreement on the WTO and the MEAs, which would focus on their primary competence and the principle of deference. Such an agreement would also include objective criteria to determine the MEAs to which the WTO should defer competence rather than leave clarification to the WTO dispute settlement system.

Trade measures in MEAs are broadly accommodated in the WTO. Despite the way in which WTO jurisprudence is evolving on environmental issues, only 10% of MEAs contain trade-related provisions. As trade measures are part of a carefully balanced package of instruments in MEAs, including technical and financial assistance and capacity building, the WTO should address all of these issues.

In conjunction with the above, there is also a need for clarification of the 'Precautionary Principle' in the WTO in order to ensure that it is not used as a form of protectionism. The principle of precaution should be used to help take decisions and manage risks to protect human health and the environment where there is scientific uncertainty. WTO measures based on this principle need to be proportional, non-discriminatory, cost effective and transparent with an emphasis on scientific risk assessment and science-based decision-making.

Labour standards and outcomes

In recent years, there have been strong public protests opposing free trade in favour of so-called 'fair trade'. There are three primary arguments commonly raised concerning the impact of free trade upon human rights and labour standards:

- Free trade encourages and entrenches poverty in developing nations by facilitating trade based on cost advantages secured at the expense of labour and human rights;

- Free trade creates higher unemployment in developed countries, as established industries are lost to cheaper overseas competition. Lower skilled employees in traditional industries such as manufacturing are said to be particularly affected; and
- Free trade leads to lower wages and reduced living standards in developed countries, as jobs are lost to cheap overseas competition based on poor labour standards and low pay.

These issues are explored in more detail in *Attachment 2*.

Proponents of linking trade to labour standards have provided no conclusive evidence of a negative relationship between human rights and labour standards, and free trade. Research indicates that no significant relationship exists between WTO and other multilateral agreements, and human rights and labour standards. Australia's association with its export and import markets need not therefore be compromised on the basis of arguments that such association encourages inequitable or oppressive domestic conditions in those markets.

Comments addressing the Terms of Reference

- *Opportunities for community involvement in developing Australia's negotiating positions on matters with the WTO*

Australia's obligations under the WTO impact on all Australians, either directly or indirectly. As such, it is important that members of the community and other levels of government have the opportunity to be involved in the development of negotiating positions.

In particular, State and Territory Governments often provide financial assistance to industry. For example, Western Australia has an Industry Incentive Scheme which aims to foster economic development in the State by facilitating major capital investment (which would not otherwise occur due to identified impediments) in new products or services that are substantially import-replacement or export oriented. It is important that such schemes be developed in accordance with Australia's international obligations. Similarly, State Government Policy priorities need to be taken into consideration when determining Australia's negotiating positions.

The Commonwealth Government could be encouraged to disseminate more, better and timely information concerning issues to be negotiated to the community generally and to call for expressions of interest from expert representatives on specific issues.

- *Transparency and accountability of WTO operations and decision making*

Decisions taken in the WTO are generally made by consensus among all members. However, there are occasions where specialist panels within the WTO make decisions that members feel require further justification and

clarification. The transparency and appeal process relating to such unclear decisions by some WTO panels is an issue for all governments and industries.

Public comments should be sought in consultations and hearings.

- *The effectiveness of the WTO's dispute settlement procedures and the ease of access*

Australia would be well advised to take a strong position in reviewing the WTO dispute settlement procedures with the goal to improve efficiency of the overall process. It would be beneficial to shorten the time requirements of the retaliation process and increase transparency.

Ease of access to WTO dispute settlement procedures is not well understood at the regional or State and Territory level. Improved information from Australia's trade negotiators to regional industries on access issues needs to be addressed. The process has the potential to be lengthy and expensive for industries and industry association. Local industries could be given encouragement to fully participate in WTO issues.

- *Australia's capacity to undertake WTO advocacy*

Australia as a member of the Cairns Group has a strong position within the WTO. During the negotiations on Agriculture at the Uruguay Round, the Cairns Group played a critical role as a group of agricultural exporting countries. Nevertheless, informal advocacy is held by the two major trading blocks, the European Union (EU) and NAFTA mainly represented by the US.

The role of the Cairns Group including Australia will continue to be critical to any future successful outcome in negotiations on agriculture. Australia is currently submitting the agricultural negotiation proposals to the WTO Committee on Agriculture on behalf of the Cairns Group.

In the area of agriculture, Australia should continue to make strong representations to the WTO supported by the Cairns Group. Further, Australia could take on a leadership role in strengthening the Cairns Group position in negotiations as a counter to the EU and NAFTA.

- *Involvement of peak bodies, industry groups and external lawyers in conducting WTO disputes*

Generally, dispute settlement procedures need to be started or lodged by the WTO member governments.

In Australia, DFAT has established a WTO Disputes Investigation and Enforcement Mechanism to ensure that exporters' interests are protected and advanced. Under this mechanism, an individual exporter or industry body can formally request that the Government exercises Australia's rights on their behalf in partnership with DFAT and other government departments. The

pursuit of any issues through to WTO dispute settlement consultations and panel process will require the consent of the Commonwealth Minister for Trade.

Industry peak bodies also have the possibility to participate in public hearings conducted by DFAT in order to enforce the Government to take actions under the Dispute Settlement Procedures. Other activities include industry peak bodies, such as the Australian Wheat Board and the Grains Council of Australia, coordinating debates with representatives from the EU and US on Grains Trade Liberalisation under the WTO.

However, the involvement of industry peak bodies as WTO panel experts directly advising or reviewing the panel examinations or findings could be contradictory. Under current rules, both dispute parties have to reach consensus on the panel composition.

Industry bodies and exporters should be actively encouraged to support the activities of the WTO Disputes Investigation and Enforcement Mechanism. Public awareness of these strategies should be raised in the community.

- *The relationship between the WTO and regional economic arrangements*

The relationship between the WTO and regional economic arrangements is a difficult issue for many countries, including Australia and Australian states. The definition of various types and levels of industry support programs as being subsidies deemed questionable or illegal under WTO rules makes it difficult to develop and apply industry support measures in a way that is compliant. This has the effect of inhibiting or undermining industry development policies such as programs to promote regional development, measures to assist strategic industries such as information technology or investment attraction programs generally. The WTO is inequitable in that it favours larger, more highly developed economies, which do not need the support of industry development programs to the same extent as smaller economies and which also tend to use their power and influence to distort WTO rules and rulings to their benefit.

Since the Uruguay Round, there have been a number of regional arrangements that clearly undermined the Agreement on Agriculture and which resulted in increased protectionism and market distortion. Dispute settlement procedures need to be strengthened and rules developed to ensure that regional arrangements cannot be used as an excuse to maintain or introduce trade barriers.

- *The relationship between the WTO agreements and other multilateral agreements, including those on trade and related matters*

Comments have been provided in Page 5 of this submission on the lack of predictability and legal certainty between the WTO and trade related measures in multilateral environmental agreements.

Generally, multilateral trade agreements outside the WTO agreements are permitted. Complaints will need to be lodged by disadvantaged countries to start the process to officially prove non-compliance with WTO rulings. These processes can be long and unwieldy.

Dispute settlement procedures need to be strengthened. The WTO has no other mechanism or procedure in place to ensure that any other bilateral or multilateral agreement complies with WTO rulings and WTO agreements.

- *The extent to which social, cultural and environmental considerations influence WTO priorities and decision making*

During WTO negotiations, members should deal with issues like the environment and rural welfare in ways that do not distort production and trade. As has been previously highlighted, WTO measures need to be proportional, non-discriminatory, cost effective and transparent with an emphasis on scientific risk assessment and science based decision making.

Conclusion

Western Australia has a major interest in the WTO and its operations due to its implications for trade and its impact on the role of governments in the provision of assistance to major projects. Regardless of the sectors of the Western Australian economy that are being considered, it is essential that WTO processes ensure that world markets are open to free trade. The WTO should be encouraged to ensure transparent and fair “rules of the game” for all member countries so that no one country acquires an unfair advantage.

There appears to be limited knowledge in the community of the WTO and its agreements and processes. Information on the WTO needs to be widely disseminated for the benefit of the community and industry. While Western Australia is broadly supportive of the WTO and its contribution to trade and economic development, there are cases that emerge from time to time where ‘blanket’ trade rules do not always act in the interests of Australia or other nations.

It is therefore important that serious consideration is given to Australia’s role and strength within the WTO to ensure that local industry and export initiatives are not compromised.