



Tasmania

**JOINT STANDING COMMITTEE
ON TREATIES**

INQUIRY INTO

**AUSTRALIA'S RELATIONSHIP WITH THE
WORLD TRADE ORGANISATION**

**TASMANIAN GOVERNMENT
SUBMISSION**

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1. Overview

On June 30 2000, the Joint Standing Committee on Treaties (JSCOT) agreed to inquire into Australia's relationship with the World Trade Organisation. The terms of reference for the inquiry commit JSCOT to examine:

- opportunities for community involvement in developing Australia's negotiating positions on matters with the WTO;
- the transparency and accountability of WTO operations and decision making;
- the effectiveness of the WTO's dispute settlement procedures and the ease of access to these procedures;
- Australia's capacity to undertake WTO advocacy;
- the involvement of peak bodies, industry groups and external lawyers in conducting WTO disputes;
- 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 environment, human rights and labour standards; and
- the extent to which social, cultural and environmental considerations influence WTO priorities and decision making.

The following outlines the Tasmanian Government's views on issues raised by the inquiry.

2. General

The Tasmanian Government supports the World Trade Organisation's (WTO) objective of reducing trade barriers as a means of enabling the State to maximise trade opportunities and generate new and sustainable jobs for Tasmanians.

It recognises at the same time that the potential effects of WTO policies can be wide reaching with regard to industries that are at the centre of Tasmania's economy. It is therefore important that the State has an appropriate vehicle by which to voice its concerns over major trade issues.

The Government considers that the development policy with regard to the WTO should be as transparent and publicly accessible as possible. The wide dissemination of information about both the WTO and the Australian government's position in negotiations will help to build and understanding of the Organisation and confidence

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in its decisions. This should be encouraged by:

- ensuring that, where appropriate, WTO Agreements, decisions, negotiations and discussions are widely accessible and in a plain language form which is readily understandable by the community
- ensuring widespread and meaningful stakeholder consultations on Australian positions to the WTO
- ensuring that issues raised in the WTO are fully integrated into the 1996 procedures for treaty making agreed by the Commonwealth and States
- ensuring appropriate consultative mechanisms for Commonwealth-State consultations on WTO matters

The Tasmanian Government also seeks to ensure that the WTO rules are applied in a way which recognises and acknowledges unique regional characteristics and circumstances and the particular requirements of individual jurisdictions, for example, specific quarantine regulations.

Australia has in many ways led the way in promoting and adopting free trade principles; the results of this stance may well often be premature relative to other countries. Whilst this principle is not in dispute, the practical applications have, at times, been detrimental to Australia's trading position. Australia often appears to be an early adopter, possibly without concomitant liberalisation from other WTO members.

3. Impact of WTO on State Activities

The WTO was established in 1994 following the Uruguay round of trade negotiations under the General Agreement on Tariffs and Trade. It constitutes the major trade body to which Australia belongs. Agreements under the WTO cover trade in agricultural products, trade related investment measures, and services and intellectual property. Agreements established under the WTO include:

- the revised General Agreement on Tariffs and Trade 1994;
- the General Agreement on Trade in Services (GATS);
- the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS); and the
- the Agreement on Trade-Related Aspects of Investment Measures (TRIMS)
- the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement)

In addition, it is noted that agreements and related instruments arising from decisions and ongoing negotiations within the WTO (for example through its dispute settlement mechanisms) create their own legal rights and obligations with the potential for significant ongoing impacts.

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Many industry sectors in Tasmania are directly affected by WTO policy developed as a result of these Agreements. For example, product dumping has historically had potentially large impacts for wood and paper products markets, while new policies on eco-labelling of products have possible consequences for a wide range of Tasmanian exports. The recent dispute with Canada on salmon imports had potentially significant impacts on the disease-free status of the State.

The Tasmanian agricultural industry exports most of its produce interstate and overseas, accounting for approximately one quarter of the value of Tasmania's total overseas exports. Market access for Tasmanian produce is currently constrained by tariffs, quotas and subsidies to farmers in other countries and by other trade barriers. The reduction of such barriers would enable the value of agricultural production in the State to increase, with positive flow on benefits to the rest of the Tasmanian economy.

Given the widespread effect of WTO policies and practices, it is important that the State has appropriate vehicles to express its views on major trade issues.

With regard to particular matters of relevance to the WTO which touch on the sovereignty of States and Territories, the State considers that the Commonwealth should commit to focussed negotiations with a view to determining an agreed national position prior to negotiations commencing.

It is hoped that this inquiry will result in the establishment of enhanced processes for consultations with both States and Territories and the broader community on these matters, particularly with regard to sectoral issues being examined by the Organisation.

4. Consultation Processes

The Tasmanian Government notes that in 1996 the Commonwealth and States and Territories agreed through the Council of Australian Government processes to an open and transparent treaty making process including:

- the tabling of treaties in Parliament for at least 15 sitting days before binding treaty action is taken;
- the preparation of National Interest Analyses (NIAs) for each treaty action;
- the establishment of the Parliamentary Joint Standing Committee on Treaties (JSCOT) with the power to inquire into and report upon matters arising from treaties and related NIAs and any questions relating to a treaty or international instrument referred to it;
- the establishment of the Treaties Council comprising the Prime Minister, Premiers and Chief Ministers; and
- the establishment on the internet of the Australian Treaties Library

These initiatives, together with existing Commonwealth-State consultative forums such as the Standing Committee on Treaties, provides a framework for coordination and consultation between the Commonwealth and States and Territories.

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The Government also notes that the Council of Australian Governments at its meeting in June 1996 adopted a set of Principles and Procedures for Treaty Making which committed the Commonwealth to *inter alia* seek and take into account the views of the States and Territories:

- in formulating Australian negotiating policy; and
- before becoming a party to, or indicating its acceptance of, the treaty or instrument

These consultative processes were to be continued through to and include the stage of implementation.

In this context the Government acknowledges that the Department of Foreign Affairs and Trade has conducted extensive public consultations on Australia's approach to the recent Seattle WTO Ministerial meeting, including through meetings of Trade Ministers.

The Tasmanian Government considers that consultative mechanisms relating to sectoral issues discussed under the WTO should also be subject to detailed consultations with States and Territories, particularly where this may impact on trade access issues, and that there is a need for an agreed Australian position before engaging overseas parties or the WTO in negotiations.

The Tasmanian Government believes that the full application of treaty making procedures to WTO Agreements, including ongoing consultations between Trade Ministers, would provide a means of enhancing consultation on actions and decisions arising from the body.

It considers that the Joint Standing Committee may wish to consider how the treaty making procedures outlined above can be applied to the ongoing decision making arrangements of the WTO.

5. Access to the WTO and States and Territories participation in WTO operations

The Commonwealth has advised Tasmania previously that there is no opportunity for observers to be present at WTO dispute settlement proceedings. This has the potential to create a climate of distrust. Tasmanian representatives travelled to Geneva twice during the Canadian salmon case but on both occasions were not allowed to be present during the formal dispute settlement meetings.

Similarly, the State has been advised that access for interested parties to key papers and information during the dispute settlement processes is subject to agreement by the disputing parties. As State Governments will often have a key interest in the conduct and outcome of WTO disputes, it appears that it should be given right of access to information of sovereign significance to the State.

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In the event of disputes being taken to the WTO involving Australia, the Tasmanian Government considers that States should have the right to understand the basis of the dispute and submit argument in pursuit of reasonable resolution. Practically, disputes at present do not entitle the stakeholder States full access and rights to the process, which clearly means that the counter argument is not necessarily fully understood by all parties.

The Tasmanian Government considers that WTO rules should provide for sub-national governments to have greater access to WTO operations, particularly where they have an interest in the issues under consideration.

6. Community Participation in the Development of Australian Negotiating Positions

In addition to providing appropriate avenues for State and Territory involvement in WTO Agreements, the Government considers that there should be widespread opportunity for community involvement in developing Australia's negotiating position on such matters with the WTO.

Decision making on these matters not only requires broad macro-economic considerations, but also needs operational level knowledge for a well rounded national position to be formed.

Since the States and Territories are not members of WTO it is appropriate that the Commonwealth Government represents their interests there, and indeed determines the appropriate position to be taken through the development of a thorough analysis of the impact on the national interest of any measures or agreements proposed by the WTO. These analyses must be prepared in consultation with the States and Territories and take account of community expectations and responsibilities.

The Tasmanian Government also notes that in the Canadian salmon case, while Tasmanian provided some information to the Commonwealth for consideration by the Dispute Settlement Panel, not all information was put forward.

7. Application of WTO Rules and Agreements

The Tasmanian Government considers that greater attention could usefully be given to ways in which both the Commonwealth and States and Territories satisfy the requirements of WTO Agreements.

With regard to the most recent case involving this State, the Tasmanian Government expressed considerable concern at the process undertaken by the Australian Quarantine Inspection Service to prepare an Import Risk Analysis related to the import of raw salmon products. Through its submission to relevant Inquiries on this matter (cf Tasmanian submission to the Senate References Committee Inquiry into the Importation of Salmon Products into Australia) the Tasmanian government has established that on this occasion AQIS failed to undertake any consultation process to clearly determine the expectations of the community or the Government on an

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appropriate level of protection (ALOP), despite the fact that it used the unilaterally determined ALOP to seek to remove protection measures already in place.

The Tasmanian Government has noted that trade-based considerations (for unrelated products) have in the past had the potential to interfere with science-based quarantine decision making. The Government is of the view that trade based decision making should not take precedence over scientific or environmental decisions with regard to traded commodities.

On this basis the Tasmanian government has sought to ensure that the Commonwealth take a regional approach to quarantine which recognises that the appropriate level of protection for a disease-free State like Tasmania is different from those required for other areas in the nation.

This approach is consistent with WTO Agreements which recognises that different sanitary characteristics in parts of an importing country are able to be recognised and measures adapted to those characteristics. It is not unique in international trade and is not inconsistent with Australia's international legal obligations.

8. Other International Obligations

The Tasmanian Government is mindful of potential conflict between international treaties and considers that the Australian government should clearly state how it considers obligations arising from related treaties and related domestic instruments should be considered.

With regard to the import of salmon, Tasmanian Government approval to import salmon products could well have been in conflict with responsibilities under the Commonwealth Endangered Species Act 1992, the World Heritage Convention and the World Heritage Properties Conservation Act 1992, the Convention on Biological Diversity and the Intergovernmental Agreement on the Environment.

In this respect the Tasmanian Government considers there may be merit in ensuring that the preparation of National Interest Analyses clearly states the extent to which the proposed treaty action is consistent with other international obligations.