



AUSTRALIAN
FOOD AND GROCERY
COUNCIL

AUSTRALIAN FOOD AND GROCERY COUNCIL

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AUSTRALIA'S RELATIONSHIP WITH THE
WORLD TRADE ORGANISATION

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AUSTRALIA'S RELATIONSHIP WITH THE WORLD TRADE ORGANISATION

1 INTRODUCTION

This submission is made by the Australian Food and Grocery Council (AFGC) to the inquiry by the Joint Standing Committee on Treaties ("the Committee") into the nature and scope of Australia's relationship with the World Trade Organisation (WTO).

Consistent with the Terms of Reference to the Inquiry (*Attachment 1*), this submission backgrounds the AFGC and the industry it represents and presents the AFGC's perspective on globalisation and the imperative of global competitiveness, world trade, and the role of the WTO, and the interests of the AFGC in launching a new round of multilateral trade negotiations in the WTO, and addresses the more specific issues the Committee is to examine.

2 THE AUSTRALIAN FOOD & GROCERY COUNCIL AND THE INDUSTRY

- The Australian Food and Grocery Council (AFGC) is the peak national representative organisation for the Australian food, drink and grocery products industry ("the industry"). Membership comprises some 185 companies, subsidiaries and associates, representing approximately 85% of the industry's annual gross value. (*Attachment 2*)
- The AFGC aims to promote a domestic business environment conducive to international competitiveness, strong and sustained investment, innovation, business growth and profitability, complemented by greater export market opportunities.
- The AFGC acts as a cohesive and credible voice for the industry, to advance policies and issues relevant to the industry and promote its further growth.
- The food, drink and grocery products industry is the nation's largest manufacturing sector and a substantial contributor to the economic and social welfare of Australians. The industry has an annual turnover in excess of \$58 billion, employs one in five of the manufacturing workforce and represents over 18% of manufacturing output.
- Growth in the food sector's exports have increased markedly over the past decade. Of the total value of all food exports of \$19.9 billion in 1999-2000, two-thirds were processed (\$13 bill.) and over a quarter (\$5.5 bill.) were highly processed consumer pack products (or 40% of all processed food exports). Growth in exports of highly processed foods has also been rapid, increasing by 175%, or at an annual rate of 13.7% in the eight years to 1999-2000, from \$2 billion to \$5.5 billion. This compares favourably with the rate of growth of other elaborately transformed manufactures. Not surprisingly, the industry commands a considerable trade surplus, exporting almost five times what it imports. (*Attachment 3*) Simply, processed foods have increased over the same period from \$5.3 billion to \$7.6 billion and unprocessed from around \$2.7 billion to \$6.7 billion.
- The industry's shift from a net importer to a thriving exporter, through the late 80's into the 90's, signified a realisation that in a mature domestic market, apart from cannibalising existing lines and catering for the shift in consumer demands, the real sources of growth lay offshore.

- The burgeoning food markets in Asia, the Indian Sub-continent, Latin-America, and the Middle East appeal to an industry increasingly under pressure from imports on account of deregulation, tariff reductions and increased global trade in processed products.
- The fortunes of both the processed foods and agricultural sectors are closely linked. The processed food industry sources in excess of 90% of its ingredients from Australian agriculture. And, improving market access for processed foods and beverage products will also provide greater business and market opportunities for Australian agricultural producers.
- Together with its farm sector suppliers, the output of the agri-food industry was, in 1998-99, valued in the order of \$70 billion, accounting for approximately 5.5% of national Gross Domestic Product, 6.9% of national employment and for more than 25% of all Australian merchandise exports.

3 GLOBALISATION AND GLOBAL COMPETITIVENESS

Australia can expect global economic and trade developments to continue to test the competitiveness of Australian industry.

Australia can expect global socio-political developments to continue to test the integrity of public policy and the resolve of governments for a domestic economic and industrial climate conducive to business investment, growth, and profitability, distribution of wealth and social cohesion.

Australia's international businesses are increasingly under pressure to justify Australia as a strategic location for corporate production, often irrespective of whether they are Australian or foreign owned.

Globalisation of the world's economy increasingly exposes any underlying weaknesses, whether business are engaged in exports or not. Comparative advantages will not be sufficient to sustain competitiveness on shore in meeting import competition, and offshore in sustaining or forging new opportunities in export markets.

Australia, as for many other countries, cannot continue to rely on its comparative advantage of raw materials to, in effect, cross-subsidise its competitive strength in their value added industrial transformation to consumer products.

In an increasingly globalised economy, companies' ability to internationalise their operations is as significant as their ability to trade globally. If Australia is not to be sidelined it cannot attempt to forge its position in the global economy bearing the legacy of a commodities-based economy, parts of manufacturing inward looking and domestically focused, and too great a reliance on driving growth in the services sector.

As globalisation deepens, and trade liberalisation continues the differentials in raw commodity prices across the globe will "pan out", increasingly shifting the determinants of competitiveness in processed products to conversion cost efficiency and product differentiation.

Businesses are under continual pressure to further rationalise and restructure to reduce costs, to improve economies of scale, to innovate in product, processes and packaging, striving for international competitiveness in meeting import competition and forging new export markets and cater for the increasingly diverse, complex and customised demands of consumers. Conversion cost-efficiency *vis* plant capacity utilisation, economies of scale, labour productivity, factor input costs, process systems technology, etc continue to challenge Australian companies competitiveness and growth, both on and offshore.

However, a company's drive for a cost efficiency and optimum revenue must be complimented by reforms to the national domestic costs structure and other domestic policy initiatives conducive to sustained development and growth of industries, legitimately exploiting Australia's natural and/or created comparative advantages in the production, preparation and sale of agrifood products.

The Reality of Globalisation

Globalisation – the increasing interdependence of the world's trade and commerce:

- is testament to economic and social benefits to individual countries in exploiting their comparative advantages in the production and trade of goods and services fundamental to their nation's social and economic development and prosperity;
- is increasing at a rapid rate, fuelled by the removal of barriers to the flow of information, capital services and goods, driven by rapid technological advancements in telecommunications and computer technology and particularly the internet, transport, biology and financial services;
- has contributed to an unprecedented improvement in global economic growth and prosperity, increased consumer purchasing power and improved living standards, driving both aggregate and differentiated food demand;
- presents both threats and opportunities for businesses, delivering more open, more prosperous markets, but intensifies competition in domestic and export markets and increases concentration of ownership among both manufacturers and retailers; and
- emphasises global sourcing of goods and services, significantly enhanced through the development of global exchanges as trading hubs of the internet, when coupled with technological advances in transport, biology (*eg.* extended shelf-life *etc*) and smart packaging, in fulfillment.

Changing Consumer Demands

- The growing global middle class of consumers are more sophisticated and discerning, driving innovation and differentiation of products and services.
- Product and service differentiation is the dominant feature of the fast moving consumer goods market globally – increased trade in processed food products has increased to 75% of global agricultural trade this year, from 50% in 1985 and growing at twice the rate of primary product trade.

- Consumer demands have transcended a “simple product for a simple need”, to convenience, prompt and efficient fulfilment, products and services that deliver health and nutrition benefits, choice but simple selections, and tailored for their individual requirements and lifestyle expectations and increasingly diverse and complex food consumption habits.
- Competition has also increased for alternative formats, meal solutions and services, which challenge the industry’s share of the wallet.
- Customer value is increasingly defined in terms of customer experience, and brand and price remain key factors in choice.
- In developed countries at least, food safety is a given – it is simply not negotiable in the market – it is the price of market entry.
- In contrast to food safety, determinants of quality transcend the traditional characteristics for organoleptic properties (smell, taste, feel), composition and nutrition to functional characteristics predominantly convenience, but with retention of freshness and naturalness as key characteristics.
- Changing consumer demand is driving extraordinary technical innovation in products, services, production processes, packaging technology and foods to meet the dynamic market.

A Changing Industry in Response

- Increased trade, rationalisation and consolidation of businesses, increased concentration of ownership among both manufacturers and retailers, intensified competition and a dynamic and increasingly complex market are features of the industry across the globe.
- Globally active companies are restructuring and extending their operations on global lines. Both international manufacturers and retailers are siting their operations globally to gain maximum strategic advantage. It is a product of:
 - increased trade liberalisation – the removal of global subsidies and protection that are distortions to production and trade; and
 - new opportunities for globally active consumer goods manufacturers.
 - corporate production processes increasingly integrated worldwide, developing strong interdependent linkages up and down the food production chain in the form of own facilities, strategic alliances and joint ventures;
 - changes in investment component sourcing such that elaborately transformed or complex products are increasingly a composite of knowledge, processes and manufactures from a range of countries; and
 - increased foreign direct investment — foreign affiliate sales worldwide of processed food and beverage products were estimated to exceed exports of those products by a ratio of 5 to 1 by the turn of the century (2000). In the US alone, in the mid-1990s, sales of foreign affiliates of US companies were four times the value of US exports of processed foods.

- International manufacturers' focus is increasingly on developing a smaller range of stronger, global brands than expanding brand portfolios.
- Mass customisation is increasingly a feature of operations as companies seek to differentiate products and services to cater for shifting emphasis in consumer values with increased purchasing power.
- Industry is faced with the inherent contradiction of meeting the demands of a more discerning and sophisticated consumer for increasingly customised products and services and the business imperatives for rationalisation of costs through economies of scale, the environment dictates for improved waste management, and a society increasingly challenging both the scientific and social integrity of technologies used in the production of consumer goods.
- Concentration in the retail sector has increased globally. Recent mergers between Carrefours and Promodes, Walmart and Asda have strengthened their position as the two largest global retailers. Walmart dominates the retail sector with an estimated annual turnover in excess of US\$150 billion, twice that of its next rival. Other retailers are also expanding the reach of their businesses to the point where the top 11 global mega-retailers are operating in at least 9 and up to 26 countries. Aldi, another top 5 global retailer, has embarked upon an entry strategy to the Australian market.
- Retailers' capacity to source globally and supply locally is significantly enhanced with the electronic trading hubs established on the internet. Prominent among new retail e-markets are the World Wide Retail Exchange, the Global Net Xchange and Walmart's e-market.
- Manufacturers are similarly strategically positioning to increase capacity for global procurement and supply chain efficiency and potentially some degree of control over the customer/consumer intersection in improving collaborative planning, forecasting and replenishment.

Changing Society

- Global society is increasingly complex, often inherently contradictory in its aspirations and needs, and more inquiring and demanding of a pivotal role in determining public policy. This is particularly so in regard to the social, ethical health and environmental consequences of biological and information technologies.
- The industry is, as are governments and institutions around the world, being challenged by a global society questioning technological advancements and increasing globalisation which are the very foundation to their improved affluence. Economic prosperity breeds social awareness, and in turn, a community more inquiring and more demanding of a pivotal role in determining public policy.
- The truly serious over-arching policy problems for growing global affluent middle class societies have become cultural, ethical and therefore political. Indeed, the intellectual debates about the direct economic benefits of globalisation and trade liberalisation have long been settled. The debate now is more focused on the social, ethical and environmental consequences of those trade and economic policies.

Government's Response

- Governments around the world face the conundrum of meeting the political imperatives of satisfying consumer interests and community concerns cognisant of their limitations [government's] in remedying market failure and of the consequences of inappropriate, if not illegitimate policies on economic growth, prosperity and social welfare.
- A sound policy platform demands an understanding of the complementarity between trade, economic, environment and social policies, the fallacies of conflicts and where it is inappropriate, if not ineffective, for the policies of one to deliver against the objectives of the other.
- The key to sound economic and trade policy is to ensure the intersection of trade and social policies preserves the integrity of both, maintaining the legitimate right, and protection, of nations to exploit their comparative advantage in international trade and their sovereignty over security, the protection of health and safety and the environment.

Those who seek to influence public policy and to shape the institutions responsible for its governance, would, in serving the national interest, do well to reflect on:

- any concept that self-sufficiency will deliver global food security is fundamentally flawed;
- protectionism restricting trade and investment, impedes economic growth, consumer purchasing power and food distribution;
- trade liberalisation's contribution to increasing globalisation and in turn, contribution to economic growth, consumer prosperity and improved living standards;
- trade, economic and social policies should compliment not compromise the integrity of the other – few argue that good trade and economic policy is good social policy, even if not exclusively so; and
- globalisation and trade liberalisation underscore the primacy of national responsibility in determining domestic economic, industrial and social policies conducive to the efficient and sustainable development of globally competitive industries and food security through self-reliance.

4 WORLD TRADE AND THE WTO

- There remains a strong imperative for continued reform of international trade.
- The AFGC supports the WTO trading system. Global liberalisation of trade improves global welfare and business benefits both for Australia and world-wide. The trading system, which is supported by the WTO, is not only instrumental in reducing levels of poverty and increasing standards of living, but also fostering business expansion and exports and through this, increased levels of employment.

- The AFGC considers there is considerable scope for further increased exports and expansion of business through the workings of the WTO. Global reduction of protection, through removal of barriers to market access to imports of processed food and beverages, elimination of domestic support and elimination of export subsidies will provide opportunities for further export and business expansion.
- Trade reform specific to processed food and beverage products has so far been inadequate. It did not feature prominently on the Uruguay round agenda, despite the focus of that Round on agriculture. The Uruguay Round began the process of removing impediments to global trade and investment in agricultural products. However, no progress was made with regard to the specific issue of removing barriers to trade in processed food and beverages.
- The failure of the WTO Ministerial Conference in Seattle to launch a further comprehensive round of multilateral trade negotiations means that global efforts to reduce global trade barriers has stalled. However, the AFGC considers the impetus for reform has not suffered irretrievably and the AFGC remains committed to further international trade reform.
- The food and beverage industry today faces high tariffs, tariff barriers which escalate as the level of processing of a product increases, non-tariff barriers to market access and subsidisation of other exporters and domestic producers in foreign markets. The industry also faces differing regulatory standards and costly regulatory impediments.
- Without trade reform the Australian industry will continue to bear the legacy of ongoing high and escalating tariffs and increased pressure on manufacturers to bear increased costs of protection. It will experience little change in trade growth of processed products. This is despite the fact that processed foods' share of world trade has risen rapidly in recent years.
- The global removal of barriers to trade, protection and subsidisation of processed foods is the single most achievable result from a new round of negotiations and would have the greatest immediate benefit to the agri-food sector, if not the Australian economy. The knock-on effect to Australian agricultural producers and to rural and regional development is substantial and profound.
- Lack of market access and subsidised competition, is a major constraint to export growth for Australia's largest manufacturing industry, restricting investment, access to critical sources of new growth and profitability. There is a direct correlation between high trade barriers and a low level of business.
- This is notwithstanding that, as evidenced in the significant increase in highly processed product exports over the past decade, and more recently export diversification from "affected" Asian markets, Australian companies have demonstrated their capacity to trade over many barriers. However, it is very inefficient, costly to exporters, distorts trade flows and resource allocation and constrains Australia's capacity to convert its comparative advantages in agri-food production into competitive strengths in the global market for value-added, differentiated food products.

- The AFGC attended the Seattle meeting as part of the Australian Official Delegation and as a member of the International Policy Council on Agriculture, Food and Trade, with the specific objectives:
 - the launch of a comprehensive round of multilateral trade negotiations covering all areas of trade [agriculture, services and industrials] with no exemptions;
 - the focus of a new round to be on market access and reduced subsidisation, without the complication of addressing so-called emerging issues, at least in any real or tangible sense - competition policy (too complex); labour (inappropriate for the WTO); environment (difficult and strongly opposed by developing countries); and investment (highly political);
 - within the negotiating mandate (the Ministerial Declaration), there be specific reference to processed foods and provision for a separate negotiating modality within the agriculture agreement – reference to tariff peaks (high tariffs) and tariff escalation (increasing tariffs with processing) in the Declaration;
 - that non-trade concerns, *vis a vis* “multifunctionality”, do not become the fourth pillar to export subsidies, market access and domestic support of the Agriculture Negotiations in an attempt to justify continued support and protection, but be addressed in the “green box” provision for non-trade distorting domestic support; and
 - biotechnology not be ascribed any special consideration that could provide for trade discrimination on the grounds of process and production methods, ie. discriminating trade in “like” products because of how they were produced; or risk opening the Sanitary and Phyto Sanitary Agreement (SPS).
- The AFGC does not consider that there is a new climate in global agriculture trade because of the Seattle outcome. Seattle was the manifestation of the climate that already exists and it is a political climate. The intellectual debate or socio-economic case for trade reform has largely been won, the debate is now far more political. And the political impetus for further reform is not strong. The reform-weary characteristics of the community are not confined to the Australian populous. It is a global phenomenon, particularly in developed economies, who can arguably afford to be reform-weary.
- Few in the developed economies appeared to appreciate the increasing significance and strategic importance of the developing countries. The G77 group came to Seattle with arguably an overly ambitious agenda in attempting to correct what they regard as profound inequities of the Uruguay Round Agreement on Agriculture.
- The United States interventions on trade and labour and the environment were regarded at the Seattle Ministerial meeting as poorly disguised attempts to discriminate against developing countries low cost labour advantages and/or to impose extraordinary costs on those countries in attempting to comply with environmental standards of developed economies. There also appeared to be little appreciation of the significance of providing technical assistance to developing countries in developing standards and conformance procedures in complying with

the stipulations of the Sanitary and Phyto Sanitary and Technical Barriers to Trade Agreements of the WTO.

- AFGC recognises that Australia played a leading role in the GATT/WTO in efforts to reduce protection of world trade in food products through its leadership of the Cairns Group. Australia should continue to use its influence in WTO affairs to achieve the global removal of barriers to processed foods and to achieve further liberalisation in agriculture.
- The AFGC therefore, strongly supports the Federal Government's attempts to create or take advantage of any political opportunity or impetus to the cause of international trade reform, including increased focus on regional and bilateral negotiations provided that is not exclusive of multilateral trade reform, but indeed, provides leverage to the overall cause.

5 APPROACH TO A NEW MULTILATERAL ROUND OF TRADE NEGOTIATIONS

- The failure to launch a new trade round at Seattle in 1999 is considered by AFGC as a major set back, albeit not irretrievable, for further liberalisation of trade in food. Given that the WTO Agriculture Agreement expires this year, it is entirely conceivable that global levels of protection of world trade in agriculture will increase.
- The rules of the WTO will offer no protection for exporters from Australia against use of subsidies by competitors in this environment. It is therefore of critical importance that multilateral negotiations to reduce protection in world trade in food are made part of a global endeavour to reduce trade barriers under WTO auspices and that members of the WTO agree as soon as possible on new global rules to restrain unfettered subsidised competition in global markets.
- The AFGC urges that Australia, as head of the Cairns Group, continues to use its leadership and exert all possible pressure along with other agricultural exporters, for recommencement of a new trade round.
- It is essential to the interests of Australian manufacturing and food producers that the WTO, for the first time, also concentrates on removal of barriers to world trade in processed food.
- The AFGC urges that the leading global trade priority of the Australian Government should be to secure the launching of a new Round of global trade negotiations. The coverage of that Round should be comprehensive and that it should aim for a result where all areas of trade face low or zero trade barriers. Producers of all products in all countries in the WTO should abide by the principles of a rules based global system of trade administered by the WTO which aims to promote the benefits of the market.

The AFGC proposes the following trade reform objectives for Australia in WTO negotiations:

1. Remove all tariff barriers to trade in processed foods and beverages:
 - cut tariffs in processed foods to zero within five years;
 - prevent non-tariff measures (NTMs) replacing tariff barriers; and

- eliminate tariff rate quotas by replacing quotas with tariff reduction formulae.
2. Reduce protection and subsidisation of all agricultural commodities.
 - reduce all tariffs on other agricultural commodities (non-processed foods) to zero within 10 years;
 - eliminate tariff rate quotas introduced in the Uruguay Round to provide limited market access, by replacing quotas with tariff reduction formulae;
 - permit only subsidies (domestic support) which are currently allowed under the WTO Agreement on Subsidies and Countervailing Measures;
 - eliminate and avoid special measures (the Special Safeguards clause, the Peace clause and the concept of “multifunctionality”); and
 - eliminate all export subsidies within 10 years.
 3. Prevent new restrictions being imposed on trade in processed foods.
 - oppose additional exemptions from GATT rules to allow trade restrictions for environmental reasons or to reconcile legitimate consumer concerns, other than health and safety.
 4. Ensure market-based rules govern any regulation.
 - non-tariff regulatory barriers reduced or eliminated;
 - respects scientifically substantiated standards and conformance procedures;
 - oppose provisions that would sanction trade discrimination on the grounds of production-related processes; and
 - ensure technical standards and labelling regulations do not substitute for market-based systems where they would be more appropriate.
 5. Prevent the general extension of rules governing geographical indicators in intellectual property rules to food products;
 - do not concede the use of geographical indicators as a ruse to protectionism.
 6. Reduce preference for developing countries in fulfilling WTO obligations, but with regard to their value in any strategic alliance for further reform.
 7. Override preferential access in regional trade agreements which discriminate against Australian processed food exporters.
 8. Ensure the integrity and focus of the WTO system is maintained.
 - ensure the WTO remains focused on market-based regulation and resists compromising of the underlying principle of comparative advantage and non-discrimination by contemplating issues such as labour rights, consumer protection and/or environmental objectives.
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9. Ensure new or emerging issues (the relationship between trade, competition, and investment policy) are focused on market efficiency.

6 APPROACHES TO SPECIFIC ISSUES

6.1 *Community involvement in developing Australia's negotiating positions*

- Whilst the trade reform imperative remains strong, so too does reconciling legitimate concerns of the community and the needs and interests of consumers within the trade rules framework and the market.
- As indicated in the earlier globalisation section of this submission, society is inherently contradictory in its aspirations and needs and more demanding of a pivotal role in determining public policy. Some are concerned about globalisation, trade liberalisation, the loss of national sovereignty and the “corporatisation” of trade and commerce. But Governments are also cognisant of their limitations in remedying market failure and of the consequences of inappropriate policies on economic growth, prosperity and social welfare. The conundrum facing governments and public policy makers around the world in “solving this equation” is arguably no better exemplified in the irony that parts of global society are increasingly questioning technological advancements and the integration of the world’s economy, (globalisation) which are the very foundation to their significantly improved economic and social welfare.
- Non trade considerations already figure prominently in the GATT Accord. The Accord provides for “exceptions” where signatories to the Accord may override their general obligations i.e. trade restrictions that are inconsistent with the central tenet of the GATT for key domestic policy considerations or objectives, provided those measures employed are at a level considered appropriate and can be scientifically and/or substantially justified as in the national security, for the protection of health and safety and or the environment, and that the measures apply equally to imported and domestic products/trade.
- Consumer interests and community concerns are often confused within the context of international trade reform and/or the consideration of trade sanctions as a means of enforcing the moral, social, ethical and/or religious dictates of one country upon others under the guise of trade concerns, but are invariably either non trade concerns or a ruse for neo-classical protectionism.
- The AFGC considers that it is wholly appropriate for Government to consult with the community about negotiating positions towards the WTO. Actions taken by the Government can have a serious impact on the Australian community.
- The mere assertion by a community group of a right to be consulted should not confer an obligation on the Government to extend that right. Community groups should be obliged to demonstrate how their interests relate to the business of the WTO before the right to be consulted is granted. Indeed, the AFGC considers that non-government organisations (NGOs) who claim to be representative of “civil society” or a particular section of it, (including business and industry organisations), should be required by government to satisfy accreditation criteria, particularly demonstrating a *bona fides* and mandate to represent a particular sector of the community. This could be comparable to the accreditation processes adopted by *Codex*

Alimentarius Commission.

- The importance of the WTO to Australia is not widely enough appreciated throughout the community, more particularly by those seeking to influence public policy. There is, however, at least some appreciation of its importance among those seeking to misuse or abuse the demonstrated capacity of the WTO as one of, if not the only, international institution capable of establishing and enforcing a rules based trading system among its signatory members.
- The AFGC considers regulation in an open trading system should be founded in market failure, whereas others seek to restrict the market through regulation to achieve desired social outcomes – the legacy of which is that those countries not a party to the decision making process or unwilling to accept its regulatory outcome are nevertheless subject to it.
- Trade policy should not provide for trade coercion in the form of sanctions that seek to impose one country's moral, social or ethical standard on others – this is a form of social policy extra-territoriality that the AFGC fundamentally rejects.
- The activity of the WTO is closely related to globalisation and the increasing importance of technology. These bring great benefits to Australia, more so than for most other countries. Those with an interest in promoting trade reform, including Government, industry and consumers, should play a more active role across the country explaining the functions of the WTO and the importance of it to Australia. If it promoted a bigger program of consultation about WTO issues around Australia, it could use this process to deepen appreciation in the community of the importance of the WTO. The AFGC recognises the Federal Government's efforts in this respect.

6.2 The transparency and accountability of WTO operation and decision-making

- The AFGC considers it important that more people see how the WTO works and the benefits it brings. It supports the general efforts by the WTO to make its proceedings more transparent.
- The AFGC does not, however, agree with contentions that all WTO proceedings should be open or that community groups and NGOs should have a right to participate in the proceedings of the WTO. Some of the processes of the WTO require negotiation of matters of great national importance. No negotiation on any important subject can be unequivocally open process if it is to succeed. Community groups whose interests are affected have a right to put their interest to Government at critical moments in the process. These include when negotiating positions are being established and before final deals are signed off.
- It should not be forgotten that the business of the WTO is to reduce government imposed barriers and to enter legal and contractual obligations with other governments to manage and reduce those barriers. The primary accountability of members of the WTO is to other members. There is no scope for accountability within the forums of the WTO between governments and community groups. The only basis for accountability with community groups is within national jurisdictions. As noted above, Governments do have an obligation to be accountable to community groups when preparing positions for discussion in the WTO, when the community group has demonstrated that activities within the WTO are relevant to its interests.

6.3 *Effectiveness of the WTO disputes procedures*

- One of the most important results of the Uruguay Round was to alter the WTO Dispute Settlement system. The agreement changed the basis for accepting Dispute panel findings from one of “consensus to adopt” to “consensus to reject”. It removed the power of veto of any one country on a panel finding and laid the foundations for the establishment by “case law” the substance to rules governing international trade. The process of arbitration over disputes is now virtually compulsory.
- The disputes system plays a vital role in the WTO. It is the principle instrument for securing enforcement by members of their obligations under WTO Agreements, and thereby ensures that members of the WTO are able to draw benefits from the world trading system on the basis of their comparative advantage and competitiveness, not the size of their economies.
- The significance of the changes to the Dispute Settlement system and consequently to the integrity of the rules based trading system, are exemplified by the fact that over the last decade the dispute settlement procedures have played a vastly increased role in the GATT, then the WTO, in resolving trade disputes and in securing access to markets. It is arguable that rulings given in the GATT Disputes System while the Uruguay Round of multilateral trade negotiations was in progress created greater access to markets than the historic Agreement negotiated in that Round to bring trade liberalisation to world food markets. The strengthening of the disputes procedures in the Uruguay Round have consolidated this trend. Since the Marrakesh Agreement in 1994, nearly 75 trade disputes have been settled in the WTO. At time of writing, 17 are active.
- The WTO is a unique international institution in that it has the capacity to establish international trade rules, to enforce compliance among the 137 contracting countries, and it provides the only international forum for the effective resolution of trade disputes. The WTO Agreements provide for three options for signatory countries found to be in breach of trade rules *vis* remedy the restrictive measure, pay compensation to the complainant’s satisfaction or suffer retaliatory trade sanctions without recourse to the WTO.
- Through the disputes system, settlement key features of the WTO have been preserved:
 - it has maintained the central principle in the GATT that trade controls should be based on the physical characteristics of products, and not the processes employed in their production;
 - it has preserved the principle that when restrictions on trade are permitted on technical grounds, such as to preserve quarantine controls, they have to be scientifically based.
- These principles have been under regular challenge in the WTO by those who find adherence to them too onerous or who wish to apply trade restrictions on political grounds. So-called consumer concerns, more often than not built on emotion and differing interpretations of social, moral and other non-trade concerns, are emerging as the foundation to neo-classical protectionism.

- It is manifest in the concepts of “multi-functionality, and “the precautionary principle” which are poorly disguised attempts to legitimise government intervention through trade policy to engineer social outcomes consistent with perceived community expectations and/or political imperatives, with little regard to the adverse consequences of distortionist trade.
- For example, the European Commission’s position on the “precautionary principle” is that it be a political tool to be arbitrarily invoked when the scientific evidence is politically judged to be “insufficient, inconclusive, or uncertain”. It would provide decision makers capacity to make determinations restricting trade on non scientific principles, including socioeconomic matters. This threatens the very integrity of the rules based international trading system and the independence of sovereign national states as voluntary signatories to an international Agreement dependent upon the consensus of those signatories.

6.4 *Australia's capacity to undertake WTO advocacy*

- Since the changes made in the Uruguay Round, effective participation in the WTO disputes system requires members to acquire greater technical and legal capacity. The processes are more legalistic and the established Appellate Body has set new and higher juridicial standards. If members do not raise their capacity to match these standards, their ability to exercise their WTO rights and therefore to forge improved market access through the removal of restrictive barriers, will be impaired.
- Recourse by members to the WTO system is steadily increasing. There appears to be a high degree of correlation between those countries that access the system with knowledge of the system’s capability in reducing restrictive barriers to trade and adequate resources to use it effectively.
- It appears that the United States, the European Union and, to a lesser extent Canada have significantly increased their resources and skills to manage the WTO disputes processes. Unlike these and other important members of the WTO, Australia appears not to have markedly increased its level of expertise or resources utilised to handle WTO issues. This must affect adversely Australia’s capacity to advocate and defend its interests in the WTO system.
- Historic changes in the pattern of Australia's trade are exposing Australia more to trade challenges. Australia's exports of manufactures are expanding steadily, attracting attention in markets where previously they were disregarded. Howe Leather had been receiving export subsidies (which are illegal under the WTO) for a decade. US importers only acted against Howe when it started to make an impact in the US market. The second trend is the adoption of risk assessment to underpin quarantine restrictions and the creation of rights under the WTO for members to contest how quarantine controls are administered. Administration of quarantine controls is now a greater focus of interest for importers.
- The new disputes system and the tighter controls on world trade negotiated in the Uruguay Round, including for example the new Agreement on Subsidies, means that the disputes system creates greater opportunities for members to use it to contest import controls and secure greater access to foreign markets. If Australia does not upgrade its capacity to utilise the disputes processes, it will be less able to advance the interests of exporters and importers.

- The institutional structures and consultation processes within Australia are comparable to those of the three major users of the Dispute Settlement system, at least for the processed food and beverages industry, *vis*:
 - both formal and informal consultative arrangements including a Trade Strategies Group, a Processed Food Market Access Committee, and a Market Access Facilitator;
 - specific initiatives through the Prime Minister's Supermarket to Asia Council, including the production of a *Food Exporters' Guide to Government Services* and programs specific to the needs of small to medium enterprises; and
 - a market access database.
- It is arguable whether Australian industry, and therefore Government, has the same degree of focus on, and thus utilisation of, the existing arrangements both within Australia and subsequently in accessing the WTO system. This is likely a legacy of industry's lack of appreciation of the opportunities and of the system's capabilities and that WTO legal barriers are a greater impediment to trade than illegitimate barriers. There is also an understandable reluctance to invite probable restrictive trade reciprocity with only a possible chance of a successful action. It may also be a legacy of Australia's concentration in agriculture negotiations on eliminating export subsidies and substantially reducing trade distorting domestic support arrangements. Market access reform in agriculture and particularly processed food, has run a poor second. Notwithstanding that the majority of processed foods are covered, as for agricultural raw commodities, under Chapters 1–24 of the Harmonised System of Tariff Classification, processed foods continue to bear a legacy of tariff escalation, tariff peaks and high tariffs compared with industrials. It is also likely a legacy of Australia's perceived resource inadequacy in advocating and defending its interests in the WTO system.
- The AFGC has no view on where to source extra resources to expand its capacity to manage the WTO disputes system. If the Government wishes to use external lawyers for representation, that is up to them. There appears to be no legal or procedural impediments to using private practitioners in the preparation of any case to Panels of the Appellate Body, nor direct involvement in the respective proceedings. The key issue is that the adequacy and expertise of resources should be available to enable Australia to participate effectively in the WTO disputes system.

6.5 Involvement of peak bodies and industry groups

- As stated earlier, community groups including peak bodies need to be an integral part of the process of establishing positions of interest which the Government will pursue in the WTO. Governments should also consult them at critical junctures in the WTO processes.
- Industry groups and businesses whose interests are directly affected by WTO processes should also be used by Governments as information resources. The national interest which the Government will be pursuing through the WTO processes will often be that of a national industry.

- For its part, the Government has an obligation to demonstrate that the processes of consultation do reflect an intention to press national interests identified by industry groups.
- Non governmental bodies, including industry and community groups, should not expect to have a right of direct participation in WTO processes. As noted above, the WTO exists to manage a system of rules through which obligations entered by governments among themselves are monitored, observed and enforced. The only parties with legal rights in this process are Governments. If parties without legal rights, such as non-governmental organisations, were given rights to participate in the system, the balance of rights and obligations, which the rules created, would be eroded.
- Those who contend that direct rights of participation should be extended to non-governmental parties do not understand the legal nature of the WTO. There appears to be a common presumption that the WTO is a deliberative body, like many of the organs of the UN. Deliberation is not the principle activity of the WTO. Its core activities are to negotiate rules to govern trade, to create fora for trade liberalisation where governments negotiate commitments among themselves to liberalise, to administer its agreements and to operate the disputes resolution system.

6.6 The relationship between the WTO and regional economic arrangements

- Maintenance of the integrity of the global trading system created by the WTO is vital to Australia's national interests. For the reasons outlined above, the integrity of the WTO is easily put at risk. Indeed, its very success to date may well undermine its longevity. Few, if any, other international institutions have established a similar track record of capability in that the WTO has established an international consensus for a rules based global trading system with the concomitant power and processes to monitor compliance and ensure enforcement.
- Australia's commitment to the multilateral trade system governed by the WTO should not preclude entry by Australia into regional trade agreements. Regional agreements can and should be seen as arrangements which reinforce and strengthen the multilateral trading system. In certain circumstances, regional agreements can divert trade instead of creating trade. This is not difficult to avoid if governments follow the appropriate policies.

6.7 The relationship between the WTO and other international agreements

- One of the key reasons for the success of the WTO has been because it has concentrated on its core interest - the orderly reduction of global trade barriers to create a rules based system which generated the optimum benefit to members through the creation of a global market.
- Its success has become one of its problems. Those with interests in pursuing other matters have sought to graft their interests onto the WTO framework. As a result, organised labor, particularly in North America, environmental groups and non-governmental organisations have all sought to give the WTO obligations to advance the interests of these groups as conditions for implementing the organisation's trade objectives.

- In the case of labor and environmental interests, the most common device is to seek to add to the provisions of the WTO the right to restrain trade if non-trade interests - protection of the environment or non-observation of labor standards - are not observed. A related device is to seek not to apply the rules of the WTO when other agreements, such as the case with some multilateral environmental agreements, contain provisions to use trade sanctions to enforce environmental provisions.
- These provisions erode the national sovereignty of countries against whom they are employed. No country or group of countries has the right to apply sanctions against others. To do so breaches fundamental UN principles. The UN Rio Earth Summit in 1994 accordingly declared that trade restrictions should not be used to protect the environment. Environmental groups in Western countries and several western governments have basically ignored these declarations.
- Since the Rio Earth Summit their actions appear to reflect a determination to add non-trade obligations to WTO agreements and to create trade provisions in environmental agreements which undermine the integrity of the WTO system. There are now several multilateral environmental agreements which contain trade provisions which are not effective for their purpose and which conflict with WTO provisions.
- There is no case to attach these non-trade interests to the WTO. International fora and organisations exist to advance development of international standards for labor standards and environmental standards. It is a recent innovation in international activity to decide to advance the interests of these organisations through other channels, such as the WTO, instead of through the international bodies which were originally established for that purpose.

6.8 *The extent to which social and cultural interests affect the WTO*

- There is a widespread contention today that the WTO does not reflect non-trade interests, and that this is a failing of the organisation. The WTO has always been subject to non-trade pressures. From the time the GATT was negotiated in 1948, there has been pressure from organised labor in the US to include the right to restrict trade if labor standards were not observed.
- Reassertion of these contentions today is a reflection of wider apprehension about globalisation. As the most visible international organisation associated with globalisation, the WTO has been made a whipping boy. This is a common perception in Europe and parts of the US. In the case of Australia, globalisation has brought Australia considerable benefits and offers Australia very significant opportunities in the future. Business organisations make this case. Governments must also.
- Australia has great benefit to secure from the WTO. A much more vigorous advocacy of the importance to Australia of the WTO by interested parties, including Government, is required.

6.9 *Australia's influence in the WTO*

- Australia has exercised a significant influence in the affairs of the WTO. It has played a role greater than its basic size probably would warrant or command. One reason is a long tradition of activity in international trade in basic commodities. As major exporters in many basic commodities, Australia's voice has commanded weight. It capitalised that long-standing asset with the formation of the Cairns Group of agricultural exporters. This has established for Australia a leading say in the reform of global trade in agriculture.
- Australia's high standing in the WTO has been the result of excellence in participation and very high quality advocacy. The capacity to carry the case of liberalisation has been strongest when the Government itself has clearly supported and advocated domestic trade liberalisation. Any lack of advocacy of the importance in domestic policy to Australia of trade liberalisation or any diminution in the assertion of the importance to Australia of the benefits of globalisation will only serve to undermine the cause of further trade liberalisation and Australia's influence in the WTO.
- Trade in food products remains one of the two leading areas for global reform of trade. As Seattle demonstrated, the WTO cannot move faster than the major players, in particular the EU and the US want it to.
- The result at Seattle probably hurt Australia more than any other country. Seattle offered the prospect of a continuation of global reform in trade in agriculture. That is what has been lost to date. The WTO Agreement on Agriculture expires at the end of 2000 and if prices fall, there is nothing to prevent a return to the subsidy wars of the Eighties. Australia's producers and processors and exporters of food and food products will suffer, as will Australia as a whole.
- The focus on reform of world trade in food also needs to be adjusted. The share of trade in agriculture which now comprises processed food has dramatically increased over the last decade. It now dominates world trade in agricultural products. As noted earlier, this a vital Australian industry. The AFGC has urged the Australian Government to revise the approach to liberalisation of trade in agriculture in the WTO to make removal of barriers to trade in processed food a key objective. But in the lead up to Seattle and at Seattle, the Government was unable to secure agreement to have the focus on reform of trade in food adjusted to reflect this very basic national interest.

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