AUSTRALIAN
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COUNCIL

“The Future of Trade and Environment Policy, and the New Trade Round”

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Mr Chairman, ladies and gentlemen.

Thank you for the invitation to address the Fourth Annual Conference on International Trade "The WTO Millennium Round" today.

Recently I addressed a Roundtable on current and future trade and environment issues within the context of the next round of WTO Multilateral Trade Negotiations, convened by Ministers Hill and Vaile. The objective of that Roundtable was to "*explore current and future trade and environment issues ……. discuss with a range of stakeholders and experts how trade and environment policy differences can be reconciled and to make positive linkages between trade reform and ecologically sustainable development.*"

This is a presumption that I do not share, at least in a rational sense.

My thesis is quite simple. There should be no tension between our national trade and environmental objectives, and therefore no need for any reconciliation between the two.

However do not assume from this that I am either naïve nor that I think we should do nothing. The philosophy we should apply in considering this issue is to secure complementarity between the trade and environment regimes.

I simply do not subscribe to the proposition that either trade or the environment will be best served by prostituting the integrity of the other. Trade cannot be sustained if the environment is compromised. Equally, undermining the integrity of the World Trade Organisation and the very basis to its success – the legitimisation and protection of comparative advantage in international trade – will by definition not deliver, certainly not sustainably so, against appropriate environmental objectives.

If you would allow me, I am reminded of the real truism, "the drovers dog never bites the hand that feeds it".

To expand on my thesis, I propose to recap as an empathy pitch, my understanding of the current state of play on the inter-relationship between trade and environment policy and to canvass the "clash of cultures" – political tokenism as against real environmental objectives, and to do so from the perspective of regulation governing the production and trade of genetically modified products. And to conclude by suggesting some key common policy objectives and strategies in the new round of trade negotiations.

A Recap

Out of the Marrakesh meeting in concluding the Uruguay Round, it was agreed to establish a committee on trade and environment to carry out a comprehensive work program on the relationship between the two.

The work of that committee to date has been fairly benign. The committee has been taking a cautious step by step approach and are yet to recommend amendments to the GATT Accord.

Our view is that environment considerations already figure prominently in the GATT Accord – the GATT Accord provides for "exceptions" where signatories to the Accord may override their general obligations provided those measures can be justified as in the national security and the protection of health and safety and that the measures apply equally to imported and domestic product/trade, that is, the Accord allows for trade restrictions that are inconsistent with the central tenet of the GATT for key domestic policy considerations or objectives – including environmental ones – provided they can be properly justified on scientific grounds.

- Article XX is the "exceptions provision" and it sets out a handful of grounds on which members of the GATT may breach their general obligations (does not specifically refer to the environment, but is accepted as proper grounds).
- The Technical Barriers to Trade Agreement similarly makes provision for trade restrictive regulations than necessary to fulfill a legitimate objective, taking into account the risks that non-fulfillment would create – while legitimate objectives are not defined, it does provide a non-exhaustive illustrative list which includes "the environment".
- The Sanitary and Phyto-Sanitary Agreement also provides for signatory countries to maintain or introduce measures which result in more restrictive standards if there is a sound scientifically justified and transparent basis for such measures – this does include environmental considerations as recent cases attest. *eg.* salmon

One of the less heralded successes of the Uruguay Round was the change to 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.

Of the present 100 plus cases before the WTO Dispute Resolution Panels, some 11 involve the Sanitary and Phyto-Sanitary and Technical Barriers to Trade Agreements. What is being reinforced from the resolution to these disputes, is that **the WTO is consistently refusing to sanction trade discrimination on the grounds of production-related processes and methods**.

- cases in point are the dispute findings on hormone growth promotants in beef (HGPs) and the use of turtle excluder devices (TEDs) as grounds for prohibiting shrimp imports. Both panels found in favour of the complainants, determining that it was not "WTO legal" to discriminate trade on the grounds of production related processes. You will recall a similar case on prohibition of tuna imports caught without dolphin free nets.

- in the hormone growth promotants case, as I am sure you know, the Europeans have chosen of the three options before them, to pay compensation to the United States and Canada in the order of US$140 million and US$40 million respectively, rather than lifting its ban on hormone treated beef from those countries, or suffer retaliatory trade sanctions without recourse to the WTO.

A Fundamental Principle

Quite simply, these Dispute Resolutions send a strong message [to the world] that signatory countries cannot without scientific substantiation, seek by virtue of trade sanctions, to impose their social, ethical, moral, **environmental** or domestic political considerations on other countries.

This is a position that we strongly support.

It is consistent with the critical role of the WTO in promoting a positive interaction between trade rules and environmental concerns.

It is consistent with preserving the foundation to the spectacular success of the GATT/WTO in legitimising and protecting the exploitation of comparative advantage in international trade and in a way that protects the sovereignty of the individual signatories to the GATT code – quite simply it determined that trade sanctions would not be used as an instrument of policy and certainly has not legitimised trade sanctions as an instrument of coercive environmentalism.

In this way, it is consistent with ensuring that environment related policies do not seek to engineer trade barriers, stifle trade reform or impose restrictive environment related policies on other countries as a prerequisite for trade reform or as part of an overall trade agreement.

This position is often mistaken as a point of view that environmental interests are not entitled to be considered in the WTO. That is not the issue. This issue is that countries should not presume to dictate policies to other countries in any area, trade or environment.

This position is also consistent with the foundation of an internationally agreed rules based trading system, that trade sanctions or restrictive measures, including food regulations, cannot be WTO legally imposed in the absence of scientifically substantiated environment or public health and safety risk and not on unsubstantiated "populist" fears.

It is consistent with the central tenets of the Sanitary and Phyto Sanitary and Technical Barriers to Trade Agreements, *vis:*

- scientifically based judgements of risk assessment;
- transparency and accountability;
- use of least trade restrictive measures;
- non-discriminatory and/or most favoured nation basis;
- adoption of international standards and conformance procedures;
- the provision to maintain or introduce measures which result in higher standards if there is a sound, scientifically justified and transparent basis for such measures.

It is consistent with, as the 'Economist' put it, "ensuring scientific or pseudo scientific differences don't poison the global trade system".

In this vein, I do not accept that the "precautionary principle", as it is now being interpreted by some to justify "inaction", is one of the "essential criteria" of food regulation – in fact it is quite ironic that some now advocate the precautionary principle to justify a moratorium on genetic modification, in fact citing the lack of scientific evidence.

I liken it to the Northern Territory tourism advertisement "if you never never go, you'll never never know"! The no-risk principle is not an effective tool for policy management. It is simply inapplicable in the real sense. The issue is risk management. We would never have gone past the wheel if we weren't prepared to accept the principle of scientifically substantiated risk assessment and risk management.

And it can only be scientifically based – those who wish otherwise and prefer their value judgements over say mine, would do well to remember the foibles in all of us and to recognise the fundamentals of any rules-based system, let alone one that co-opts a consensus and the commitment of sovereign states.

No Conflict but a Clash of Cultures ……..

It is not as some would have it, paramount to a conflict between trade and environment policy. Quite on the contrary. Such a policy manifestation preserves the integrity of the policy objectives of both policy areas and promotion of global trade in goods and services and the preservation and sustainable development of the environment.

As I suggested in promoting my original thesis, using trade measures as a quick fix to environmental problems rather than focusing on the underlying problem, will undoubtedly compromise both policy objectives – just as will providing scope for environmental concerns to be used as a ruse to new found or retained protectionism.

But I am aware that this is not a position that is universally shared. But it begs the question. Why would those who want improvement seek to use methods that do not work? Do those with an environmental cause have a cause or are they just looking for a cause?

When you cut through the cacophony of protest on both sides of this debate, you come to what I call the "clash of cultures" – "parish pump politics" versus real outcomes.

The former are content with poor measures because they satisfy political imperatives, the latter are prepared to adopt principles for sound and effective regulation and encourage the market to reconcile the legitimate needs and expectations of consumers or indeed the community.

The former seek to use discriminatory trade measures in multilateral environmental agreements (MEA's) which needlessly undermine the integrity of the World Trade Organisation and to usurp its agreed rules governing international trade.

On the one hand – the World Trade Organisation Agreements require signatories to surrender their sovereignty in world trade to an internationally agreed set of trade rules and standards and conformance procedures – where exceptions to those rules will only be allowed on a scientifically justified basis [and where penalties in the form of trade sanctions are used as a means to discipline and ensure conformance for signatories who breach the rules].

Whereas, on the other hand, the Multilateral Environment Agreements (MEA) for all of their legitimate and pretence of environmental objectives, look to use trade sanctions as the means to force compliance by non-parties with the MEA – in essence to project the power of "extra-territoriality".

Some say there is no difference. We disagree. One is the enforcement of the agreed rules, the other is being used to both dictate the rules, restrict trade on unjustified grounds and devolve responsibility for matters governing international trade and the WTO to an external party.

Biosafety Protocol

There is no better example in this respect, than the debate over the text of the Biosafety Protocol to the United Nations Convention on Biological Diversity. Those who seek to use environmental objectives to impose trade sanctions are seeking to establish a system of export control or restrictions on trade in the trans-boundary movement of living genetically modified organisms (LMOs).

Our position is simple, if not initially, more difficult to sustain. We considered such a Protocol unnecessary, as quarantine issues (including environmental protection) associated with the trans-boundary movement of LMOs was provided for adequately by the operation of the Australian Quarantine Inspection Service with domestic arrangements.

In addition, in our view, the World Trade Organisation, SPS and TBT Agreements to which I have referred, and to which Australia is a signatory, establish a rules based international trading system providing appropriate mechanisms to restrict trade, including trade in LMOs, when threats to the environment can be demonstrated based on sound science.

Recognising that the Protocol might proceed, we proposed an importer notification system consistent with the system now in place for goods entering Australia undergoing quarantine assessment by AQIS. Importing agencies must advise AQIS of information relevant to imported products, including GMO status. We stressed that:

- the definition of LMOs must be restricted to modified organisms that are living and not be extended to derivative products, such as processed food products;
- the Protocol must be subservient to and consistent with current WTO Agreements;
- any information requirements should be through an advanced informed agreement for the voluntary posting of information, possibly on the internet;
- importer notification must be consistent with Australia's current quarantine system; and
- considerations be restricted solely to those covered by WTO Agreements and not extended to socio-economic considerations.

This approach demonstrates how it is possible to devise systems which meet environmental objectives, but are consistent with WTO rules and respect principles for sound regulation.

The debate over the Biosafety Protocol is a clear case of a political decision to go for a trade control where it had not been established in domestic jurisdiction if there was a health and safety issue and what sort of action should be taken to meet consumers interests.

Gene Technology

And those of you watching the debate here in Australia over the extent of mandatory labelling of our foods derived from gene modification, will have a real sense of "being there, doing that".

I don't know of anybody who rationally argues against the objective of the provision of meaningful information to consumers on and about food products made using modern biotechnologies. What's at issue is the means.

To this end, the Australian Food and Grocery Council has continually advocated the necessity for a comprehensive labelling regime and information system to provide consumers with the necessary information to exercise their undeniable right to choice. The right to choice is meaningless without meaningful information upon which to base it.

But rather than exercise proper rigor in determining where Government can legitimately intervene to require the labelling of products, the debate was "shanghaied" by populistic streams either for political posturing, or in the genuine belief they were serving a legitimate objective or by more mischievous parties, trying to construct a labelling regime tantamount to a warning statement to undermine the technology and deny its application in at least food products, if not more broadly.

To re-cap the issue – the provisions of Standard A 18 of the Food Standards Code – *Food Produced Using Gene Technology* – as it currently stands, are founded in sound science on the principle of *substantial equivalence* and as such, are practical, enforceable, cost efficient and internationally consistent.

The principle of *substantial equivalence* is not only the foundation to all food standards relevant to novel foods internationally, it is a near cousin to the fundamental premise upon which the WTO rules on matters of trade discrimination rest and which guide the result of dispute resolutions pursuant to the provisions of the GATT and the TBT Agreements.

The consideration to extend mandatory labelling to substantially equivalent foods is neither practical nor enforceable, is meaningless to consumers, will impose extra and unwarranted costs and stands to contest WTO rules in at least five counts.

It simply defies the fundamental basis upon which Government should seek to intervene and regulate on public health and safety grounds, the provision of meaningful information to consumers or reinforcement of legislation elsewhere regarding false, misleading or deceptive conduct.

Indeed, the Ministers declared that their decision to extend mandatory labelling provisions was not a safety issue. It begs the question as to why Health Ministers were making that determination.

In that this decision will apply to imported products it will breach the non-discrimination trade rule of the GATT and TBT Agreements which requires there be no discrimination in trade between imports if the products concerned are like products – products that are substantially equivalent fit that definition like a glove. It also violates one of the fundamental principles of the WTO Agreement on Technical Barriers to Trade in that when measures are adopted, alternative means must have been explored to meet the genuine information requirements of consumers and they must have the least trade-distorting effect.

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I have no intention of re-hashing this debate here, but draw your attention to this case as an example of sound principles for effective regulation being discarded for what is perceived to be a more "popular" outcome, which at the end of the day is unlikely to satisfy the needs and expectations of consumers and will be costly in the attempt. It will, at least in the short term, be a significant impediment to the market reconciling the legitimate information requirements of consumers and impair rather than improve their capability in exercising their right to choice.

Some Objectives

So where to from here? I have two propositions.

Firstly, our position in further multilateral trade negotiations specific to the trade and environment policy nexus.

As you would expect, our primary objective is the further liberalisation of trade, protection and subsidisation in processed food and beverages. And that includes significant reduction in protection and subsidisation of all agricultural commodities, with *inter alia* consequently effects on the environment.

In the management of environment and biotechnology issues, we are, quite simply, about ensuring that any new regulation respects the principle that primacy should be given to market based instruments, consistent with the principle that global trade should be managed according to the same market based principles.

We oppose provisions to restrict trade in products on the basis of how they are made, specifically production and processed methods. This is not a political position. The point is that no case has been made which warrants restrictions on these grounds.

We want to ensure that technical standards and labelling regulations do not substitute for market-based systems where they would be more appropriate. Exceptions to market based rules should be restricted to health and safety issues, which as I have underscored, need to be based on sound scientific principles and measurable risk assessment in accordance with the related principle that Government regulation should be restricted to health and safety concerns and the demonstrable capacity to correct "market failure".

Consumer concerns, other than health and safety requirements, are generally better satisfied by industry or private sector based systems of standards, such as ISO Standards, than Government mandated regulations.

Some consider we should develop an ISO 14000 sector specific strategy as a means of capturing the agenda in a proactive or "front foot" strategy by determining a range of standards covering environmental management systems *eg.* such as is the case with ISO 14001 and ISO 14004.

They could be a useful adjunct to business' capacity to deliver against the triple bottom line – better environmental outcomes, improved social benefits and increased economic welfare – and sustainably so.

If established, these standards could be incorporated into environmental regulations or certification and labelling schemes that could be used to industry's commercial advantage by establishing "environmental credentials" as an ISO accredited business.

There is some concern that the adoption of the more rigorous Eco Management Audit Scheme (EMAS) in Europe, may limit the value of achieving an ISO 14000. Notwithstanding, there may be an effective method of demonstrating adoption of environmentally sound processes.

It may enable producers to meet environmental standards set by domestic authorities and by regulators in export markets, without impinging on international trade.

The additional costs of compliance with an ISO 14000, will need to be considered carefully in terms of delivering businesses' competitive advantage, industry's environmental defense and government's capability to thwart environmentally sponsored trade restrictions.

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Of course, that will mean that any de facto regulation by governments where ISO accreditation is a pre-qualification requirement to do business for those product areas where the government regulates standards for products and/or in government purchasing arrangements, will need to be managed very carefully and of course the impact of that will depend on the strictures of the ISO Standard itself.

Furthermore, we need to ensure the Standard does not inhibit the ability of companies to differentiate their products and production processes from competitors elsewhere in the world and to claim credit and capitalise upon preferable environmental outcomes – and not just as a means of enforcing Australia to conform to the environmental and ecological dumping dictates of foreign competitors.

If industry takes the lead, the ISO Series may be the means to capture the moral high ground and dissuade governments globally from falling into the trap of agreeing to environmental treaties in the expectation that that will satisfy the political imperatives of environmental policy.

Such a course of action is consistent with the Australian Food and Grocery Council's work in developing environment policy and management strategy that will allow member companies to voluntarily and responsibly manage the environmental aspects of the operations in a manner that complements their commercial needs and opportunities and acknowledges that companies have social obligations to minimise the impact on the environment.

The proposed strategy will strongly support the concept of eco-efficiency which for our industry and many others, means doing more with less – using environmental resources more efficiently in economic processes.

The strategy will provide for members an eco-efficiency "tool box" and resource materials on issues and management practices. It is being developed in consultation with Government and community stakeholders. At no time in the course of those consultations, has there been any suggestion that our policy and strategic objectives were mutually exclusive of our economic and trade objectives.

Complementarity, not exclusivity, is the way it ought to be.

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