Department of Foreign Affairs and Trade

Submission to Senate Select Committee on Australia's Food Processing Sector

The Department of Foreign Affairs and Trade (DFAT) welcomes the opportunity to make a submission to the Senate Select Committee on Australia's Food Processing Sector. This submission provides background on trade issues and policy that impact on the processed food sector. DFAT would be pleased to elaborate on any of the issues outlined in this submission.

Australia's trade and investment policy

Australia's trade and investment policy focuses on the negotiation of improved access to overseas markets for Australian exporters as well as on productivity-enhancing domestic reform. The Government's efforts focus increasingly on non-tariff barriers and restrictions behind the border, such as licences, permits, complex domestic regulations and burdensome and time-consuming processing of applications.

As a member of the World Trade Organisation (WTO), the Government needs to ensure that its domestic rules and regulations remain consistent with Australia's WTO obligations and other international agreements, including Free Trade Agreements (FTAs). The Government also works to ensure that Australia's trading partners act in accordance with their international obligations.

Appendix 1 summarises international agreements most relevant to Australia's processed food sector. These agreements incorporate relevant internationally agreed standards and aim to distinguish legitimate measures from disguised trade protection.

Australia's Processed Food Sector

Australia's processed food sector is the largest component of Australian manufacturing. The processed food sector accounts for approximately $1 in each $5 of total manufacturing sales and services income and, with some 240,000 employees, one in four jobs in Australian manufacturing, based on the most recent information for these activities.[1] In 2009-10, the annual gross value added of the processed food sector was $23.755 billion; the sector accounted for 21.4 per cent of manufacturing output and 1.85 per cent of Gross Domestic Product.[2]

Global agrifood[3] demand outlook and Australia's processed food sector

Growth in global agrifood demand reflects: continuing population growth, mainly in developing countries; economic growth and rising per capita incomes in developing countries resulting in higher per capita food demand and changing diets to higher quality, safer and more diverse foods; urbanisation in developing countries; and growing use of agricultural inputs for non-food uses such as bioenergy and industrial products. FAO projections have found that feeding an estimated world population of over 9 billion people in 2050 would require raising overall food production by some 70 per cent.[4]

Global challenges to achieving increased food production include: limited natural resources, especially land and water; unsustainable farming and fishery practices in many areas; rising energy and fertiliser costs; declining crop yield growth rates due to underinvestment in agricultural research and development;

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[1] See Australia Food Statistics (AFS) 2009-10 p 4, Department of Agriculture, Fisheries and Forestry (DAFF).

[2] See www.abs.gov.au Publication 5204.0 - Australian System of National Accounts, 2009-10 Latest Issue Released at 11:30 AM (CANBERRA TIME) 29/10/2010

[3] DFAT's definition of 'agrifood' is more inclusive than the ABS definition used by DAFF in its AFS publication (see footnote 1 above). DFAT's definition of agrifood refers to any food or beverage, or food or beverage material, from unprocessed through to highly processed (including fish and seafood), as set out in the DFAT publications *Subsistence to Supermarket II: Agrifood Globalisation and Asia*- see footnote 5 below.

[4] See 'High-Level Expert Forum – How to Feed the World in 2050' Rome 12-13 October 2009, FAO Economic and Social Development Department

inadequate investment in developing country agriculture; and the major distortions to global agricultural and food markets.

By maintaining Australia's comparative advantage and competitive strengths in agriculture and food production – extensive land resources; highly skilled farmers, fishery operators and food processors; strong research and development (R&D) base; well functioning domestic market and international supply chain linkages; and capacity to cope with challenges like limited water resources – Australia should be able to continue being a significant player in global agrifood markets and to take advantage of the ongoing growth in global agrifood demand, especially into Asian markets.

Australia's agrifood trade

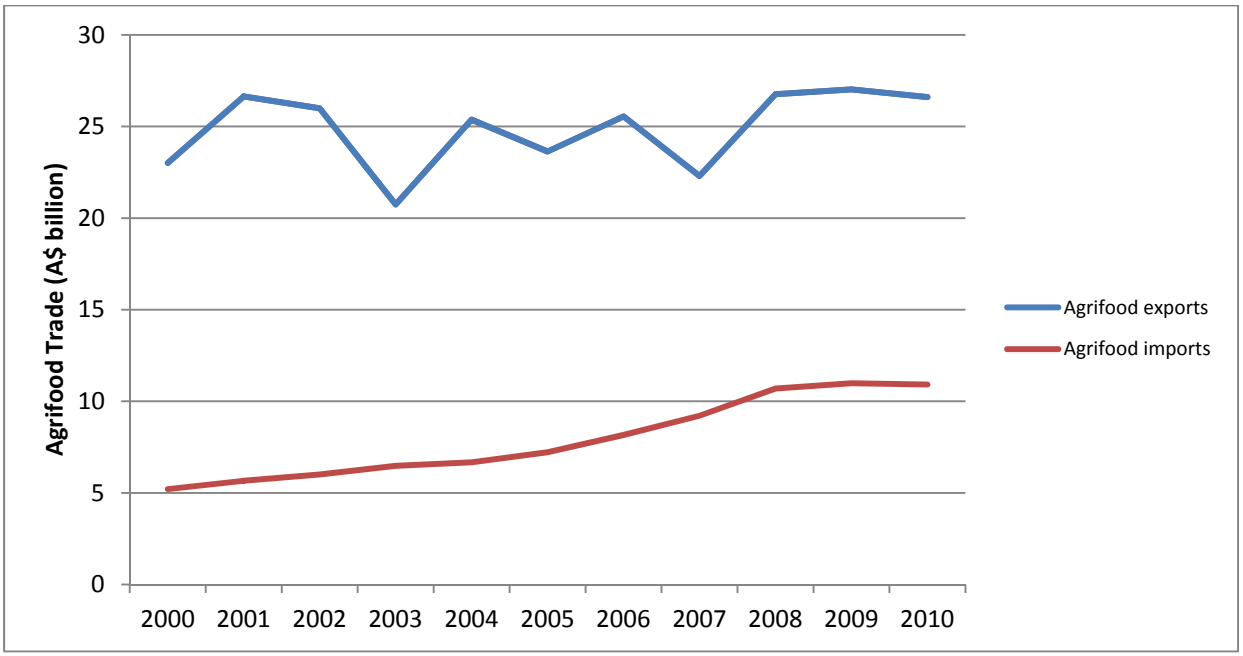
Australia's total agrifood exports value was $26.6 billion in 2010 with imports of $10.9 billion.

Table 1 – Australia's agrifood trade 2005-2010 – by value $ billions

	2005	2006	2007	2008	2009	2010
	$b	$b	$b	$b	$b	$b
Exports	23.631	25.551	22.302	26.765	27.062	26.605
Imports	7.222	8.163	9.210	10.700	10.982	10.919

Source: DFAT STARS Database, based on ABS Cat No 5368.0, June 2011 data; ABS Special Data Service.

Chart 1 – Australia's agrifood trade 2000-2010 – by value $ billions



Source: Based on ABS trade data on DFAT STARS database

Asia continues to account for between 55 and 60 per cent of Australia's global agrifood exports. Asian customers account for the majority of Australia's key agrifood exports of meat and offal, live cattle, wheat, barley and barley malt, raw sugar, milk powder, cheese, fish, crustaceans and molluscs, rapeseed and oil,

pulses, and vegetables, fruit and nuts.[5] One exception is wine, with the European Union (EU) and North America accounting for most Australian wine sales; though in 2010 wine exports to Asia reached $388 million, or 18 per cent of total wine exports. Other exceptions are live sheep and goats, worth $286 million in 2010, with 86 per cent going to the Middle East.

The emphasis on bulk food commodities – both minimally and substantially transformed - in Australia's agrifood exports reflects Australia's competitive strengths in broad acre and extensive crop and livestock production. Australia's strong reputation for clean, safe and high quality food production has underpinned not only the maintenance of market share into high value markets for our bulk food commodity exports, but also export growth for high quality fresh horticulture, fish and seafood, and more highly processed branded food and beverage products, such as wine and confectionery.

A wide range of factors heavily influences Australia's agrifood trade performance. The scope of factors includes seasonal climatic conditions in Australia affecting the level of basic agricultural production, the value of the Australian dollar compared to other major currencies, international food commodity price trends and the impact of national policies, e.g. US and EC production subsidies, that distort global agricultural and food markets.

Role of foreign investment in Australia's agrifood sector

Australia has had a strong trade surplus in agrifood over a long period, derived largely from an efficient combination of domestic and foreign investment.

Foreign investment has had a significant role in Australia's agriculture and food sectors over many decades. European and North American investors have long had a significant presence in Australia's food industries. The domestic business activities of multinational companies such as Clyde, Cargill, Nestlé and Kraft have assisted greatly in linking Australia to world markets and developing its global agrifood presence. From the 1960s on, foreign investment from companies such as Mitsui and Mitsubishi in our beef and dairy sectors helped to increase Australia's exports to Japan. Australia is now the recipient of growing direct investment from emerging economies in Asia, Latin America, and the oil-rich Middle East. Such investment from these regions will also strengthen linkages with those important growing markets.

Food regulation

There are many Commonwealth and State/Territory regulations that affect our food processing sector. In regulating the sector, the Government needs to ensure that domestic rules and regulations remain consistent with Australia's international trade obligations under the WTO, FTAs and other relevant agreements. Government agencies (Commonwealth and State/Territory) are required to respect these obligations and ensure that regulatory provisions are consistent with them.

Trade Barriers

Trade reform is an ongoing process. Australia has undergone many years of trade reform including unilateral reductions in tariffs.[6] Successive Australian governments have worked to open markets to Australia's agrifood exports, including through the WTO processes and free trade agreements. These reforms have contributed to strong domestic economic performance. However, Australia's agriculture and

[5] Detailed analyses of Asian agrifood demand and supply trends and outlook, agrifood distribution systems, and the opportunities for Australia in the fast growing Asian agrifood markets are contained in the DFAT publication series *Subsistence to Supermarket II: Agrifood Globalisation and Asia* (see http://www.dfat.gov.au/publications/agrifoodasia). A wide range of government, industry and private sector sponsors have supported the SSII project. DFAT has released five volumes in the SSII series, and provided copies to the Commonwealth Parliament and State Governments, as well as making them available to the public; the final two volumes are planned for release in 2012.

[6] See World Tariff Profiles 2010 http://www.wto.org/english/res_e/publications_e/world_tariff_profiles10_e.htm The simple average of Australia's applied tariffs on agricultural products is currently 1.3 per cent and the maximum applied tariff on any agricultural product entering Australia is 22 per cent. In contrast, the simple applied average and maximum applied agricultural tariffs are 13.5 and 166 per cent in the EU, 21 and 641 per cent in Japan, 4.7 and 350 per cent for the US, 10.7 and 539 per cent in Canada and 48.6 and 887 per cent in Korea.

food exports continue to face significant trade barriers, including high tariffs, direct government support, export subsidies, together with non tariff barriers and behind the border restrictions.

Australia exports approximately 60 per cent by volume of its agricultural production. Australian farmers and food processors have competed for market share in many international markets distorted by production subsidies from major developed countries.[7] Similarly, subsidised exports from other countries fill demand in international markets which competitive producers, like Australia, could supply.[8]

High market-distorting support subsidies in other countries lower input prices for their domestic food processing sectors and disadvantage competitive food producers. Domestic support, coupled with tariff protection and export subsidies, creates significant impediments for competitive food processors exporting from Australia. For this reason, Australia continues to seek fundamental reform of global agricultural and food markets and trade.

[7] Direct government support as a percentage of producers' total income averaged 9 per cent in the United States, 16 per cent in Canada, 22 per cent in the European Union, 49 per cent in Japan and 47 per cent in Korea over 2008-10. Direct government support to agricultural producers in Australia averaged 3 per cent of farmers' incomes in this same period

[8] In 2009, the EU re-activated dairy export subsidies (including on butter, cheese and milk powders) and the US re-activated its dairy export subsidies (including on cheese and milk powder) shortly after. Following the actions of the EU and US, global dairy prices fell which reduced returns to Australian producers and processors.

Appendix 1 - WTO Agreements and Free Trade Agreement Obligations

Agreement on Agriculture

The Uruguay Round of trade negotiations produced the first multilateral agreement dedicated to the agricultural sector – the WTO Agreement on Agriculture (AoA). The agreement was a significant first step towards a less-distorted global agricultural sector, although more work is necessary. It contained new commitments for WTO members in the areas of market access, domestic support and export competition.

In terms of market access, under the Agreement on Agriculture, tariffs replaced all non-tariff border measures, and tariffs were progressively lowered through the application of a tariff reduction formula. Tariff rate quotas also provided additional market access, particularly where high tariffs remained in place.

On domestic support, the Agreement places limits on the use of trade-distorting subsidies. Domestic support measures that have, at most, a minimal impact on trade ("green box" policies) are not included in spending limits.

The disciplines on export competition included limits on the products that can be supported by export subsidies, the amount that can be spent on such export subsidies for such products and the volume of such products that can be supported by such export subsidies. The export competition text also included disciplines on the use of food aid and export credits to prevent their use as a 'disguised form' of export subsidy.

The Agreement on Agriculture included a commitment (Article XX) to continue the reform process through ongoing negotiations. Further reforms to the Agreement on Agriculture are one of the key objectives in the current Doha Round of trade negotiations.

Agreement on Application of Sanitary and Phytosanitary Measures

The WTO Agreement on the Application of Sanitary and Phytosanitary (SPS) Measures (SPS Agreement) sets out members' obligations relating to food safety and quarantine. SPS rules incorporate a 'constrained sovereignty' model. The SPS Agreement entitles a WTO member to impose its national standards to protect human, animal and plant life and health, subject to conditions that ensures a WTO member's SPS arrangements avoid imposing unreasonable or unjustified quarantine or food safety restrictions that block trade. The major conditions are that SPS arrangements are scientific and evidence based, that they apply only to the extent necessary to protect human, animal or plant life and health, that they are not more trade restrictive than required; and that they avoid discriminating arbitrarily between countries where similar conditions prevail.

The SPS Agreement places considerable importance on international harmonisation of food standards. A labelling regime that is limited, for example, to preventing direct health risks (such as allergic reactions) is subject to the SPS Agreement. The SPS Agreement encourages WTO members to base their national food safety measures on the Codex Alimentarius Commission standards, guidelines and recommendations. Members may use measures which result in higher standards of protection if (based on an assessment of risk) there is a scientific justification.

SPS measures include laws, regulations and procedures applied within the territory of a WTO member to protect the life or health of humans, animals (sanitary) or plants (phytosanitary) from the risks arising from pests, diseases, additives, toxins and contaminants.

WTO Agreement on Technical Barriers to Trade (TBT Agreement)

The TBT Agreement gives WTO members the right to adopt standards or regulations they consider appropriate to prevent deceptive practices, protect human health or safety, animal health or safety, or the environment, and achieve other legitimate objectives. Under the TBT Agreement, technical regulations, standards, testing and certification procedures must not create unnecessary obstacles to trade, or give domestically produced goods an unfair advantage over imports (the national treatment principle) or give imports of one country an unfair advantage over imports of another country (the most favoured nation principle).

Food processing regulations may fall within the scope of this Agreement. The rights and obligations contained in the TBT Agreement provide protection against the risks of unreasonable or unjustified restrictions on trade arising from activities such as labelling, testing or certification systems. This is particularly important for trade in food.

Where appropriate, the TBT Agreement requires WTO members base their technical regulations on international standards, in order to minimise diversity between the technical regulations and industrial standards of different countries.

It is important to note that the TBT Agreement clearly indicates (Articles 2.2 and 2.5) that when a technical regulation is prepared, adopted or applied for legitimate objectives such as human health or safety or for the prevention of deceptive practices and meets relevant international standards, it will not be regarded as an unnecessary obstacle to trade. National technical regulations are valid and necessary in fulfilling a legitimate objective where they comply with relevant international standards.

Trade Related Aspects of Intellectual Property Rights Agreement (TRIPS).

The TRIPS is a WTO agreement that establishes minimum standards for the protection of intellectual property rights for members to implement. It includes obligations concerning trademarks, signs that identify a good as being produced or sold by a particular establishment, and geographical indications (GIs) – signs that identify a good as originating from a particular geographic place, where that good has a characteristic unique to that place. Restrictions on the use of common product names on labels may cause consumer confusion and affect trade. Any review of food processing laws and policy would need to take account of these obligations.

WTO Agreement on Rules of Origin

The Agreement on Rules of Origin establishes a harmonisation work programme, based upon a set of principles, including making rules of origin objective, understandable and predictable. The harmonisation program, originally planned for finalisation by July 1998, remains incomplete. During the 'transition period' or until the entry into force of the new harmonised rules, WTO members have adopted a consensus in abiding by a series of disciplines that are set out in the Agreement's Article 2.

Article 2 includes that rules of origin:

- are not to be used to pursue trade objectives directly or indirectly (Article 2(b))
- do not have restricting, distorting or disruptive effects on international trade (Article 2(c)
- applied to imports are not more stringent than the rules of origin applied to determine whether or not a good is domestic (Article 2(d));
- must not discriminate between one and another Member (Article 2(d)); and

- are consistent, uniform, impartial and reasonable in their application by administrative agencies (Article 2(e)).

Article 3(b) of the Agreement is to apply upon the implementation of the harmonization work program. It states:

> ‘(b) under their rules of origin, the country to be determined as the origin of a particular good is either the country where the good has been wholly obtained or, where more than one country is concerned in the production of the good, the country where the last substantial transformation has been carried out;’

WTO General Agreement on Tariffs and Trade 1994 (GATT 1994)

The General Agreement on Tariffs and Trade (GATT 1994) covers trade in goods. Like the TBT Agreement, the GATT 1994 includes obligations providing for national treatment and most-favoured nation treatment. Under the GATT 1994, WTO members must ensure that they treat imported goods no less favourably than domestic goods and that any advantage accorded to goods originating in another country extends to like products of all WTO members.

The GATT 1994 covers all goods and includes the following provisions:

- any advantage, favour, privilege or immunity granted by a WTO Member to any product originating in another country must be accorded immediately and unconditionally to like product originating in another country (Article I.1)

- imported products must be accorded treatment no less favourable than that accorded to like domestic products in respect of all laws, regulations and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution or use (Article III:4); and

- laws and regulations relating to the marking of imported products shall be such as to permit compliance without materially reducing their value or unreasonably increasing their cost (Article IX: 4).

The WTO Dispute Settlement System

When the WTO commenced in 1995 to reduce trade barriers and create enforceable trade rules, a system of resolving disputes between member countries on a fair and transparent basis was also established. The dispute settlement system provides an orderly procedure that entitles a WTO member, or a group of WTO countries, to seek redress and gain remedies against alleged unfair and/or illegal international trading practices.

The Disputes Settlement Body administers the Dispute Settlement System; all WTO member countries constitute the Disputes Settlement Body. Each member country or state has an equal voice, regardless of its size.

The rules for dispute settlement are contained in a WTO agreement called the Dispute Settlement Understanding (DSU). This understanding provides a mechanism through which WTO member states can raise concerns about the trade policies of another member as well as a neutral forum for the clarification of WTO provisions.

Australia's FTA obligations

Technical Barriers to Trade (TBT)

Australia's FTAs with the United States, Singapore, Thailand, Chile and ASEAN contain TBT chapters that replicate the TBT Agreement definition of 'technical regulation'.

These chapters generally affirm (but do not incorporate as enforceable commitments) the Parties' existing rights and obligations under the TBT Agreement, but in some cases they do build on TBT Agreement obligations. In particular, the Australia-United States Free Trade Agreement (AUSFTA), the ASEAN-Australia-New Zealand Free Trade Area (AANZFTA) and the Australia-Chile Free Trade Agreement (ACI-FTA) build on WTO obligations to consider positively the acceptance as equivalent the technical regulations of the other Party. A Party must give reasons (where requested) for not accepting a technical regulation as equivalent.

AUSFTA, AANZFTA and ACI-FTA also build on WTO obligations on conformity assessment procedures, including by requiring an explanation (where requested) of a decision not to accept the results of a conformity assessment procedure conducted in the territory of the other Party.

The Australia-New Zealand Closer Economic Relations Trade Agreement (ANZCERTA) contains a provision on 'other trade distorting factors' that refers to 'technical specifications' (Article 12). There is also the non-treaty level Trans-Tasman Mutual Recognition Arrangement (TTMRA) that requires that a good sold legally sold in New Zealand may sell legally in all Australian states and territories (TTMRA 4.1.1). This operates subject to various exemptions and exceptions, the most relevant to this context being the exclusion at Paragraph 7.2(a) providing that (or with the intention that) laws relating to the prohibition or restriction of imports are excluded from the Arrangement. Schedule 1 of ANZCERTA lists certain laws covered by the exclusions and includes 'any laws of the Commonwealth to the extent that they provide for the prohibition or restriction of imports and would be affected by the mutual recognition principle as set out in paragraph 4.1.2.'

Sanitary and Phytosanitary Measures (SPS)

Australia's FTAs with the United States, Singapore, Thailand, Chile and ASEAN contain SPS chapters that affirm each Party's existing rights and obligations with respect to each other under the WTO SPS Agreement. The FTAs contain provisions on arrangements aimed at strengthening SPS information exchange, cooperation and consultation among the Parties. They also provide for the establishment of contact points and SPS committees to review progress in the implementation of their respective SPS measures.