BEFORE A PANEL
OF THE WORLD TRADE ORGANIZATION

CHINA – DOMESTIC SUPPORT FOR AGRICULTURAL PRODUCERS

(WT/DS511)

Third Party Oral Statement of Australia

Geneva, 23 January 2018
## TABLE OF CASES

<table>
<thead>
<tr>
<th>Short Title</th>
<th>Full Case Title and Citation</th>
</tr>
</thead>
</table>
I. INTRODUCTION

1. Australia welcomes the opportunity to present its views on the issues raised in this proceeding.

2. In our oral statement, Australia will expand on the views outlined in our submission on the relationship between a Member's Schedule and obligations in WTO Agreements; as well as the legal interpretation of key provisions in the Agreement on Agriculture, including the methodology used to calculate market price support, the meaning of "production eligible" in Annex 3, and the reference period for the "fixed external reference price".

3. In Australia's view, the Agreement on Agriculture provides clear and precise direction for calculating market price support, including the reference period to be used for a fixed external reference price. In Korea – Beef,1 the WTO Appellate Body has also provided clear and unambiguous guidance on what is meant by "production eligible" in Annex 3.

4. However, as relevant context for these legal interpretation issues, it is important to recall that the Agreement on Agriculture provides "a framework for the long-term reform of agricultural trade and domestic policies, with the aim of leading to fairer competition and a less distorted sector."2 The Agreement not only places rules and limitations on domestic agricultural support by Members, it also aspires to reduce domestic support. The Agreement on Agriculture recognises Members' long term objective "to provide for substantive progressive reductions in agricultural support"3 and contains commitments by Members to continue reforms to reduce support.4

5. WTO Members have therefore agreed that domestic support must not only be limited and subject to rules, but ultimately, that it must be reduced. Australia is of the view that any outcome in this dispute that would effectively allow China or any WTO Member to increase levels of domestic support would be in direct conflict with the aspirations of all Members as recognised within the Agreement on Agriculture.

II. Relationship between a Member's schedule and obligations in WTO Agreements

6. Much of China's legal argument in this dispute centres on the status of "Rev. 3"5 a document included as a reference under the heading "Relevant Supporting Tables and document" in Part IV of China's Schedule. China argues that the document should be considered treaty level text.

7. In Australia's view, Rev. 3 is not in itself a Schedule, it is merely a reference in a Schedule which provides an illustration of domestic support in China at the time of its accession.

---

1 Appellate Body Report, Korea – Various Measures on Beef.
3 Preamble, Agreement on Agriculture.
4 Article 20, Agreement on Agriculture.
5 WT/ACC/CHN/38/Rev.3.
8. Even if the Panel were to take a different view on the status of Rev.3, Australia would ask the Panel to keep in mind that Members cannot use Schedules to unilaterally modify or reduce commitments that they have made under the WTO Agreements. Information in a document referenced in one Member's Schedule cannot be used to override legal obligations in the Agreement on Agriculture.

III. Calculating market price support

9. In Australia's view, the Agreement on Agriculture provides clear and unequivocal guidance for calculating market price support. It says that AMS should be "calculated in accordance with the provisions of Annex 3" and "taking into account the constituent data and methodology used in the tables of supporting material incorporated by reference in Part IV of a Member's Schedule".

10. In this dispute, the US put forward its estimations of China's market price support using the provisions of Annex 3, whereas China argues that the "constituent data and methodology" in Rev. 3 is the more relevant authority. While both of these sources are valid for calculating market price support, the Agreement on Agriculture makes clear that their status under the WTO Agreement is not equal.

11. The phrase "in accordance with" indicates that the calculation of domestic support must comply with the provisions of Annex 3. By contrast, the phrase "taking into account" merely requires that consideration be given to a Member's Schedule, without specifying precisely the weight that consideration should be accorded. In Australia's view, two points are clear – reference to Annex 3 is mandatory, while the relevance of a Member's Schedule is of a lesser nature and, at the very least, subsidiary to Annex 3.

12. In Australia's view, under the Agreement on Agriculture, there is no direct obligation on the Panel to accept or apply the constituent data and methodology in China's Schedule, however, the Panel could choose to "consider" it. In any event, the requirements of Annex 3 override any methodology contained in a Schedule.

IV. The meaning of "production eligible"

13. In Australia's view, the Appellate Body's findings in Korea – Beef makes clear that, absent exceptional circumstances, "production eligible" is all production "fit or entitled" to be purchased and will generally equate to total production. Accordingly, in applying the text of the WTO Agreement to the facts in this dispute, Australia considers that the relevant values to be used for "eligible production" in the calculation for market price support should be the value of total production of each given commodity in the identified provinces.

14. China submits that this definition of "production eligible" does not apply and the Panel should instead rely on the definition of "eligible production" in Rev. 3. The Rev. 3
definition limits eligible production to "the amount purchased by state-owned enterprises from farmers".

15. China's alternative definition of "eligible production" cannot be accepted for three reasons – one, it does not reflect the economic reality of market price support programs; two, it is contrary to the text of the Agreement on Agriculture, as interpreted and applied in Korea – Beef; and three, it undermines the domestic support reform objectives of the Agreement on Agriculture.

16. First, limiting eligible production to the actual amount purchased is without sound economic basis. It is worth recalling the policy rationale behind market price support. To paraphrase the Panel in Korea – Beef:

Market price support gauges the effect of a government policy measure on agricultural producers… rather than the budgetary cost … (to) government. … [A]ll producers of the products subject to the market price support mechanism enjoy the benefit of an assurance that their products can be marketed at least at the support price. Therefore, the minimum price support will be available to all marketable production of the type and quality to which the … programme relates. 9

17. In light of how market price support operates, its price distorting effect takes place the moment a product is eligible to be purchased by the government. Any consideration of the product distorting effect of market price support must therefore occur at this point.

18. It follows that when calculating market price support under the Agreement on Agriculture, absent exceptional circumstances, "production eligible" is all production "fit or entitled" to be purchased and will generally equate to total production, as found by the Appellate Body in Korea – Beef.

19. Second, limiting eligible production to the actual amount purchased is in direct conflict with the terms of Annex 3 of the Agreement on Agriculture, as interpreted and applied by the Panel and Appellate Body in Korea – Beef. Since a Member cannot use its Schedule to reduce or modify commitments under WTO Agreements, China's proposed alternative definition is not legally valid, even if Rev. 3 had the status of a Schedule.

20. Third, limiting eligible production to the actual amount purchased would permit Members to grossly underestimate the level of domestic support they provide and, as a consequence, create an environment for increasing domestic support. In signing up to the Agreement on Agriculture WTO Members have committed not only to limit domestic support but also to reduce it. Any outcome that would lead to increased levels of domestic support would undermine this commitment.

V. The reference period for the "fixed external reference price"

21. The methodology for calculating market price support is set out in paragraph 8 of Annex 3 of the Agreement on Agriculture. One of the figures to be inserted into the formula is the "fixed external reference price".

---

22. Paragraph 9 of Annex 3 specifies that "the fixed external reference price shall be based on the years 1986 to 1988". The text in the Agreement on Agriculture is mandatory and legally unambiguous.

23. However, China asserts that an alternative reference period applies in calculating China’s market price support namely, the years 1996-98. The rationale for this approach is that: this is the period used in Rev. 3 (the supporting material referenced in China’s Schedule); WTO Members accepted this period as one of the terms of China’s accession to the WTO; this is in accordance with a technical note by the WTO Secretariat for acceding Members10; and all of the accessions since the establishment of the WTO in 1995 have used base periods other than 1986-88.

24. Australia notes the arguments put forward by China and some of the other third parties in support of a later reference period. However, the text of the Agreement is clear. The Agreement on Agriculture specifies that the fixed external reference price shall be based on the years 1986 to 1988 and neither China's Accession Protocol nor its Working Party Report indicates that an alternative reference period to 1986-88 must be used. While the documents and practice put forward by China in support of an alternative reference period highlight key policy considerations, they do not constitute a legal basis on which to apply a later reference period.

25. If WTO Members determine that a new reference period should apply for acceding Members this should be provided for explicitly either through amendment of the Agreement on Agriculture or express provision in relevant Accession Protocols.

VI. Conclusion

26. Australia thanks the Panel for the opportunity to address these issues.

---

10 (WT/ACC/4, pp3-4) which provides that "in order to calculate a product-specific AMS for these products, relevant tables from Supporting Tables DS:5 and DS:7 should be used" and that an "external reference price" is to be calculated from data "normally for each of the last three years"