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I. INTRODUCTION

1. Australia's submissions in this dispute have focused 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".

2. 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 the term "production eligible" in Annex 3.

3. As relevant context for interpreting the provisions at issue, 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 of "provid[ing] for substantive progressive reductions in agricultural support"\(^3\) and contains commitments by Members to continue reforms to reduce support.\(^4\)

4. Accordingly, Australia is of the view that any outcome in this dispute that would effectively allow Members, including China, to increase levels of domestic support would be in direct conflict with the object and purpose of the Agreement on Agriculture.

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

5. Much of China's legal argument in this dispute centres on the status of WT/ACC/CHN/38/Rev.3 (hereafter referred to as 'Rev. 3') 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.

6. 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.

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\(^1\) Appellate Body Report, Korea – Various Measures on Beef.
\(^2\) WTO, "Agriculture gateway" available online at [https://www.wto.org/english/tratop_e/agric_e/agric_e.htm](https://www.wto.org/english/tratop_e/agric_e/agric_e.htm), accessed on 19 January 2018.
\(^3\) Preamble, Agreement on Agriculture.
\(^4\) Article 20, Agreement on Agriculture.
7. Even if the Panel were to take a different view on the status of Rev.3, Australia observes that Members cannot use Schedules to unilaterally modify their obligations under the WTO Agreements. In particular, 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

8. In Australia's view, the Agreement on Agriculture provides clear and unequivocal guidance for calculating market price support. It provides 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".

9. In this dispute, the US has 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.

10. 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" requires that consideration be given to a Member's Schedule, without specifying the weight such consideration should be accorded. This interpretation has been affirmed by the Appellate Body in Korea – Various Measures on Beef.

11. In Australia's view, two points are therefore clear: (i) reference to Annex 3 is mandatory; and (ii) the relevance of a Member's Schedule is of a lesser nature and, at the very least, subsidiary to Annex 3. As such, there is no direct obligation on the Panel to accept or apply the constituent data and methodology in China's Schedule. The Panel is only required to consider it. However, in any event, the requirements of Annex 3 override any methodology contained in a Member's Schedule (or contained in a reference within a Member's Schedule).

IV. The meaning of "production eligible"

12. In Australia's view, the Appellate Body's findings in Korea – Beef make clear that, absent exceptional circumstances, "production eligible" is all production "fit or entitled" to be purchased and will generally equate to total production.

13. 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

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7 Appellate Body Report, Korea – Various Measures on Beef, para. 120. The Panel in Korea – Various Measures on Beef had earlier specified that the actual amount purchased by a government is not relevant, nor are the government outlays involved: Panel Report Korea – Various Measures on Beef, para. 827.
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" – which seeks to limit eligible production to the amount actually purchased – cannot be accepted for three reasons.

16. First, the definition does not reflect the economic impact of market price support programs, which provides producers with the "assurance that their products can be marketed at least at the support price". Given this assurance, the price distorting effect of market price support takes place the moment a product is eligible to be purchased by the government.

17. Second, the definition is contrary to the terms of Annex 3 of the Agreement on Agriculture, as interpreted and applied by the 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.

18. Third, limiting eligible production to the actual amount purchased would permit Members to underreport the level of domestic support they provide and, as a consequence, effectively allow Members to increase such support. Any outcome that would lead to increased levels of domestic support would undermine the object and purpose of the Agreement on Agriculture to not only limit domestic support but also to reduce it.

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

19. 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".

20. 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 unambiguous.

21. In this dispute, China asserts that an alternative reference period – namely, the years 1996-1998 – applies in calculating China's market price support. China argues this on the basis that: this is the period used in Rev. 3 (the supporting material referenced in China's Schedule); WTO Members accepted this period as

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8 China's first written submission, paras. 196-203.
10 Appellate Body Report, Korea – Various Measures on Beef, para. 120. The Panel in Korea – Various Measures on Beef had earlier specified that the actual amount purchased by a government is not relevant, nor are the government outlays involved: Panel Report Korea – Various Measures on Beef, para. 827.
one of the terms of China's accession to the WTO; this approach would be in accordance with a technical note by the WTO Secretariat for acceding Members\(^\text{11}\); and all accessions since the establishment of the WTO in 1995 have used base periods other than 1986-88.

22. In Australia's view, 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 specifies 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.

23. In Australia's view, 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.

\(^{11}\) (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"