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Statement by Australia

EC paper on Food Quality (G/AG/NG/W/18)

The EC paper on food specificity touches on questions of how we should regulate trade, in the best interests of our societies and our economies - what are the objectives of regulation, how should those objectives be served, and what should be the limits of regulation.

These are hardly new questions, and the existing package of WTO Agreements already contains strong mechanisms for addressing these questions.

Our societies and our economies are not so different that we should find ourselves answering these questions in radically different ways. Most legal systems provide balanced forms of protection for consumers and producers - consumers are entitled to safeguards against being misled or deceived, and against unsafe or unhealthy products, but are entitled to a wide selection and freedom of choice in what they purchase, whether or not it is a domestic or imported version of the same product.

Equally, producers are entitled to present and describe their products in ways that attract, inform and interest consumers, and are entitled to use descriptive terms and appealing ways of presenting their product, provided that this is done in a fair and truthful manner. This balancing of interests is not unique to the food industry, but is central to honest trade and fair competition in any sector.

Our doubts about the 'food specificity' concept relate not to the objectives of fair competition, but to the suggestion that new forms of regulation, or the creation of new categories of rules, will contribute in any way to these objectives.

Balance is vital. Ultimately, too prescriptive an approach to any of these questions can lead to over-regulation, impediments to legitimate trade, or repression of true competition. And the consumer is denied freedom of choice between genuine products.

To illustrate the options already present in the WTO system, and to highlight the costs of neglecting this balance, I would like to mention two specific examples.

Feta cheese is a popular and distinctive style of cheese, originally made from sheep's or goat's milk, but now widely made from cow's milk. Feta was originally made in the Balkan region, and Greek and Bulgarian feta cheese are still highly regarded and are sought out as speciality products in the Australian market.

How should this product be regulated? To the consumer, 'feta' denotes a style of cheese, produced in a certain fashion. Should it only be made from sheep's milk, as it was traditionally? Not, we would suggest, unless the consumer is deceived. A consumer may actively prefer feta which is

made from goat's or cow's milk. Would we be doing the consumer a service by denying that choice? GATT Article XX and TBT Article 2.2 pointedly remind us that we have no business in suppressing that choice, and that any labelling standards should be the least trade-restrictive measure, justified with reference to the avoidance of consumer deception and similar objectives. Where there are issues concerning the suitability of labelling and other standards for food or other products, these can be taken up in the context of the TBT which provides an accepted basis for these standards.

Should the term 'feta' be reserved for the use of one set of producers only, or is the consumer entitled to purchase feta cheese from other producers? Should other producers be forced to drop the use of the word 'feta' if they were not the first to use it? Here the issues include the correct use of marks of origin (GATT Article IX), the balanced use of standards (TBT Article 2.2), and the balanced use of the intellectual property system (TRIPS). If, to most consumers in any economy, the word 'feta' simply describes a style of cheese, on what basis can we restrict its use?

Can producers in one location assert a monopoly over it? Even those terms which once had a strong geographical root, such as Cheddar cheese or kiwifruit, have become generic terms, used by producers in many countries, and there is no point in turning back the clock, any more than saying that cheese should only be made from sheep's milk. If a producer or retailer falsely tries to pass off feta cheese from elsewhere as being the product of Greece, of Bulgaria, even of Australia - they should face legal sanctions.

If the labelling and presentation is accurate, if the consumer is not deceived or misled, if no distinctive sign such as a trade mark is not being misused, then the consumer is entitled to choose which quality and characteristics he or she wishes, and producers are entitled to present their products and inform potential customers. International trade would grind to a halt if descriptive terms were reserved for the use of those who first coined or applied them. Whoever first produced feta cheese did humanity a great service, but that did not create a permanent monopoly over that product.

The EC states that the so-called preservation of food specificity is not meant to create trade barriers. On the contrary, they claim it is designed to open markets by reducing consumer deception.

We are not convinced from our experience in exporting wine that this is the case.

We have found a situation in one particular market where having agreed to give up the use of geographical indications and a number of semi-generic names, we are now facing demands to give up other descriptive terms which have no geographical basis.

We had been assured that the approach to the issue had nothing to do with protecting producers and was only being done to protect consumers against misleading practices and usurption and imitation. This, despite the fact that we had been exporting the product for over a century. Consumers had expressed a free and informed choice, without any apparent harm.

We are now even getting to the stage where we are being asked to forgo such technical and complex terms as sweet, dry and fruity on labels.

The paper on food specificity is a timely reminder that the benefits of existing WTO trade rules are in danger of being overlooked, and that failure to consider them in a balanced way can lead to protectionist over-regulation and impediments to legitimate trade. As the example of 'feta' and wine illustrate, there is a risk that 'food specificity' becomes a means of limiting legitimate competition, and denying consumers accurate product descriptions and freedom of choice.
