

SUBMISSION TO THE PRODUCTIVITY COMMISSION ENQUIRY ON COST RECOVERY

1. As a Member of the World Trade Organization (WTO), Australia has an obligation to ensure that its government laws, regulations and measures which have an impact on international trade are consistent with the obligations contained in the WTO Agreements.
2. The WTO Sanitary and Phytosanitary Agreement (the SPS Agreement) imposes obligations on WTO Members on the adoption and enforcement of SPS measures which affect international trade. It applies to measures which protect human, animal or plant life or health from risks from pests or diseases; or from risks arising from additives, contaminants, toxins or disease-causing organisms in foods, beverages or feedstuffs. A prohibition on the importation, sale or use of a product subject to regulatory approval or registration could constitute a measure under the Agreement.
3. The charging by regulatory agencies to conduct import risk or equivalence assessments could raise a number of WTO issues under the SPS Agreement. Relevant domestic legislation may include the *Australia New Zealand Food Authority Act 1991*, the *Agricultural and Veterinary Chemicals Code Act 1994*, the *Industrial Chemicals (Notification and Assessment) Act 1989*, and the *Gene Technology Bill 2000*.
4. Article 5.1 of the SPS Agreement imposes an obligation on Members to base SPS measures on an international standard or a proper risk assessment. Article 4 requires Members to recognise the measures of other Members as equivalent, if the exporting Member objectively demonstrates that its measures achieve the importing Member's appropriate level of protection.
5. Given the positive obligations imposed by Articles 5.1 and 4, it appears that Members cannot condition the conduct of import risk or equivalence assessments on the payment of a fee or charge when they relate to an SPS measure within the definition of the SPS Agreement.
6. This does not, however, preclude Members from charging for "control, inspection and approval procedures" – including for sampling, testing and certification. Article 8 and Annex C of the SPS Agreement requires that such fees be equitable to that charged on domestic products or the products of any other Member, and must not exceed the actual cost of the service.
7. Given the potential WTO issues, agencies are encouraged to consult closely with the Department of Foreign Affairs and Trade when developing and applying cost recovery arrangements that may have an impact on international trade.

