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Working Group on the Interaction between Trade and Competition Policy

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COMMUNICATION FROM AUSTRALIA

The following communication, dated 22 May 2003, has been received from the Permanent Mission of Australia with the request that it be circulated to Members.

INTRODUCTION

1. With the forthcoming Ministerial nearly upon us, Australia wishes to use the opportunity of this working group meeting to offer some reflective comment and our current views on some of the main issues discussed in the working group to date. In presenting such views, the usual qualification applies – this represents work in progress, and Australia's objective is to support and encourage active discussion rather than present a definitive position.

2. As an overarching comment, for many issues before the working group, there appears to be a high degree of common ground and understanding among Members, while in a few areas there are still some important discussions before us.

3. Australia also welcomes the opportunity of this meeting to discuss in greater detail the items under agenda items B and C that have had comparatively less examination, at least in terms of written input from Members, prior to the May 2003 meeting.

4. Australia will also report briefly on technical assistance and capacity building and some significant recent policy debate and review outcomes.

A. ELEMENTS RAISED IN PARAGRAPH 25 OF THE DOHA DECLARATION

5. The Doha declaration recognises the case for a multilateral framework to enhance the contribution of competition policy to international trade and development. Australia supports this.

6. Australia considers that its competition policy and competition law provides critical support to Australia's welfare through enhancing efficiency, productivity and consumer welfare. Australia's enhancement of its competition policy framework through the 1990s has been an important contributor to a very strong economic performance over the past decade, and through recent years when significant forces have been buffeting many economies. Australia notes that this view has also been widely endorsed internationally. This supports the conclusion that competition policy is fundamentally compatible with economic growth and development. Australia also considers that effective competition policy is fundamentally compatible with an open multilateral trading system that supports the interests of all participants by raising aggregate growth and development potential.

7. Also by way of introductory comment, Australia will make brief observations on the research study by Dr Evenett, a draft of which was considered in the February working group meeting and on the Symposium on Trade and Competition Policy held on 22 February 2003.

8. The study addresses thoroughly the call for an examination of the benefits and costs of a possible multilateral competition framework (MCF). It presents strong evidence that there are significant net benefits from a multilateral framework and that there is no significant inconsistency between a framework and industrial and development policies.

9. Australia also wishes to record its congratulations and appreciation to the Secretariat for the high quality Symposium held in February. It provided very useful and complementary observations on many of the issues being addressed by the working group and featured many high quality presentations. Some of the key observations made during the Symposium were:

- Poor quality domestic regulations and anti-competitive practices can defeat trade liberalisation and deprive nations of the benefits of free trade.

- The damage from anti-competitive agreements is substantial, with the costs being even greater in developing countries. That is, there is a persuasive case for multilateral cartel enforcement. Further, enforcement costs are very minor compared to the benefits.

- A MCF offers the prospect of shortening significantly the time frames that developing countries would need to build and embed competition law and policy by offering a more supportive environment and targeted assistance. That said, patience and an ongoing commitment to progressivity and flexibility is essential.

- The need for technical assistance and capacity building efforts cannot be overstated, and the multilateral institutions have a leading role to play in delivering this objective.

- In terms of dispute settlement/compliance mechanisms, a range of options are available for consideration in any MCF, but flexibility should be a consideration.

- Civil society and consumer perspectives are fundamentally supportive of competitive market frameworks.

10. Some of these themes will be revisited in later comments.

11. Working group discussions on potential elements and principles for inclusion within a MCF have revolved particularly around the proposals/suggestions of the European Community, identified mainly in WT/WGTCP/W/222. Key components include: an objective of very basic competition principles; no requirement for harmonisation of competition laws; an assumption that all WTO Members – at some point in time – will have a competition law and enforcement agency with progressivity and flexibility as a driving principle; a narrow focus on and definition of core principles (transparency, non-discrimination and procedural fairness) and hard core cartels; a flexible approach to exclusions and exemptions that are transparent; defining non-discrimination only in terms of preventing reference to corporate nationality in competition law and involving a binding principle only in respect of de jure discrimination; limiting transparency to laws, regulations and guidelines of general application; and protecting confidential information.[1]

[1] This extremely brief identification of the main proposals seeks to provide context for subsequent comments.

12. While discussions in the working group have on occasion considered whether more comprehensive commitments might be appropriate, it seems fair to conclude that there is no current widespread support for more ambitious proposals.

13. Australia finds considerable merit in the EC proposals and suggests, at the broadest level, there appears to be wide support for many of the elements. There has, however, been some divergent views expressed in some areas, so the opportunity for further discussion is welcomed.

14. From Australia's perspective, some of the key issues include the following.

Binding versus non-binding

15. A threshold issue is whether, or to what degree, possible elements of a MCF would be binding on Members. There are, of course, significant linkages with the way that progressivity and flexibility is to be defined, and to consideration of possible compliance mechanisms, and the meeting will address them in detail later.

16. At this point, we only wish to raise the issue in a general way. Australia's understanding is that the EC proposes that the main elements of the core principles and hard core cartel arrangements should be binding, with some qualifications, such as that non-discrimination would be limited to de jure definition. On the other hand, some Members have questioned the capacity to deliver, or in some cases the appropriateness, of binding commitments in some of these areas.

17. The submission from Hong Kong, China to the February meeting (WT/WGTCP/W/224) observed that for Members to make an informed decision on whether or not they will be ready to undertake any multilateral obligations in the area of trade and competition policy, it is necessary for them to know the breadth and depth of possible obligations.

18. Australia endorses this view and consequently considers it important to endeavour to reach greater clarity in this area.

A commitment to having a competition law/enforcement agency at some point in time?

19. This proposal, of course, only has direct implications for those Members, most commonly developing country Members, that currently do not have a competition law or enforcement agency.[2] A number of those Members have expressed reticence about whether they could "commit" to this element, including for such reasons as competition policy being overshadowed by higher priority government objectives.

20. In considering this issue, it may be helpful to observe the following:

- More and more countries are embracing competition policy/law and its enforcement. This trend appears inexorable (and no country is removing such law).

- This trend is undoubtedly influenced by the emerging evidence of the benefits of competition law, and the potential costs of not having it, with the Evenett study providing significant further impetus to that evidence.

[2] The proponent has suggested that this might be achieved on a regional basis and/or through a multipurpose enforcement agency.

- Multilateral institutions (and individual Members) are delivering significant technical assistance and cooperation in support of such policy reform – and a potential MCF should endorse and enhance this.

21. Against this background, and given the scope for progressivity and flexibility provisions to ensure no-one is forced to make such changes before they are ready, the "commitment" might not be considered to be demanding, indeed, it could be very helpful to policy makers.

Core principles/hard core cartels

22. As identified in earlier papers and interventions, Australia considers the core principles of non-discrimination, transparency and procedural fairness to be the key foundations necessary to underpin any successful competition regime. Australia therefore supports these principles forming the bedrock, along with provisions dealing with hard core cartels, of any MCF. At this point, Australia offers only brief further comment on these issues.

- While it is, of course, appropriate that close consideration be given to the detailed manner in which these principles might be expressed in a MCF, it should be kept in mind that no Member has identified any competition regime in existence or contemplated that is fundamentally inconsistent with the principles.

- In discussing these issues, there has been broad recognition among Members that adjustment costs would involve a greater burden for developing countries. The key to addressing this lies with appropriate provisions dealing with progressivity and flexibility, and with ongoing commitment to technical assistance and capacity building (rather than any change to the core principles).

- An important feature of the proponent's model, with ramifications for the more specific provisions of each of the core principles, is that a MCF would deal only with the general laws, regulations and guidelines and would avoid dealing with case specific application of such provisions. Australia supports this, but recognises the concerns noted particularly by colleagues from the United States that delivering this objective will require careful thought.

- With respect to hard core cartels, Australia supports provisions that clearly prohibit them and are sufficiently broad to include domestic and international cartels. Rule of reason should apply where potential competitive benefits may occur from activity that is anti-competitive on its face. The OECD Recommendations[3] provide good guidance in this area.

Protection of confidential information

23. Australia supports the proposal that a MCF should not seek to extend non-discrimination to cover existing or future cooperation arrangements. It is important that decisions about whether information needs to be disclosed or protected remains solely with the domestic competition authority. It has been argued in the working group, convincingly in Australia's view, that any approach that sought to coerce the provision of confidential information would inflict significant damage on enforcement capabilities, so would be highly counterproductive.

24. That said, some have noted their frustration that information asymmetry limits their capacity to prosecute cartel activities, and consider this a problem for smaller economies in particular.

[3] OECD Council Recommendation Concerning Cooperation Between Member Countries on Restrictive Business Practices Affecting International Trade, adopted 28 July 1995; and OECD Council Recommendation Concerning Effective Action Against Hard Core Cartels, adopted 25 March 1998.

However, seeking to make cooperation arrangements binding appears to risk significantly greater costs.

25. Australia would be interested to hear the views of other Members on whether there may be other approaches, other than a requirement to share confidential information, that could go some way to address these concerns. For example, is there scope for a general principle that regulators will give consideration to international implications of their agreements in leniency programmes and the like? The objective would be to encourage, to the maximum degree possible, regulator enforcement actions facilitating cessation and appropriate punishment of illegal cartel behaviour not just within the regulator's formal area of jurisdiction.

B. THE NATURE AND SCOPE OF COMPLIANCE MECHANISMS

26. Three broad approaches to this issue have been flagged: a formal binding mechanism based on the WTO's Dispute Settlement Understanding (DSU); a peer review process; or some combination of these. The importance of this topic was clearly recognised at the February meeting, although divergent preferences were raised at that point. While a number of Members supported (at least) some element of binding and enforceable commitment, others indicated no interest beyond non-binding and voluntary arrangements.

27. Australia welcomes the opportunity to participate in a substantive discussion of this issue in the May meeting, particularly as the working group has had little opportunity to consider the matter in any depth as yet. At this stage, Australia does not have a fixed preference among the options but would characterise its starting point prior to this meeting as follows:

- Australia agrees that some form of compliance mechanism is an important element of any MCF.

- Australia has reservations about the merits of the DSU being applied to a MCF. Key factors influencing this initial view include questions about the applicability of DSU components such as binding panels and sanctions, the capacity to reassess individual cases and de facto compliance issues. That said, a fuller understanding of the form of dispute settlement mechanism being proposed will be important for Members to refine their views on this issue.

- Australia considers that a peer review mechanism could be a very useful component of a MCF that would support development of best practices in a non-adversarial environment, and it could also be a very useful component of technical assistance delivery to developing country Members.

28. Against this background, Australia welcomes the European Community's submission on Dispute Settlement and Peer Review Options for a WTO Agreement on Competition. The submission provides an excellent focal point for further discussions, particularly in respect of the dispute settlement issue.

29. Australia recognises the observation in the submission that it does not seek to deal exhaustively with all related issues. However, to seed further discussion, and to facilitate the working group's understanding of the submission, Australia wishes to raise some questions relating to this dispute settlement option:

- To what extent does the option contrast with existing elements of the DSU? In particular, preventing application to individual cases appears to represent a marked variation to the scope of the DSU.

- Similarly, would the option proposed prevent application of dispute settlement to de facto compliance issues?

- What possible form of sanctions could be applicable to the binding option raised?

30. Australia is also submitting a separate short paper on compliance mechanisms, focusing on peer review design options.

C. POSSIBLE ELEMENTS OF PROGRESSIVITY AND FLEXIBILITY

31. Australia wishes to make some very broad observations on this issue.

- There is universal agreement that 'one size does not fit all'. Along with every other Member that has expressed a view on this matter, Australia supports embedding the concepts of progressivity and flexibility in a MCF. It will be especially important for developing countries and those that do not have a competition law and an enforcement arrangement.

- Australia also considers that a MCF should be premised on the basis that competition should be the general rule, while also accepting the principles of flexibility and exemptions. Of course, exemptions and exclusions operate to some degree in all Members that have a competition law already, but there should be a commitment to transparency and periodic review wherever these exist.

- There is a range of matters that could be included in the menu of progressivity and flexibility measures including exclusions and exemptions, interim and transitional periods, enhanced flexibility of commitments, links with technical assistance measures and so on.

- Australia prefers that progressivity and flexibility not be considered a core principle, as it seems to be a concept rather different from transparency, non-discrimination and procedural fairness. The latter might be characterized as absolute and invariant elements of a MCF, while progressivity and flexibility address relative and transitional elements. This view does not diminish the importance of progressivity and flexibility.

32. On a related matter, in an attempt to assist working group Members that have expressed particular concerns about the scope for a MCF to compromise achievement of social or industrial policy priorities, Australia has prepared case studies of the way exceptions or public interest tests may operate to achieve broader public policy objectives in Australia. Interested Members are referred to Attachment A to this submission.

D. TECHNICAL ASSISTANCE AND CAPACITY BUILDING

33. A summary is provided below of the Australian Competition and Consumer Commission's (ACCC) most recent technical assistance and capacity building activities.

Barbados

34. From February to April 2003, the ACCC provided 'in country' assistance to the Fair Trading Commission of Barbados in the establishment of its Competition Division. The assistance included providing guidance to Director of Fair Competition and staff; providing insights on lessons learnt from experience in enforcing this type of legislation; and contributing to the development of guidelines in the various areas.

Fiji

35. With funding assistance from AusAID, the ACCC will implement the first stage of a project to establish the technical assistance needs of the Fiji Commerce Commission. The work will involve preliminary investigation, research and information collection that will result in the development of a technical assistance implementation plan for the Commerce Commission.

Thailand

36. Following a successful joint application by the ACCC and the Thai Department of Internal Trade under the Thailand-Australia Government Sector Linkages Program, the ACCC has received funding approval from AusAID to run a five day investigation course for sixteen staff of the Thai Trade Competition Commission (TCC) in Bangkok in September 2003. The funding also provides for translation of customised training materials to be retained by the TCC in hard copy and CD Rom.

E. OTHER BUSINESS, INCLUDING STOCKTAKING OF NATIONAL EXPERIENCE

37. Australia advised the working group, in WT/WGTCP/W/211, of an independent review being undertaken of the competition provisions of Australia's *Trade Practices Act 1974* (the Act). Australia now wishes to report on the outcome of this process.

38. The object of the Act is to enhance the welfare of Australians through the promotion of competition and fair trading and provision for consumer protection – the competition laws are contained within Part IV of the Act.

39. Broadly speaking, Part IV of the Act prohibits collusive agreements; misuse of market power; exclusive dealing; and mergers that substantially lessen competition in a market.

40. The Act also recognises that not all anti-competitive conduct is necessarily detrimental to the economy. This is reflected in the authorisation and notification provisions (Part VII of the Act) that empower the ACCC, Australia's competition regulator, to grant immunity from prosecution for anti-competitive conduct that would, or would be likely to, result in a net public benefit.

Background

41. The Prime Minister announced in October 2001 that there would be a review of the competition provisions of the Act, and their administration. On 9 May 2002, the Treasurer announced the membership and terms of reference of the independent Committee of Inquiry.[4]

42. The terms of reference required the Committee to consider whether the Act provides sufficient recognition for globalisation factors and the ability of Australian companies to compete globally. At the same time, the review considered whether the Act is sufficiently flexible to respond to the transitional needs of certain industries, specifically those in rural and regional Australia. The review considered whether the Act provides an appropriate balance of power between small and large businesses. The review also examined the administration of the Act, and particularly whether the Act provides sufficient protection to the position of individual businesses.

43. The Committee's Report follows an exhaustive consultation process. Over a period of eight months the Committee received and examined 213 submissions and 320 representations from

[4] Sir Daryl Dawson, AC KBE CB, a former Justice of the High Court of Australia, chaired the Committee, and the members were Ms Jillian Segal and Mr Curt Rendall.

consumers, business, regulators, industry groups and others, and conducted consultations with a range of interested parties around Australia. The Committee also undertook additional meetings with international regulators and experts.

The Report

44. On 16 April 2003, the Treasurer announced the release of the Report and the Commonwealth Government's response. The Committee concluded that the competition provisions of the Act have served Australians well. The Act has sustained a competitive environment in terms of service and price. The Committee found that the Act had achieved an appropriate balance between the prohibition of anti-competitive conduct and the encouragement of competition.

45. The overall theme of the Report is that the competition provisions should protect the competitive process, rather than particular competitors. Further, competition laws should be distinguished from industry policy.

46. The Committee made a total of 43 recommendations to further improve the operation and effectiveness of the Act. The Government response endorses the Report. The significant features of the Government response[5] are:

- the introduction of an optional formal clearance process for consideration of mergers, and provision for direct application to the Australian Competition Tribunal (rather than the ACCC) for merger authorisations;

- the introduction of a notification process to facilitate collective bargaining by small businesses dealing with a large business; and

- an increase in the maximum pecuniary penalty for corporations breaching the competition provisions, and in-principle acceptance of a proposal to introduce criminal sanctions for serious cartel behaviour, subject to further examination of the issue by a working party.

47. While noting that the ACCC has been commendably rigorous in enforcing the Act, the Government also provided in-principle support for several recommendations designed to enhance the accountability of the ACCC in the administration of the Act.

48. Under the terms of the 1995 Inter-governmental Conduct Code Agreement, the Commonwealth will now commence a period of consultation with the State and Territory Governments on the proposed amendments to the Act prior to those amendments being introduced into Parliament.

[5] The Government's announcement, containing links to the response and the report is available at http://www.treasurer.gov.au/tsr/content/pressreleases/2003/021.asp

ATTACHMENT A

A MULTILATERAL COMPETITION FRAMEWORK AND SOCIAL AND INDUSTRIAL POLICIES

1. A number of Members have expressed concern that a multilateral competition framework may compromise the achievement of social or industrial policy priorities. However, Australia considers that such concern could be misplaced as many countries use arrangements such as exceptions or public interest tests to balance policy objectives where a case for this is demonstrated.

2. This note outlines some key features of Australia's competition arrangements and provides a number of case studies of the way public interest tests have operated in Australia.

Australia's competition policy framework

3. Under Australia's National Competition Policy framework (details of which were included in WT/WGTCP/W/159), governments (federal, state and local) are only required to implement competition reform measures where the benefits outweigh the costs. Governments have recognised that encouraging effective competition may not always deliver efficient resource use and maximum community benefit, or may conflict with other social objectives.

4. Accordingly, the framework establishes a public interest test mechanism to examine the relationship between the overall interest of the community, competition and desirable economic and social outcomes. These factors are broader than the economic benefits and costs of a proposed reform, and include consideration of:

- government legislation and policies relating to ecologically sustainable development;
- social welfare and equity considerations, including community service obligations;
- government legislation and policies relating to matters such as occupational health and safety, industrial relations, access and equity;
- economic and regional development, including employment and investment growth;
- the interests of consumers generally or of a class of consumers;
- the competitiveness of Australian business; and
- the efficient allocation of resources.

5. The list is open-ended, and the process requires that all relevant matters should be considered in assessing the public interest.

6. Under the National Competition Policy framework, individual governments ultimately make an assessment of the public interest. However, each jurisdiction's performance in implementing the required competition policy reforms is assessed by an independent agency – the National Competition Council.

Australia's competition law

7. Furthermore, Australia's competition law, the *Trade Practices Act 1974* (the Act) also enables the competition regulator, the Australian Competition and Consumer Commission (the ACCC), to

grant immunity from prosecution for certain anti-competitive conduct where the conduct would result in a net public benefit.

8. This process, known as authorisation, is available for the competition provisions of the Act, except the misuse of market power provision. Public benefit for the purpose of authorisation is not generally defined in the Act, however the Australian Competition Tribunal (the appellate body for ACCC decisions) has stated that a public benefit is:

> *Anything of value to the community generally, any contribution to the aims pursued by the society including as one of its principal elements (in the context of trade practices legislation) the achievement of the economic goals of efficiency and progress.*

9. The decision to grant an exemption through the authorisation process is based on an assessment of public benefit gains from the conduct. This involves a trade off between the objectives of preventing anti-competitive conduct and attaining public benefits from well functioning markets.

10. While authorisation is not granted lightly, the public benefit test in the authorisation process is flexible and has responded to the transitional needs of industries and communities affected by structural change and to the requirements of rural and regional areas.

11. Both economic and non-economic public benefits are included in the concept of 'public benefit' for authorisation of anti-competitive conduct. Examples of economic benefits recognised by the ACCC and the Australian Competition Tribunal include: fostering business efficiency, growth in export markets and industrial harmony. Examples of recognised non-economic benefits include: improvements to health and safety, environmental protection, avoiding conflicts of interest and adopting provisions that lead to equitable dealings between businesses.

Case Study 1 – Dairy Authorisations

Helping dairy farmers adjust to negotiating in a deregulated market and facilitating the international competitiveness of Australia's dairy industry

12. On 1 July 2000 the dairy industry in Australia was fully deregulated and there are no longer any formal quantitative controls on the supply or price of milk in Australia.

Premium Milk Supply Pty Ltd authorisation

13. In December 2001 the ACCC granted authorisation to allow Premium Milk Supply Pty Ltd to collectively bargain farm-gate prices and milk standards in negotiations with Pauls Limited in the State of Queensland. Pauls specialises in producing branded milk and dairy products and is the largest milk processor in Queensland. The 580 Queensland dairy farmers that supplied milk to Pauls through six cooperatives were offered Premium membership.

14. The ACCC accepted that this arrangement would lead to a net public benefit because efficiency gains from transaction costs savings and by smoothing the transition from a regulated to a deregulated market. The ACCC granted authorisation until 1 July 2005.

Australian Dairy Farmers' Federation authorisation

15. On 12 March 2002 the ACCC issued a final determination granting authorisation to the Australian Dairy Farmers' Federation (ADFF) to allow groups of dairy farmers to collectively

negotiate pricing and supply arrangements with dairy processing companies across Australia. The authorisation was subject to a number of conditions and was granted until 1 July 2005.

16. ADFF applied for authorisation in very broad terms and the ACCC considered that the collective bargaining arrangements proposed by ADFF were likely to have a detrimental effect on competition with consumers likely to be charged higher prices for dairy products. To address these concerns the ACCC imposed conditions to limit the scope of the collective bargaining groups that could be formed.

17. The ACCC considered that the conditional authorisation of collective bargaining by dairy farmers would lead to several public benefits, including:

- increased competition in the supply of raw milk by allowing dairy farmers to take advantage of additional market opportunities for their milk;

- reducing the likelihood of harsh or unfair contractual terms by improving the confidence of individual dairy farmers in dealing commercially with processors and increasing their individual bargaining power;

- assisting with the transition to a deregulated market by giving farmers the opportunity to gain negotiating and information collection skills and increasing their ability to conduct efficient and effective negotiations when they ultimately assume independent responsibility for negotiations; and

- to the extent that the ability to collectively negotiate would stop farmers exiting the dairy industry, benefiting the rural communities that rely on dairying through continued employment and commercial activity.

Case Study 2 – CSR

Assisting the Burdekin community, North Queensland and facilitating the international competitiveness of Australia's sugar industry

18. In July 2001 the ACCC granted authorisation to allow sugar cane growers and CSR to collectively negotiate terms and conditions for supplying sugar cane to the CSR-owned Pioneer and Invicta mills in the Burdekin region of the State of Queensland.

19. The ACCC was satisfied that the agreements would deliver economic public benefits to the Burdekin cane growing region flowing from increased mill throughput and farm output and associated new investment and efficiency from improved infrastructure use.

20. The ACCC acknowledged that the communities and many towns in the Burdekin sugar region are substantially maintained and/or affected by the raw sugar industry and its associated service areas.

<u>Facilitating international competitiveness</u>

21. The sugar industry is Australia's second largest crop industry and Queensland's largest rural commodity. Around 85 per cent of raw sugar is exported. The effect of the ACCC's decision to grant authorisation was to allow implementation of industry agreements to provide for a gradual extension of the cane crushing season, together expansion of mill crushing capacity. In its decision to grant authorisation the ACCC recognised that the agreement was likely to result in export growth and an increase in the international competitiveness of the sector.

Case Study 3 – Homeworkers Code of Practice

Facilitating occupational health and safety

22. On 11 July 2000 the ACCC granted authorisation to the Homeworkers Code of Practice (the code).

23. The code – a voluntary self-regulatory scheme negotiated by industry participants in 1997 – was designed to supplement the outworker provisions of the *Clothing Trades Award 1982*.

24. The aim of the code is to redress the non-award conditions of many people employed in the garment-making industry as homeworkers – that is, people who sew in premises other than a registered factory. The garment industry increasingly uses homeworkers to do their sewing.

25. The code provides for the accreditation of parties along the garment manufacturing and retail chain. Competition issues include the potential use of commercial sanctions, which retailers and manufacturers may impose on contractors who engage homeworkers if they do not comply with the code.

26. The ACCC was satisfied that the arrangements in the code would benefit the public because they helped to:

- lessen the risk of exploitation of a disadvantaged group;
- improve compliance with statutory award requirements;
- provide information to help homeworkers understand their employment conditions;
- ensure satisfactory employment options for women who choose to stay at home; and
- improve the social environment of the families of homeworkers by providing standard working conditions.

27. While the code could restrict the use of contractors by suppliers, the ACCC decided the code would not substantially affect their ability to compete. The ACCC also considered that adequate safeguards existed to minimise the adverse effects on competition from trading sanctions under the code.

Case study 4 – Agsafe

Facilitating the safe use of agricultural and veterinary chemicals

28. In 2002 the ACCC reauthorized an agricultural and veterinary (agvet) chemical industry self-regulation compliance program run by Agsafe Limited.

29. The Agsafe program has been operating successfully under ACCC authorisation for more than ten years. In that time the program has benefited users and the community by promoting the safe use of agvet chemicals and Australia-wide uniform standards for their safe storage.

30. The authorisation granted by the ACCC applies to Agsafe's industry accreditation scheme requiring persons and premises involved in the transport, handling and storage of agvet chemicals to

be accredited and to comply with a code of conduct. The authorisation also allows Agsafe to apply trading sanctions to premises that fail to meet accreditation standards.

31. Agsafe trains industry participants in the relevant safety and regulatory requirements. Agsafe also inspects premises where agvet chemicals are stored to ensure they comply with all relevant state and federal safety regulations. Where premises breach these regulations Agsafe is able to, as a last resort, impose trading sanctions. Trading sanctions prohibit other businesses purchasing from or supplying to the offending premises until safety concerns have been addressed.

32. The Agsafe program brings benefits to rural and regional Australia where agvet chemicals are mostly used. Through its accreditation and training scheme, the Agsafe program has increased knowledge and understanding of existing regulatory requirements for the safe transport, handling, and storage of agvet chemicals.

33. This decision is one of several the ACCC has released in recent times that demonstrate how the authorisation process accommodates social issues – such as public safety and the specific needs of rural Australia – as well as economic considerations.

Case Study 5 – Port Waratah Coal Loading Services

Facilitating workable solutions to promote Australia's international competitiveness

34. In 1997 a large queue of coal ships developed at the coal loading facilities in Newcastle with queues of between 35 and 40 vessels common. The effect of this queue was to damage the reputation of the port in the eyes of overseas buyers with the potential to damage the international competitiveness of the Hunter Valley coal industry. Over 68 million tonnes of coal is exported each year through the Newcastle port. This represents over 90 per cent of total exports from the Hunter region.

35. To provide a short-term solution to the queuing problem, the ACCC granted an authorisation for a capacity allocation system. The ACCC recognised a clear public benefit in promoting the quantity and the value of coal exports out of Newcastle. The ACCC accepted the need for a short-term exemption from the competition provisions of the Act to be granted, subject to conditions, to resolve the vessel queuing problem that was damaging the international competitiveness of Australia's coal industry.