

10 September 2010

Bilateral and Regional Trade Agreements  
Productivity Commission  
GPO Box 1428  
Canberra City ACT 2601

**RE: NFF Response to Draft Report - Bilateral and Regional Trade Agreements**

The National Farmers' Federation (NFF) appreciates the opportunity to provide comments to the Productivity Commission in relation to its Draft Research Report on Bilateral and Regional Trade Agreements. We have provided responses to recommendations below that are of particular importance to NFF members and hope that these will be taken into account within the final report.

**DRAFT RECOMMENDATION 1:**

The Australian Government should consider pursuing bilateral and regional trade agreements to reduce foreign barriers to trade and investment when alternative channels, including plurilateral and multilateral means, are not practicable and where a prospective bilateral or regional agreement offers additional opportunities, provided the prospective arrangement:

- as far as practicable, avoids discriminatory terms and conditions in favour of arrangements based on non-discriminatory (most favoured nation) provisions;
- does not preclude or prejudice similar arrangements with other trading partners;
- does not establish treaty obligations that could inhibit unilateral, plurilateral or multilateral reform; and
- is assessed, through an independent and transparent analysis, to afford meaningful net economic benefits.

**NFF RESPONSE:**

The NFF agrees that the focus of the Government should continue to be on pursuing multilateral and plurilateral means as a way of reducing trade barriers wherever practical.

The NFF also agrees that most favoured nation (MFN) provisions should be pursued within all bilateral or regional trade agreements provided doing so does not add a level of complexity to the negotiations that would place an ambitious outcome in jeopardy.

A major concern about the proliferation of bilateral and regional trade agreements is that in those deals that Australia is not a party, our exporters face discriminatory

conditions. Similar outcomes may also occur if a third nation negotiates a more ambitious deal with a country that already has a bilateral and regional trade agreement with Australia.

Including an MFN provision would give Australian exporters confidence that this could not occur and that any Bilateral and Regional Trade Agreement negotiated by Australia will not be “bettered” into the future. In this way it would act as an insurance policy.

#### DRAFT RECOMMENDATION 2:

The Australian Government should continue to comply with WTO requirements in forming bilateral and regional agreements. Within this framework, the Government should:

- adopt a more flexible approach to the coverage of bilateral and regional trade agreements and consider less comprehensive, while still WTO-consistent, agreements; and
- make greater use of implementation schedules that rely on built in agendas to promote reductions in barriers to trade and investment.

#### NFF RESPONSE:

From the NFF’s perspective, this is the most concerning recommendation within the draft report, particularly the suggestion that the Australian Government should adopt a more flexible approach to the coverage of bilateral and regional trade agreements and consider less comprehensive, while still WTO-consistent, agreements.

As previously stated, the NFF believes that all-inclusive trade agreements, whether they are bilateral or multilateral, must be Australia’s bottom line.

Projected population growth will raise issues of food and fibre security within our region and comprehensive trade reform will be required to enable food and fibre to move from areas of surplus to areas of need. This will create both opportunities and responsibilities for Australia. The potential exclusion of food and fibre from trade negotiations would therefore be short-sighted in the extreme.

Agriculture remains the most distorted area of international trade with average tariffs more than three times higher than non-agricultural goods, with some commodities facing anti-competitive tariff barriers of more than 800%.

There are large gains for Australia’s net economic position in pressuring for agricultural trade inclusions. To take the easy road, as this recommendation has been interpreted as suggesting, would be selling Australian farmers, and Australia’s prosperity, short.

The NFF acknowledges that the Productivity Commission has subsequently suggested that the above recommendation in no way suggests that a sector such as agriculture, or even a sensitive commodity within the sector, would be “carved out” of any future bilateral and regional trade agreements before the negotiation even commences. It has been suggested by the Productivity Commission that the requirement that any deal

be WTO-consistent, provides an adequate safeguard to ensure that any fears projected by the NFF are unfounded.

While the NFF is buoyed by this feedback, the current recommendation wording as it stands remains ambiguous and needs to be amended to avoid future misinterpretation.

As the draft report states, article XXIV of the GATT requires that *actions to reduce the trade barriers between member countries should cover 'substantially all trade'*. However, what is meant by 'substantially all trade' is not defined within the GATT.

Clearly therefore, the suggestion that future bilateral and regional trade agreements be WTO-consistent does not explicitly rule out the possibility of a negotiated outcome that does not include agriculture, or a sensitive commodity within the sector. The wording therefore needs to be amended.

In addition to this recommendation, the report suggests *a flexible approach may mean considering, for example, a services-only agreement - as the Mortimer review suggested with respect to the European Union.*

The NFF believes that pursuing a services only agreement with the EU would represent a lost opportunity for Australian agriculture and jeopardise any potential future improvement in access to the European agriculture market. We also believe that such an agreement would set an extremely damaging precedent that would clearly signal to the world that Australia is prepared to sell itself short by pursuing trade deals that avoid discussion on areas of sensitivity.

#### DRAFT RECOMMENDATION 3:

The Australian Government should adopt the composite model for rules to determine origin in merchandise trade as used in AANZFTA, as a basis for rules of origin in future preferential trade agreements. In adopting this broad model:

- a choice of Regional Value Content and Change in Tariff Classification rules for determining origin should be afforded for each item of merchandise;
- the least restrictive variant of each test should be adopted, consistent with preventing trade deflection; and
- Australia should seek to negotiate agreement partners' agreement to a waiver to rules of origin requirements that would be applied where the MFN rates in the partner countries are close (that is, the difference between tariff rates is 5 percentage points or less).

#### NFF RESPONSE:

No comment.

#### DRAFT RECOMMENDATION 4

The Australian Government should not include matters in bilateral and regional trade agreements that increase barriers to trade, raise industry costs or affect established social policies without a comprehensive review of the implications and available options for change. It should adopt a cautious approach to:

- negotiating and including IP protections in agreements, particularly when these involve extensions to current thresholds;

- referencing core labour standards in agreements; and
- exclusions for audiovisual and cultural services.

**NFF RESPONSE:**

The NFF agrees that the Australian Government should be extremely careful to keep to trade-related matters only and to avoid ‘new protectionism’ in bilateral and regional trade agreements.

**DRAFT RECOMMENDATION 5:**

The Australian Government should be cognisant of the capacity of legal systems in prospective partner countries to resolve disputes on all relevant aspects emerging from cross border commerce.

- Where the legal systems of partner countries are relatively underdeveloped, it may be appropriate to refer cases to third party dispute settlement mechanisms.
- However, such process should not afford foreign investors in Australia or partner countries with legal protections not available to residents.
- Investor-state dispute settlement procedures should be subject to regular review to take into account changing international best practice and the evolving legal systems in partner countries.

**NFF RESPONSE:**

No comment.

**DRAFT RECOMMENDATION 6:**

The Australian Government should institute measures to substantially enhance the scrutiny of the potential impacts and benefits of prospective agreements, particularly those involving preferential arrangements.

- Before negotiations commence, greater attention should be given to the reasons for seeking to negotiate with a trading partner, the proposed topics for negotiation, potential impacts and benefits of a prospective agreement, expected timeframe, resource requirements, relevant exit strategies where negotiations cannot be concluded within, say, 2 years, and the relative merits and feasibility of alternative strategies, including unilateral and multilateral reform options.
- Before an agreement is signed, an independent and transparent assessment of the likely impacts and community-wide benefits of the proposed agreement, commissioned independently of the executive, should be undertaken. The assessment should be made against the text of the agreement and not an overly optimistic scenario. It should take into account any additional administrative and compliance costs and the economic effects of the proposal for reducing barriers to trade and investment and other provisions.

**NFF RESPONSE:**

The NFF believes that there is already a significant level of scrutiny of Australia’s trade agreements, although we acknowledge that this scrutiny tends to occur on a public level only between sign-off and ratification by the Australian Parliament. In

the past, the NFF has been subject to intense questioning before the Senate as trade agreement outcomes are considered.

Despite this being the case, the NFF agrees that it is a good objective for the Australian Government to attempt to enhance scrutiny of the reasons for, time frames, exit strategies, potential impacts and benefits of prospective agreements. At a time when there is a increasing global focus on pursuing 'geo-political' deals that have little interest in genuine trade liberalisation, it is important that the Australian Government makes it clear to stakeholders about what direction they intend to drive the negotiations.

However, the NFF does acknowledge that, in practice, additional scrutiny after the completion of negotiations could be difficult to achieve and has the potential to politicise the agreement sign-off process to a standstill. It may also have the potential to undermine the integrity of an 'in good faith' negotiation process. These risks should be examined further by the Productivity Commission before making a final recommendation on the issue.

The NFF would also urge caution about requiring public feasibility study modelling undertaken prior to commencing a bilateral or regional trade negotiation to undertake an array of less ambitious modelling scenarios. While acknowledging that assumptions used in current feasibility study modelling can be unrealistic in highlighting 'best case' scenarios, the NFF believes that it is appropriate for this to form the starting point of the negotiations. Providing alternative options may risk lowering the starting ambition underpinning the negotiations.

#### DRAFT RECOMMENDATION 7:

To enhance transparency and public accountability, the Department of Foreign Affairs and Trade should publish estimates of the expenditure incurred in negotiating bilateral and regional trade agreements and multilateral trade agreements.

#### NFF RESPONSE:

The NFF has received a strong level of service from the Department of Foreign Affairs and Trade (DFAT) in matters relating to trade negotiations. In our view there are already high levels of DFAT transparency and accountability to the NFF and the specific agricultural commodity sectors who engage with DFAT negotiators both directly and/or through the NFF channels.

#### OTHER ISSUES:

- Quantifying the benefits of bilateral and regional trade agreements

The NFF notes the statement in the draft report that *to date, the Commission has received little evidence from business to indicate that preferential BRTAs have provided substantial commercial benefits.*

While it is for the individual agricultural commodity organisations to provide feedback to the Productivity Commission on the accuracy of this statement, the NFF questions whether this statement takes into account the commercial losses that accrue

when we do not have a trade agreement with a country that has a preferential arrangement with a competitor to Australia.

The NFF highlighted the example of South Korea in our original submission, where Centre for International Economics (CIE) modelling revealed that Australian agricultural and food exports to Korea could be slashed – in real terms, down 12.4% (\$162 million) by 2030 – should Korea and the United States (US) ratify their Free Trade Agreement. The NFF questions whether benefits such as these could be classified as being ‘modest’ as is suggested in the media release accompanying the release of the draft report.

The NFF also questions whether the Productivity Commission has placed a value on improvements in business confidence provided by bilateral or regional trade agreements when existing tariffs are locked in at existing levels. The certainty delivered to exporters when the risk of backsliding is removed is tangible, as was reinforced by NFF members in the wake of Australia’s agreement with ASEAN.

Before signing this deal, some ASEAN countries could set tariffs for Australian imports over 200%. The trade agreement with the ASEAN locking tariffs effectively killed that option, boosting the confidence of exporters about the ASEAN market’s longer term opportunities.

Yours faithfully,



**DAVID CROMBIE**  
**President**