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DEFENCE AND TRADE

TRADE SUBCOMMITTEE

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Latin America**

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**JOINT STANDING COMMITTEE
ON FOREIGN AFFAIRS, DEFENCE AND TRADE**

Trade Subcommittee

Friday, 11 September 2009

Members: Senator Forshaw (*Chair*), Mr Hawker (*Deputy Chair*), Senators Mark Bishop, Ferguson, Fifield, Furner, Hanson-Young, Johnston, Ludlam, Moore, O'Brien, Payne, and Trood and Mr Baldwin, Mr Bevis, Ms Julie Bishop, Mr Danby, Ms Annette Ellis, Mr Gibbons, Ms Grierson, Mr Hale, Mr Ian Macfarlane, Mrs Markus, Mr Murphy, Mr Oakeshott, Ms Parke, Ms Rea, Mr Ripoll, Mr Robert, Mr Ruddock, Ms Saffin, Mr Bruce Scott and Ms Vamvakinou

Trade Subcommittee members: Ms Saffin (*Chair*), Mr Bruce Scott (*Deputy Chair*), Senator Forshaw (*ex officio*), Senators Ferguson and Furner and Mr Gibbons, Mr Hale, Mr Hawker (*ex officio*), Mr Ian Macfarlane, Mrs Markus, Mr Murphy, Mr Oakeshott, Mr Ripoll and Ms Vamvakinou

Members in attendance: Senator Ferguson, Senator Forshaw and Ms Saffin

Terms of reference for the inquiry:

To inquire into and report on:

Opportunities for expanding Australia's trade and investment relations with the countries of Asia, the Pacific and Latin America, with particular attention to:

- the nature of existing trade and investment relations;
- likely future trends in those relations;
- the role that these countries might play in advancing the Doha round of multilateral trade negotiations in the WTO; and
- the role of the Government in identifying opportunities and assisting Australian companies, especially those in rural and regional areas, to maximise opportunities in these regions.

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Subcommittee met at 9.03 am

CHAIR (Ms Saffin)—I declare open this eighth public hearing into Australia's trade and investment relations with the nations of Asia, the Pacific and Latin America which is being conducted by the Trade Subcommittee of the Joint Standing Committee on Foreign Affairs, Defence and Trade. Today the subcommittee will be taking evidence from a range of important organisations operating in the fields of international trade and investment. The experience and knowledge that these witnesses bring to the table will be very valuable to the subcommittee members in considering the major issues we face at present. We anticipate an informative and encouraging discussion. The subcommittee hopes that the discussion this morning will assist it in preparing some solid recommendations for the government on ways in which Australia can improve trade and investment relations with the countries covered by its terms of reference. At the same time, we are also seeking ways to assist Australian companies, especially those in regional areas, to make the most of current and developing opportunities. Finally, I remind any members of the media who may be observing the public hearing of the need to report fairly and accurately the proceedings of the subcommittee as required by the Senate order concerning the broadcasting of Senate and committee proceedings.

[9.05 am]

CHALMERS, Mr Ian Mar, Chief Executive, Medicines Australia

MONK, Ms Deborah Jane, Director, Innovation and Industry Policy, Medicines Australia

CHAIR—Welcome and thank you for appearing before us today. Although the subcommittee prefers that all evidence be given in public, should you at any stage wish to give any evidence in private you may ask to do so and the subcommittee will give consideration to your request. Although this committee does not require you to give evidence on oath, you should be aware that these hearings are legal proceedings of the parliament and therefore have the same standing as proceedings of the chambers themselves. Do you wish to make a short opening statement?

Mr Chalmers—Thank you. Medicines Australia is grateful for the opportunity to appear before this hearing. We represent the innovative pharmaceuticals sector of Australia. Our 50 member companies develop and market new medicines, vaccines and health services that benefit patients in Australia and in many other countries around the world. The pharmaceuticals industry in Australia as a whole employs over 40,000 Australians, nearly 14,000 of whom are involved in the research, discovery and development functions of our sector, and 4,000 of those 40,000 employees are directly involved in manufacturing. Last year the industry exported products worth approximately \$4 billion and 53 per cent of that export volume by value was to countries in the Asia-Pacific region. This makes the pharmaceuticals industry Australia's second largest exporter of elaborately transformed goods.

In large part our successes are due to the strength of Australia's intellectual property system. On 22 May 2009 representatives of the Australian Generic Medicines Industry Association appeared before this committee. Those representatives proposed in their submission to this inquiry that companies that do not own the patent for a medicine should be permitted to manufacture generic copies of patented medicines for export. We appreciate this opportunity to respond to the proposal that was put before you and to other matters that were raised in the submission by the generic medicines industry.

At the heart of this debate is a concept known as patent term restoration and its impact on investment, innovation, jobs and exports in the pharmaceuticals sector. Between a half and two-thirds of a standard 20-year patent term for a new medicine is effectively lost to the pharmaceutical innovator because they must demonstrate the quality, safety and efficacy of pharmaceutical products before those products can enter the market. In recognition of this erosion of the 20-year patent term most advanced countries, including the United States, Japan and members of the European Union, offer patent term restoration.

Patent term restoration partially compensates pharmaceutical companies for the 12 to 15 years it takes to bring new medicines from discovery to market. In providing restoration of the effective patent life ongoing investment is encouraged, which translates into more jobs and more exports. Patent term restoration for pharmaceuticals is an integral part of Australia's patent system and is consistent with world's best practice. It is not a self-imposed barrier, as was asserted by our colleagues in the generics industry.

Under the terms of the Australia-United States Free Trade Agreement both countries recognise the need to compensate pharmaceutical patent holders for lengthy regulatory delays. In addition, as a party to the World Trade Organisation's Agreement on Trade-Related Aspects of Intellectual Property Rights, or TRIPS, Australia is obligated to confer exclusive use rights to the patent holders for the entire term of a valid patent. Were any proposals implemented that would curtail the rights of patent holders Australia would stand in violation of its international trade obligations. Such a violation would reflect very poorly on Australia. Indeed, it might expose Australia to retaliatory measures, including tariffs on Australian biopharmaceutical products from our key trading partners. I cannot stress enough the serious and significant impact this would have on employment and exports in the pharmaceuticals industry in Australia if we were to be out of step with other major countries in terms of intellectual property protection.

On 23 July 2009 Medicines Australia received a letter from Senator the Hon. Kim Carr, the Minister for Innovation, Industry, Science and Research, stating that the Australian government could not support the proposals put forward by the generics industry regarding the amendment of Australia's patent laws. There are very sound reasons for the government's decision. In particular, Minister Carr stated that the, 'Proposals could not be supported in light of Australia's international commitments on intellectual property and trade.' We believe that the government recognises that Australia's long-term competitive advantage lies in conducting high-quality research and in manufacturing and exporting high-tech goods and services. These ideals are best served by maintaining a strong and internationally competitive intellectual property environment in this country.

I will conclude by saying that government and industry must work together to foster what Australians do best—innovation. We must work together to create jobs that help to attract and retain Australian talent. We must work together to maintain and expand Australia's high-tech manufacturing sector, which will sustain high-paying jobs and high-value exports and which will open up new markets to Australian products and services. Above all, we must make sure that patent laws are not weakened under the erroneous claim that weakening the laws will, somehow, ensure better public access to inventions or will provide better jobs for Australians. The fact is this: intellectual property laws underpin Australia's modern and technologically advanced economy. Weakening those laws would weaken the foundations upon which we have been able to attract investment to Australia and to grow our exports. Thank you, again, for the opportunity to address the committee this morning. We welcome any questions on the matters before you today.

CHAIR—Thank you for your opening statements. We do have some questions and I will move into them so that we get to ask a few questions before you leave. I note your comments about the submission we received from Three Plus. You are saying that in your opinion it would violate our WTO obligations—have you any comment about the free trade agreement with the United States and that issue?

Mr Chalmers—Yes, I would say that the free trade agreement requires that Australia implement the intellectual property regime which is underpinned by the obligations that our country and other developed countries have to the World Trade Organisation's TRIPS agreement. I understand that the Australian Government Solicitor has confirmed this obligation.

Ms Monk—It is actually article 17.9.8(b) of the free trade agreement which reinforces this concept of patent term restoration and which obliges the parties to the agreement to make sure that they provide patent term restoration. We argue that in that extended patent period—the five years of extended patent that can be obtained—there is no difference to the full patent term. There is no different quality, for want of a better term, in the extension period than the original 20-year patent term.

CHAIR—So you consider that five years to be the package—the patent term. Is that what you are saying?

Ms Monk—Yes. And the extended period should have no lesser validity or protection than the 20 years.

CHAIR—I understand. That is clear. The submission to this inquiry by Three Plus called for an amendment to section 78 of the Patents Act. I am not asking you to second-guess or to comment on what is in the minds of the people who come before the committee, but would you like to comment, just a little, on that, because it actually says, in the submission, that it will allow ‘the Australian pharmaceutical and biotechnology sector to manufacture for export to international markets’. I thought that was what was happening now anyway.

Mr Chalmers—Well, it is what is happening now. But that manufacture and export is being effected by patent-holding companies. The submission that you received was from generic companies who are not patent holders, who are seeking a change to the law to allow them to profit from the intellectual property which resides with the patent holders during a valid and legitimate patent-protection period.

Ms Monk—Certainly once the patent has expired the generic manufacturers can manufacture the molecules, once they are out of patent, for export. So the generic companies do export, now, those out-of-patent molecules. But the vast majority of the exporting from Australia of pharmaceutical products is done by the originator companies, not by the generic companies. We export about \$3.9 billion worth of pharmaceuticals every year. That is from 2008. Of that, a bit less than \$500 million is of generic exports. So the vast majority of exports are from our companies.

Senator FORSHAW—Can I just ask you to clarify, for the record and to remind me, the phrase ‘patent restoration’?

Ms Monk—‘Patent term’—

Mr Chalmers—‘Patent term restoration’.

Senator FORSHAW—‘Patent term restoration’. You said that, over the course of a typical 20-year patent which commences from the registration or the discovery—

Ms Monk—From the discovery.

Senator FORSHAW—you may have 10 or 15 years or so before you can actually get that product onto the market. That is a fairly typical position, is it—that length of time?

Mr Chalmers—It is, yes.

Ms Monk—Yes, it is.

Senator FORSHAW—Which leaves you with, presumably, five years left of the 20.

Mr Chalmers—Five to seven years, perhaps.

Senator FORSHAW—So can you just explain to me what this patent term restoration concept is?

Ms Monk—Yes, of course. Given that a lot of your patent term has been lost before you get the product to market, the idea is to give you an effective patent life of up to 15 years. So, if the patent is going to expire five to seven years after you get it on the market, you can ask for an extension of time of up to another five years. That would give you a maximum effective patent life of up to 15 years.

Senator FORSHAW—That is what I thought. I will just be the devil's advocate for a minute here. Do not assume I have made a decision or formed a view. I note what you have said: the government has pretty well closed the case on this, at least in terms of the submissions put by Three Plus. Is it the case that you should look at the 20-year or the 25-year period as a patent that is taken out or made available—an exclusive right for production and marketing? Is it not the case that that length of time is to take account of the fact that you are going to have to develop the product, test the product, get through the regulatory period and put it onto the market? If you look at it from another philosophical position you could say that the reason you can get 20 to 25 years is to take account of the 10 to 15 and to enable you to recoup those investments without fear of someone else taking the invention or the discovery, let alone then putting it through all the other processors to put it onto the market.

Mr Chalmers—The 20-year patent term is the standard intellectual property benchmark which extends across multiple sectors of the innovative sector of our economy.

Senator FORSHAW—That is what I am looking for.

Mr Chalmers—It applies equally to innovations in the IT sector, the electronic sector or the aviation sector—whatever innovative sector you care to name. But uniquely in the pharmaceutical sector, because of the critically important necessity to demonstrate to the satisfaction of regulators here and internationally that a new medicine is safe, is efficacious and works, before that medicine can be brought to market, the process of demonstrating safety and efficacy to the satisfaction of regulators—who set an extraordinarily high and quite inappropriate benchmark—takes many years, far longer than would be the case in bringing another invention to market in a different non-pharmaceutical sector. That is why there is particular recognition of the extraordinary expense and very long time it takes to bring a product to market in our sector, which is not replicated in other innovative sectors of the economy.

I also note that the cost of bringing a medicine to market through the cycle of extended phases of clinical trials, which builds the evidence which can ultimately be presented to regulators, is enormously expensive. Typically in excess of a billion dollars is expended in preparing a

medicine for market entry. Naturally, generic companies are keen to enter the market at the earliest opportunity, although they have no R&D expenditure at all. All the research, development and presentation of proof of efficacy and safety are done by the innovator companies. So innovator companies need a reasonable period to recover their investment.

Senator FERGUSON—You told us you had a letter from the minister saying that he would not proceed along the lines that were requested by Three Plus or by the generic producers.

Mr Chalmers—That is correct.

Senator FERGUSON—Does the fact that the minister has given you an undertaking address the concerns you have?

Ms Monk—With the proposals put forward by the generic medicines industry, yes, the minister's answer was quite definitive. It said that none of the proposals put forward by the generic industry would proceed. He indicated in the letter that they had sought extensive advice and we understand that included advice from the Solicitor-General. So they gave proper and due consideration to the proposals and came to the conclusion that they were not consistent with our international trade obligations.

Senator FERGUSON—So the generic producers have suggested that the requested amendment that they wanted would not affect international obligations, particularly under the Australia-US Free Trade Agreement. You disagree with the statement?

Mr Chalmers—So does the Solicitor-General.

Ms Monk—We strongly disagree that it would be consistent with our trade obligations. We do not think those changes would be consistent with our trade obligations.

Senator FERGUSON—When did the minister write this letter to you?

Ms Monk—We received it on 23 July.

CHAIR—Would we be able to have a copy of that letter because we do not have any such information before us?

Mr Chalmers—We do not have it with us but we are very happy to provide it to the committee.

CHAIR—Thank you. It can be submitted as part of the evidence.

Senator FORSHAW—Why would it be inconsistent with or contradict our obligations under WTO and the US free trade agreement? If it is a complicated answer, you might provide it to us. It is one thing to say, 'Yes, it is,' or, 'No, it does not,' but there could well be a technical debate about that.

Ms Monk—It is quite complicated and, if I may, I would like to take that on notice and provide you with written advice.

Senator FORSHAW—That would be helpful. Is it set out in the minister's letter?

Ms Monk—No, but it has been set out by us in our letters to the minister.

Senator FERGUSON—I think the generic producers said that they expect the generic pharmaceutical market to grow by 14 per cent a year. Do you have any views as to whether that is a reasonable expectation? Has the current financial situation affected all those projections?

Mr Chalmers—Our industry is evolving in quite a dynamic way. There is an increasing level of convergence between innovators and generic companies and the next wave of new discoveries will largely be around biologic medicines. That will provide the opportunity down the track for the introduction of biosimilars, which is the generic version of a biologic medicine. Innovator companies are diversifying their product offerings and acquiring generic companies so the industry is evolving quite rapidly.

When generic companies move into the biosimilar space, they will need to establish a research and development capacity of their own because biosimilars are just that—they are similar, they are not exactly the same as biologic medicines. So generic companies in future wishing to produce alternate forms of biologic medicines will have to demonstrate the safety and efficacy of their biosimilar, in the same way that originator companies need to do. The short answer is yes, the market is growing, but the market is not growing in the area of generic companies manufacturing medicines which are currently patented. There is strong growth in the generic market but there is no scope for growth for generic companies copying medicines which are patent protected.

CHAIR—Mr Chalmers, you can be excused and thank you to your attendance here today. If there are any matters on which we might need additional information, the secretariat will write to you.

Mr Chalmers—Thank you, Madam Chair. I thank the committee.

Senator FERGUSON—Ms Monk, in the area of patent laws are there any significant differences between Australia's patent laws and those of a significant trading partners?

Ms Monk—Australia enjoys a strong intellectual property regime. Generally I would regard it as equivalent to our trading partners such as the US, Europe and Japan.

Senator FERGUSON—And New Zealand?

Ms Monk—And New Zealand, yes. New Zealand is a big trading partner for Australia. About 11 per cent of our exports go to New Zealand. There are some areas of our intellectual property—general protection, not just patent law—that we would like to see made more equivalent to our trading partners, such as in the area of data exclusivity, which is a protection of information submitted to the regulator so the regulator cannot rely on that information to evaluate a generic product for a certain period of time. We would also like to have the capacity to have information about when a generic medicine is being registered in Australia so that the originator company can make sure that that generic product is not coming to market ahead of the patent expiry.

Senator FERGUSON—You have not mentioned our largest trading partner, which is China.

Ms Monk—Yes.

Senator FERGUSON—What significant differences are there?

Ms Monk—I think China has been improving its intellectual property laws. I think they have been behind Australia and other first-world markets for many years, but I think their intellectual property laws are becoming more equivalent to Australia's. Coincident with that, we have seen an enormous increase in manufacturing and investment and in research and development in China. Australia is a relatively small market—about one to 1½ per cent of the global market for medicines—and we are finding it increasingly difficult to compete in drawing investment to Australia for research and development and clinical trials. We are finding that partners like India, China, Brazil and Eastern Europe can do the clinical research at the same quality as we can do it in Australia. They can start their trials quickly. They have very large populations that they can enrol into clinical trials quickly. They can complete the research quickly, and often at a cost that is lower than or very competitive with the cost in Australia.

As an industry, we are finding it very difficult to compete on a global scale and to convince our company headquarters to send that investment to Australia. If we have a further weakening of our intellectual property laws in Australia, the head offices of our companies will say: 'Why would I send that investment to Australia? Why wouldn't I send it elsewhere around the world where there is stronger intellectual property protection?' So intellectual property protection is essential to us in attracting that investment not only in manufacturing but also in research and development. It is the whole package, not just the manufacturing piece.

Senator FORSHAW—There was one claim that we have not touched on and that was the impact on employment and jobs going offshore. I just have to find that question.

CHAIR—In the submission we received from Three Plus, they said the law as it stands is forcing manufacturers to shift jobs offshore.

Senator FORSHAW—Yes. Could you respond to that? Are you aware of that assertion?

Ms Monk—Yes, we are aware of that argument. As I understand it, the proposal came forward from the generic sector because they could see opportunities for attracting some investment activity to Australia. But we were not convinced that the proposal provided any evidence that there would actually be an increase in the number of employees in the generic manufacturing sector in Australia. Senator Ferguson asked a question earlier about the growth of the generic sector. What that refers to is that there a quite a number of chemical molecules that are about to come off patent over the next five to 10 years, and the generic sector obviously sees that as an opportunity to manufacture those products and export them. But we are unconvinced that that will make a huge difference to actual employment in the generic sector in Australia, because that sort of manufacture can be done in any country around the world. Just as our innovative sector is finding it difficult to compete with markets like China and India, so will the generic sector find it difficult to compete with bringing that manufacturing investment to Australia when it can be done a lot more cheaply in India, China or another market. So we are

unconvinced that there would be a dramatic increase in employment in the generic manufacturing sector.

But what we are most concerned about is the loss of employment in our own sector both in research and development, the highly technologically advanced employment—because our headquarters would not be interested in sending research and development investment to Australia if our intellectual property laws were weakened so that they were out of step with other countries—and also in manufacturing, because, if the change that the generic sector had requested came into place, it could mean that the generic company would be manufacturing exactly the same product that the originator company was manufacturing in Australia for export to the same markets.

If I were sitting in the headquarters of GlaxoSmithKline or AstraZeneca, I would be saying: ‘Why am I putting my investment in manufacturing in Australia, where the generic company is allowed to manufacture exactly the same product for export to the same market? I am going to put my manufacturing investment in another country.’ That would jeopardise the current manufacturing that we have in our innovative medicine sector. We are very concerned about the potential loss of jobs that could occur if that change proposed by the generics came into effect.

Senator FERGUSON—I will just go back to one thing that I asked you. I knew there was a diagram that I wanted to see when I was asking you about the differences in our patent laws. One of the tables that were given to us by the generics manufacturers showed that Australia’s manufacturers are at a competitive disadvantage because of patent terms and the length of terms. New Zealand, Canada and South Africa have 15 years with no patent extensions. I think it is 15; it might be 20. At any rate, they have no patent term extensions whatsoever. The Americans have a short extension period. The European Union has a little bit longer one. But Australia has the longest period of time that the patent actually excludes other manufacturers from producing the product. Is that a fair assessment of what we have in place?

Ms Monk—I think there is a subtle difference. I have the submission here before me. What I believe the generic medicines industry is arguing is that the patent expires later in Australia than in other countries for a number of molecules. It is not that the patent term is different. We were talking about patent term restoration earlier. The restoration period is meant to compensate for the time it takes to go through the clinical research and regulatory processes. So the way that the patent extension period is calculated in different markets varies slightly. On the page that I think you might be referring to, it says that in the US they can have a maximum of five years of extension of patent term, as we have in Australia, but the way they calculate that is different to the way we calculate it in Australia.

Senator FERGUSON—Or 14 years from approval.

Ms Monk—That is exactly right, whereas ours is calculated five years from the date the medicine is included in the Australian Register of Therapeutic Goods. The starting date for that period differs in the US. That is not the sole reason but it contributes to why the patents expire at different times in the different markets.

Senator FERGUSON—Can you just explain to me what springboarding is.

Ms Monk—Springboarding is an allowance under the patent legislation. A generic company can do all the work that is required to put in its application to the TGA to register the generic medicine. They can do that currently, since a change about four years ago. They can do that at any time during the patent term of a medicine in Australia. They can do any bio availability tests. They can do some start-up manufacturing—but not for-sale manufacturing—to work out how to manufacture the product. They can do that work and put in their regulatory application, but the law prohibits them from manufacturing quantities for sale on the market or for exporting.

Senator FERGUSON—But they can do everything else so that they are ready to start from day one?

Ms Monk—Exactly right.

Senator FERGUSON—Okay. I was not quite sure.

Ms Monk—That is in part a compensation for the generics medicines industry for the patent term restoration for the innovative companies. It is always a balancing act between trying to stimulate the different sectors of the industry.

Senator FORSHAW—Does the industry that you represent retail many generics?

Ms Monk—Of its own?

Senator FORSHAW—Yes.

Ms Monk—It certainly does, yes. That has been a historical way the industry has developed. Certainly once the medicine of the innovator, the patent holder, goes off patent they will continue to supply that to the market.

Senator FORSHAW—They would supply the branded name pharmaceutical but would they also provide a generic?

Ms Monk—On occasion they will have their own generic brand as well or they will enter into commercial agreements with generic firms around their medicines.

Senator FORSHAW—How significant is that? I think the generics industry representatives who appeared before us suggested it was not all that significant.

Ms Monk—I think we would disagree with that. I do not have that information before me but I would be pleased to provide that to the committee. My understanding is that the proportion of the number of generic medicines that are supplied in Australia is very significant from the originator companies as compared to the generic companies, but if I could take that notice I would like to provide that information to the committee.

Senator FORSHAW—Finally, I have seen not necessarily pharmaceutical medicines in the sense that they have to be supplied with a script but a product like Gaviscon, which is an indigestion or heartburn product. I have seen that look like the fully branded product. Then you see the same name product in what looks like a generic label, maybe a pharmacy group putting it

out. Can you explain to me what is happening there? With generics, as I understood it, you might have, say, Panadol as the brand-name and then paracetamol as the generic. Am I right in that description?

Ms Monk—Yes. I guess the difference is that pharmaceutical innovators have a 20-year patent term and they have the exclusive right to manufacture and sell their product during that time.

Senator FORSHAW—But this goes the way in which the product is named or described. It may have a brand-name as distinct from the compound name.

Ms Monk—I cannot remember what is in Gaviscon, but in Panadol it is paracetamol. The originator brand was Panadol and now there are several different firms that also sell their own brands of paracetamol. But the originator company continues to sell its original brand of Panadol.

Senator FORSHAW—I understand. It just seemed with the Gaviscon example that they were both using what I thought was a brand-name, which I thought could not happen with generics, that you could not use the name, say, Panadol.

Ms Monk—But sometimes they like to use a name that sounds a little bit similar to the originator brand name, and that is entirely legitimate as long as it is not identical, I suppose. I am certainly not an expert in that area. Brands are very important to innovators because it is that recognition that encourages people to choose that product over another product. I would like to continue with something Ian was saying earlier. We are going through a lot of change in the industry and there is a lot of diversification. We are seeing very much that pharmaceutical companies that have traditionally been innovative companies almost exclusively are entering into partnerships and even buying generic companies. One that we have in Australia is Novartis and its generic arm is Sandoz. Another firm, Sanofi-Aventis, has a generic arm called Whitehall. Pfizer pharmaceuticals in Australia is diversifying strongly into the generic sector. So it is the nature of our industry, particularly as a lot of the molecules are going off patents, the pharmaceutical companies see the need to diversify into the generic sector as well.

CHAIR—I have got two final questions. You might want to take this one on notice. Is Medicines Australia involved in working with developing countries, for instance supplying certain pharmaceuticals at lower prices and things like that? I know there are certain mechanisms for that to happen.

Ms Monk—Not Medicines Australia directly ourselves, more our member companies through their headquarters would be engaging in that. Certainly when there have been some disasters in our near neighbours such as the tsunami, our member companies were very active in donating medicines to assist.

CHAIR—The final question is: what effect has the global financial crisis had on the pharmaceutical manufacturing industry in Australia?

Ms Monk—I guess that is a little bit hard to evaluate. All of our member companies are feeling the strain of the global financial crisis but I do not think that is solely in Australia, it is

obviously happening globally. Regrettably, we have recently seen a divestment of the manufacturing plants of one of our member companies to a generic company. I do not say that is as a result of the global financial crisis but it is just an indicator of how the industry is needing to redirect its finances as strongly as it can to innovation, and sometimes it needs to do that through rationalisation of the business.

I guess the industry has been going through that sort of evolution for some years before the global financial crisis hit and that has perhaps put even more pressure on the need for companies to work out how they can economise, so to speak, so that they can make the investments that they need into new products because that is the lifeblood of the company. Thank you very much for your time today.

CHAIR—Thank you for your attendance here today. If there are any matters on which we might need additional information, the secretariat will contact you. They will also send you a copy of the transcript of your evidence on which you can make any necessary corrections to errors of transcription.

[9.46 am]

WITHERS, Dr Glenn Alexander, Chief Executive Officer, Universities Australia

CHAIR—Thank you for agreeing to appear before the committee and give evidence. Thank you for your submission, which we have all had an opportunity to read. Although the subcommittee prefers that all evidence be given in public, should you at any stage wish to give any evidence in private you may ask to do so and the subcommittee will give consideration to your request. Although this committee does not require you to give evidence on oath, you should be aware that these hearings are legal proceedings of the parliament and therefore have the same standing as proceedings of the chambers themselves. Before we proceed to questions, do you wish to make a short opening statement to the subcommittee?

Dr Withers—Thank you for the opportunity to appear here today and to make a statement. Our position is set out in the fairly succinct submission that we made. The background is that education exports have become a very significant component in a relatively short period of Australia's exporting activity. From almost nothing 10 or 15 years ago we now have the third largest export sector coming from education. That has been a marvellous achievement, we think, but there are, as we know from a number of recent events, risks attached to that sector and to other sectors as well.

Our concern is to seek to underpin the sustainability of that achievement which for us in education is not only an economic achievement. Hand in hand with economic benefits to the country are a whole range of wider social and community benefits that come out of education beyond the simple making of money. Indeed, were I addressing a humanities faculty, I probably would not even emphasise \$15 billion or \$16 billion of export success, I would be talking about the splendid integration of ideas that come with the mixing of people from different backgrounds, their ability to research from different perspectives and share their experience through education.

The nice thing about education is that the two things go together, so that we have created a very significant export industry. In the context of your inquiry, we are looking to find support for reinforcing a number of the underpinnings that have helped that happen and perhaps address in several ways some matters that can threaten that success.

CHAIR—Thank you. We have a list of questions that we would like to put to you, but feel free to do some of that by way of discussion.

Senator FORSHAW—I will start with one question just to clarify a figure. Your submission states, and we know, that education exports have increased substantially in recent years. It is now, as you state, our leading services export area. You use a figure of \$15.5 billion. I understand that is essentially made up of the income that is earned from foreign students studying in Australia. Are there any other elements to what you count in the education export services, such as—

Dr Withers—There is—

Senator FORSHAW—You could explain it to me.

Dr Withers—I am not quite sure what you have in mind.

Senator FORSHAW—I suppose I am thinking of what income may be earned, if any, through the presence of Australian universities and other teaching establishments having relationships with other countries and other universities.

Dr Withers—I see. In some ways that figure, which of course is the official standard international figure as compiled by the ABS according to the international protocols, is essentially the summation of the expenditures made by non-nationals who are foreign students—international students—upon Australian goods and services while resident in Australia. That is an understatement of the total in a couple of ways. For instance, for various reasons of statistical collection availability, it does not include expenditure on durables, so if they buy cars, for instance, then it is not in that figure. The other one you mentioned that is not in that figure but is elsewhere in the accounts is, for instance, the activities of Australian universities, in particular—but increasingly also institutions in the VET area—offshore. That turns out to appear elsewhere in the accounts—in fact, in the capital account—as repatriated profits and earnings, for instance, rather than in this headline figure.

Senator FORSHAW—How much would that be? I have just lumped it all in as part of this \$15.5 billion and assumed that the bulk of it was for overseas students in Australia.

Dr Withers—It is.

Senator FORSHAW—But you have now clarified that that is not the case, so this is sort of a base figure. How much is made up of those other things?

Dr Withers—I would have to take that on notice, but it is of the order of no more than half a billion dollars.

Senator FORSHAW—I was not expecting it to be as much, but it is an important developing area.

Dr Withers—It is important and relevant to your inquiry in a way. It is important; we would like it to become more important. One of the reasons that that is an issue is, of course, a lot of behind-the-border protections overseas as opposed to here, where, for instance, we have recently opened up our sector to universities like University College London, Carnegie Mellon and so on, which have been able to establish campuses here by exactly the same rules as Australian universities are established by. The same protocols apply. On the other hand, that does not necessarily apply in many of our major overseas partners. An example is India, where there are severe restrictions on the establishment of campuses by foreign universities. In many other countries it has to be done in partnership with local universities and you cannot have a freestanding foreign university establishing itself. We would be particularly keen to see, in international FTA-type negotiations, complementary negotiations that deal with those sorts of behind-the-border restrictions, if not specific education chapters, for instance—and we would like to see that too.

Senator FORSHAW—Thank you.

Senator FERGUSON—Early in your submission you have a table of the international students as a percentage of all tertiary enrolment. Australia is at the top, narrowly ahead of New Zealand. But, among all the countries mentioned in here—it says ‘selected OECD countries’ and includes France, Ireland, the UK and the whole lot—there is no mention of Germany. Is there any reason for that? Do they have a very low international student percentage?

Dr Withers—As best I recall that was statistical; Germany, for whatever reason, was not reporting that in the standard *Education at a glance* from the OECD. They do have a significant foreign presence but nothing relative to ours. The reason for that is fairly obvious: they mostly teach in German and international students from the likes of India and China are especially interested in learning English. But very recently Germany has moved very strongly, as has France, to become a major international competitor by intentioned, deliberate policy. For instance, in Germany international students pay no tuition fees, in which case the relatively smaller share of international students is a little surprising and only explained by the language, to some extent.

France is actually now also teaching in English as a mechanism for seeking to compete against the Anglos. But Germany is significantly below us, and I am pretty sure the omission there was a statistical issue of them not recording data in a manner that the OECD could render compatible with the rest. It was partly because they do not pay fees, which are an easy way of recording international students, and they were not recorded in university data as something foreign. It is a little like the problems we have with coroner’s courts and so on with student safety here. There was not a recording process that actually said, ‘This is a foreign student who has been in an incident or a problem.’

Senator FERGUSON—I notice in the recommendations you have at the end of your submission that recommendation 2 recommends the number of students between the ages of 25 and 34 who have a bachelor’s degree or better should be 40 per cent of the population. I am not quite sure how that relates to our overseas trade, but I am curious about the recommendation and how you arrived at the 40 per cent.

Dr Withers—It is the target given by the present government. It was not our target, it is the one that this government has laid down now as its objective for 2025. It is seeking 40 per cent of adult Australians up to the age of 35—I think it is—having a bachelor’s degree. This is the aspiration of the present government, rather than a target that Universities Australia itself has set. We are at about the low thirties currently so it is a big ask. How does it relate to this? Importantly, in a range of ways; that is, the government chose not to adopt one key recommendation of the Bradley review, which was to increase the funding per student in teaching and learning. It has adopted many of the other recommendations of the Bradley review framework, and we are very supportive of that. We think, potentially, there is an excellent framework now in place, but one we have a significant worry about is the absence of an increase in real funding per student in Australia.

Why is that relevant to this? We have been relying upon international students to cross-subsidise domestic students. It has reached the point where that is forcing our class sizes to be so large that the question is: if you were an international student, why would you come here when

you have got a class size, on average, of 26, when you can go to Canada for a class size of 20, Britain for 19 and Germany for probably about 12? Unless we stop the reliance upon international students to cross-subsidise domestic students, and save the domestic treasury from having to fund higher education appropriately, we run the risk of undermining the very success that treasuries are free riding on. There has got to be a correct balance there.

We have had a 30 per cent real decline over the past decade in real funding per Australian student. That is nice for the taxpayer, but in the end the taxpayer may cop it on the chin if, for instance, the sorts of recent problems that emerged with international students kill the goose that lays the golden egg. That can happen because classes will get too crowded, university services for those international students will not be able to assist them properly with accommodation or with employment that is safe and validated and they will not have the appropriate other health and counselling support and the like on campuses that can help sustain that experience. They will start going elsewhere, or incidents will recur of the kind that we do not have the funding to pre-empt fully.

So there is an interesting connection between our export industry and what we do by way of funding for domestic students. These days, universities receive only about 20 per cent of their revenue as direct institutional grants for students. That is almost the lowest in the OECD—much lower than Germany, which is about 70 per cent.

Senator FERGUSON—I guess I could get political and suggest that a small portion of the money that is going into building buildings, were it channelled into teaching students or supplying the extra resources, might achieve some of the aims of your recommendations.

Dr Withers—You could, but we have to have rooms to teach them in.

Senator FERGUSON—I can say that; you cannot.

Dr Withers—And that is bipartisan, by the way, because there was the HEEF from the coalition and the EIF from the Labor government, and it is the same pool of money. So I would have thought that is almost bipartisan.

Senator FERGUSON—The reason I asked you about the 40 per cent, which I did not realise you put in your recommendations because it was a government recommendation—

Dr Withers—Sorry, can I be clear on the figure: is it the goal of 40 per cent that are graduates or is it the 40 per cent funding figure?

Senator FERGUSON—The 40 per cent who are graduates. I speak as someone who does not have a tertiary degree and many of the successful people I know in Australia have never bothered tertiary institutions. I live in a small community where less than five per cent of the people would have a tertiary degree and it is a very successful community. There seems to be an obsession with channelling as many students as possible towards a tertiary education when in fact some of those students may be better suited to learning a trade, which does not necessarily give them a tertiary qualification. In many cases, people with physical skills are able to attract and command a higher salary than some people who have tertiary education. I am just wondering where the line is drawn as far as your recommendations are concerned. This is why I

was surprised at the 40 per cent figure. That is a very high figure that may be achieved only in a country like America, which has tertiary qualifications for practically everything you do in life. Is there any other country in the world that has a target of 40 per cent?

Dr Withers—Yes, and some have achieved it. The northern Europeans—Finland and one of the other Scandinavian countries—have already achieved that.

Senator FERGUSON—But you can see where I am coming from.

Dr Withers—Sure; I understand that well.

Senator FERGUSON—I matriculated to go to university. I went back and did honours and then decided I thought I could make more money going home on the family farm. That was my first mistake!

Dr Withers—You have just made the case. But can I make two comments. One is that it was the government's target rather than ours. But, that said, you would not be surprised to learn that universities still feel that is a valid goal compared to where we are now. Let me say why we think that, and it is not to preclude options. What we would like is to operate in a framework where students finishing school have a whole array of pathways and they can choose which best suits them. What we have in our system at present are a whole lot of obstacles in the road of many of those pathways. Examples are the ability to transition between VET and university and vice versa. One is run under various state regulatory regimes and the university system is largely a Commonwealth artefact in the way it operates, so there are all sorts of credit transfer issues, choices and fee arrangements that inhibit people from freely choosing which way they want to go. You might start a first-year university course and decide it is not really for you and you would much rather do an apprenticeship or a certificate in IT or whatever and go for a different sort of job. At the moment there is a bunch of problems inhibiting that.

The system at the moment is trying to look to a way forward to remove some of those barriers under the notion at least of a good 'tertiary' framework—if you like, post secondary. Within that, short qualifications and long qualifications—anything from a half-year certificate to a six-year doctorate—would be viable according to the preferences and aspirations of the individuals. So we would like a system that best maximises the informed choices of individuals to make their lives as they would wish and that does not restrict those options unnecessarily.

Senator FERGUSON—But you specify a bachelor's degree, don't you? You do not talk about six-month—

Dr Withers—The government did. But, along with that, there is a whole range of other new targets being specified for the system which include tertiary integration. There is a new body being established in the next six to nine months called TEQSA, the Tertiary Education Quality and Standards Agency, and there is also a body, chaired by one John Dawkins, called the Australian Qualifications Framework Council, which are trying to more seamlessly meld these things so that while one target is bachelor's degrees there is a whole range of COAG targets that relate to other levels—apprenticeships, various forms of work experience and various forms of certificate-level and diploma-level qualifications.

Bill Gates is a university dropout and he has done rather well, but overall what you find is that on average you do get higher lifetime earnings with a university degree compared to, say, a school leaver. A factoid encapsulating that done by AMP.NATSEM—NATSEM and the insurance company AMP—is that the average graduate earns \$1.5 million more over their lifetime than the average school leaver with no further training and qualifications. Around that there are myriad individual experiences. Many a university graduate does not earn much and can end up not doing all that well materially, and many a school leaver who takes no further training may end up as a major entrepreneur with a tremendous achievement. But the average for society—and that is not just in Australia; it is universal—is that the more skilled you make your population in all the myriad directions that schools have, and degrees are one of them, the better off overall you will be in income terms as a society. It will also be a healthier society. It turns out that on average, the higher the level of qualifications you have, the more you look after yourself in terms of your own health. You smoke less; you drink less alcohol—a whole range of these things.

Senator FERGUSON—So you can live to spend the \$1.5 million!

Dr Withers—Exactly! It is an average proposition.

Senator FORSHAW—That is so you can live to 100!

Dr Withers—The freedom to choose is also a crucial co-condition of that.

CHAIR—Dr Withers, I have a few questions to ask. One is related to your proposal that negotiations for all FTAs should include strong representation for the case of education exports. Have you had a response from the Department of Foreign Affairs and Trade?

Dr Withers—Not at all, no. We do notice, however, a trend to what we would call improvement, and it is understandable—that is, the rapid and recent growth of education as an export is only a 10 to 15-year phenomenon. Bureaucratic and indeed wider cultures take time to adapt to new phenomena. They have to check whether it is going to be sustainable. Is it just a flash in the pan? Is it going to be there forever? What we have noticed and documented in our submission is a bit of a change since the 2003 Singapore FTA, which universities feel did absolutely nothing in any way whatsoever for universities, through to the Chile agreement, which through behind the border or associated and complementary activities had a strong education commitment, through to the current China FTA, where there is at least talk of an education chapter. To us that indicates a bit of—

CHAIR—It is progress.

Dr Withers—a trend of progress. But, as yet, it does not seem central to the thinking of our trade negotiators. We would like to see that increasingly trade negotiations have a more conscious element of education included in them as a core part of what they do.

CHAIR—We note that that is a strong and clear recommendation that is coming through from your submission. You also suggest greater cooperation between federal and state and territory policies on issues such as visas, student transport, education charges and housing arrangements.

Have these issues been discussed by COAG since the Bradley review? If so, has there been any outcome or is there anything you would like to add?

Dr Withers—The Bradley review did helpfully address—and government was seeking to respond in a whole-of-government manner across state, territory and federal government—the tertiary integration issue we mentioned briefly earlier; that is, the way in which the way universities, for instance, can work with VET, both TAFE and private providers. That is already happening anyway. Your average university these days typically has a partnership with a private provider, a Navitas or a Kaplan, who are major providers of foundation gateways into university degrees. They often work in conjunction with TAFEs, often co-locating, for instance, or now beginning to develop joint purchasing and procurement agreements. In Victoria especially dual sector institutions are quite common, where one institution, such as RMIT or Swinburne, is both a TAFE and a university. We are learning a lot about how to make that work together.

It is a fascinating experiment, because it is often said that university culture is inimical to that of TAFE, universities look down on TAFE and they do not want to work with TAFE. In an institution that has both you find that is not a problem because you have the same management directing both and trying to integrate them. Our members in those dual sector institutions—and Charles Darwin up in Darwin is another dual sector institution with the same problems—find it incredibly hard to get over the state regulatory apparatus that separates universities from TAFEs. It is about simple things like industrial relations regimes. In Victoria, for instance, the TAFE conditions of service are taken away from the university and negotiated by the state education department with no university input, whereas the university negotiates through an enterprise bargain the conditions for its academic staff in the university component, so you just have absolute inconsistency. There is no ability to have integrated conditions of service, and they end up having nothing to do with the universities' desires whatsoever.

We are going forward on trying to improve that relationship. The states and territories and the Commonwealth are now looking at it much more seriously and are looking at institutions that combine these perspectives. It is about little things. For instance, Skills Australia had its ambit extended into universities, instead of just being VET. The NCVER, the research body on VET in Adelaide, is also going to be researching universities in terms of skills requirements and so on. So there are some developments. However, what we have been frustrated by is the inability of whole-of-government perspectives within the Commonwealth at times. For example, the occupations in need list got out of control, education bodies were not listened to significantly in that respect and we got the problem of fly-by-night hairdressing colleges driven by migration incentives that then caused problems that have traduced the reputation of the whole sector for brand Australia. So there was a whole-of-government issue there.

Equally, the state governments did not want to know about their responsibilities to university students. We have been trying for two years to get universities on the COAG human capital productivity agenda. Basically the states kept saying: 'Buzz off. This is a Commonwealth responsibility. We're only interested in VET.' We kept saying: 'But it's not like that. You've got problems. International students of any brand really get annoyed that they don't get the same travel concessions as domestic students. It's a symbolic issue for them. They really feel short-changed and abused because they don't get the concessions in New South Wales and Victoria that their equivalent domestics do, even though they're paying GST and they're paying income tax on their employment. Rightly or wrongly, that's how they feel.'

That sort of issue, along with safety issues and the like, was bubbling away. I sat in a format like this as a member of a visiting delegation, and the minister for higher education in India picked up a letter from his nephew in Melbourne about how the nephew was attacked. He read it out and said: ‘What are you going to do about it? You can’t have this. This is going to be a problem.’ So we came back and put submissions to COAG and we got told to go away again. The sorts of issues that finally bubbled up with the Indian students are partly a whole-of-government issue because of that artificial separation where the states think they only do VET and the Commonwealth thinks it does universities. We are bringing them together now in our framework, particularly for domestic students, but we did not square the circle on the international students, and that is costing us dearly in brand Australia.

CHAIR—But the universities are set up by state legislation.

Dr Withers—But the state funding has been withdrawn.

CHAIR—They are set up by state legislation but with Commonwealth funding.

Dr Withers—All care, no responsibility. That is changing a little. Several states are getting much more proactive on university research funding, Queensland and Victoria especially.

Senator FERGUSON—You have not commented on the visa issue. I was staggered to find in your submission that the cost of visas was \$458. That is not the actual cost of a visa, surely.

Dr Withers—To the international student, yes. When you are paying \$20,000 a year for a degree, it is not a lot. But it is a little like the travel concessions. They list the visa thing again as one of those symbolic issues. They think they are being milked.

Senator FERGUSON—It is \$121 in New Zealand.

CHAIR—What do they compare it with?

Dr Withers—Other countries. It says one of two things: either we are milking them or, if it is a full-cost justification, which I am sure Immigration would say it is, we are inefficient in managing visas. If the costs are that much to manage a visa compared to New Zealand, which also operates on full-cost principles, then we have not got our costs under control.

Senator FORSHAW—I read your submission and I looked at those figures and I got that impression at first. But, thinking about it a bit more, shouldn’t the comparison be made really with the UK and the US, as distinct from New Zealand, as the first choices of a lot of foreign students? I can see the UK figure. I am not trying to defend anything, but I put it to you that the US is a high target for a lot of overseas students from everywhere, as is the UK. The UK is reasonably cheaper, but the US now is pretty comparable. Whilst we can argue costs are high here in Australia, how does that really impact on the choice of overseas students to come to Australia? I have never heard that they put New Zealand and Australia—with no disrespect to our cousins across the Tasman—in the same bracket.

Dr Withers—They are doing all right. As Senator Ferguson said before—

Senator FORSHAW—But you know what I am getting at?

Dr Withers—Yes.

Senator FORSHAW—We have often thought that we were competing against the UK and the US for students from Asian countries particularly, who have the financial capacity to be full-fee-paying students at foreign universities.

Dr Withers—That is certainly true, and the US, for instance, receives many more students in absolute numbers than we get—

Senator FORSHAW—That is right.

Dr Withers—and for many families is their first preference. For many other families, partly as a matter of historical tradition and so on, the UK would be their first preference. But we have been making steady inroads on those attitudes, if you like, and New Zealand, in its own way, has been doing something similar such that, per capita, it now has a very healthy international education industry. But, certainly, in absolute numbers it is not in the same ballpark.

Senator FORSHAW—The point of your argument then is that it would be in our interests to have a more competitive visa fee than, say, the US and the UK.

Dr Withers—Yes, for the very reasons you are giving.

Senator FORSHAW—I do not read from these figures that we are going to be losing lots of potential students to the UK or US. It may be because of a number of other factors, and the visa fee may not be a significant thing in their decision.

Dr Withers—Intrinsically it is not. Compared to the \$20,000 a year in fees and living costs it is nothing, but what we get from surveys is that they see it like we would. If you are leaving a country with an exit charge and they demand \$100 for you to leave, but you do not have any money at the time, you think, ‘What sort of country am I in?’ It is that sort of symbolism. The international students in the surveys that we do with them tell us that there are three things about Australia that are symbolically significant. One is the visa fee, another is the travel concessions and the third is the attitude of employers for work experience when they make inquiries in Australia—because one of the attractions of Australia in the past that helped us build the international education industry was that we were more relaxed about students working while studying than the US. For a long while, you could not work off-campus if you were an international student in the US. Australia allowed students to work up to 20 hours a week much earlier than the US. That was quite attractive, although not necessarily for the sort of people you are talking about. For instance, a very wealthy Indian middle-class family does not worry about whether the student can work much or not.

Senator FORSHAW—I can see that perceptions can be real in terms of people’s attitudes. For instance, you constantly hear concerns expressed by young Australians who go to the UK that at the end of the two years there is no way they will get an extension on their working visa and they will have to leave. They see that as really frustrating, but it does not stop lots of them going over for the first two years. That is the point I am getting at.

Dr Withers—Sure, and in universities alone we have 250,000 students who were not deterred by this.

Senator FORSHAW—That is right. I was just trying to get that in perspective.

Dr Withers—I am an economist by training, and economists always say, ‘At the margin, however,’ but—

Senator FORSHAW—But in our situation you could mount a good case for reducing that visa fee to add another element to making our universities more attractive.

Dr Withers—You would remove something that might be a perception barrier for a small but significant group.

Senator FORSHAW—We cannot have them going to New Zealand!

CHAIR—Dr Withers, you also said that one of your proposals is for universities to be given greater representation in trade policy making forums. Can you expand on that idea and on how you see that developing. Has there been any feedback from any forums? Have you been included in any forums? Please add anything you can.

Dr Withers—I think there is change there. It just seems a little slow to us, but it is happening. I said before that a sustained performance for 15 years begins to change attitudes. Even though it is not popular among our humanities lecturers to say that we are a great export industry, we find that politicians’ ears seem to prick up at the notion of us being the third largest export industry. This seems significant when compared to universities that are just Cinderellas. We are Cinderellas and exporters.

CHAIR—Waltzing around the world!

Dr Withers—Exactly! We like that duality of identity, but that seems to have attracted some significant attention. The bureaucracy is likewise beginning to come to terms with that. An example of what has begun to happen is that we have become members of the Australian Services Roundtable, which is an emerging lobby group for services. We find that the traditional focus, even within that body itself, has been on areas like professions, engineering, and exporters of that kind—technology exporters, pharmaceuticals and so on. Just because we are with them, every time they list their normal issues when they are going across to DFAT, they now always include education. We find that DFAT now invite us to join discussions and negotiations on the new Austrade Brand Australia initiatives, whereas the last time they had those sorts of campaigns I do not think there was the slightest approach to universities and maybe universities did not think to approach them. Now we are being proactive and we are finding that we are getting responses too. So there is a glimmering of change.

On the other hand—and I am on the board of the Australian Services Roundtable—when I compare the number of committees dealing with international trade that my colleague Matt Hingerty from tourism is on to the number I am on, I find he automatically gets a great quantity more invitations compared to education. But it is changing.

CHAIR—Which provides better access to information and contacts as well, doesn't it?

Dr Withers—Yes, and we would hope that in something like the Brand Australia campaign there is something on the notion of Australia as not just a miner or a lovely country for tourism but also a smart, knowledge country that is up with the world in ideas. That should be part of the image for Australia. It suits a country that wants to keep growing well and increasing its income.

CHAIR—The review's executive summary claims that Australia is falling behind other countries in performance and investment in higher education. Can you give us an idea of the extent of that and some of the reasons that you think are implicated in it.

Dr Withers—According to the OECD, which has the most comparable information in this area by common definitions, over the last 10 to 12 years we were the only OECD country where public expenditure on higher education as a share of GDP fell backwards. Depending on which 10 years you are talking about, it declined by four to six per cent, whereas the average OECD country increased its share of GDP on higher education through public outlays by 48 per cent. So we were falling backwards while the others were going forwards. However, we were increasing our spending through private sources such that we now have, along with the United States and Japan, the highest share of private revenues going into universities of any of the other countries. Those three are the large private entities. In the United States and Japan it is through private universities; in Australia it is through the earnings of public universities. In Australia, 40 per cent of our revenue comes from government—half of that is competitive research grants from the ARC and the NHMRC; the other half is direct grants to universities—whereas private schools get 60 per cent of their revenue from the Commonwealth government. So you have got public universities at 40 per cent and private schools at 60 per cent. They are indicators of how we have fallen back in the balance of public and private funding.

In universities we do not for a minute want to reduce our entrepreneurialism—because that is really what it has been for over 10 years now—in alternative sources of revenue. We like our mixed portfolio of revenue sources. We do not want to be dependent only upon private revenue or only upon government revenue, because we like to be free and independent. Having a range of benefactors really helps us position ourselves to do what we believe we are there to do, which is to provide independent generation of knowledge and training in knowledge. We think the balance has got a bit out of whack and that the public component has fallen. Overall, for instance, we now have about 1.6 per cent of GDP being spent on higher education. The European Community has now committed itself to two per cent. For us to reach that would roughly require that government step up to the OECD average in public funding; then we would be there. That is an aspirational goal of the OECD, but we have a little way to go on that.

In research areas, which are additional to the teaching areas, the European Community has set a goal of three per cent of GDP for private and public research. In Australia we are only at about two per cent. There we are down on the private spending; in higher education we are down on the public spending. So both partners in the national endeavour have to step up to the plate more, in our view, for Australia to be an even smarter and more skilled nation.

Senator FORSHAW—I have one other question. In your submission you have a section on public diplomacy. I appreciate that you put that in. You refer to the Senate inquiry and report, which I participated in. It was an interesting inquiry, and I think one of the things that came out

was a lot of talk about public diplomacy. I am not always sure what it really means, but there have been issues raised about the level of resources devoted to public diplomacy, particularly through the department. I appreciate that the university sector is one area of the non-bureaucratic government bureaucracy that is doing a good job. Do you have any comment about the level of support, assistance and interaction through our embassies and consular posts for your sector or any suggestions or recommendations that would go specifically to assisting further promotion of education services?

Dr Withers—A good example of that would be, for instance, the way in which the Indian student issue evolved relatively recently. The high commission in New Delhi played a marvellous role in helping mute, though not suppress, an Indian media that was out of control.

Senator FORSHAW—They were pretty busy.

Dr Withers—They were, and their efforts seemed to us to be very intelligent, targeted and appropriate. So they really stepped up to the plate well there. More generally, what we rely upon in our sector is Australian Education International, AEI, which is within the Department of Education, Employment and Workplace Relations; it is its international arm. We think their overseas posts, which are attached to embassies, do an excellent job, but there are a limited number of them. There could be more. They are in our major existing source areas, especially Beijing and New Delhi. There could be more funding for more posts. For instance, Chile has been a recently emerging market of great interest to us. President Bachelet there has been a strong proponent—partly, perhaps, out of her brief Australian experience when she was in exile here—of trying to integrate Chile into Anglo culture, in a way.

Senator FORSHAW—That has worked very well, because there has been an ambition on both sides, in both countries, to promote that relationship.

Dr Withers—So how do you get that? Take the Bachelet case. It is about interaction with each other, and it need not be formalised. We worry a little about AEI because it has both a regulatory function and promotional function, and there is an issue there still to be resolved about whether those functions would not be better done by separate bodies. That is sort of in debate at the moment, without a decision by government. We think the best way for that to occur is not by, as it were, the artificial construct of government but by osmosis through high-level international linkages. Again, international students studying in Australia, provided we get it right and do not damage them but let them see the true, democratic, open Australia in operation in a friendly, supportive way, they will go back with that experience. A paper we are about to release in a month or so has got, for instance, a listing across major governments in our region of distinguished graduates of Australian universities now occupying major positions in those governments. You count the number of Australian graduates in the Indonesian cabinet and you find that the trade minister and the foreign minister are Australian graduates. In the Malaysian government you find the same sorts of things, or that China's richest man is a graduate of UNSW. So we have been trying to pull that together—

Senator FORSHAW—So am I!

Dr Withers—There you go.

Senator FORSHAW—That is the only comparison!

Dr Withers—One contributes to the public good in different ways!

Senator FORSHAW—Sorry, I should not have mentioned that.

Dr Withers—But we think that that sort of thing does not require, and we are not looking in that dimension for, a conscious government public diplomacy program to support us. Maybe a restructuring of AEI would be very helpful. But, beyond that, getting our own education system on firm foundations will generate those sorts of benefits—the trade integration, the diplomatic access et cetera.

Senator FORSHAW—Finally, is there a greater role for Austrade to play in terms of education? I have heard they are going to appear before us later. Their focus has traditionally been on other industry sectors and not so much on this area.

Dr Withers—It has not focused a lot on universities and higher education in the past. It is partly that same tradition of only coming to terms now with the new export industry. But it has recently established within its operations a specialised focus and locus for dealing with higher education and indeed VET, of course, since there is massive growth there. So they are coming to the party. The only qualification I would make on that is the one we just made about Australian Education International: we have got to be clear on how they integrate and where the buck stops, and we do not want duplication and we do not want either of them thinking the other is doing it and then dropping the ball. So we need some clarity on those promotional structures.

Senator FORSHAW—Good. Thank you.

CHAIR—Thank you, Dr Withers, for your attendance here today. If there are any matters on which we might need additional information, the secretariat will write to you, and they will send you a copy of the transcript of your evidence on which you can make any necessary corrections to errors of transcription. Thank you for an interesting discussion.

Dr Withers—Thank you very much.

CHAIR—We will have a short break for morning tea.

Proceedings suspended from 10.33 am to 10.49 am

ANDERSON, Ms Victoria Rosalie, General Manager, Bilateral Trade Section (North Asia, Europe, Middle East), Trade and Market Access Division, Department of Agriculture, Fisheries and Forestry

MORRIS, Mr Paul Charles, Executive Manager, Technical Market Access, Trade and Market Access Division, Department of Agriculture, Fisheries and Forestry

ROSS, Mr Paul, General Manager, Bilateral Trade Branch (Americas, South-East Asia, Subcontinent, New Zealand and Pacific), Trade and Market Access Division, Department of Agriculture, Fisheries and Forestry

CHAIR—On behalf of the subcommittee, I welcome you. Although the subcommittee prefers that all evidence be given in public, should you at any stage wish to give any evidence in private you may ask to do so and the subcommittee will give consideration to your request. Although this committee does not require you to give evidence on oath, you should be aware that these hearings are legal proceedings of the parliament and therefore have the same standing as proceedings of the chambers themselves. Before we proceed to questions, do you wish to make a short opening statement to the subcommittee?

Mr Morris—I thank the committee for the opportunity to appear before you today and to present a submission to your inquiry. More than half of Australia's \$28 billion in agriculture, fish and forest exports arrives in Asia, the Pacific and Latin America. These regions include a range of markets of varying levels of economic development with many differences in consumption patterns—ranging from least developed nations through to highly developed countries. They also represent markets of varying levels of maturity for our exports—with countries like Japan being highly mature and established markets; with a range of markets in the ASEAN region and China being established but still developing; and many other markets where we have a small presence at present but much potential, including in Latin America and South Asian markets, such as India.

Our approach as a government to each of these markets needs to continue to be appropriately tailored to suit the circumstances of that country's development and its maturity as an export destination. The role of the Department of Agriculture, Fisheries and Forestry with respect to trade is: first, to support the government's efforts through the Department of Foreign Affairs and Trade in seeking outcomes from the World Trade Organisation negotiations and free trade agreement negotiations that are of most advantage to DAFF's portfolio industries and Australia more generally; second, to address technical market access barriers, such as quarantine barriers, that are impeding our access to overseas markets—and DAFF has a lead responsibility in regard to these issues; and, third, to manage quarantine aspects of the flow of products into and out of Australia through the setting of import policy addressing plant and animal health risks as well as through operational activities pre-border, at the border and post-border, as appropriate.

In addition, the department is involved in cooperation activities with some of our developing country trading partners linked to facilitating agricultural trade and building capacity in areas such as biosecurity. The department works closely with industry to determine priorities for its export market access activities and to develop strategies. Often these strategies involve working

in partnership with industry to develop technical submissions and through efforts in the destination country. We also have a network of officers located in our key overseas markets to assist the department's efforts. I would note that it is not our role to promote agriculture products—that is the role of industry and the various industry marketing bodies, such as Meat and Livestock Australia and Horticulture Australia Ltd. We also do not generally get involved in issues associated with inward and outward investment.

In closing, I want to note a few updates since our submission in November last year. First, the ASEAN-Australia-New Zealand Free Trade Agreement was signed. The parties to the agreement comprise the 10 ASEAN countries together with Australia and New Zealand. Secondly, the Australia-Chile Free Trade Agreement entered into force in March this year. We are happy to respond to any questions that the committee may have.

CHAIR—Thank you, Mr Morris, we do have some questions. Feel free to answer by way of discussion as well. One question that I would like to ask arises out of your opening statement. What is the mechanism for interacting with ASEAN? It is 10 countries and the secretariat and I am aware of its structure. Could you just give us a bit more information about that please.

Mr Morris—Perhaps I could start off and then Mr Ross might like to add a little bit more. I think that we are interacting with ASEAN largely on an individual country basis. We have a lot of interaction with each of the individual countries within that region. Obviously most of our interaction is with those countries that we trade most heavily with. For example, Thailand, Malaysia, Indonesia and the Philippines are some of our key trading partners in that region. There are also some growing partners such as Vietnam and Cambodia where our involvement and relationship with them has been expanding over the last few years.

With some of those countries we have quite formal working groups, groups which form the role of facilitating bilateral agricultural discussions with those countries. In the case of Indonesia we have something called the Working Group on Agriculture, Food and Forestry Cooperation and that group meets once a year. I chair that for Australia and then there is an equivalent counterpart on the Indonesian side. We meet to formally discuss bilateral market access issues in both directions and also to develop possible cooperation activities with Indonesia. That is a forum which also involves industry from both sides and we try to encourage greater connections between Indonesian industry and Australian industry. Under the free trade agreement with Thailand we also have a working group arrangement which facilitates bilateral agricultural discussions and, again, I think that meets on an annual basis. Perhaps Paul could add something further to that.

Mr Ross—Yes, thank you. In addition to those mainly bilateral interactions we do have some engagement with ASEAN as a whole. I guess a useful example would be the ASEAN SPS Capacity Building Program that the department has been implementing on behalf of AusAID, which provides training to ASEAN member countries to assist them building their capacity in sanitary and phytosanitary measures.

In addition through the ASEAN-Australia-New Zealand Free Trade Agreement there is to be established under that an Economic Cooperation Unit to implement an economic cooperation program to assist ASEAN countries to implement the FTA. We have had some involvement with

DFAT and other colleagues in the development of that unit and in discussing some of the proposals that might come forward.

Senator FERGUSON—I just want to shift the focus a little bit. Ten years ago this committee did an inquiry into trade and investment opportunities in South America, which was a fairly comprehensive inquiry, and members of the trade committee visited South America—eight countries in total. I was a bit disturbed by your opening statement to hear you say:

... and also many other markets where we have a small presence at present but much future potential—including in Latin America ...

I seem to remember exactly the same words being said to us in 1999 when we were at the start of this inquiry. What has happened in the intervening 10 years and where is the potential?

Mr Morris—Thank you, Senator. Perhaps I might start and make some general comments and then Mr Ross might like to add to that again. I think that there are a couple of initial points worth making in terms of the agricultural situation in Latin America, and South America in particular. A lot of the major countries there such as Brazil, Chile and Argentina are all very significant producers of agricultural products themselves and in many cases we are actually competing with those countries in overseas markets for things like beef, sugar, wool in some cases, and so forth. Horticultural products are another example.

Those countries are very low-cost producers of many of those products. We tend to quite often compete in third markets against those countries. Naturally, because they are low-cost producers of agricultural products, the opportunities for our exports to actually get into those markets are a little bit more limited. We have to compete on the costs of production in their country and, obviously, we have to bear the transport costs of getting our product all the way across the Pacific to those areas. Those factors tend to have a competitive impact on our ability to access those markets. From our perspective as a department, our key role is to try and identify whether there are any barriers that might be artificially stopping the flow of products. In the case of many of those markets, the barriers are not very high. For example, in Chile, where we have a free trade agreement, the actual trade barriers—in terms of tariffs, quotas and so forth—are very low and in many cases are zero. In essence, it is really the competitive pressures that are driving the ability of our exporters to enter those markets rather than the things that we as a government might deal with, which are the tariff barriers and other technical barriers. I think they are some of the reasons why we are where we are at the moment. Paul, I do not know whether you would like to add anything to that.

Mr Ross—I guess that is the main point, that there are still significant tariff barriers to some of the countries—for instance, to Mexico. The countries of Latin America have a number of inter-regional agreements. There are lots of preferential rates for members of those agreements. In the case of Mexico, I understand there are tariffs that are quite high. However, we have had success in sheep meat because we have been able to take advantage of the limitations of domestic sheep meat production in Mexico. I believe we supply about a third of their imports at the moment. We have seen more recently considerable interest from Latin American countries in pursuing opportunities for cooperation with Australia. That has been primarily in sharing information about our various systems—for instance, about our sanitary and phytosanitary systems, our livestock production systems and how we are managing climate change and

drought. There has been quite a deal of interest from several of the major Latin countries. This probably steps beyond our portfolio's interest, but there seems to be some interest by companies wanting to invest in Latin America, to secure land for production in areas of high rainfall or to help diversify their production areas.

Senator FERGUSON—I understand what you are saying, but cooperation is exactly the same thing that they were talking about 10 years ago. You talk about them being competitors. In fact, in wool Argentina is not a competitor anymore; it only has one million sheep left, I think. We do not have that many either. We might have 70 million, but it is not the same competition as when they had 20 million sheep and we had 180 million. In the areas of grain production, in most cases the quality of their grain is totally different from the quality of the Australian grain that is exported overseas. They were looking at joint opportunities for export, where they would fill one sector of the market and we might be able to look at other sectors. We cannot fill our beef quota to America. Incidentally, I think the Argentineans produce the best in the world—at least that I have tasted. But they still have foot and mouth disease in certain areas. There are lots of other factors. They have the best agricultural expo that I have been to in my life, ExpoChacra. We should be able to glean some information from that.

I wonder why, in the intervening 10 years—when they talked about so much potential—it has not eventuated. Now we are talking about potential. In 10 years time the exact same thing might be said. What I would really like to know is this. If we are going to have an inquiry into trade and investment opportunities for a much larger area than just South America—but if South America is part of it—what can we do to make sure that the inaction of the past 10 years is not repeated?

Mr Ross—I could point back to some of these more recent developments. It is hard for me to assess because my involvement in this area does not go back 10 years but recently there has been a considerable amount of activity with these countries. There has been this joint expert group report on Mexico, pointing to the opportunities there and that has been welcomed by both sides. In the case of, for instance, Chile we have had very successful cooperation with them and that has been quite active over the last 12 months or so. Drought and water experts have gone to Chile and been very successful in advising them in terms of policy developments. We have had a number of delegations come to Australia to look at our quarantine operations, forestry and other aspects of our agriculture. Quite recently that interaction was somewhat formalised in the signing of a memorandum of understanding on agricultural cooperation. Similarly, there is an action plan being developed with Brazil and agriculture is an element of that draft plan. The Mexican ambassador has provided us with a draft of a proposed memorandum of understanding on sanitary and phytosanitary cooperation and agriculture and we are looking at their draft at the moment.

Senator FERGUSON—Have we done anything at all with Argentina?

Mr Ross—I was just about to add that. The Argentinean ambassador visited us recently along similar lines, acknowledging that we compete in a number of markets but also looking at the areas where there is potential for cooperation. So there is a reasonable amount of activity.

Mr Morris—I think the other thing worth noting is that we very much respond to industry priorities as to where they would like us to put our effort in trying to gain new market access. I

think it is fair to say that a lot of the pressure on us in terms of market access has been to the Asian region in particular, the Middle East to some degree, Europe also and less so with the South American countries. Although there has been some pressure there, it is less than the others. Our effort tends to be in response to where the commercial players think they are going to get the biggest bang for their buck in getting new access. We do tend to tailor our efforts a bit in response to what industry wants as well.

Senator FERGUSON—In the tables that you had in your submission I was noting the imports from Latin America into Australia. Our exports seem to have decreased. Imports from Argentina in 2005 were just on \$40 million. In 2007 they were \$152 million. From Brazil it was \$156 million in 2005 and \$270 million in 2007. There has been an enormous increase. The value of our imports from Latin America has almost doubled from 2005 to 2007. That is a significant amount and I am wondering in which areas those imports have increased and why our exports decreased. I am looking at page 17 of your submission. I was quite staggered at the increase in imports, not knowing what they were.

CHAIR—You can take the question on notice, Mr Morris, if you need to get back with better particulars.

Mr Morris—We can certainly look at that in more detail so we can give you a definitive answer as to what the specific reason—

Senator FERGUSON—Are there general areas where there has been an increase?

Mr Morris—We were just speculating among ourselves then. We have been importing a bit more feed stock and so forth as a result of the drought. Some of that may be from that. We note in the text that animal feed, cereal and crops and pulses are about \$226 million out of the \$623 million, so it is about a third of the trade, and I do not know for sure but I would speculate that a lot of that would be due to the fact that we do need that feed supply, particularly during the poor conditions that we have had in Australia for the last few years, with the problems of availability. But we can do some further investigation on that, if you wish, and get back to you.

Senator FERGUSON—Yes. I found it rather concerning. If it is only stock feed, I can understand it. But I am very keen to know whether there are any other areas where we are actually increasing our imports, when in fact our exports are decreasing.

CHAIR—Thank you. Senator Forshaw.

Senator FORSHAW—In some of our earlier hearings—and I trust that you have been following the committee's hearings—some of the Latin American representatives expressed concern about the length of time it takes for finalisation of approval for products through quarantine; I think fruit was one area. Do you have any comment to make about those expressions of concern?

Mr Morris—As you may be aware, Senator, over the last two or three years we have looked at trying to significantly improve the transparency and openness of the processes that we use to undertake import risk assessments within the department. One example of that is that we have set up within the department an import market access group, an advisory group which looks at

the list of requests from various countries to Australia to undertake import risk assessments and then categorises them as an A, B or C depending on a range of factors. That listing of the priorities for each individual country is actually available on the DAFF website, and it makes it very clear to overseas countries exactly where they are sitting in the priority list. That priority list is then used by Biosecurity Australia to form their work plan for each year, and then they do assessments, taking into account the priorities that have been given to those countries. In many cases, we very much take into account in those assessments what a country says to us is their highest priority product. So if, for example, Mexico were to say to us that avocados were their highest priority then that would be taken into account in those assessments. We also take into account things like, obviously, the resources that might be available to do those assessments.

Another example of Biosecurity Australia's approach to improving the speed at which it does assessments is that the new regulated process has defined time frames for the import risk assessments. There are two types of assessments that are done. There is a standard type assessment, which has a maximum of two years to be completed after the initial announcement of the process, and then there is a more extended review for more complicated issues, which essentially has a time frame of 2½ years or 30 months. That regulated time frame provides much more certainty, I think, to the countries which wish to export to us in terms of how quickly their issues might be assessed.

So I think those two things are quite important changes which hopefully will enable a speeding-up of some of the processes. As for specifics, I know for example that Chile's request on table grapes was considered a couple of years ago and was completed by BA, so there has been some movement towards completing risk assessments for the Latin American countries.

Senator FORSHAW—Okay. Going to another part of your submission, under the section on Thailand—pages 10 and 11 of your submission—it states:

However, the department, in conjunction with other government agencies, is seeking even further tariff concessions to match or exceed the outcomes that Thailand has since negotiated with China and New Zealand.

Can you expand on that statement and on what progress has been made.

Mr Ross—There is provision within the Thai-Australia FTA for a review of the agreement. It is referred to as the 'inbuilt agenda'. There have been considerable efforts made to seek engagement with the Thais to initiate that inbuilt agenda. Delays have occurred over the last year or so because of the political instability in Thailand. They have a requirement in entering into any international negotiations that they be put to their parliament for approval before they can proceed with those negotiations. There have been efforts primarily by the Department of Foreign Affairs and Trade this year to encourage engagement with the Thais. I attended a Thai joint working group meeting just recently and their advice then was that they were hoping that their political process could be undertaken so that discussions could proceed next year. There have been efforts regularly to look to engage with the Thais. In that discussion we hope for agriculture that we are able to pursue improved market access for a number of products, as well as have a discussion about other elements of the agricultural part of the agreement, such as the operation of the special safeguards mechanism and operation of tariff quotas.

Senator FORSHAW—Do you have some expectation as to an end point in those negotiations?

Mr Ross—No. Our efforts at the moment are on initiating those negotiations.

Senator FORSHAW—What impact is mulesing, if any, having on our wool trade with China or any of the other nations within the scope of this inquiry? China is the major export destination.

Ms Anderson—We send around 66 per cent of our clip to China. It is a huge market for us. The major pressure from animal welfare groups on Australian wool has tended to come in the European and United States markets. We obviously sell quite a bit of wool to Italy in particular. I think it is fair to say that both our department and the Department of Foreign Affairs and Trade are watching the issue very closely and retailers in Europe in particular are very much interested in what happens at the end of 2010 when there is a commitment to phase out mulesing. From a government perspective we are watching that very closely. Obviously China does some processing and often on-sells to other markets. That through-chain management is something the industry is going to have to look at in terms of mulesing but at the moment there is a lot of work going on prior to 2010 through the wool industry itself and Australian Wool Innovation to ensure that retailers are able to give assurance to consumers about the integrity of the wool they are purchasing. I am not an expert on wool—that is another area of our department—but there is a declaration system where there are now declared mulesed and non-mulesed wools and there is a series of declarations that can be made about wool. There is a lot of confidence being built in the verification of that at the moment. That is certainly pleasing retailers, but there is more work to do over the next year and a half.

Senator FORSHAW—The Chinese themselves would be concerned, given that a lot of their product is exported to other—

Ms Anderson—Yes. We have not received any real pressure from the Chinese end. It has been mainly the high-end retailers who have been receiving the pressure from animal welfare groups.

Senator FORSHAW—I appreciate that, and we know in Europe particularly, but at the same time the Chinese do export a fair amount of manufactured wool product.

Ms Anderson—We will need to monitor that market very closely, particularly over the next couple of years. If there are any more pressures on the industry we need to be watching what is happening in the Chinese market, and I am sure the Chinese buyers are watching that as well.

Senator FERGUSON—Is the 2010 date set in stone?

Ms Anderson—I should not be the oracle on this one, but there is an industry commitment that was made that I understand still stands. There are a lot of different voices in the industry, as you would appreciate.

Senator FERGUSON—The only reason I ask is that I understand there have been a couple of technical setbacks in the program towards phasing out mulesing, particularly in the way they intend to combat blowflies. One of the techniques was to breed out the wrinkles in sheep, and

that takes time. That is why I wondered whether 2010 was actually set in stone. I thought they might be seeking some sort of an extension. I guess it would have to be legislated at the end of the day.

Ms Anderson—Probably not. At the moment that commitment is not a government commitment but an industry commitment, although we obviously support the industry. There is a lot of research going on, with various degrees of success. AWI is running a number of programs. There are clips, pain relief, breeding out and other things. In the declaration system that has been established by the Wool Exchange there is a category for properties that have ceased mulesing. That does not mean there are not mulesed sheep on the property, of course, because of the lifespan of a sheep. So time will be needed to phase that in, and there is recognition of that in the industry and among retailers.

Senator FERGUSON—The opponents of mulesing will not accept pain relief as a measure to allow it to continue. They will not accept that pain relief is one of the ways that it can be alleviated.

Ms Anderson—It is true that the main opponents are not completely sold on pain relief.

CHAIR—Page 3 of your submission suggests that trade barriers are the biggest problem for agricultural products. Could you please give a bit more detail on that? You might want to comment about how that impacts on the FTA negotiations and whether it is being addressed in the Doha Round.

Mr Morris—The agriculture market globally is very distorted by a number of measures. Some of those measures include the domestic support measures that a number of countries have to assist their farmers that potentially create overproduction and push down prices, such as the US farm bill, EU subsidies and so forth. Also, a number of countries have export subsidies, which also directly affect our exports. For example, the reintroduction of European dairy subsidies and US dairy subsidies has been in the media in the last few months. Thirdly, there are a whole lot of tariff and quota barriers, which are direct additional costs to our exporters when they want to enter particular markets. In some cases the tariffs and quotas are so high that they cannot enter at all. Fourthly, there is a set of measures we call technical market access barriers that are essentially other barriers in place, such as quarantine, that prevent our access into marketplaces. They include things like not being able to export avocados to the United States because there is no agreed protocol at this stage that enables us to have measures in place to meet the plant health conditions in the US.

The domestic support areas—the export subsidies and the tariff and quota barriers—are specifically being dealt with through the Doha Round of the WTO. They are called ‘the three pillars’ in the jargon that is used in the negotiations. The WTO is really the only forum that deals with domestic support and the export subsidies. So the WTO is very critical for us as a negotiating forum that enables us to deal with these high levels of support that are being provided by Japan, the US, Europe and other countries, and also to deal with the export subsidy issue. One of the key things that has been agreed so far—although it has not been finally signed off on—is that export subsidies will be eliminated by 2013. If we can finalise the Doha Round agreement, we might finally get rid of export subsidies.

CHAIR—Do you think it will happen? It is all right; you do not have to answer that. But it is good that it is there.

Mr Morris—It is certainly part of the agreement at the moment. In addition to the WTO, free trade agreements are also able to deal with tariffs and quotas. When we enter into negotiations on free trade agreements, our main focus is to try and remove the tariff and quota barriers that are in place in those countries. Our starting position in all of those negotiations is that we have zero tariff barriers into those markets in the future. We do not always achieve that. We got very close with Chile. We have basically got that with New Zealand. We have not achieved the full extent of the gains that we wanted in the US, where we were not able to get the sugar arrangements removed. Free trade agreements are very important for the tariff and quota barriers. The range of technical market access issues is not directly dealt with by the WTO negotiations or the free trade agreement negotiations, because these technical barriers are regarded as barriers which were in place for scientific reasons.

CHAIR—So they are not caught by the technical framework that exists.

Mr Morris—That is right. They are essentially to protect animal and plant health. For the same reason that Australia has quarantine arrangements in place to protect animal and plant health and food safety in Australia, other countries do the same thing. We would regard some of those barriers as legitimate, in that we may have pests and diseases in Australia that other countries do not want, but we would regard a lot of those barriers as not legitimate. Therefore, we have to go in and negotiate on a scientific basis with those countries to demonstrate to them that our animal and plant health, and our food safety systems, are sufficient to provide them with guarantees that we are not going to compromise food safety and animal and plant health in their country.

A lot of work in our department is engaged with trying to deal with those technical barriers. In our submission we talk about the difficulty in that area. One of the difficulties is that a number of the developing countries are becoming more sophisticated with their barriers over time. As they become more developed, they focus more on animal and plant health issues and food safety than they did in the past. We are finding that those countries are starting to put in place new barriers.

CHAIR—Give us an example.

Mr Morris—At the moment we are working with Indonesia on a new food safety policy which deals with plant products. They are requiring testing for a whole lot of residues—these are chemical residues in our products from pesticides and so forth. We believe that some of the ways they are implementing that are overly restrictive and we are trying to negotiate with them a recognition of our food safety system in Australia. That is an example where a country did not have regulations in place in the past but has suddenly decided to put new regulations in place which could potentially block, or certainly have a significant cost impact on, our grain and horticultural exports to that country. So we have to go in there and negotiate with Indonesia to put in place a set of arrangements which will enable trade to continue to flow without being disrupted by these new arrangements.

Thailand is another country that has similar arrangements. Taiwan has new residue requirements as well. There is a new food safety bill going through the United States Congress at

the moment. So there is a lot of this activity going on globally at the moment, and we quite often have to run hard just to keep up with these developments and maintain our trade flow, let alone dealing with new access and trying to remove existing barriers.

CHAIR—How does that then translate and distil to the farmers and the producers?

Mr Morris—I am not sure whether you mean in a communications sense.

CHAIR—Yes.

Mr Morris—There are various levels. When—

CHAIR—Obviously industry groups, but I am thinking more from the departmental—

Mr Morris—Yes. Let me use Indonesia as an example again. When a new arrangement like that is put into place we communicate that to relevant industry groups and then we liaise with them as to how we might best deal with that particular situation—that is, whether the industry can meet the new requirements of that particular country or whether we need to go and try to negotiate an alternate set of arrangements that will enable them to continue to trade. So we work very closely with industry on those matters. When a new set of arrangements are to be implemented, AQIS quite often puts out what they call an industry advice notice. It goes out to a wide range of stakeholders in Australia, particularly the exporters who have to meet those requirements. In terms of the individual farmer level, we do not usually communicate those requirements directly to the individual farmers; we leave it to the exporters to talk to their suppliers and make sure that those requirements are being met in supplying that product to the exporter.

CHAIR—Mr Morris, we have run out of the formal time we have allocated. I still have some more questions and I am sure the other committee members do too, so we will follow up with those in writing through the secretariat. I note that you gave an undertaking to get some information back to us in terms of the question that Senator Ferguson asked. That would be really useful, particularly where it shows the increase in one area of imports and exports and the why and where around that issue. Thank you for your attendance here today, Mr Morris, Mr Ross and Ms Anderson. If there are any matters on which we might need additional information, we will certainly follow up through the secretariat. You will also get a copy from the secretariat of the transcript of your evidence on which you can make any necessary corrections to errors of transcription. Thank you for your submission and your appearance here today. It was very interesting.

[11.34 am]

HUDSON, Mr Andrew Thomas, Member, Law Council of Australia; and Section Chair, International Law Section, Law Institute of Victoria

NAYLOR, Mr David, Policy Lawyer, International, Law Council of Australia

PERCIVAL, Mr Andrew, Deputy Chair, International Law Section, Law Council of Australia

CHAIR—On behalf of the subcommittee I welcome you and I note you have representatives from the Law Council of Australia and the Law Institute of Victoria. Although the subcommittee prefers that all evidence be given in public, should you at any stage wish to give any evidence in private you may ask to do so and the subcommittee will give consideration to your request. Although this committee does not require you to give evidence on oath, you should be aware that these hearings are legal proceedings of the parliament and therefore have the same standing as proceedings of the chambers themselves. Are you going to give an opening statement before we proceed to questions?

Mr Percival—A brief one, yes.

Mr Hudson—We are going to share one.

CHAIR—Please proceed.

Mr Percival—I will start by firstly making a brief statement about the Law Council and its international strategy. The Law Council is the peak national representative body of the Australian legal profession. It was established in 1933. It is the federal organisation representing approximately 50,000 Australian lawyers through their representative bar associations and law societies, referred to as the constituent bodies of the Law Council. The Law Council speaks for the Australian legal profession on the legal aspects of national/international issues on federal law and on the operation of federal courts and tribunals. It works for the improvement of the law and of the administration of justice.

In terms of its strategy regarding the promotion of the export of legal services, the Law Council has an international strategy for 2009 which gets updated annually. I think it is in the materials we have provided. You will see on the flip side there that strategy 1 aims to improve access to overseas markets for Australian lawyers—so this is dear to our hearts. It not only looks at securing market access overseas for Australian lawyers—or trying to because it is a difficult process; it also looks at the Australian market with the aim of having a national legal regulatory regime for the Australian market instead of the eight that we currently have. We feel that would also improve our perception overseas and assist us in convincing other markets to open up where we are dealing as a single market here.

In pursuing our international strategy, we work very closely with the government—DFAT, ILSAC, Attorney-General's Department, Austrade and others. Where we are looking at things

like free trade agreements or the DOHA negotiations and the WTO, we tend to focus on government to government and we work through the government that way. We also form associations with other legal bodies overseas of a similar stature to the Law Council, whether in Japan or China, and we work with them in trying to cooperate to open markets mutually.

Mr Hudson—I thought I might usefully provide some additional information on behalf of the Law Institute of Victoria, which of course is a constituent member of the Law Council. There is some information in our submission on the Law Institute. It is 150 years old this year. We have been running the profession in Victoria for some time. We are very keen, as the Law Council is, to advance the idea of a national profession. We think that advantages both the Australian profession and the overseas lawyers who wish to come to Australia and practice so there is one prescribed way of operating.

On behalf of the institute, I would like to thank the committee for the opportunity of appearing on behalf of the LIV today. I would like to endorse the comments of my colleague Mr Percival. We are pleased to be here both in our own capacity and as a constituent member of the Law Council. The Law Institute has its own independent international legal strategy, which works in a complementary fashion with the Law Council's. We work together on a number of fronts, but we also work on our own account and we have a fairly extensive history of having done so which is referred to in our submission. We do have a life of our own, if you will excuse that expression, in respect of the profession.

As a general proposition, the Law Institute, together with the Law Council, welcome all measures which can advance the cause of Victorian and Australian legal services. I think we work actively towards advancing those interests, as well as in a more general capacity-building way in other jurisdictions as well. We will be happy to talk about that later. But we do not just seek to advance the commercial interest of the profession; we do work in a number of capacity-building ways in conjunction with other government organisations, such as AusAID, for example.

The other main preliminary point that is useful to make is that, while services generally is a significant portion of GDP, it is fair to say, that, certainly in our view, perhaps it has not had quite the specific attention at the multilateral level that we would like. There tends to be a focus predominantly on agricultural goods, manufactured goods and services tend to come—

CHAIR—Services in general.

Mr Hudson—Services in general. We understand that lawyers are not necessarily everybody favourite people, so perhaps lawyers slot in occasionally towards the bottom of the services agenda on the premise that we can look after ourselves. But we still think there is a lot of evidence out there. The ILSAC report you have about the estimated value of Australian legal services supports the idea that it is a very large sector of the marketplace, and that there is a significant potential for advancing the Australian market for legal services. We think there is real merit in both working with the profession and also advancing the cause of the profession.

In terms of the Law Institute's recent work, in addition to the material that is in the submission, I will add that we have recently completed a memorandum of understanding with the Hong Kong Law Society, which is the profession to profession type arrangement we have

talked about. We have recently hosted some meetings with a senior member of the Korean parliament. We have recently run some sessions with DFAT, Austrade and the Law Council in respect of the ASEAN free trade agreement with the view of getting the message out there to our stakeholders about what is in the free trade agreement and the benefits of that. The LIV is also looking at other commercial opportunities, in particular to the way in which it can bring its experience in regulating a profession, particularly to the Asian market where there are new legal professional bodies being established.

I should also add that both the Law Institute and the Law Council are members of other industry bodies, such as the Australian Services Roundtable, of which I am a director. Again, we collaboratively work with government and through our own auspice to try to advance the cause for services generally.

Senator FERGUSON—Looking at your international strategy for 2009, where are the major destinations for your current export of legal services?

Mr Percival—Looking at practitioners and where legal services are primarily being exported to, I would say that the US and Canada are probably the leading countries. They would probably be followed by China, the UK and Europe, and then other countries in Asia. But from a Law Council perspective our focus, and probably most of the major law firms at the moment, is certainly in Asia.

Mr Hudson—On that point, the recent ILSAC report, on the value of legal services exported, absolutely confirmed what Andrew said, in that it made the observation that Asia had, if you like, jumped over the EU and the UK as being their second major market.

Mr Percival—Historically, a lot of legal services have probably gone to the US or North America and Europe. For obvious reasons that is where Australia did a lot of its business, and still does. As businesses increasingly focus their attention on the Asian markets, I think you will find the legal services will follow that direction as well. It is probably indicated already by virtue of China moving up the tree.

Senator FERGUSON—Is it possible to put a dollar value on the export of legal services?

Mr Hudson—In theory. There is the ILSAC report referred to in the submission, which put a figure on it. I think it was \$657 million—

Mr Percival—It was \$675 million for 2006-07.

Mr Hudson—But we think that is probably an underestimation. It was a few years ago now. There is a general perception within the industry that the measurement of services and the value of services are not as precise as they perhaps should or could be. One of the things that we think would be of merit is more focus on the ABS statistics in respect of services. That was a figure; we think it is probably underreported. You could probably take that figure and add a bit. What ‘the bit’ is is the vexed issue about the capture of those figures.

Mr Percival—Part of that is probably because some legal services are fly-in fly-out. Other legal services establish branch offices. It really comes down to how you want to measure it. As

Andrew said, certainly the Australian Services Roundtable has some concerns about the way the Australian Bureau of Statistics captures statistics on services.

Senator FERGUSON—If part of your strategy is to improve access to overseas markets, how successful do you think you have been at it?

Mr Percival—It is a hard one to assess. I say that for this reason: opening up markets is incremental and very slow. Legal professions around the world are heavily regulated, and to get people to move is very difficult. That said, I think there are certainly law firms with offices and operating in places like China. There are Australian practitioners operating in Japan and Thailand. So in a sense I think we are being successful. Part of that success is also that Australian lawyers are widely recognised as being very good. That is why we tend to lose a lot overseas. That also helps.

Senator FERGUSON—Our inquiry involves South America, Asia and the Pacific. I guess in South America language is a barrier, so you are not going to concentrate there. Are there any other barriers to the export of legal services to the countries we are looking at?

Mr Hudson—There are a number of potential barriers, some of which we try to address through, for example, free trade agreements or other mechanisms. There is the movement of persons—the ability to actually get a visa and go in there in the first instance—for example. Then there is the recognition of professional standards and professional qualifications, which is always an issue. I think every free trade agreement we have entered into has a chapter with a commitment to work towards ongoing mutual recognition. There is the ability to go there and actually have the legal standing to provide legal services. DFAT has advanced that under the joint committee on the US free trade agreement. They have created a new category of lawyer in Delaware that allows Australian lawyers to fly in, fly out and do some work there. But you are not guaranteed those abilities. You are not guaranteed the ability to actually invest directly and set up your own operation. You are not necessarily guaranteed the right to expatriate money that you have earned there.

CHAIR—Is that in Delaware, or anywhere?

Mr Hudson—I was referring generally rather than to Delaware. Generally there are restrictions on recognition of professional qualifications, licensing issues. Often overseas—

Mr Percival—Obviously, if you were going to go to China and practise Chinese law you would need to be qualified for it. But often the Australian firms are going into another country to practise or advise on home country law—that is, Australian law—or international law, or it could be a third country's law. Even so, actually establishing a presence there is heavily regulated and in some jurisdictions you need to go into a joint venture that is run by people in the country you are going to. And there are restrictions on the names you can use. If the committee is interested, ILSAC has, on a country-by-country basis, reviews that list the barriers in each of those countries.

Mr Hudson—Certainly DFAT do consult extensively, as part of their FTA negotiations with the Law Council and the state constituent bodies, as to what we perceive to be the particular barriers in particular countries with which we are negotiating. I guess the endgame of all of this

ideally would be advanced through a WTO round, but there is a concern about the successful completion of such a multilateral round. So you come back to individual countries. Obviously, on occasion there are other countries where the professional regulators are concerned about foreign lawyers coming in.

CHAIR—They have laws about it.

Mr Hudson—Yes.

Senator FERGUSON—I am just not aware of the protocols. If any of you wanted to go to another country and practice, would that involve you being admitted to the bar of that country?

Mr Hudson—It really depends on the country—I know that sounds awful, but it does. Practising local law, you would probably have to follow the local admission requirements.

Mr Percival—It does depend on the sort of law that you are intending to practice. For example, looking back to Australia, if you wanted to be a solicitor in New South Wales, you would need to have the appropriate qualifications and be admitted under the Legal Profession Act. If, on the other hand, you were coming to Australia to practise foreign law, as some US law firms do, there is a separate registration for that, which does not mean you have to comply with Australian admission standards. But a lot of other countries do not have that sort of facility built in.

Mr Hudson—There is a limit—for example, Australian firms in China. There are nine or 10 firms, including my own firm, of which I am a partner. We have a limited licence to practise in China, and we have been up there operating for 10 years. But that is not to practise Chinese law. If we were to employ a Chinese lawyer, they would have to basically renounce their local practising rights. So there are limits on what law you can practise. When we seek to advance the cause of legal services, we look at it on a limited basis; we do not look to go into overseas markets to practise their local family law, for example, or their domestic conveyancing law. We would look at particular areas of law to enable us to go in there, to look after our clients, to advance the interests—particular areas where there might be specific expertises on an international level.

Mr Percival—If I can go back: this is what is produced by the International Legal Service Advisory Council. Would you like to have a copy?

CHAIR—Very much so. Is that the country-by-country barriers—

Mr Percival—That is country by country.

CHAIR—or requirements?

Mr Percival—Yes, and they do an assessment of what the country is like, what legal services are there and what the barriers may be.

CHAIR—That is particularly useful. Following on from what Senator Ferguson was saying—and it may not be as relevant—because we are a common law jurisdiction, and you are operating

in civil law jurisdictions, are there any barriers or issues around that, or is it more the regulatory environment you talked about? Do our law schools provide enough, within our degrees, in those systems?

Mr Percival—I do not think that operating in a civil law country is actually the barrier, unless you wanted to practise that law. It is more the regulatory environment to actually practise foreign law in that country.

Mr Hudson—In terms of our law schools: I think that most of the undergraduate degrees or, in the case of Melbourne University a postgraduate degree, focus predominantly on Australian and international, rather than civil. I do not think they actually teach many qualifications to become admitted in the civil law jurisdiction. It all focuses predominantly on Australian practise and then, out of interest for the individual students, they might throw in some international trade law, for example, or international human rights law. But I am not sure that there would be a lot of focus on civil law.

Mr Percival—There is not a lot of focus on the civil law, but I think the universities do run, certainly through their postgraduate courses, not civil law courses, but a wide range of international-type courses which actually attract a wide range of people from overseas, particularly in the Asian region.

Mr Hudson—It might be EU competition law, for example, but that is all WTO based.

Mr Percival—At one stage I was teaching international trade law for UTS in Sydney, and most of the students—it was a postgraduate course—were from overseas.

Senator FORSHAW—To come back to basics for a moment: I am just trying to understand the scope of what we refer to as ‘legal services exports’. Clearly, it includes Australian law firms that are operating overseas with established offices and branches. What else does it include?

Mr Hudson—It would include individual Australian lawyers going to advise clients overseas. For example, Andrew and I both practise and we do some antidumping law. If I get asked by a Chinese exporter to assist because they are subject to an Australian antidumping investigation, it would include me going to China and advising and assisting them with whatever that would be in exportable legal services.

Mr Percival—Within my own firm there are partners and practitioners involved in negotiations with major commercial transactions around the world.

Senator FORSHAW—That is what I am trying to get my head around. Obviously there are Australian firms who are involved in doing work on behalf of companies in other countries or multinational companies. Does that all get lumped in as part of legal services exports?

Mr Naylor—That is an area that does have some level of contention as to who is actually preparing the statistics.

Senator FORSHAW—That is what I am trying to get to.

Mr Naylor—That has been the area of difference between the Bureau of Statistics data and the ILSAC data, which has been prepared by FMRC Legal. I am fairly certain that the ABS data includes—I can get back to you on this—only Australian law firms that have real estate overseas. So only firms that have offices and report that back are measured under the ABS data, whereas the ILSAC figures actually include firms that perhaps deal with foreign clients coming to Australia. For example, there are no Australian law firms with offices in the US, but it is our largest market. It is all done through fly in fly out arrangements for US clients coming in.

Mr Hudson—That is why things like the ability to fly in and fly out and go with your clients is so important—that is, the ability to get a visa, enter the country and legally conduct the work on behalf of the clients and go with them.

Mr Percival—The other area in which that can occur is national commercial arbitration.

Senator FORSHAW—A lot of this work would also be reflected through the trade that major companies do, and it may be counted in there. With all due respect to other states, I picked up from your submission and from your appearance here today that the Law Institute of Victoria is a bit out in front of the other states.

Mr Hudson—What can I say!

CHAIR—Mr Hudson could not comment!

Senator FORSHAW—I am from New South Wales, but I will not declare a specific conflict of interest because I have been admitted, but I have never practised. Without being disrespectful to your colleagues, it seems that the Law Institute of Victoria has taken a more prominent role. Are you just one example?

Mr Hudson—Thank you for that. It is probably all my fault.

Senator FORSHAW—I am giving you some credit here, but it is important. You have the law council and you have an international strategy and so on, but the state legal professions in each state do guard their particular patch quite jealously.

Mr Hudson—My understanding is that the Law Society of New South Wales does have practitioners and a section which deals with international law matters. Keep in mind that a lot of the state law societies and constituent bodies are member-driven bodies.

Senator FORSHAW—They are trade unions, you know!

Mr Hudson—At any given time, it is a number of people who have a particular interest getting together and thinking about how they can advance the cause, not just for the national profession but for our own people locally, and then getting the appropriate level of support within the state or constituent body, whether it be a bar council or an institute. In our case, we have had an international law section for a number of years. The members within that section took the opportunity to say, ‘This is all important. We have worked for a very active international trade agenda over the last eight, nine or 10 years. We think we can be involved, be engaged, and

have some influence in that.’ I think there are benefits for all professional representative bodies, but you have to engage to ensure that your interests are represented.

Senator FORSHAW—I did not put that as a criticism at all. It was more that, if you look at some other industry sectors’ education, particular states or particular institutions will target a particular country rather than trying to cover a broad range of countries or having a whole range of companies in a particular industry target every possible—

Mr Hudson—Marketplace?

Senator FORSHAW—marketplace and getting in each other’s road. We see this with universities. Quite a few of them target China, of course, but others have more of a focus on the Middle East or other areas. I was thinking, in terms of law, as to whether or not your structure allows for this sort of focus on a broad approach for the whole profession or if there is cherry picking.

Mr Hudson—If I could briefly answer that, I am sure my colleagues will add to it. The reality is that we work very much under the auspice of the Law Council. We have been at pains over the period to ensure that our work is complementary. At different levels there are different resources available. At any given time we might have more people available to do the work in Victoria than we have up in Canberra. But we do work in a complementary fashion. We very much see the Law Council as the peak body; we work actively together. Until 12 months ago I sat on the executive of the international law section for the Law Council together with Andrew. So we have very good relationships between the relevant officers from the state law societies and the Law Council, and we work collaboratively. We are at some pains to make sure messages are consistent and work is done consistently and in a complementary fashion. Every information session or seminar we run is done on a collaborative basis. It might be done at the Law Institute, but the people on the flyer or who are the proponents of it will include, on a regular basis, the Law Institute, Austrade, DFAT, on occasion ILSAC and certainly the Law Council. It is all done by working together. There is no separation and there are no individual agendas being driven.

Mr Percival—From the Law Council’s perspective, the aim is to bring the voices of the various constituent bodies together so that when talking with government or institutions overseas it is with a united view or a single view. We have that sort of objective in mind. I should also mention that one of the members of the Law Council is what is known as the large law firm group, which picks up the big law firms. They are actively involved in the Law Council, and they are the ones who really have the international strategies.

Mr Hudson—It is also probably useful to remember that not all legal practitioners are necessarily members of the Law Council, even though it is a peak body. They might be a member of a state law society. If you have state practitioners who are interested in that area, you have to address that level of interest. But, in terms of the policy, the Law Council comes first. It has the primary role and we work with them, as do the other constituent bodies.

Senator FORSHAW—I want to raise two other areas. Firstly, what about major corporations that are not law firms but who employ substantial numbers of legally trained personnel, such as finance and banking? Is there a relationship, and do they get picked up, if you like, in the calculation of legal services, or is that treated as within, say, the banking export figures?

Mr Naylor—Currently, as far as I am aware, the measures that have been taken have not included those major firms and the business that they generate through in-house counsel.

Senator FORSHAW—I would not have thought so, but there is an increasing amount of that sort of thing.

Mr Percival—Could I also mention that, certainly with the in-house legal counsel for major corporations, most corporations would be admitted to practise in Australia, so they would be members of the Law Institute or law societies. Some of them are in fact members of the Law Council as well.

Mr Hudson—There is also the Australian Corporate Lawyers Association, which is a representative body on their behalf. But, in terms of the capture of the dollar figure, my understanding is that that is seen as a cost of business rather than an export of legal services.

Senator FORSHAW—But in the broad trade perspective it is all part of—

Mr Hudson—Yes.

Senator FORSHAW—One of the things that we know have enhanced Australia's reputation in trade generally has been the focus upon services. Even if it is in heavy industry, mining or construction, it is the service end of that as distinct from the more physical. I was in China some years ago and am aware that this happens in other countries, where the profession has been involved in working with governments in those countries to develop their legal system or facets of it. That might more properly come under an aid umbrella but it still does involve Australian lawyers, judges et cetera. Is that a related area of interest for the Law Council?

Mr Hudson—Absolutely. The Law Council is doing the work through the South Pacific Lawyers Association.

Senator FORSHAW—I wanted to get onto the South Pacific because, although we have been talking about Asia, the Pacific is clearly an increasing area of interest.

Mr Hudson—It certainly is. I will just make two brief comments before I hand back. One is that currently there are negotiations, or the beginning of negotiations, for PACER Plus. A lot of the bodies have been talking to DFAT about what we see as important there. We see capacity building from the legal industry there and the importance of the rule of law and proper legal infrastructure. The other observation was that a lot of lawyers work through AusAID, for example—or DFAT or the Attorney-General's Department—where they do capacity-building work. I did some AusAID capacity-building work in Vietnam on their antidumping regulation, for example. We actively support those sorts of issues.

Mr Percival—David might like to talk about it.

Senator FORSHAW—I appreciate that if you were taking a strict trade definition—more aid than trade—there is a real crossover here because it is—

Mr Hudson—It is very important.

CHAIR—Yes.

Senator FORSHAW—You have public diplomacy as well.

Mr Percival—From the Law Council's point of view, being involved in the South Pacific Lawyers Association in terms of capacity building, we would certainly—as their closest neighbours—like to see them with a stronger legal infrastructure developing their legal skills. That would obviously help businesses in the area. There are other sorts of flow-on effects but that is certainly a strong focus. I do not think we have necessarily gone past the South Pacific lawyers at the moment.

Mr Naylor—No. I guess that is something worth touching upon, particularly in developing countries where Australia has an interest in seeing the further development of infrastructure. Legal services and the regulation of the profession are an area that seems to be quite frequently overlooked. If you take the example of Papua New Guinea, we are currently working closely with the law society there to implement effective complaints- and discipline-handling procedures. That is important for protecting society and people and for ensuring that lawyers are doing the right thing and are being investigated properly. When you have issues of corruption, having a weak legal profession and a weak judiciary really just leads to problems everywhere else. There needs to be a strengthening of those core institutions and structures, and there are usually very keen people to do it. The need is just for a very small amount of outside assistance to actually kick-start the process. That is really the objective of the South Pacific Lawyers Association and is certainly the basis of the Law Council's work, particularly in the South Pacific, where Australian lawyers have an interest—including East Timor as well.

Senator FORSHAW—How was that received by those countries—because there is always this issue of 'big brother', if you like?

Mr Naylor—Of course.

Senator FORSHAW—For example, in Fiji, since the coup the new regime has been very hostile towards—

Mr Percival—I think Fiji at the moment is problematic.

Senator FORSHAW—It does seem a special case, but you get those views being expressed in other countries as well.

Mr Percival—Certainly the concept of the South Pacific Lawyers Association, which the Law Council runs through its secretariat, has been warmly received by the countries. I think we will have delegates coming out in the next few weeks.

Mr Naylor—Yes. In terms of how it is received, it was originally proposed by Graham Leung, a former president of the Fiji Law Society, and all the funding to establish it came through the International Bar Association in collaboration with the Law Council and the Law Society of New Zealand. That led to us hosting a South Pacific forum in 2007 which was attended—and this is all in the materials—by 21 bar leaders from 11 countries in the Pacific. It was from there that they decided to form a steering committee to establish the association. So in that respect it has

actually been driven by developing bars, and the work and activity is set by the presidents of the PNG, Fiji, Solomon Islands and Samoa law societies and bar associations. We have been successful in obtaining funding to bring them out to meet face to face at the Australian Legal Convention next week.

In terms of broader support for the organisation, last year we put in a proposal to the PILON meeting—PILON is the Pacific Islands Law Officers Network, which comprises the solicitors-general and attorneys-general of most of the South Pacific countries. We put forward a proposal to them to conduct a study into whether it might be possible to prepare model rules for the South Pacific to regulate the legal profession. There are all sorts of issues of sovereignty involved but the idea is that, with this push for multilateral agreements everywhere else, multilateral and mutually agreed model legal professional rules would be a very good step forward. That has been endorsed by PILON and is one of a number of initiatives that the Law Council is taking to the National Pro Bono Task Force, which was established this year by the Attorney and is looking at ways to better integrate pro bono activities of the Australian legal profession internationally.

Senator FORSHAW—Thank you for that. That is interesting.

CHAIR—I have a question in relation to the Mortimer review. You suggested that the government develop an international legal strategy. Have you had any response or feedback on that as yet?

Mr Hudson—I do not think there has been a substantive government response to Mortimer at this stage, so we are—

CHAIR—Still waiting?

Mr Hudson—Yes; I presume that will be part of that larger report. There have also been submissions to the Cutler review, which is about services generally but including legal services.

CHAIR—You also said you had proposed to the Mortimer review that the legal profession should benefit as well as other sectors relating to trade. Can you expand on that?

Mr Hudson—There might be a perception within the larger world, and I could be incorrect in this, that lawyers are big guys and they can look after themselves. The reality is that that is not always the case. The law is a very broad church. It covers individual practitioners, students, small law firms and SME law firms as well as the very large law firms, and there is probably a perception that they can all look after themselves. The reality is that it is important for all levels of the profession to be able to export their legal services, to look after their own clients and to look after their own businesses, and there would be nothing worse than a small firm having a good client going overseas and being unable to do so.

So the profession covers a variety of interests. There is also a sense in which the legal profession does deliver a lot of value to the marketplace in terms of services and exports. Maybe people have perceived that it can fund itself and look after itself. The reality is that we believe it is a vital part of the investment structure. People will not invest unless they are comfortable that they have appropriate legal advice and that they are looked after here and overseas. That is why

we think that there is merit and value in all of that. Lawyers do work altruistically as well but we do believe that the legal profession does warrant care, attention and support as with other professions and the remainder of the services industries as well.

CHAIR—So essentially recognition and inclusion.

Mr Hudson—That would be our position.

CHAIR—What would the legal profession expect to gain through Australia's involvement in a trans-Pacific partnership agreement? I note that was in your submission.

Mr Percival—One of the things that I have found certainly with agreements, whether they are bilateral or multilateral, to date is that to the extent you can get market access it is a good thing, but quite often you will find in those agreements that there is a mechanism for ongoing reviews. Part of that ongoing review is where you can start to focus on changing rules regarding market access and working with bodies overseas to produce something which is good. In terms of the partnership, if there were that sort of mechanism included within it so that it enabled the Law Council and equivalent bodies in the other countries in the partnership to work together to look at market access type issues, that would be a good thing.

Mr Hudson—To add to that I totally endorse what Andrew was saying. If you work with the premise, we all ideally would advance through a comprehensive multilateral treaty, a Doha type outcome or a separate plurilateral services type thing. We recognise the reality is that there are difficulties and inherent political issues associated with that, so you do tend to look around at what can be done in other forums to advance the cause, so to speak, which is why we look at trade agreements. The trans-Pacific partnership agreement is another opportunity with potential for Australia and the US, one of our main markets. It is another way in which we can either secure some market advantages under that agreement or put another framework and another structure in place by which people can continue to work together to enhance the market for legal services. So it is looking for opportunities to either secure particular concessions and advantages or mechanisms to work towards them. We have found under the US FTA and the Singapore FTA that the mechanisms there for review have delivered additional benefits over time. Those are a couple of good examples.

Mr Percival—That sort of mechanism not only works for the legal services industry but I would add for the others as well.

CHAIR—Thank you.

Mr Naylor—In addition it is very much a process of incremental changes. Andrew said in his opening comments that we focus on government to government levels through FTAs and WTO. The Law Council, to complement, that tends to work in the countries that the government is focusing on as countries of interest, Malaysia, China, India and Japan, otherwise on an institution to institution level because, usually within the legal structures in a country, the regulators of the profession tend to have some strong say over the extent to which that market is open. By developing relationships with the relevant bar associations the Law Council is able to help pursue on a parallel level improved market access but we also work through other agreements, the trans-Pacific partnership being one, and other initiatives of government.

You have just had handed around a short information sheet on the APEC Legal Services Initiative and this is another initiative that is being run at an APEC level. It is a mid- to long-term very ambitious initiative to try to create the concept of an APEC lawyer similar to the concept of an APEC engineer. While the system may not yet be working as perfectly as it was envisaged, there seems to be this trend towards multilateral agreements rather than bilateral agreements which allow other countries to throw their lot in and to benefit from this sort of broader access agreement. It only comes through participating in all these other peripheral forums. You never really know which one is going to be the dark horse that bolts to the front or if there is going to be one. It is a process of having to be involved.

Mr Hudson—That is right. Whether it is institutions or professions engaging with government or government engaging with government on whatever level, we engage as openly and as comprehensively as we can. Both David and Andrew commented that this is an incremental process. For a long time Australian lawyers went with their clients. Now Australian law firms, on their own account, are setting up their own operations, which are not necessarily driven by their own clients but are looking at opportunistic areas to go. It is a long process. Appropriate levels of support from government instrumentalities are terrific. We certainly do work actively with government departments on those opportunities.

CHAIR—I am conscious that we are out of time.

Senator FORSHAW—Could you please take this on notice. It would be useful to get a list or a number of Australian law firms that have established offices in other countries in the region subject to this inquiry. It is a pretty broad area.

Mr Hudson—It is a big area. We will certainly undertake that.

CHAIR—I will come back to some follow-up questions. I just want to deal with the two documents that you have submitted to the committee. Is it the wish of the Trade Subcommittee that the documents, Legal Services Country Profile: China and APEC Legal Services Initiatives information sheet, be incorporated into the records as an exhibit for the inquiry into Australia's trade and investment relations with Asia, the Pacific and Latin America? There being no objection, it is so resolved. In closing, we did run out of time and still had a few more questions. I note that one of the questions was to do with the MOU with Austrade, who are here.

Mr Hudson—A very good MOU it is too. It is working wonderfully well and we have been delighted with its operation.

CHAIR—If there is anything that you would like to provide on that it would be useful for the committee. We may contact you with a few follow-up questions. Thank you for your attendance here today.

[12.26 pm]

HARVEY, Mr Gregory, Manager, Americas, Australian Trade Commission

MONRO, Ms Helen, Manager, Government, International and Policy Group, Australian Trade Commission

STORTZ, Mr Pat, Manager, South-East Asia, South Asia and the Pacific, International Liaison Unit, Australian Trade Commission

YAP, Mr Hian, North-East Asia, International Liaison Unit, Australian Trade Commission

CHAIR—I welcome you on behalf of the subcommittee. Although the subcommittee prefers that all evidence be given in public, should you at any stage wish to give any evidence in private you may ask to do so and the subcommittee will give consideration to your request. Although the committee does not require you to give evidence on oath you should be aware that these proceedings are legal proceedings of the parliament and therefore have the same standing as proceedings of the chambers themselves. Do you wish to make a short opening statement to the subcommittee before we proceed to questions?

Ms Monro—Particularly because there has been a period since the Austrade submission was prepared and there have been quite a lot of changes in that time, there are a few things I would like to recap quickly. I could go through a little bit of background on Austrade but I am inclined to take that as a given.

CHAIR—Take that as a given.

Ms Monro—The major change is probably the GFC.

Senator FORSHAW—I do not think it could be any bigger.

Ms Monro—It is a big one, but at the top of my list is a change for Austrade in our own mandate because we now have the responsibility for inwards investment attraction and promotion. That was the case when we prepared the submission but we were in the very early days of that because that responsibility came into effect from 1 July last year. So I really just want to flag that we are now fully underway on that and we have adopted a much more integrated approach to trade and investment across the organisation. That has involved reviewing what we are doing and how we are doing it, building up skills across the network. We have a small specialist network of investments people but we are building up the skills so that we have much better base of investment skills and ability to respond on investment promotion and attraction. From an internal perspective that is probably a significant change in the way we are operating.

In terms of the wider economy the global financial crisis has obviously had a big impact and we have responded to that. From where we sit it looks as if things are hopefully over the worst and there are some new opportunities emerging. We have been operating for some time at least

on the basis that wherever there is chaos there is some opportunity, and so we not only look to advise Australian businesses on how to deal with the situation in the particular markets that they are in but we also look to inform them of where there are opportunities, for example through stimulus packages that may have been introduced by overseas governments which then provide opportunities for Australian business.

Equally, Austrade ran a series of seminars earlier this year where we got over 600 companies—I think it was—around the capital cities coming to hear some senior trade commissioners from overseas talking about what was going on in relevant markets. So that is obviously something that we have taken into effect.

The final point I want to raise is just to flag that there have been two new free trade agreements implemented since the submission was put in. The first of those is the AANZFTA, where the treaty legislation is currently before parliament, as I am sure you are aware. It is likely to come into force on 1 January next year. It will be the largest FTA that Australia has signed, and we are working very closely with DFAT on the implementation of that and planning an extensive promotional seminar series to make sure that as many businesses as possible are aware of that. The second FTA is the Chile-Australia FTA, which came into force on 6 March this year. Again, we have worked very closely with DFAT to make sure that business is aware of that. We ran a series of seminars and then some roundtables late last year, and we will be running a follow-up series this November, again keeping the business community aware of those FTAs and the implications for them. Of course, in Asia, which is the home of our top three export destinations, we are currently negotiating FTAs with Japan, China and South Korea. That is the FTA context.

CHAIR—Do you have any other comments?

Ms Monro—No, we were going to open with that and then leave it to questions.

CHAIR—Okay, that is fine; that is your opening statement. Thank you.

Senator FORSHAW—Can I start with the last point you mentioned, which was the negotiations on FTAs with China, Japan and Korea. For the purposes of the record, could you just quickly tell us where they are. I am particularly interested in the three of them, but you might also make some comment about the recent change of government in Japan. Of course, the Japanese economy has been under a lot of pressure for some time now, and there have been some public indications that there may be some change of policy position in Japan on protection.

Ms Monro—I will ask Mr Yap to respond to that.

Senator FORSHAW—If you could deal with the three, it would be handy for us to have that on the record.

Mr Yap—I should preface my comments by saying that really the prime carriage of the negotiation of FTAs is by the Department of Foreign Affairs and Trade.

Senator FORSHAW—Yes, I understand. I think we are expecting a submission from them.

CHAIR—Yes.

Mr Yap—We do help them at the margin. The picture as it stands is that with China we have completed 13 rounds of negotiation. As I understand it, there is still no date set for a 14th round. With Japan, we have completed nine rounds. I am not aware of when the 10th round will be, partly I think because of a change of regime, and I can come back to that. With Korea, we have completed two rounds. I believe that the third round is scheduled for the end of this year.

Back to Japan: in terms of a change of regime, it is still early days to make detailed comments, but I think we can probably say that the new DPJ manifesto—and, if you look at their constituents, they are less dependent on the agri sector compared to the previous LDP, so some commentators say, ‘Well, there might be more scope to negotiate on agriculture.’ But it is still early days.

Senator FORSHAW—Thank you. We will obviously await the Foreign Affairs submission. I will just follow on with another question. In your submission, with respect to the free trade agreement with ASEAN and New Zealand, on page 10 you state:

... it is currently too early to provide advice on where the agreement will deliver new opportunities for Australian companies. However, Austrade’s recent restructure of the ASEAN region has put the organisation in an optimal position to pursue such opportunities.

That was written in October. When does the AANZFTA—I am trying to work out how to say that acronym—actually come into force? I was going to go on and ask you: do you have any more indication of what might be the potential opportunities of significance out of that FTA? We appreciate, of course, that you have had the GFC, which has thrown a lot of this into disarray.

Mr Stortz—The reference is to AANZFTA, and people also call it the ASEAN FTA. At the moment, the planning is that it would come into force on 1 January 2010. That is subject to the passage of legislation in Australia, New Zealand and at least four of the ASEAN countries, so it is contingent upon all of those things happening for it to come into effect by then.

In terms of the opportunities, we have a marketing strategy for the FTA. It is quite a complicated FTA, the most complicated we have ever had to promote. The marketing plan really focuses on domestic promotions in Australia, as well as awareness raising in the 10 ASEAN countries. We have found from previous experience, particularly with the Thai FTA, that we do need to have an active information program delivered in country, because quite often customers, the buyers of Australian goods and services, are not aware that these tariff changes are occurring, and they may find that Australia provides a cheaper source of goods and services than they currently have when buying from elsewhere.

These FTAs have two benefits. One is a direct benefit, and that is the tariff changes as they occur. In the case of the ASEAN FTA, they will occur over time. The other one is the indirect benefits, and that is the awareness raising of these countries as potential export markets. So we will be working on both the direct and the indirect benefits of the free trade agreement to get commercial engagement and increased business with all of the 10 ASEAN countries.

The broad areas of opportunity, and they are quite broad, range from non-racing horses in Indonesia to the supply of live goats to the Philippines to the supply of motor vehicles—hearses, golf carts and so on—to places like Brunei, Indonesia, Malaysia and the Philippines. There are opportunities for tyres to Indonesia; auto components to a range of countries including Thailand, Vietnam and the Philippines; and building and construction equipment and supplies to almost every ASEAN market. There are a number of opportunities in the clean energy sector for most of the ASEAN countries; some opportunities in fashion, particularly in Malaysia, the Philippines and Indonesia; and a whole raft of new opportunities in the food and beverages sector. I will not go through them, but they are both processed foods and commodities in nearly all of the ASEAN countries. There are new opportunities in health, biotechnology and wellbeing in Indonesia, the Philippines, Thailand and Vietnam; ICT opportunities, particularly telecoms, equipment and services in nearly every ASEAN country; and new opportunities in the supply of equipment for mining, oil and gas in most of the ASEAN countries as well.

Senator FORSHAW—Thank you for that. That is very useful.

CHAIR—I have a few questions, particularly to do with Latin American countries. The response to this inquiry so far has been very positive. Your submission discusses the growth in trade with Latin America and the opportunities presenting themselves as these economies become less dependent, in some ways, on the US. What sorts of steps is Austrade taking to help Australian industry capitalise in these particular markets?

Ms Monro—I will pass to Mr Harvey.

Mr Harvey—As our submission lays out, we are focusing our attention in a number of areas. In terms of context, Latin America has weathered the global financial crisis fairly well. Most of those countries have slowed, but they are forecast to come back fairly strongly. One of the things we are currently doing in the areas of our existing strengths, such as agribusiness, mining services and technologies and so on, is helping companies to position well so that, when global demand returns and commodity and resource prices start to rise again, they can take advantage of the expansion of commercial activity in those markets.

On a tactical level, one of the areas we are pursuing is companies that already have strong experience and potentially a base in Latin America—many of those are in Chile—and looking to migrate those companies to greenfields, if you will, in countries such as Peru and Colombia in particular. Our Latin American mining team is currently in Medellin in Colombia with a number of Australian companies. In that sector in particular, where a number of the Australian majors have operations in Latin America, we are finding that that is opening up opportunities in mining services, mining technologies and so on. It is similar in the agribusiness area. As global demand rises and the demand for Latin America's agribusiness products increases, it will create opportunities for the Australian agribusiness companies that have services, products and technologies that can help those Latin American countries to improve their yields and their packaging and servicing.

As you will see in the submission, we are also focusing on the areas of alternative energy and various environmental issues where Australia has strong capabilities. One that stands out is water management and supply. I know Pacific Hydro is involved not only in hydroelectricity but also in wind farm areas—in particular in some very small and focused projects that are providing

power for mining and agribusiness operations. We are focusing on these very particular areas where Australia has strong capabilities and some foothold in the region and on how we can multiply and extend that. In those sectors that have technologies and services to bring, we are trying to migrate companies, possibly smaller ones, and bring them into the region. We are doing that with a cluster program.

CHAIR—What is that about?

Mr Harvey—It is about bringing together small to medium-sized companies that may not have sufficient resources on their own to break into a market so they can leverage their communal strength. For example, next week in Peru, the AUSMIN mining cluster will bring a delegation across to showcase a range of their services and technologies in the mining area. There is export and merchandise trade with Latin America, but one of the important aspects is certainly investment. As Helen mentioned, we have taken on responsibility for inward investment attraction, but we have always had responsibility for looking at outward investment opportunities. We have companies in the mining, agribusiness, service and other sectors who are looking for investment opportunities within the region to use as a base to export and expand their business and also, in many agribusiness cases, to balance the risk in terms of climatic conditions and so on.

CHAIR—Thank you. Following on from that, I will ask a question to do with language. Do you find that language is or is not an issue? Obviously, if you have the languages, things always work better, but is it an issue in general?

Mr Harvey—I have to say that on one level I am a relative novice, having only moved into this area relatively recently. From my initial conversations with both Australian businesspeople and people within the region, increasing our language skills in both Spanish and Portuguese is always a benefit. Austrade certainly provides companies with access to language specialists. English is a very common business language throughout the region and I have not had reports of that being a significant barrier to trade.

CHAIR—Following on from a question that Senator Forshaw asked before—it was to do with Japan, China and Korea being our biggest export markets—has the global financial crisis had a negative impact and, equally, has it thrown up opportunities?

Mr Yap—The global financial crisis, believe it or not, has been with us for about a year and is a fast-moving feast. The first thing we noticed about 12 months ago, when it hit us and the Australian dollar dropped to the low 60s, as I recall, was that we were getting inquiries, for instance, in Taiwan, where businesses used to source pasta from Italy. They were saying, ‘Gee, if you look at Australia, the currency has depreciated by 30 or 40 per cent—maybe we should look towards Australia.’ Of course, that has changed—the currency has gone back up to the 80s.

As you will probably know, China is probably the only major market that is still growing despite the global financial crisis—I do not think that growth rate dipped below 6.5 per cent. So it was a shining beacon for a lot of exporters who used to export to other major markets that then went into recession. Our China market specialists were definitely getting more calls and knocks on their doors. People were interested in looking at China. The picture does vary from market to market and also depending on what time of the global financial crisis we are looking at.

CHAIR—Will the recent decline in commodity prices cause any long-term problems for our export industries?

Mr Yap—I will talk about China again. China has not stopped buying our resources; in fact we just heard, for instance, about the Gorgon LNG project, worth \$50 billion, and then yesterday about \$70 billion from the same project to be purchased by Japan and Korea. Overall, I think that North-East Asia is still a very dynamic region, even based on our experience. I do not think there has been a huge drop-off in people interested in exporting to North-East Asia. That is partly helped by the huge domestic stimulus put in by the respective governments. Demand has held up pretty well, I think.

CHAIR—That leads on to India. In your submission—the caveat was that it was written a while back—you indicated that the Indian economy was expected to continue to grow at 7.5 per cent a year. Looking at it a year later, what is your comment about that?

Mr Stortz—Madam Chair, maybe I could pick up your comment about the commodity prices and then answer that.

CHAIR—Sure.

Mr Stortz—The two main commodity markets in my region are essentially India and Indonesia. The volatility of commodity prices is an issue from time to time but the biggest issue we have had is the drought impact on supply, which has meant that a lot of the buyers have had to diversify their sources because they could not get the quantities of product from Australia. With good growing conditions in Australia we should find that those markets come back to Australia, because we have a very good reputation internationally for the commodities we produce and, I think, we are the source of choice for a lot of countries, particularly in a range of commodity areas in India and Indonesia.

In terms of the forecasts, we as an organisation do not do market forecasts but we do rely on others. One in particular is an organisation called International Market Assessment in Asia, which does a whole range of forecasting for all the major economies. Their forecast for GDP growth in India is 6.2 per cent for 2010, ramping up to 8.5 per cent in 2013. So it will be above six per cent for the foreseeable future, which is pretty strong growth. The issue with India is that before the GFC it got to capacity constraints, which forced up inflation and interest rates quite significantly. In a sense there was a cooling down effect on the Indian economy, but now things are starting to grow. Unfortunately for India, but fortunately for us, it was less affected compared to other big economies because their economy generally is domestically focused: it did not have a big export sector that was exposed to supplying the US or Europe.

Senator FORSHAW—I want to ask you about what Austrade does to promote trade opportunities in the region for small and medium sized businesses. I have heard from time to time that Austrade has a focus on the big industries and could do more to support smaller enterprises. You may disagree with that, but it is a comment that I have heard. I appreciate that you have limited resources—a limited number of posts around the world and so on. In this country a substantial proportion of enterprises are small and medium enterprises. I come from an area in Sydney, the Sutherland Shire, which is particularly so. They have a business enterprise centre which covers the St George and Sutherland Shire region. I know they try to put a lot of

work into assisting local businesses, with an export focus if they can. They work the EMDG Scheme, as we know. They run a thing called the China Lunch Room, which is a series of events held on a regular basis to try to promote opportunities.

What I am leading to is: what is Austrade doing as part of this push through BECs and whatever else to help the small and medium enterprises to tap into this great market? Obviously, we are going to continue to hear about the Woodsides and whatever, but there are a lot of businesses out there. There have been some terrific success stories, but if we are going to have these FTAs and so on they have to filter down to assist where a lot of the employment in this country exists. That is a bit of preaching, but that is the question.

Ms Monro—It is interesting that you raised the focus on big companies. I think Austrade has been subject to criticism over the years for focusing on big companies and for focusing on small companies. I think we have missed the middle range!

Senator FORSHAW—I have heard that too; I have been here a long enough time!

Ms Monro—More recently, I think, the commentary has been about our focus on small companies. Inherently, the small-to-medium sector is probably where the bulk of our clients are from. I do not have the figures to hand. A lot of them are quite small.

Senator FORSHAW—It would be useful for your to provide us with some material about those broader statistics. That could be incorporated into our report.

Ms Monro—We could certainly do that. We work with large companies, but the nature of that interaction and support tends to be quite different. More often, large companies have internal capacity to deal with export activities, and they are more likely to make contact with Austrade in market so that there is a flow of information both ways about what is happening in a particular market. Austrade might be able to make representations with or without the Department of Foreign Affairs and Trade to the relevant government to assist the company and so on. So it is really a higher level of activity and engagement with the larger companies.

Senator FORSHAW—I probably should have included there that you work with large industry groups that may have a lot of smaller enterprises. The wine industry is a classic example. I appreciate that.

Ms Monro—Yes, but we do work very closely with the small to medium companies through, in particular, the extended Austrade network and the TradeStart network, which is run in conjunction with a range of allied organisations and is very strongly regionally based. We have a large network all around the country in relatively small locations such as Wollongong, Bega and so on. Their bread-and-butter business is dealing with small companies. There are obviously some larger companies scattered around but the bulk are small companies.

Those export advisors, either Austrade or TradeStart, do work very closely on a one-on-one basis with the small companies. We have a program called Getting into Export, which is specifically designed for companies, as the name suggests, getting into export. It involves some coaching and taking people through the basic principles of export: what it is all about, how you get into it, what is involved, what does your company need to do, what skills and knowledge do

you need, and how do you need to set yourselves up. Then we take it forward from there and assist them in working through appropriate markets and with the people in the Austrade posts in those markets.

Senator FORSHAW—Good. If you could provide that I—

Ms Monro—We will certainly provide some more figures.

Senator FORSHAW—I confess I was aware of some of what you just said but I thought it was good to take this opportunity to get you to put that on the record.

CHAIR—I have got some more questions to do with Latin America. It comes from your submission where you are talking about closer ties, particularly with the Latin 6. How important is that and can you give a few more details of your forward strategy over the next two or three years in Latin America?

Mr Harvey—I would possibly preface that by saying, ‘Why the Latin 6?’ That is because we see them in terms of the opportunities both for growth and for areas where Australian companies and expertise have strong capabilities. That is not to say that we are not pursuing, on a case-by-case basis, opportunities in the other markets. That is the preface. As I mentioned before, one of the things we are also doing is honing it into some very specific industry focus areas. I have mentioned mining a number of times.

CHAIR—And agribusiness.

Mr Harvey—But also what follows on from that, in a number of areas, is infrastructure, construction and so on. We are looking at where Australian companies have an expertise, some degree of visibility within the market and seeing ways in which we can both bring new companies to those markets and expand on the reputation that Australian companies have built in those markets.

A case in point, for example, is in one of the growth markets, Colombia. It is a market where traditionally we have not had as much representation. We are working fairly energetically in that particular market. It is the only South American country that has both an Atlantic and a Pacific port. They are looking to develop that infrastructure. We are certainly talking very closely with the Colombian government and looking to establish a business council with them. That would both make Australian companies aware of the tendering processes for things like those infrastructure developments and help them to access those. Off the back of that, it creates a pull for other companies. It may be that the prime contractors who win the contract are familiar with other Australian suppliers and service providers. That sometimes helps to pull in the smaller and medium sized companies.

We are focusing on where we see the growth markets within the region so that we are concentrating our efforts there and in industry sectors. Basically, it is positioning Australian companies and creating a thought leadership in some areas, such as water management. It is creating awareness within those countries, such as Peru, which have similar water management to us. We think there is great scope, in the first instance, for creating awareness of our abilities, capabilities and the experience Australia has and then, off the back of that, bringing in

companies that have expertise, products and other services there. It is essentially leveraging off the particular sectors where we have already created a degree of awareness and working closely with those countries.

I attended a meeting yesterday with ambassadors from the Latin American countries, and the Minister for Foreign Affairs was there to emphasise to them the importance that the Australian government places on the region. We are working both with those embassies here in Canberra and equally in the region. At the moment there is a group of technical specialists from the University of Queensland in education, tourism and mining areas within the region creating awareness of Australian expertise and skill sets and broadening that out to business services. Keep in mind that there is a very large middle class and a very sophisticated business culture. Frankly, one of the areas is sometimes making Australians aware of the degree of sophistication of the markets there.

I close by saying that there is a huge behemoth of a market, Brazil, there which is one of the top 10 economies in the world. We see it as a world leader in energy production in which we can help to position Australian companies so that, as Brazil becomes an increasingly important and dynamic market within the world, they can take up those opportunities.

CHAIR—Brazil certainly is increasingly important, isn't it? It is a leader in that area.

Mr Harvey—To cap that, rather than dissipating our efforts—because we have a relatively small team within the region—we are focusing on those markets that we think have the best opportunities for Australia and the sectors which are multipliers and which present the best growth opportunities going forward.

CHAIR—Following on from that, in your submission you talked about the problem of a lack of direct shipping services to Latin America. The delegations to Australia that we meet talk about that as well. Is there any movement on that or any plans that you know of?

Mr Harvey—For the detail I need to take that on notice, but it is an ongoing issue, although a lot of the businesses that we are working with that are investing in the region are providing either services or technology there.

CHAIR—So it is not an issue.

Mr Harvey—In that sense it is less of an issue for education supply and so on. I note that Qantas now has a direct flight to one of those areas.

Senator FORSHAW—Again.

CHAIR—It is back on.

Mr Harvey—I know it is an ongoing issue.

CHAIR—It is: it gets raised with us all the time. It is just one of those issues.

Senator FORSHAW—We have had many inquiries on that over the years, haven't we?

CHAIR—Yes, I'll say. Looking at Fiji, is the current diplomatic problem causing any difficulties that you are aware of for Australian businesses in the Pacific?

Mr Stortz—We have found that our small office in Suva is probably busier than ever because companies now need to know about the political climate and whether they can safely come to the market, reasonably expect to do worthwhile business if they do and so on. The outcomes we have been getting from that market have not significantly changed.

CHAIR—So the business outcomes are still the same; it is just the uncertainty that people come to you about a lot more?

Mr Stortz—Pretty much, yes. People still have to eat, they still buy consumer products and there is still some construction activity going on. The area of the economy that has really been mostly impacted is tourism and new tourism and resort developments. There were apparently quite a few in train prior to the military takeover that would have added significant capacity to hotel rooms as well as the spin-off to increased airline arrivals and departures. That is an area that has been hurt, but we have found that our office has been very busy as a result of the uncertainty.

CHAIR—I have a question to do with education that was raised directly with us by Universities Australia. It is noted as one of the fastest growing sectors for many of the countries in the Asian region. In their submission, Universities Australia said that the reduced funding for Australian universities compared to historical levels is putting this situation in jeopardy. Do you have any—I will not say view—information or comment about that?

Ms Monro—We certainly do not have a view, Madam Chair. I think we need to take that question on notice. We do not have any information with us that would allow us to respond to it. Maybe when we get the exact question we can come back to you with something.

Senator FORSHAW—You might want to have a look at the *Hansard*.

Ms Monro—For the discussion around that.

Senator FORSHAW—They talked about overseas students subsidising Australian students.

Ms Monro—We will follow it up and see what we can find.

Senator FORSHAW—They also raised some visa issues, but that becomes a Department of Immigration and Citizenship issue.

Ms Monro—Austrade will not necessarily have much information about that, but we will have a look and see what we can find. We may find something from the Australian Education International people as well.

CHAIR—That would be useful. What role does Austrade play in our overseas missions for the education sector? Do you have particular officers or an officer who handles everything?

Ms Monro—It varies between locations.

CHAIR—Depending on the market?

Ms Monro—Yes, I think so. We have some particular arrangements in some of the European countries where we have some people working within Austrade who are designated as working in the education sector. That applies in some other locations as well. From memory—and I will make sure that I am correct in responding—I think in Mexico there are one or two staff as well. In some locations we have some staff who work within Austrade specifically on behalf of education. In other locations it is one of the sectors that are covered by local staff.

Senator FORSHAW—I thought there have been some in China, maybe in the consulate in Shanghai.

Mr Yap—In some places we are co-located.

Senator FORSHAW—Yes, that happens.

Mr Yap—In terms of operations, AEI looks after the policy aspect, but works with us in organising events, such as Study in Australia events.

Senator FORSHAW—I was in Shanghai a few years ago when there was a very large promotion. It was fantastic.

CHAIR—An education expo?

Senator FORSHAW—Yes, from Australia where dozens of Australian institutions were promoting their facilities.

Ms Monro—It was probably a Study in Australia event. Austrade does a lot of work in the education sector and we have a significant MOU with Australian Education International, AEI. We work very closely through that MOU and that is the umbrella under which we work, whether we have people who are working specifically on behalf of AEI, whether they are focused on the education sector or part of a broader range. AEI has some staff overseas and there are particular initiatives, like the Study in Australia initiative, where we work very closely together. It is a significant area of activity from an Austrade perspective, but there are a range of ways in which we engage with AEI.

CHAIR—My other question is to do with the Australia-United States Free Trade Agreement. Has that affected our two-way trade and investments with the USA?

Mr Harvey—There was a Fulbright conference recently where they looked at the FTA. The consensus seemed to be that, in broad terms, it was too early to tell specifically. Australia's commercial ties with the United States have continued to strengthen and go from strength to strength. However, there have been other externalities, such as the downturn in the United States which has had an impact on our direct trade and investment. We have had interesting areas where this has become an opportunity for Australian companies that are looking to buy or invest in distressed assets in the United States. There are many things that impact on our commercial linkages, in a mature relationship such as we have with the United States on a commercial basis.

It is a complicated picture, and not one that I would profess to be an expert on. We continue to look at specific opportunities and one area in particular is government procurement.

CHAIR—Could you explain a little bit?

Mr Harvey—The United States has a very complicated government procurement regime that has federal, state, county and city entities. We are doing a lot of work looking for opportunities where stimulus money—a very significant amount of stimulus money—has been injected into projects in the United States. Most of that is delivered at the city, county and state levels. We are working with those entities to make them aware of Australian suppliers, be they infrastructure or service. Often it is an education process to make them aware of the conditions of the FTA and to make them aware that Australian companies are eligible to bid for that business. It creates a good framework for managing our commercial relationship with the United States. I note that in mid-October, Minister Crean and Ron Kirk will be meeting as part of the AUSMIN talks, which are part of the AUSFTA process, and that there are subcommittees working through issues that arise from time to time. It provides a framework through which we can continue to manage that very important commercial relationship that we have with the United States. I can take that on notice and bring some material to you in terms of the outcomes from the FTA.

CHAIR—It would be useful if you could come back with that. I have no further questions but Senator Forshaw does.

Senator FORSHAW—I would like to update a figure. On page 11 of your submission you referred to India and the forecast GDP growth of 7.5 per cent a year, and to our exports growing at an annual average rate of almost 29 per cent. Has there been any revision of those figures since you prepared the submission, given the GFC? It is just so that we do not rely on a figure that is—

Mr Stortz—We are more than happy to rely on the figures in the submission. The comments I made previously—about the Indian economy being largely domestically focused, and that there were minor impacts from the GFC but they are not being as badly affected as others—meant that those forecasts are, I think, still quite valid. The latest forecasts from organisations that do this research are projecting fairly strong growth for India right out to 2015.

Senator FORSHAW—It is good to confirm that. Thank you.

CHAIR—I do have one question, arising out of India. I note in your submission you talked about—and you talked before about this—capacity constraints. I take it that they would make it a bit harder for Australian firms, in particular, to penetrate into those markets?

Mr Stortz—Quite the opposite. The needs of an economy growing from a very small base, in developmental terms, means that there are opportunities everywhere and when they should reach capacity constraints they need more of the sorts of things that Australian companies are very good at, particularly in infrastructure building—

CHAIR—In services?

Mr Stortz—In services areas—food has enormous opportunities there—right across the economy. The Indian economy is so diverse and its needs are everywhere, so there is almost no sector of the Indian market in which we are not active on behalf of Australian companies.

CHAIR—So we are growing?

Mr Stortz—We are growing, and I will quote some figures that might help the committee. In the four years between 2003-04 and 2007-08, we experienced a growth in outcomes for the clients who we helped of over 400 per cent. The number of clients that we helped to get a commercial outcome—I mean, we worked with hundreds of others—

CHAIR—But you are only talking about those that got a commercial outcome.

Mr Stortz—The number of clients that got a commercial outcome grew from 187 in 2003-04 to 951 in 2007-08, with only a modest increase in resources. So there is a lot of demand there, a lot of interest and a lot of challenges for Australian business, but the potential is enormous.

CHAIR—Sure—and the trend seems as though it will continue like that?

Mr Stortz—Absolutely. I mean, we are not without competition; as you can imagine, in a growth market like India, the competition is ferocious—

CHAIR—Everyone is at the door.

Mr Stortz—The Indians are also very price sensitive, so that makes it harder. But, in a sense, that makes our people more in demand than ever to provide the service, the guidance and the assistance that they need in order to find the right partner to grow their business.

CHAIR—Thank you; that is interesting. This was a good opportunity to give an update on the time that has elapsed between the submission and today. I know there has been quite a time lag, but events intervened to almost overtake the inquiries. If there are any matters on which we need additional information, and we have flagged a few questions on notice, the secretariat will write to you and follow up on them. They will also send you a copy of the transcript of your evidence on which you can make any necessary corrections to errors of transcription. I thank you for your attendance today; the subcommittee really appreciates it.

Resolved (on motion by **Senator Forshaw**):

That this subcommittee authorises publication of the transcript of the evidence given before it at public hearing this day.

Subcommittee adjourned at 1.17 pm