



COMMONWEALTH OF AUSTRALIA
PARLIAMENTARY DEBATES

SENATE

Official Committee Hansard

ECONOMICS LEGISLATION COMMITTEE

**Reference: Customs Legislation and Customs Tariff (Anti-Dumping)
Amendment Bills 1997**

MONDAY, 22 SEPTEMBER 1997

BY AUTHORITY OF THE SENATE
CANBERRA 1997

SENATE**Monday, 22 September 1997****ECONOMICS LEGISLATION COMMITTEE****Portfolios:** Treasury; Industry, Science and Tourism; Workplace Relations and Small Business**Members:** Senator Ferguson (*Chair*), Senator Jacinta Collins (*Deputy Chair*), Senators Bishop, Chapman, Murray and Watson**Substitute member:** Senator Crane to substitute for Senator Watson on matters covered by the Workplace Relations and Small Business portfolio.**Senators in attendance:** Senators Abetz, Boswell, Brown, Bob Collins, Colston, Conroy, Cooney, Faulkner, Harradine, Lundy, Mackay, Margetts, Murphy, Neal, O'Brien, Schacht and Sherry**The committee met at 9.06 a.m.**

Matter referred by the Senate:

Customs Legislation (Anti-Dumping) Amendment Bill 1997

Customs Tariff (Anti-Dumping) Amendment Bill 1997

ATTLEE, Mr Andrew David, Manager, Business Strategy and Government Relations, Pilkington Australia, 570 St Kilda Road, Melbourne, Victoria 3004**BRYCE, Mr Robert McKinnon, Chemicals Sector and Commercial Manager, Plastics and Chemicals Industries Association, 4/380 St Kilda Road, Melbourne, Victoria 3001****McALLEN, Mr Bruce James, Chairman, Industry Anti-Dumping Task Force, 103 Pipe Road, Laverton North, Victoria****McDONALD, Mr Anthony James, Trade and Customs Adviser, Council of Textile and Fashion Industries of Australia, GPO Box 1469N, Melbourne, Victoria 3001****O'CONNOR, Mr John, Government Relations Manager, ICI Australia, ICI House, 1 Nicholson Street, Melbourne, Victoria 3001****van LINT, Mr Wenceslaus, General Manager Planning, SPC Ltd, Andrew Fairley Avenue, Shepparton, Victoria, 3630**

CHAIR—Welcome. The Customs Legislation (Anti-Dumping) Amendment Bill 1997 and the Customs Tariff (Anti-Dumping) Amendment Bill 1997 were referred to the committee by the Senate on 4 September 1997 for inquiry and report by 29 September 1997. Today we will be taking evidence from a number of organisations which have made submissions concerning the bills. We will also receive a response from government officials on comments made during the hearing. To assist all parties involved with the inquiry, the committee has agreed to publicly release all submissions received.

Before we commence taking evidence, let me place on record that all witnesses are protected by parliamentary privilege with respect to submissions made to the committee and evidence given before it. Parliamentary privilege means special rights and immunities attached to the

parliament, its members and others necessary for the discharge of functions of the parliament without obstruction and without fear of prosecution. Any act by any person which operates to the disadvantage of a witness on account of evidence given before the Senate committee is treated as a breach of privilege.

Senator HARRADINE—Mr Chairman, as you know, I am not a member of this committee but merely a participating member. I have another meeting commencing shortly, a joint committee of which I am a member, and therefore I will have to leave. I do apologise for that. I am most grateful for receiving the submissions and I will be anxiously looking at the outcome.

CHAIR—If there are any questions that you wanted to pose before the witnesses go to the submission, I am quite happy for you to do them first.

Senator HARRADINE—Thank you.

CHAIR—Gentlemen, do you have any further comments to make on the capacity in which you appear?

Mr Bryce—The Plastics and Chemicals Industries Association is the peak industry association in Australia, with somewhere near 600 members.

Mr McAllen—You have the list of the participants of the Anti-Dumping Task Force so I do not think it pertinent to go through them. I will be presenting a summation of the task force's position on this issue.

CHAIR—Mr McAllen, will you be making the initial comments?

Mr McAllen—Chairman, with your agreement, I propose to read a brief summary of our position; then the other participants here, who represent different associations and different company views, will make a brief submission, not covering the ground that we have already covered but just adding some comments from their perspective.

CHAIR—Please proceed.

Mr McAllen—An overlooked and critical element in the debate on industry policy is the key role played by the anti-dumping system. Since 1921, Australia has legislated against the internationally recognised unfair trading practice of foreign countries dumping their products in Australian markets.

Dumping is simply defined as selling goods in foreign markets at prices lower than those achieved in the home market, causing material injury to industries in the importing countries. An integral right under the World Trade Organisation—formerly GATT—is a country's entitlement to take action against this unfair practice. The WTO has prescribed a code of practice which countries are required to follow. The code provides order in international trade. It ensures that actions are not barriers to trade and that there is uniformity in the way that countries administer their anti-dumping laws.

Australian industry's entitlement to exercise its rights under the world trading system is now under threat. The economic rationalist approach is to regard anti-dumping action as providing de facto tariff protection, sheltering Australian industries from international competition and depriving Australian consumers of the opportunity to benefit from the availability of cheap, imported goods. It is of little importance to those dispensing advice on Australia's system that anti-dumping actions are short term, that they prevent overseas countries exporting their problems and that there is no guarantee of a continual supply of cheap imports.

Past years have seen a number of changes, the net result being the ever increasing difficulty industry has in exercising its entitlements. Before the election, the coalition promised to ignore the traditional advice of entrenched bureaucrats, to reform the anti-dumping system, to expedite the process and to return effectiveness to the Australian system. Before the election, the coalition apparently recognised that failure to provide an effective system to counter dumping would result in industry closure and job losses: it is evident that investment decisions are made on the presumption that the anti-dumping system is effective against unfair pricing.

Initially, the new government gave encouraging signals that it would honour its pre-election promise. An independent review was commissioned and a report—the Willett report—was made, recommending major reform and reduced bureaucratic involvement. Industry awaited the government's response.

That was in 1996. Since then the government has made little change other than to indicate that the matter will be referred to the Productivity Commission, with a reference crafted by the bureaucracy inviting an economic rationalist approach and a predictable recommendation to abolish the system.

On the subject of transitional economies, based on legal opinion that existing law did not allow industry to adequately address dumping from economies in transition—such as China—new legislation has been introduced into parliament. Previously, anti-dumping action in relation to China and other command economies was taken on the basis that prices and costs were not acceptable because of government control.

Industry will accept a law which recognises that those industry sectors exhibiting free market characteristics should be afforded similar treatment to that given to industries in free market economies. The proposed legislation is flawed, as it accords free market status where enterprises owned by foreign governments remain significant suppliers of goods in a market or where enterprises controlled by foreign governments supply significant inputs to a manufacturing sector. This legislation, if not amended, will allow companies controlled by foreign governments and raw materials provided by foreign governments to be dumped onto Australian markets. Recognition by Australia of the legitimacy of foreign government prices and costs will preclude anti-dumping action against other countries—even if they are dumping product in Australia—because, if these prices are the lowest in the Australian market, no action is available against other dumpers under Australian practice.

The legislation provides for judgments to be exercised by officials on the central question of whether or not a price control situation exists in a particular market of an economy in transition country. Our discussions with officials on the tabled legislation have given us little confidence that a price controlled situation will be recognised when foreign government owned operations continue to be major suppliers in a market or where government owned enterprises continue to supply major raw materials to downstream operations albeit that these operations are privately owned.

Industry, conscious of the need to establish a pragmatic framework for the conduct of a dumping investigation, which is necessarily time constrained, is proposing a simple test: the identification by the investigators of significant foreign government ownership, either directly in the company manufacturing the exported goods or in an enterprise supplying a major raw material to downstream manufacturers should positively establish that a price control situation exists. That particular market should then be disqualified as one suitable for the determination of a fair or normal value. In such circumstances normal value should be established on surrogate country information.

The industry has proposed amendments to achieve this outcome and to remove the inherent uncertainty created by the proposed legislation. No other OECD or WTO nation recognises domestic prices or cost in economies in transition as relevant for the establishment of fair values. Australia's trailblazing legislation, if amended, will give recognition to market sectors in those countries exhibiting true characteristics of a free market, while ensuring that foreign government assisted industries do not dump products on Australian markets.

The key to our proposal is the identification of foreign government ownership or control in the goods being produced or in the supply of significant raw materials to the manufacturing sector producing the goods exported. This should constitute a price control situation and trigger section 269TAC(4), which is the old surrogacy provisions.

Our amendments, which are detailed for you, insert substantial influence to ensure that inputs from government owned controlled operations are unambiguously identified as constituting a price control situation. 'Significant raw materials' is defined as any single element in excess of 10 per cent of production cost.

Our amendments make provision for the prescription of regulations and seek a regulation to prescribe certain circumstances as situations which are deemed to constitute price control—for instance, majority ownership or control by a foreign government, at whatever level, in the enterprise manufacturing the exported goods; any government restriction on selling on the domestic market; when major domestic customers for the goods sold are government owned or controlled enterprises; any government price control on the domestic market; and any government restriction or direction as to the quantity of goods to be manufactured. We believe these proposals will enable investigations to be conducted expeditiously and without complication, overcome uncertainty and provide a significant degree of predictability for applicants.

That summarises our position. After the other gentlemen have given their presentations, I would like to enumerate a number of case studies which are significant in that there are instances where Australian industry has suffered severe damage resulting in job losses and/or investment being shelved or investment going to other countries.

Mr Bryce—I have already made a written submission to the committee; I will pick out some of those key points and run through them. My first comment is that PACIA is a member of the industry task force on anti-dumping and supports the submission that is before you. The PACIA submission outlines the impact that proposed changes to the anti-dumping legislation has on the level of certainty and on potential investment decisions in Australia. It is a very important aspect for potential investors to have an anti-dumping system for which there is some degree of certainty.

First of all, just a little bit about PACIA. PACIA is the peak Australian Plastics and Chemicals Industries Association. The organisation was formed in 1994 through the amalgamation of the PIA, the ACIC and CIECA. Adhesives and sealants manufacturers joined PACIA in 1996. PACIA has in excess of 560 members and represents over 85 per cent of the industry's turnover.

PACIA, or the plastics and chemicals industry in Australia, has a turnover exceeding \$28 billion and employs over 100,000 people at more than 4,000 sites across Australia. It is interesting to note that the industry is the second largest manufacturing sector in Australia, only after food and beverages, and accounts for 10 per cent of the manufacturing sector.

The industry association comprises a wide range of companies from the largest multinational chemical companies to small privately owned family concerns employing few people. Earlier

this year, PACIA decided to commission Access Economics to prepare a report for PACIA on the economic impact of chemicals and plastics investment, and we launched this report in June in this place.

The summary of the report is useful background so that you get an appreciation of where the chemical industry stands at the moment. Quite frankly, the industry is at a crossroads. It can really go one way or the other. Tariffs have come down from levels around 45 per cent in 1986, dropping to 15 per cent in 1990. They are now at a maximum rate of five per cent. We are amongst one of the lowest tariff industries not only in Australia but in the rest of the world.

Chemical imports have risen by 12 per cent per annum or a billion dollars per year since 1990. This rate is expected to grow as present facilities mature and investment relocates offshore, taking with it jobs. In 1996, the chemical deficit made up nearly 20 per cent of the national current account deficit. We do not see that percentage altering too much and, of course, the national current account deficit will probably continue to increase.

The chemical industry is truly multinational and companies have to decide where to site the next generation of world plants to service growing demands not only in Australia but in the Asian regions. Companies will determine the location of the next major round of investment on the basis of expected returns which will be significantly influenced by investment incentives being offered in other countries. We are part of the global scene and companies will not necessarily invest in Australia even though they are located here. They have obviously got to give returns to their shareholders as well.

Australia does have some problems. I think there is a typo here. It should say that Australia has an uncompetitive position. We are facing strong competition from large scale plants in Asia, USA and the Persian Gulf. Tariffs and non-tariff barriers restrict exports into most Asian countries. Tariffs are typically 30 to 60 per cent for Australian exports going into those countries. This makes it a major obstacle for us to get over, although we are making some inroads into that market access question. Australia also has high internal transport costs, particularly relating to coastal shipping. We also have some waterfront practice issues which cause us some difficulty.

Internal transport costs are important because, if you are locating a plant on the North West Shelf, for example, and you have to bring product around to the east coast, there are difficulties or cost disadvantages in doing that. Availability of flexible and generous investment incentives in tax regimes are occurring in Asia. We also have a small and slow growing domestic market and there appears to be a lack of long-term commitment by government to Australia's manufacturing sector, thereby causing uncertainty. I think that question of certainty or uncertainty has come up twice in this presentation so far.

The PACIA study on the economic impact of chemicals and plastics is a very important study for this industry. We continually hear of some of our members wanting to invest in Australia but, for various reasons, those investment decisions have not gone ahead. So what we did was to get an independent organisation to conduct a study on this industry, and I would like to talk about that a little more.

The study was based on a survey of companies, mostly PACIA members, that identified \$6 billion worth of potential investment projects that would progress if the investment climate in Australia was right. About \$4 billion worth of those projects would be on the North West Shelf and about \$2 billion on the east coast of Australia. In fact, that is a conservative figure, in our estimate. The raw data coming out of that survey came up with a figure of \$9 billion.

Access discounted that figure because, firstly, one or two of the projects had already been announced and, secondly, there was some duplication. It is PACIA's belief that if the investment climate is right in this country—and part of that climate, of course, is a certain anti-dumping legislation—probably the figure would be closer to \$12 billion or \$13 billion.

The study quantifies the significant economic benefits to Australia should all of those investments go ahead. Real GDP would increase by \$1.5 billion annually and economic welfare would increase by \$0.7 billion annually, which is equivalent to about \$110 per household. The important part also is that imports would be reduced by about \$1.2 billion annually and exports would be increased by \$2.2 billion annually. The study also concludes that investment in the chemical industry provides a more efficient way of meeting Australia's import bill than many of the activities of other Australian industry sectors represented in the Access Economics model. I should add that that report has been out since June and all of the statements that I have made here have not been challenged.

The other aspect with respect to the investment is that it will provide jobs during the construction phase and also provide skilled job opportunities for those people operating those plants. It is also another means by which remote areas of Australia can be populated and the industry can add value to the vast array of raw materials that we have in this country—instead of exporting raw materials we can add value to them. It also has a flow-through effect to the rest of the manufacturing industry. There is nothing that is manufactured that is not impacted by chemicals. There is a chemical in just about everything that is made, so if we have strong, internationally competitive, world-scale plants in the chemical industry, that obviously will pass benefits to the downstream users, and some of those downstream users are very large employers.

The report identified five impediments to growth. In other words, there are five major reasons why these investment decisions are not currently being made in Australia's advantage. The first one is that we must remove uncertainty by having a clearly defined and long-term commitment by government to a specific policy relating to manufacturing industry. We give a lot of lip service to that and, with the reports currently in front of the government, we are hoping that that certainty for manufacturing industry will be improved, particularly in the investment area.

The second reason is that there is the need to address taxation differentials between Australia and Asia as they relate to investment. That is a key part of the impediments. There are several taxation benefits which are being offered to potential multinational investors which are not being offered in Australia.

The third one, which is probably the most important one for this committee and has been identified as an impediment, is the implementation of an effective anti-dumping system, as promised in the coalition's pre-election industry platform. The industry must have an effective anti-dumping system, as part of our WTO arrangements those provisions must exist, and we must have certainty. Again, that word certainty comes up. What we are seeing in this current round of debate is that a number of our members who have potential investment projects are feeling uncertain about the future. One of our large member companies, Monsanto, had announced an \$80 million glyphosate plant expansion in Melbourne but that decision is now in limbo because of this very issue that is in front of us.

One of the other impediments is the need to improve market access by the removal of tariff and non-tariff barriers in overseas markets. Unfortunately, it is getting more difficult for Australia to negotiate in these areas because we have given away almost all of our tariffs—we

have five per cent left. We are not for one moment suggesting that we need an increase in those, but we would like those to be left where they are. By not having a higher tariff we have not been able to negotiate reductions in some of these higher tariff areas that we need to overcome. We also need to have internationally competitive coastal shipping.

In conclusion, one of the key five impediments to growth, as I have said, is the need to implement an effective anti-dumping system, which was promised in the coalition's pre-election industry policy. The modern economic theory of investment—and I have given a reference in my written summary—considers explicitly the effect of uncertainty on the timing of investment decisions and on the hurdle rate of returns that projects must meet. Greater variability of product price, and hence of expected returns, means a higher hurdle rate. In other words, if you do not have an effective anti-dumping system, you will see a far greater variability in product price. A higher hurdle rate means that some projects will not proceed at all or are subjected to delay even though, on average, they would provide an adequate overall return on the resources deployed in them.

The major area of uncertainty such as we currently have in the proposed amendments to the anti-dumping legislation is causing considerable concern amongst the members of the plastics and chemicals industry. I cannot stress that point enough. It is a major issue which is discussed at our board meetings when we are talking about investment. The attractiveness of Australia as a potential investment location for multinational chemical companies is not high, unfortunately, as shown by identified impediments in the PACIA study conducted by Access Economics.

The industry has requested that a task force comprising ministers, senior officials and company CEOs be established to find ways of reducing impediments to future growth. That request was made on 17 July and we are still awaiting a response from the government. Investment on the scale required to impact on the economy to reduce the current account deficit, add to GDP and, of course, improve our employment prospects for this generation and future generations will simply not occur unless these impediments are removed. The current proposed amendments to the anti-dumping legislation need to be identified in line with the request of the industry task force, which will reduce the list of impediments to encourage investment. Thank you.

Mr Attlee—My colleague has covered a number of the key issues. Pilkington supports the broad submission put in by the anti-dumping task force. A critical issue for our organisation is to have analysis of the condition of the industry producing the like goods, not purely of the exporter. This arises from the situation in the flat glass industry where about 85 per cent of capacity in China, to take just one economy in transition, is still part of the state sector. It has been highlighted at the 15th Congress in China how significant the drain of that state sector is on the finances of the central government and of the banking system as well. We do not see the opportunity for prices to be truly determined by the market while that situation exists.

We have seen, in two glass cases recently considered by Australian Customs and the Anti-Dumping Authority, the influence of the demise of section 269TAC(4) with findings in the laminated glass case that there was not dumping occurring out of Chinese suppliers. While it is still before the minister, a number of reports suggest to us that, in the rectangular glass panels case brought by one of the smaller manufacturers in the glass industry, a similar situation may apply.

The other point perhaps to highlight is that in terms of looking at the situation relating to the state sector, we do not see an opportunity to progress these issues through the

countervailing and subsidies part of the code, which does not really appear appropriate to this type of situation.

Mr J. O'Connor—I am representing ICI Australia. We put in a separate submission. We fully endorse the industry task force position on the proposed amendments. I would like to give you some background in relation to ICI Australia. It is the largest chemical and plastics manufacturer in Australia and employs over 9,000 people, mainly based in manufacturing associated roles. We have an annual turnover of \$3½ billion per annum. We were recently delisted by our parent company in the United Kingdom and can now operate as an independent company here in Australia with Australian control.

ICI is presently examining opportunities within Australia for further investment. The proposed amendments that are before the committee will impact on those investments. Furthermore, ICI recognises that countries that have moved from a state control position do not move to market driven positions overnight. We believe that there exist pockets within industry that will take considerable time to privatise. In the petrochemical industry, where we have significant investments, we consider that our competitors in such economies—China, for example—have not only their downstream suppliers but themselves been traditionally state owned enterprises. In most chemical markets, there exist one or two large manufacturers, with the remaining suppliers considerably smaller. Those one or two large manufacturers have the ability to affect domestic selling prices.

A similar position exists for the raw material suppliers to those petrochemical facilities. They have been established for social reasons as opposed to purely market driven reasons.

ICI is concerned about the precedent the proposed legislation will have on future anti-dumping inquiries. My company is an extremely diversified company with many manufacturing interests across the chemicals, plastics and agrichemical industry sectors. The acceptance of market prices which are impaired by access to state influenced input prices will establish a non-dumped benchmark price in Australia. All other dumped imports from alternative sources will therefore not be actionable under the Australian non-injurious provisions.

We also have concern that the proposed amendments will be exporter specific as opposed to sectoral specific. Our arguments would be that if there is one supplier who is impaired or impacted by access to raw material prices influenced by state owned enterprises, the whole market will be contaminated as a result. They would be all competing in the one market. ICI has seen a number of cases fail in the last 12 months since the new provisions were adopted in practice by the investigating authorities. Therefore, we are seeking an amendment to the legislation which addresses this anomaly of not paying true regard to state influenced raw material input prices in economies in transition in anti-dumping inquiries.

Mr McDonald—I will be brief, as most of the issues have been covered. I appear on behalf of the Council of Textile and Fashion Industries of Australia. Our industry represents somewhere near 100,000 employees in Australia with a wide and diverse group of structures and ownership, basically from publicly listed international companies through to a very significant number of small, family-owned operations.

The recent support that the industry has had, through the wider parliament and the community generally, has given us a basis from which, post-2000 up to 2005, there are some real prospects for growth and investment. However, it is a fact that those opportunities for further investment growth and maintaining current employment prospects must be made in the industry's awareness that there is in fact a strong and effective anti-dumping and countervailing system.

While the TCF has no quantitative restrictions in Australia, we do have a tariff. If the tariff is effective, it will lead to a strong base from which we can develop products and services on our domestic markets—which is the strength of the development in the TCF sector. That is to prepare the industry for the wider internationalisation of the TCF sector, following the APEC and other trade agendas.

Basically, the TCF sector internationally is recognised as one of the most corrupted areas of international trade. The industry is linked in most instances by demand and supply through non-related companies. In other words, yarn spinners do manufacture yarn and sell to non-related fabric manufacturers. This is really where one of our concerns with the current proposed legislation lies: for the effective application of industry assistance through the tariff, the TCF sector requires that the anti-dumping system acknowledge not only the final products but also the major raw materials consumed and involved in the production of that final product. They must also be analysed to ensure that they do indeed lead to a market determined price for the finished product.

We could add that the apparent path of the proposed legislation seems to infer a liability on the domestic industry to prove that certain economies are in fact not market economies. We believe that is an unsatisfactory demand upon an industry sector that does not have the international connections, let alone the finances in many cases, to prepare the documentation necessary to satisfy the appropriate authorities that a particular economy is in fact non-market or has a significant government involvement in that domestic economy.

I would ask that the committee ensure that the government have a look at what other economies around the world do, particularly the major trading partners. It is our understanding that, in fact, proof of the market economy basis is left to the exporting country and not to the domestic industry. In conclusion, the TFIA fully supports the intent of the draft legislation; however, we are very concerned that the government and parliament generally are very aware that it does not meet the requirements to deliver what we consider would be an effective and strong anti-dumping system.

CHAIR—Mr McAllen, you wanted to come back to continue with some remarks. Please proceed.

Mr McAllen—To consolidate those submissions, you have heard about the investment consequences from the big end of town in some of the bigger industries. You have heard the consequences in industries like the TCF. I might add that we have here the full support of the Australian Business Chamber and the Australian Chamber of Manufactures. Those organisations look after very many small and medium sized businesses. These enterprises are not really aware of what is going to happen to them with this legislation.

Typical of what will happen to them is what has happened to Mr Skinner, and I refer to an article in the *Australian*. Mr Skinner runs a small picture-framing business at Tullamarine in Victoria. He has dismissed half of his work force because of competition from Chinese picture frames. The essence is that the Chinese picture-frame manufacturers can buy their raw material—notably, the wood, since these are wooden picture frames—from government owned businesses at prices that do not represent world prices for timber.

I come now to some of the other examples that we have seen since this switch in policy has been put in place by the government. In the instance of glyphosate, which may be better known to senators as Roundup, a very well used and common brand of herbicide, the paraformaldehyde used to make Roundup comprises a great percentage of its cost of

production—something like 70 per cent, from memory. That paraformaldehyde is sourced from a government run and owned business, at prices well below world cost for paraformaldehyde.

ACI Fibreglass, who make fibreglass rovings which are used for spraying to make fibreglass boats, baths, et cetera, have been in dreadful trouble with this legislation, because they cannot compete against Chinese fibreglass manufacturers who buy their round glass marble from Chinese government factories supplying that marble to the people who grind the balls to make the fibreglass—again, at prices well below world prices.

Mr van Lint will tell you in a minute about the canned fruit operations, which are significant employers of people and are having similar difficulties. The point I want to make here is that there are multitudinous small businesses out there that will be affected by this legislation. Anywhere that China will be able to send products in this market will be at risk from this legislation, because it does not address this central issue of government owned inputs. We were told, when this legislation was being contemplated, that our representations in regard to inputs would be taken into consideration.

I should go back a step before that. We had some discussions with the foreign affairs department. When this switch in attitude towards China and other economies in transition was made, we brought our concerns to the surface. We had meetings with Foreign Affairs. We put forward our position regarding inputs and we presumed—falsely, I now see—that the basis of understanding was that the input question would be considered.

We believe Australia has conciliated and gone far enough in recognising those sectors of Chinese industries where there are free market forces at work. We do not deny that that is so, in certain sectors of China. The example we often use in this debate is footwear: where a Chinese manufacturer in Guangdong or one of the southern provinces is making footwear from leather imported from India and buckles imported from Taiwan and is operating as perhaps a joint venture listed on the Chinese stock exchange, that is a commercial venture. We are, in Australia, going to face up to that. I might add that no other country is going to face up to that, but we are prepared to face up to that as a competitive source. But we do not see that we should be asked to compete where the major inputs are still derived from government owned enterprises. We do not think this is a fair deal, and this is why we are present here today.

As I said initially, this switch in policy—which happened halfway through the Roundup case—with this recognition of Chinese prices and costs, was done at a time when we believe the bilateral relationship between Australia and China was in some difficulty. We believe also that this had a major influence on Australia deciding to change tack in this policy approach. It was done without consultation with Australian industry and without any consideration of the wider ramifications of what might flow. We have seen from some of these instances I have given you what is going to happen. The Roundup case has resulted in \$80 million in investment being sent to Argentina and not to Somerville Road, Footscray. Similarly, there are other investments, as Mr Bryce said, in the chemical industry that are greatly at risk: \$6 billion worth of investment.

I might briefly explain that, when an investment proposal is considered, it is done on the basis of your competitive position with an undumped imported product. The net economic benefit analysis that was done on the Access Economics study for the chemical industry was done on the basis of swings and roundabouts in price fluctuations in the industry, which typically suffers from those variations. It was not done on the basis of dumped price, where the down figure would be a lot lower than a fairly priced import price.

All that investment is predicated on the fact that there are fair competitive import prices in the Australian market. The consequences are drastic and they are of great concern. If this legislation goes through, we might as well rip up the anti-dumping act right now because it will not operate where any Chinese product is in this market.

We would see only very rare and singular circumstances as being actionable under this legislation—that is, a Chinese company that has monopoly ownership, is the only company in China, is government owned and is manufacturing goods. That is the only situation we would see able to be addressed, certainly not one of the mix of companies that are government owned or state owned or private owned in regard to this crucial question of raw material imports.

There is one further important aspect which is in our submission. We believe the legislation drafted is unworkable. It really requires an investigator to go in there, identify some sort of price control situation operating in China and then gather all relevant information to allow a decision to be made—and all that within two days. One of the prime objectives of an effective anti-dumping system is to settle this matter quickly. Investigations are necessarily short and time constrained. To ask investigators to paddle around in economies such as China looking for influences on costs, et cetera and making adjustments for that is a tremendous and impractical task.

We are saying that you should look at the industry sector. We believe we were sold the dump by government here. They said, 'The legislation is no good for these economies in transition.' That is debatable. Given that that is the case, we said, 'What do you propose to do about it?' They said, 'What about a case by case approach.' We said, 'Okay, we'll agree to a case by case approach. But we wanted an industry sector by industry sector approach looking at a particular industry to see whether it was influenced significantly by government and, if it was, to walk away from that industry sector and come back to the old surrogacy arrangements. Those arrangements impose a measure of fairness in subjecting goods exported from China to a comparison with goods exported from Thailand or another economy.

We do not have that. We have this narrow bit of unworkable legislation which looks primarily at the exporter. Is the exporter a private company? Is there a member of the Communist Party? Is there anyone else in that company that is representative of government? If the answer to that is no, then it gets a tick and those prices and costs are okay. We do not think that is a fair deal.

When we first put our concerns about input prices and input costs to the foreign affairs department, they did not see any difficulty with it. They did not think it would threaten the bilateral relationship or that it would have a significant impact on Australia-China trade. But the Chinese are very keen on this legislation because they are using it as leverage over the US and the EU to adopt the same approach that Australia is adopting in their anti-dumping policies at the same time as China is putting in its own anti-dumping legislation. As we say, we do not think we have had a fair shake in this whole debate.

Against a background where this government came to power on the promise that it would fix the anti-dumping system, do away with this dual bureaucracy we have where one agency outguesses or tries to trump the other one with some fact or other, we do not think that we have had a fair shake in this whole debate. Do away with the situation where overseas exporters are allowed to come in at the last hour with their information to the anti-dumping authority—information that was never gleaned by Customs in the first inquiry—where they are permitted to provide extra information which allows previous decisions to be overturned.

There are a whole raft of recommendations in the Willett report which we thought the previous minister for customs was going to act upon in accord with the government's pre-election promise to fix this within 155 days. The only way you can do that is to get rid of one of these agencies.

We thought we were on track for that, but now we find that not only were we not on track for that, but that decision was ducked by a decision to refer it to the Productivity Commission. While we have got that sword hanging over our heads, we have this new switch in policy in relation to economies in transition, principally China. So, what we have got here is a renegeing on the electoral promise—

Senator WATSON—Could you just articulate a little bit more on the mechanics of that switch?

Mr McAllen—Let me use the Roundup case—

Senator WATSON—I followed the Roundup case. What are the mechanics of the switch which is the central feature that you are trying to get at?

Mr McAllen—Following the preliminary finding which was based on a surrogate country's information—the information of prices and costs in a country that was not subject to government influence—the government then decided in the second half of the inquiry and sent its investigators into China to gather information regarding Chinese prices and costs. That had never been done before in the history of anti-dumping policy. We have had these anti-dumping measures in place since 1921 in one form or another.

Senator WATSON—We know that but, again, you talk about the surrogate country, and then they move across to China. What was the result of that?

Mr McAllen—The result of it was that the industry went down the drain. The result was that they accepted a lower fair price. They had a fair price up there based on a surrogate country, and when they went and accepted the Chinese price—which was influenced by the paraformaldehyde raw material cost—that fair price dropped down. In other words, it was then found that there was no dumping occurring.

Senator WATSON—Yes. But what are the words to get to that so-called fair price? You still want the surrogate country fair price, do you?

Mr McAllen—We want the surrogate country where there is significant government influence in that industry sector, that is, the supply of raw materials. We have actually given away ground in terms of saying that these economies, such as China, can take advantage of their labour costs in their cost structure, but we do not believe it is fair to say that these companies ought to be given the advantage of the supply of raw materials out of government owned enterprises. Mr van Lint might like to explain about the canned fruit industry which is another example.

Mr van Lint—I have just a brief point. In terms of looking at the canned fruit industry as part of the processed food industry—it is a fairly large industry—the canned fruit industry is only a small player in the scale of things, but an important player in terms of the rural industry in Australia.

If we look at our situation, you can break up production into thirds. About a third of the costs is raw material costs; cans and packaging take another third, and labour is the other third. Accepting that, in comparison, say the Chinese have got an advantage in their lower labour costs, we have found that the other advantage that they are able to receive is in the raw material cost, which is often supported through enterprises that are still government owned.

This allows them to transfer, obviously, a lower raw material cost into the processing operation.

On the other side, the cans are a major part of the canned fruit industry. That is also directly supported through government owned enterprises. So we are finding that we are competing at a processing level with companies that have quite distinct advantages in terms of their input costs which are not taken into account when we are looking at the process of trying to establish a fair price or a price comparison in terms of the dumping into the Australian market. The point that we are stressing is that sometimes we need to be able to take a slightly broader approach to the analysis to be able to ensure that we get a true and fair comparison.

CHAIR—Mr McAllen, in your submission and throughout the whole of your oral submission, you talk about economies such as China, but, in fact, you are talking about only China, aren't you?

Mr McAllen—No. There are a number of economies in transition where the state used to run the country.

CHAIR—What other countries are you concerned about, besides China?

Mr McAllen—Iran and central Russian states, for instance, are possibilities that this legislation will be relevant for.

CHAIR—Why don't you mention them in your submission? All you talked about was China.

Mr McAllen—To date we have only had the practical example of China in its effect on Australian industry. We have yet to see some of these other economies come forward with problems.

CHAIR—Do you think that they are likely to?

Mr McAllen—I think they are likely to.

CHAIR—My involvement has been more in primary industry where we have had lots of problems with dumping of imported goods—and I think particularly of Canadian pork, and all of those sorts of things. In those general terms, when we talked about dumping in Australia, we talked about countries that were dumping their product in Australia at a price below their domestic price in their own country. When you are talking about an economy in transition, which we are talking about with China—it is neither one nor the other in total—don't you think that it is only fair that in any report they should go into China to see just what sort of domestic pricing there is, and what is happening with regards to that economy in transition?

Mr McAllen—The difficulty, as I said earlier, with that approach is: in the constraints of an anti-dumping inquiry how do you cover sufficient ground to tease out, if you like, all of the influences that are in a particular market sector? This was the pragmatic approach that we ultimately settled for. It is impossible to look at a product and go into every detail of its cost composition and trace back to see where they bought that raw material, or where that cost component was sourced.

CHAIR—But you were critical of them even going into China. You said that they were supposed to use a surrogate country, and then you were critical because you said that they then went into China.

Mr McAllen—We are critical because under the old system we were never asked to provide any information concerning China in relation to an anti-dumping case. We are critical because the government, when it did go to China, accepted costs of production that reflected Chinese

government inputs. We do not believe that is a fair thing. We are proposing that it is easily done, if you like, for the initial part of an investigation where information is sought from exporters as to where they are buying their raw materials and who is owning those sources of supply, and then to identify what we would describe as a contaminated market sector. Once that simple identification has been done, you then revert to the old rules of surrogacy.

We think that is a very practical way to approach this difficulty, not to go into China and attempt to adjust for all elements of cost. In fact, as I said before, we are prepared to acknowledge labour and raw material costs, but not significant raw material costs where we have drawn the line at 10 per cent. If a raw material is at 10 per cent or more of total cost, we say that is a significant raw material and its origins should be examined. If its origin is a government owned factory, then a red light goes on and that market is deemed to be not suitable. It is not a market oriented sector, and the normal surrogacy provisions should then apply.

It is a simple test and, we believe, one that can be administered. I would invite the senators to ask the customs department—the administrators—and the anti-dumping authority—the administrators—if they could administer that simple test. We believe they can.

CHAIR—My final question is to do with another comment that you made during your submission. I think it was you, Mr McAllen—forgive me if it was one of the other witnesses—who talked about the fact that tariffs in some sectors had already been reduced from 45 per cent to five per cent—something which this government was not responsible for, but the previous government was. Were you as united in your opposition to that tariff reduction as you are to the current legislation that is before us?

Mr McAllen—I cannot recall who made those comments, but fundamental to this is a confusion, which I detect behind your question, as to whether or not dumping duties and customs duties flowing from tariffs are the same beast. It has often been said that dumping duties are de facto tariffs. I say emphatically that they are not. It does not matter whether you have a five per cent level of tariff or a 20 per cent level of tariff; that level of tariff is quickly eroded by a dumping position, naturally.

CHAIR—I would not have raised it if you had not.

Mr McAllen—Right. I cannot make a comment as to whether all Australian industry is united against tariff reduction or not. All I am saying is that whatever tariffs are left there, you may as well not have them if you do not have an effective anti-dumping system as well.

Senator JACINTA COLLINS—Mr McAllen, I think you said that it was arguable as to whether the application of section 269TAC(4) was at issue.

Mr McAllen—The government, in the preamble to this issue, said that they had taken legal advice that an economy in transition was not actionable under TAC(4), as we call it.

Senator JACINTA COLLINS—Have you seen that legal advice?

Mr McAllen—I have not, no.

Senator JACINTA COLLINS—Have you seen any contrary advice?

Mr McAllen—We as the industry task force sought some preliminary legal advice, and it turns on the issue of whether or not there is still substantial influence by a government in all of the trading of a country and on the question of what is substantial. If the government is still controlling 20 per cent of the country, is that substantial? Some judge may hold that it is. Somewhere between nought and 100 is the answer to that. We did not want to set the legal people flying with all sorts of briefs on something that is as uncertain as that.

In relation to China, nobody knows just what it is. In a report in the *Australian Financial Review* on 15 December, it said:

The complexity of the challenge laid down by President Jiang is underlined by the rubbery nature of the statistics released. Mr Li—

the Premier—

said the State sector still accounted for 76 per cent of GDP . . .

I suggest some justice might find that that is substantial and TAC(4) would operate. However, another guy, Mr Li Qiming, director of the industry section for the state statistical bureau, said that the figure had plunged to 30 per cent. So you have a government official saying 30 and a politician—or somebody—saying 76 per cent. I think China is very complex and no-one really knows the real level of government influence in that country.

Senator JACINTA COLLINS—Moving on as you have, to take for granted that we should look at this issue—I think you made the point quite well in answer to Senator Ferguson—you are not actually saying that we should not go into China but that, rather than going into China, we should assess whether there is still a significant level of government influence in a sector or not and then, if there is, move back to surrogacy, so to speak, in relation to those influenced or contaminated sectors.

Mr McAllen—Correct.

Senator JACINTA COLLINS—I am interested in how other members of the WTO have dealt with this issue.

Mr McAllen—No other members of the WTO or OECD will recognise any price or cost in China. They are on surrogacy arrangements—in determination of the normal value that is.

Senator JACINTA COLLINS—In fact you could go one step further, couldn't you, with respect to China and the US? Is there not a protocol that the US would apply even if China did become a member of the WTO?

Mr McAllen—In this legislation, it only applies until these countries get their act together, if I could use that sort of colloquialism, to the extent that they are accepted under the WTO. There is a clause in the legislation that says once a country is in the WTO it becomes the same as any other country. When this issue first broke, we went to the United States and Europe to ask questions of their authorities over there as to how they were going to handle it. We said, 'We are going to face up to some Chinese competition. What about you people?' They said, 'When they're in the WTO, we'll see what we'll do.' But the US said, 'It is our belief that when China does get WTO membership, it will be on the basis of a protocol that will maintain the old surrogacy arrangements in relation to any dumping action.' That is the message that was given to us. Perhaps you could ask the DFAT authorities or the government officials as to their communication with these other countries to see whether or not that is going to emerge. That is our understanding.

Senator JACINTA COLLINS—Okay. I would like to move fairly quickly on to your proposed amendment. We have made public a submission also put before the committee by Coles Myer. I was disappointed actually that on request Coles Myer did not come to speak to this because it does quite a case on your proposed amendment. In fact, it describes the approach as nonsense.

Mr McAllen—When you are protecting margins I suppose it is nonsense.

Senator JACINTA COLLINS—However, dealing with some of the points made in it, your approach is essentially described as an approach dealing with input dumping. The claim is

made that input dumping was dealt with by an ad hoc international committee which essentially decided that it was not WTO friendly. Can you distinguish your proposal from what was dealt with in respect of input dumping?

Mr McAllen—Easily. Our proposal has nothing to do with input dumping. The issue of input dumping is the sourcing commercially from ordinary type companies in one country sending a raw material to another country in a commercial transaction. That raw material is incorporated into a product which is finally sent to Australia. It is the so-called secondary dumping but it deals with issues relating solely to commercially owned companies and commercial goods transacted in a normal commercial sense. Our proposal goes to the ownership of raw materials and where and how they are made with the assistance of governments. It is a completely different situation from a commercial situation regarding input dumping.

Senator JACINTA COLLINS—Have you received any legal advice or did you have advice on framing the amendment?

Mr McAllen—We had these amendments drawn up by a legal person who is very well qualified in this area.

Senator JACINTA COLLINS—Why 10 per cent?

Mr McAllen—One of the difficulties is that if we said to the administering authorities, ‘You chase every nut and bolt in a product to find out where there is government influence,’ it would be a never ending proposition and a very difficult one. What we are saying is ‘Let us just look at essential raw materials.’ We have taken an accountancy line where an essential raw material is regarded as something that is 10 per cent or more of total factory cost. We say, ‘Let us draw that line in the sand. Any raw material of which 10 per cent or over is sourced from a government factory or a government enterprise ought to be seen to be exercising some sort of price influence.’

Senator JACINTA COLLINS—One point which you probably would agree with the Coles Myer submission on is that dumping is only one element of the broader picture of international trade relations or, some might suggest, foreign relations or foreign affairs. Although Coles Myer goes on to say that the Australian approach has been widely recognised as positive, your suggestion earlier was to raise some concern about Australia as being seen to be trailblazing in this sort of area. Is there any further comment you would like to make on that?

Mr McAllen—I think the opportunity may have been there for Australia to make more gains in its trading relationships with China when it made this policy switch. For instance, we have got wool issues and apple issues with China but, as I understand it, nothing was gained out of these negotiations other than this belief that it was in Australia’s interests, not clearly defined, to adopt this new stance in relation to the People’s Republic.

Senator JACINTA COLLINS—The Coles Myer submission also suggests that your proposals are looking at expanding the anti-dumping regime. My reading of it is actually not along those lines. There is a suggestion that an amendment such as yours might expose us to reciprocal action, but my understanding of your amendment is that it is actually restricted to ex command economies. Is that not the case?

Mr McAllen—It is true—unless you say Australia is an ex command economy. Was it!

Senator JACINTA COLLINS—So where would the reciprocal action be coming from?

Mr McAllen—I think some of those comments, certainly in relation to input dumping, were sourced from the Customs issues paper that was put out with this legislation. I suggest that

whoever used that as an example should have done a bit more research or was not fully backgrounded on the history—

Senator JACINTA COLLINS—Did the issues paper actually deal with the nature of this amendment that you are putting forward?

Mr McAllen—Yes. We were told that cabinet specifically considered and excluded raw materials, that they were deep and meaningful and cogitated well into the evening about this issue, about raw materials.

Senator JACINTA COLLINS—Okay. One final point out of the Coles Myer submission: it expressed concern that if we adopt the approach that you are suggesting, then there could be significant impact in that the dumping margin could be ridiculously high—for example, Japan could be used as a surrogate for China. Is there any reason why the surrogacy issue would be any more significant under this proposal than as it is currently applied?

Mr McAllen—With respect, whoever wrote that submission knows very little about the way the system operates. Regardless of how high the normal value is, the duties will only be imposed sufficient to address the injury, and what we get is commonly called a non-injurious price prescribed for countries that are dumping. There may be big margins of dumping up there but the non-injurious price principle will allow a lot lower level of duty to be imposed just to ensure that imports and local competition remain competitive. It will not eliminate exports. It will only adjust the imports to a fair and competitive position.

I might add that in the glyphosate case in the European Union, the European Union found huge margins of dumping but only imposed a smaller—some 30 per cent—dumping duty on Chinese glyphosate. So that was a situation where they took a lesser approach.

Senator WATSON—The essence of the inquiry is that the legislation focuses only on whether the government price control is exercised directly over the company exporting to Australia. How do we get that? That is by reference just to the term ‘export price’, is it?

Mr McAllen—No. A simple example is—

Senator WATSON—I cannot see it in the bill. I am trying to identify those words: ‘the exporter’. Where are they in the amendments that we are looking at?

Mr McAllen—I do not have the legislation in front of me, I am sorry, Senator.

Senator WATSON—I have got the legislation. We are talking about the export price, and I am trying to identify where it is that it refers to the exporter. I can see references to export price. I agree with your argument; I am just trying, as I said before, to identify your arguments with the words in the amending legislation.

Mr McAllen—As I understand the legislation, it refers to a price control situation exercised on the exporter by the government.

Senator WATSON—On the export price, not the exporter.

Mr McAllen—I would have to go back and look at exactly what it is.

Senator WATSON—Perhaps some of your advisers can help you, because there is a difference between the export price and the exporter.

Mr McAllen—What section of the bill is that? There is a section that says:

If the exporter of those first-mentioned goods sells like goods in the country of export and the domestic selling price of those goods is controlled, or substantially controlled . . .

Is that the section you are referring to?

Mr Bryce—Could you give us the actual reference? We have got the bill in front of us now.

Mr McAllen—Section 5E of the new legislation says:

A price control situation applies in relation to the domestic selling price of like goods to the goods first mentioned in section 5D if . . . and if . . .

Senator WATSON—Right, I've got it now. It says here:

Firstly, the Legislation focuses on only whether Government price control is exercised directly over the company exporting to Australia. It does not require officials to examine the extent of Government control in the industry producing like goods as a whole.

How practical would it be for our officials to be able to get access to these centrally controlled suppliers?

Mr McAllen—It is not as difficult as it may seem. There is a degree of onus placed on those companies that make complaints. I believe it is quite likely that in making those complaints the company would point to the industry sector, as in glass marbles, and say, 'In China, while you have private companies making fibreglass, they are buying their glass marble from a government run, state controlled glass marble supplier.'

Senator WATSON—The point is: do you think these government-controlled glass marble suppliers are likely to open up their books?

Mr McAllen—You do not have to ask them to open up their books under our proposal. All you have to identify is whether it is a fact that Chinese fibreglass manufacturers derive and obtain their principal raw material from a government factory—the answer being yes, you walk away from that particular market and go back to the old surrogacy arrangements. So it is just a question of establishing some up-front facts, not—

Senator WATSON—Yes, but what I am saying is that there is a big difference between determining what might be getting back to a normal price and accepting the criteria of a surrogacy price.

Mr McAllen—The legislation requires that agonising exercise to be done. It says, 'Go on in there, you investigators, and see if this price control situation exists in fibreglass.' Okay, the guy is buying in his raw material, his marble. Take that into consideration, and have regard to all relevant information. If it is all too difficult, it implies that you walk away and do your surrogacy the way you used to. But it does require that you take aboard all relevant information, which would require some sort of in-depth analysis—going back to that glass marble chap, perhaps, and saying, 'Where do you get this cost from?' That is the agony and the impracticality that is inherent in this current legislation.

Senator WATSON—It is becoming clearer. You state that there is no indication in the bill to the minister and to the investigating officers as to just how a normal value should be determined if there is price control.

Mr McAllen—That is right.

Senator WATSON—You say that the simple solution is to go back to the surrogacy arrangements.

Mr McAllen—Yes.

Senator WATSON—Thank you.

Senator MURRAY—Mr O'Connor, I understand the thrust of the argument before us is that Chinese state owned enterprises supply goods at a lower price than they would if they were privately owned. Is that correct?

Mr O'Connor—That is right, Senator Murray.

Senator MURRAY—Therefore, the recent decision of the People's Congress to privatise many thousands of enterprises will result in a situation where that may change; where you will be dealing with private companies.

Mr O'Connor—Over time.

Senator MURRAY—Whose price will be higher.

Mr O'Connor—Yes.

Senator MURRAY—I happen to agree with that, but you have to look at it in terms of national experience. When you sell Qantas, the Commonwealth Bank, airports, electricity and water utilities—all those things that governments in this country have been selling—prices do indeed go up. The result is that prices go up to the customers. That is quite an interesting point to make to rationalists who love to go down the privatisation route.

However, having made that point, it does put you in some difficulty in a reciprocal basis when other countries look at our own exports—such as those from Telstra, which operates quite widely in the region—and may seek to apply the same principle if you got it through to us. Do you consider there are any dangers in that?

Mr O'Connor—I can only take the position that we experience in the chemical industry. Certainly when we look at our substantial raw material input costs, those costs are arms-length transactions. In terms of WTO consistency and in terms of the Australian legislation, they would be consistent with free market principles. As China introduces its own anti-dumping legislation, it would be a question for their investigating authority to unearth or ask questions as to any prices that may have been paid for a raw material input which may not have been determined by the market.

Senator MURRAY—Fair enough. Mr McAllen, I am advised that this initiative primarily arises from the discussions of the Minister for Trade with the Chinese government. I am also advised that the Chinese government were advised in their approach by Australian lawyers. Do you know whether the Minister for Trade was in turn advised by Chinese individuals to look at ways in which Australian interests could be pursued?

Mr McAllen—No, I am not aware of what advice the Chinese trade minister may have sought from so-called Chinese experts in international law or whatever that may be.

Senator MURRAY—From the cabinet's point of view, they have a difficult situation to deal with, because the Minister for Trade might be driving this, but the minister for industry has responsibility for anti-dumping overall and the minister for customs is handling the legislation. From your experience in the private sector, are there conflicts that arise in dealing with this issue because of that situation?

Mr McAllen—Certainly, dealing with this issue. Industry was at a loss to understand how we could concede this huge trade advantage to China without any quid pro quo. Even though manufacturing industry, if you like, is the sacrificial offering here, if we could have seen some benefits flowing back to Australia by way of more acceptance of some of our primary products—apples and wool, et cetera—if there was an agreement on that, and we were traded off for that, at least we would know what we were traded off for. But in this situation we do not see that there has been any advantage in Australia's trading relationship in adopting this policy switch.

Senator MURRAY—With regard to anti-dumping provisions, I record three components: the first is the legislation; the second would be the resources applied to implementing that

legislation, both in terms of people and funding; and the third is the political will to energise it, to advance it.

In those three instances my summary is as follows, and please elucidate if I have got it wrong. You consider the present law as fairly effective, but in need of beefing up, and that these amendments do not accomplish that goal, and you have made some recommendations. You have not remarked on the resources available to the anti-dumping administrators in terms of people and funding and whether those are adequate to do the job. You have indicated the difficulty of doing an inquiry in the short term and getting to all the requirements. You have not contrasted the political will of this government, or the previous government, in energising our anti-dumping legislation versus, say, other OECD countries or the United States or anywhere else.

I would like you to pick on those three, if you could, briefly, because there is not that much time, and indicate to me where the greatest strengths and the weaknesses are in our current system.

Mr McAllen—Essentially, we have two bureaucracies operating under two acts to do the same job, and that is a fundamental flaw in the approach, as we see it. The resources and the expediency for handling a case would be much more efficient if it were done under one act and one bureaucratic agency. In effect, that is what we believe the government was prepared to do when it came to power. It was in its manifesto, and we can give you chapter and verse on that.

Then they commissioned the Willett inquiry. The Willett inquiry will answer all your questions regarding resources, timing, et cetera. Its essential tenet was that this system can be better run, be better managed, be more available and be accessible to the smaller type businesses if there is an outcome within 155 days and the process is simplified.

We sat there waiting for a response to the Willett recommendations, but, in effect, we have not got that. We have the added uncertainty of a reference to the Productivity Commission, and overarching all of that we have this policy switch on economies in transition which, in effect, attacks the effectiveness of the system in such a way as to emasculate it.

Senator MURRAY—In another guise, members of this committee in another committee have been looking at the question of industry policy. You did not in your submission, and I do not recall any of your panel in their submissions, put anti-dumping legislation and pricing into the framework of industry policy—

Mr McAllen—Could I make a comment?

Senator MURRAY—Yes, but let me just conclude my remarks, if I may. It is my consideration that it is part of industry policy, together with tariffs and other pricing mechanisms. Could you indicate to us how important a part of overall industry policy you believe it to be?

Mr McAllen—I think that it is the most important part of industry policy, and our submission said in the first sentence that anti-dumping law was an integral and important part of industry policy. Why is that so? Because it looks at the criteria of investment in industry, as we have seen—\$6 billion worth of investment here and TCF investment foreshadowed—on the premise that what you have to compete with are fairly priced imports. That is the analysis that is done. If dumping is allowed, then those analyses are flawed and the price competitive position completely changes. You are not competitive with imports and you will not invest.

On the other crucial element we have the small business component where we have Mr Picture Frame here sacking 20 out of his 40 people because he cannot compete with wooden picture frames from China. That becomes the job question, and we go to the very heart of what this government is supposed to be about: looking at small and medium sized businesses, ensuring that they have a future. It does not matter what support mechanisms they may dream up to support the industry, whether it be grants, or some sort of tax incentives to invest; it will all be undermined if you do not have an effective anti-dumping system.

So the questions here are: what is trade, and why does the anti-dumping system exist? It exists, as we said in our submission, to put some sort of order and stability into the world trading picture. If you do not have that, you have anarchy.

Senator MURRAY—Is that why a country such as the United States, which has a quarter of the world trade, is exceptionally energetic in its anti-dumping activity?

Mr McAllen—It is exceptionally energetic, and so is the EU, and so are all our northern neighbour trading countries where we see anti-dumping systems going into place at the same time as they are lowering their tariffs. It is no coincidence that that is so because if you were in a country, you must have some idea of what your competitive position is against imports. In other words, how much does it cost that country to make that product and, given that it is a fair cost reflecting its competitive or comparative advantage, what is its landed cost in Australia?

Senator MURRAY—So you are saying to me that free trade is worthless without fair trade?

Mr McAllen—Absolutely, along with what prescribes the rules for fair trade—the GATT anti-dumping system, the WTO, as we now know it.

Senator MURRAY—To which Australia is a signatory.

Mr McAllen—To which Australia is a signatory.

Senator MURRAY—And is it your belief that this proposed legislation—and, indeed, our exercise of our existing legislation—is going against the intent of Australia in signing that agreement?

Mr McAllen—I believe it is, and we have got the added problem, if you like, of some reference to the Productivity Commission, which, in essence, invites abolition of this system on an economic rationalist approach. In other words, it is to Australia's advantage to sit there and cop any import price from anywhere.

Senator MURRAY—Is Australia thereby failing to honour its international obligations by acting as the Trojan Horse in breaking down the WTO and GATT anti-dumping system?

Mr McAllen—You will not get Australia hauled into the WTO court and told, 'You are not exercising your entitlements.' Where the odium is is that the manufacturing sector is being denied exercise of its rights. The other countries of the world will not call Australia in and say, 'We've seen that there have been tonnes and tonnes of XYZ material dumped and you ought to be taking anti-dumping action.'

Senator MURRAY—But you specifically said in your submission that China was using Australia to break open the system in order to access the EU, or to argue for access to the EU.

Mr McAllen—We believe that that is the case.

Senator MURRAY—That is a Trojan Horse technique.

Mr McAllen—It is in that context.

Senator MURRAY—That is really the nub of my question: are we being naive or are we deliberately allowing ourselves to be used against the interests of the world free trade system?

Mr McAllen—I agree completely with what you have said. I believe we are.

Senator CHAPMAN—I just want to clarify your views on the Chinese economy in terms of this issue. Are you saying that if there is any industry sector in which there are government owned enterprises active that their prices should not be taken as market prices?

Mr McAllen—Yes.

Senator CHAPMAN—Is that irrespective of whether there are also private sector firms competing within China in that market?

Mr McAllen—Yes. Where you have a mix of state owned companies and private companies, we contend that the presence of a state owned operation will be there. It will reflect the government assistance and be able to set prices in a particular market sector.

Senator CHAPMAN—We have had sectors of the economy in Australia that operate in exactly that way. We have had government owned enterprises and private enterprises competing in a sector of the market. What is different about China in that regard in its transition phase?

Mr McAllen—Tell me where.

Senator CHAPMAN—The airline industry, the banking industry. We have a government owned bank.

Mr McAllen—In the services sector, maybe, but not in the traded goods sector.

Senator CHAPMAN—We have the Commonwealth Serum Laboratories. We have government owned defence industries, which have been manufacturing, and a government owned aircraft corporation.

Mr McAllen—We are talking about a single test. It is aligned with what the US is contemplating: a market test to test whether that market sector is market oriented. That test says where there is a significant company that is government owned and supplying goods to that sector. Let us say the Commonwealth Serum Laboratories was benefiting from some sort of government largesse, that it was supplying syringes or serum onto the Australian market and that those things were being sold in Australia in competition with other companies that were privately manufacturing serum and selling also. What is the factor there? What is setting the price in that market? Is it the factor that the government largesse is enabling Commonwealth Serum Laboratories to set a price in the Australian market for serum at an artificially low level? If you translate that to a dumping situation, we are saying that a country that was taking dumping action would say, 'That is a direct government subsidy and it can be countervailed.' In fact that probably would happen.

Senator CHAPMAN—I understand the point you are making. But shouldn't the real test be whether private sector companies can operate in that market and still make a profit? Let us look at the Australian example and CSL. If Australian companies manufacturing the products that CSL is manufacturing as a government owned authority were able to do so and compete in the marketplace with CSL, and make a profit, you would say that a dumping situation is not likely to arise in that situation. Shouldn't you apply the same rule in China and look at the marketplace? If there are private sector companies operating in China in the market in which this government owned enterprise is operating, then they are competing with the company supposedly receiving government largesse to lower its costs and therefore its

capacity to price its products in the market, which those private sector companies are not receiving but are still able to compete and still able to make a profit.

Mr Attlee—In the flat glass industry it has indeed been the situation that there is a significant state owned sector. Customs have recently found in their investigations in China that very few of the private sector companies in fact are profitable.

Senator CHAPMAN—Clearly you have got a dumping argument in that situation but, if you have private sector companies which are profitable, you have not got a dumping argument. Shouldn't that be the test rather than just the fact that there might be a government owned enterprise operating in that sector? Shouldn't you look at what is happening in the market rather than just at the fact that it is a government owned enterprise in the market? That is what I am saying.

Mr McAllen—Your case sounds reasonable and good, if we have the same sort of accounting standards. But, in an economy such as China's, what accountability and profits, et cetera, really are is anybody's guess—in terms of measuring against the standards that we have here in Australia. It is a very difficult exercise and one which we believe, in the interests of getting a system that works for small- and medium-sized businesses, is so difficult and complicated that to ask our investigating authorities to do it is not practical. They are there for two days.

Let us take an up-front situation. We have already gone far down the track of recognising the Chinese shoe manufacturer but, in these other situations, the continuing presence of a significant government owned enterprise manufacturing and selling goods in the market is a signal, if you like.

Senator WATSON—Your solution effectively seeks to scuttle the concept of economies in transition, because, if you go back to the surrogate model, it is really the basis of the previous situation, is it not?

Mr McAllen—As I said before, in those economies we are prepared to recognise the market sectors which are freewheeling and are operating in a free market environment. That is going further than any other OECD and WTO country. They all maintain surrogacy, no matter what. So our solution does not scuttle the legislation in relation to those; it rewards those sectors of China that are coming forward and commercialising, if I can use that expression. It encourages that to happen, because they are joining the true commercial world. It does not scuttle the legislation; it encourages those industries in China to be like that. What it does do is to revert to using surrogacy where we have government controlled inputs and where we have government owned enterprises still operating in the economies of those countries.

Senator WATSON—You say you advocate an industry-by-industry approach rather than a case-by-case approach.

Mr McAllen—Yes.

Senator WATSON—Couldn't that work to the disadvantage of, say, the smaller firms? Because an industry-by-industry approach is going to be dominated by the major players.

Mr McAllen—I will use the example of the picture frame man again. If the picture frame man has to compete against China, surely he is entitled to compete against Chinese picture frame manufacturers who are paying normal world prices for their timber or whatever it is, sourced from Malaysia or whatever. Instead, this is the case: the timber is imported by a Chinese government enterprise and provided at artificially low prices to those Chinese

manufacturers who are putting together picture frames. I do not think the small guy is being disadvantaged at all.

Senator WATSON—What is your logic for an industry-by-industry approach rather than a case-by-case approach?

Mr McAllen—As we said, the case-by-case approach merely focuses on a particular company operating, say, in China. If that company has no government involvement in its ownership, then it is okay in terms of this legislation.

Senator WATSON—I cannot see the difference between an industry-by-industry sector approach and a case-by-case approach. Surely the outcome is going to be the same?

Mr J. O'Connor—Senator, can I add that that exporter may in fact be operating wholly independently of the state but his competitor on the domestic market may be benefiting from raw material input prices from a state owned authority and he has to compete with that on the domestic market. The domestic price of that whole sector is tarnished because of a major seller, who is not necessarily exporting to Australia, getting access to those raw material inputs.

ACTING CHAIR (Senator Jacinta Collins)—Senator Watson, we will have to move on. Could you please finalise your questioning?

Senator WATSON—That does raise a more difficult problem for us as government, doesn't it?

Mr J. O'Connor—That is right. It does not have to be the sole exporter to Australia. There can be a privately owned company who is exporting but they are competing on a domestic market which has been impaired by raw material input sourced from government enterprises. That is what we are concerned about. That is principally what I, as a chemical and plastics manufacturer, am concerned about down the track in the years to come. I will accept that countries like China will go to a free market economy and we will compete with that longer term.

In the short term, if we look back at what happened with the Monsanto case, that happened during the process of the investigation. We spend a lot of money to take an anti-dumping action. It requires us to understand exactly what is happening in that exporting country before we lodge. In that instance, Monsanto did not know, prior to lodgment of the case, that the rules would change throughout the process.

Senator WATSON—But if you adopt this industry by industry sector, you would probably find that there would be very few firms operating that did not, somewhere along the line, have competition that was government sponsored or government initiated in terms of some of their raw materials.

Mr J. O'Connor—Yes, there is a question of how far back you go. Certainly it has been our experience in anti-dumping investigations that it is normally over the last 12 months or two or three years that investigating authorities will research. I do not think it is reasonable to expect it back in 1921.

Senator WATSON—No. But if you look right across the whole Chinese economy, there might be very few industries that operate in a situation where some of the suppliers are not state operations.

Mr McAllen—Then it is really not in transition; it has probably just got out of the blocks. But the analysis that has been done by experts says it is further along the track than that. There are, indeed, the commercial zones in the southern provinces that exhibit all the characteristics of free market. They are joint venture companies, they source their raw materials commercially

and so on. They have private shareholding, they are listed on stock exchanges, they have boards and they are accountable, et cetera. That is the emerging picture of China. How far it has emerged goes to your question of where you would find these genuine commercial operating markets.

Senator WATSON—But when you are talking about the industry, are you talking about the industry of a particular zone in China or are you talking about China per se?

Mr McAllen—China per se. And we are talking about industry in a narrow context because the industry as defined in dumping legislation is, say, men's shoes—not all shoes. In fact, shoes are a case in point where the EU has just applied huge dumping margins to Chinese footwear.

ACTING CHAIR—In a couple of the submissions the point was made that, in relation to overall industry policy, one of the important issues that Australia needs to address is reducing the tariff and non-tariff barriers of our trading partners. To me, the potential seems to exist, with the bill as it currently stands, for it to be an incentive for economies in transition to structure their arrangements to create non-tariff types of barriers. The example is used in the textile industry of cotton. So the Chinese government, for instance, establishes its cotton industry in such a way that small private enterprises ride on the back of a government industry. Has that potential been an issue of concern?

Mr McAllen—That is one of the core elements. We are saying that if you have a downstream industry operating from the benefit of upstream contrived raw materials, if you like, that is a concern. How big a concern is anybody's guess. We are just looking at a huge complex with regard to China; it is just vast.

ACTING CHAIR—In some sense, it is a bit like creating a new barrier.

Mr McAllen—That is right; but here are we hairy-chested when no other nation in the world is yet prepared to go any way towards looking at any sector in China to see whether it is commercially operating or not.

ACTING CHAIR—Thank you very much, gentlemen. We need to move on.

[10.56 a.m.]

GAINSFORD, Mr Leonard Andrew, Chairman, Customs and International Trade Committee, Institute of Chartered Accountants in Australia; and President, State Chamber of Commerce (New South Wales), 37 York Street, Sydney, New South Wales

ACTING CHAIR—Welcome. We have allowed half an hour for your submission so if you could make a brief opening statement, that will allow time for senators to ask questions. We have received an outline of the points that you would wish to cover.

Mr Gainsford—Thank you. I will be very brief. Firstly, on behalf of the two organisations I represent, we very much appreciate the opportunity to appear and provide evidence today. If there is anything that the committee would like us to follow through with, we are quite happy to do that at any later stage.

The part of the two bills that we are concerned with is in relation to interim duties. We do not have any comment on the China situation, which we have just been hearing about extensively. Also, I would like to say—

Senator WATSON—You do not see that as a problem?

Mr Gainsford—We just have no comment on that, Senator Watson. Some of our members, particularly the Chamber of Commerce, have some views but those views are not coherent enough.

Senator WATSON—Coherent or uniform?

ACTING CHAIR—Both?

Mr Gainsford—I think we have differing views. If I could digress for a moment, within New South Wales the chamber of commerce movement represents over 160,000 businesses. There are about 293 chambers within New South Wales, so the State Chamber of Commerce is the peak body for that movement. There is a very large number of importers, exporters and manufacturers, as well as other traders, involved in the chamber of commerce movement in New South Wales.

The bodies I represent would like to support the smooth operation of administrative procedures undertaken by both the Australian Customs Service and the Anti-Dumping Authority. We have no particular criticism at all of the administrative procedures that we are observing. We would just like to make sure that the committee understands that the principles of transparency and predictability are very important to both the institute and the chamber.

It is very important that people understand the ground rules at the outset before they undertake trading activity. It is very difficult, as you might understand, if you are importing and subsequently there is a duty liability which arises and which may or may not be recoupable from the marketplace. Those things are very commercial but they are nevertheless quite telling.

I will move on to some specific comments in relation to the bill. Both bodies are opposed to retroactivity. Unless there is fraud of the scale detected in the 1980s bottom of the harbour schemes, our view is that there should be no backdating in legislation.

In terms of duty demands, there are also some technical problems. I will give you an example. If you are looking at a normal duty demand—a customs duty demand—if there is no fraud, you can go back 12 months under section 165 of the Customs Act. If we are talking about going back now to 1 January 1993, it is substantially in excess of that 12-month period. So there is a consistency-inconsistency issue there within other provisions of the customs legislation. We are also not entirely sure how other means of collecting securities and entering into undertakings and so on under the respective legislation all fits together with this proposed amendment back to 1 January 1993.

In terms of the ascertainment of actual export price and normal value, which is at the crux of this part of the amendment, as I understand it we are looking at amendments to section 269TG subsections (1) and (2). Basically, it talks about the validation of interim duties collected after the preliminary findings had been reached by the CEO of Customs, but before the publication of the notice in the case of subsection (1) and subsequent to the publication of the notice in subsection (2).

I am not entirely sure that in some situations you really can ascertain what an actual export price or normal value is in any case. I will give you an example. If you have got non-arms-length trading, you might have a related party transaction cross border between, say, a parent company in the US and a subsidiary company in Australia. It is very difficult in some cases to ascertain what an actual price is—actual in terms of an arms-length price. You will get an actual price from an invoice. But the whole process of dumping is that you need to ascertain normal values and those sorts of things. It is almost a proxy value. So I am not entirely sure

that this will remedy any particular problem because you will always have difficulty in ascertaining what actual prices are anyway. That is about all we can take a view on at this stage, unless there are any questions.

Senator WATSON—Your duties which are not recoverable are essentially those duties that are levied after the goods have arrived and been sold in Australia?

Mr Gainsford—We are concerned that if goods have arrived and have been subject to an interim provision and are unsold, we are not entirely sure what the recourse is. The explanatory memorandum talks about there being no increased liability to those. I think there is about \$12 million in interim duties that are currently in abeyance or currently being collected. I know that in that situation there is no objective on the part of Customs to go and recoup that or increase the amount of liability, but it runs against the principles of transparency and business certainty that I outlined.

Senator MURRAY—I appreciate that you have flown in this morning and you were not here for the whole time of the previous submission. Were you here for any part of it?

Mr Gainsford—I was here for about the last half hour.

Senator MURRAY—The core, I thought, of the submission by the industry panel before us was that China is still indisputably a country dominated by public sector enterprise and that public sector enterprise necessitated lower prices than would result in the private sector situation. Do you agree with that view?

Mr Gainsford—I have no view really, as I mentioned before, from my bodies on that. I could only give you a private view.

Senator MURRAY—Can you give me a private view?

Mr Gainsford—It is a very difficult situation being outside these industries. I know that certainly it is a question of how you compete, in lots of cases, and the degree of competition. Could you give a bit more—

Senator MURRAY—The problem that will face this committee is this: anti-dumping legislation has primarily focused upon the price at which it is landed in the importing country and whether that is a subsidised or less than market price. If you start to focus on where or from what sector that price is derived, that is a different principle. If you automatically predicate the view that public sector enterprises are automatically cheaper than private sector enterprises in their pricing, that as a theoretical concept needs to be well established. I would expect you, as an accounting person, to have a view on that. If that assumption is invalid, then you have to return to the former measure, which is simply to evaluate the pricing mechanism per se and discover if it is a subsidised or undercosted price.

Mr Gainsford—As a private view, again, I am inclined to the former. I think you have to look at the way in which people compete. If you look at it on a sectoral or industry basis, you will see some of the dynamics there which are quite a deal different. Your second proposition is: do you look at the mechanism across the whole economy perhaps? I think you will get a different answer, and I think that is the way of business.

Senator MURRAY—I am always reluctant to push these things upon witnesses who come to us, but if you are able to go back and think a little bit about that—I think we have a fairly rapid turnaround—and come back to us on that issue, it would be helpful.

Mr Gainsford—Okay.

Senator MURRAY—Hansard will let you know the requirement. The second major area of interest in broad policy is whether you take a global, sectoral or case by case approach. Global implies such things as tariffs, which are a universal percentage across an economy, sectoral implies you just look at that particular industry, and case by case is by firm or by goods that are coming in.

There is some dispute by, again, the industry panel that the decision of the government to go on a case by case basis is wrong. They believe you should go by a sector basis. What is your reaction to that?

Mr Gainsford—Again I would have to think about that and get back to you. It is very hard, I guess, to think across a number of sectors and a number of situations. What are our obligations under the WTO? Are we allowed to do that?

Senator MURRAY—Yes. You can choose the method. The third area was not really covered by them fully, but relates to our ability to apply our own laws and to police our own laws. That arises primarily in terms of the resources and funding available to us as a relatively small country. The second area is the degree to which we could gain access to the necessary information in the host country, such as China, which, as you know, is a pretty secretive place, and you have the problems of language and so on.

Would you think it is appropriate for Australia to take as a guide to its policy the decisions arrived at by other major economies dealing with the same problem? For instance, if the United States, the OECD and the EU have all come to a view, should we simply say, 'Why bother to do all the work ourselves? Those are our free trade companions in the world. If it's good enough for them, it's good enough for us,' and save ourselves all the problems of being groundbreakers in this legislation?

Mr Gainsford—Commercially, quite a few of the companies I am aware of do treat the dumping process as a very important process, a quite significant process. Also, if you are an importer and there is a case against you, that could have repercussions elsewhere in the world. I know in the US it is not definitive but it is persuasive on the US customs authorities if there was a positive finding of dumping in Australia, say. It certainly would give encouragement to somebody who wished to file a complaint in the US, the fact that somebody that they are complaining against has been found to be a dumper, or somebody subject to subsidisation elsewhere in the world, particularly if you are WTO covered, as Australia is.

I am also aware that in some cases there is a bit of a testing ground for certain complaints. For instance, in Canada I am aware that certain complaints have been lodged as a bit of a testing ground to see if something might be successful in the US. With all those sorts of considerations, I am not sure whether you are saying whether it is persuasive or whether it should be definitive. Obviously, it depends on the local law and the way in which the local law can adopt that.

Senator MURRAY—It might simply be a question of needing to make the decision. If the government agency is simply not funded or populated sufficiently or has access, should our law allow them in their decision to take account, in a definitive sense, of an EU or a US decision and essentially copy it rather than go through this groundbreaking exercise? What the panel clearly said is that the new direction indicated by this bill breaks new ground. It is not common WTO or OECD or EU or US policy at present.

Mr Gainsford—I am talking from the Australian end. Anything to streamline the administration from a Customs or an ADA point of view is useful. There has been a problem, if you are looking inbound to Australia, getting access to information. I have not had recent

experience with China, but China would be particularly bad, I would imagine, in trying to ascertain information that is reliable.

With the case I was involved in with the US, even where you have got a fairly sophisticated operation in the US, it was very difficult. There can be a reluctant local management, reluctant to provide information to Australian Customs. Anything to do with streamlining the process is useful.

We have always had provisions—and, no doubt, Customs will appear later and mention this to you—to accept information or not accept information. There are some judgments that can be made. You can make statutory declarations. There are lots of ways in which you can validate or attempt to validate information.

Senator MURRAY—Except those are contributory factors, not definitive factors, and you quite rightly picked upon the difference that I am driving at.

Mr Gainsford—Yes. There is a major change then if you are suggesting that in terms of a definitive outcome. Certainly, I would be able to get back to you with some further thoughts on that.

Senator MURRAY—You would be aware from the text and nature of my questions that I am focusing almost entirely on policy rather than on specific instances. I do so deliberately because, as you would be aware, in Australia, in the government, in the media and within the community as a whole there is a great debate as to what our industry policy should be and whether it should be on the dry side or the wet side—activist, interventionist or hands-off and free marketish.

Again, the view of the panel was that anti-dumping legislation—they used these words—is the most important component of industry policy because it provides for the appropriate mechanism for fair trade within a free trade regime. Do you have any views on the place of anti-dumping legislation, policy and practice in terms of industry policy overall and the advancement of Australian interests in terms of exports, investment, jobs and any other criteria?

Mr Gainsford—I was at the ACCI industry policy forum in Brisbane a few weeks back. Minister Moore was there and he spoke about it, and there were quite a few people who spoke about it. I am not sure that dumping really fits into that format. I would always see the dumping and subsidisation countervailing legislation as being something that almost guarantees a fair trade or a competitive outcome. It is almost competition policy rather than industry policy. I think industry policy is something that is far more specific, and by its very nature it sometimes needs to be a bit more interventionist. Dumping legislation is really just setting ground rules. It sets the state of play in the same way that the Trade Practices Act sets that state of play. That is the way I see it, and I do distinguish between the two myself.

Senator MURRAY—But trade practices seldom deal with pricing issues except in policy terms—in indicative terms—whereas the anti-dumping legislation results in a pricing outcome. It is a very specific measure. In that sense it is like industry policy, in that a grant or a tax benefit or a particular policy device inevitably directly affects tax or profitability or investment.

Mr Gainsford—Maybe in the effect rather than the actual instance. It does set prices, but only in the sense of a non-injurious level or something that should reflect free trade. In the competition policy realm, what you are talking about probably is not so much the Trade Practices Act but the Prices Surveillance Act. If you look there, it is far more prescriptive if you are looking at the price of petrol or alcohol or whatever. That is perhaps the analogy.

Once you start putting dumping into the area of industry policy, I think it is a bit dangerous, because inevitably what you have to do is look at a particular situation or look at a case-by-case approach, and it is sometimes a bit difficult to remain consistent.

Senator MURRAY—Let me say where I am going to with this. An industry sector approach, which is what the panel was after, does in fact accord with industry policy, whereas a case-by-case approach is more adjudicative and discretionary—a little bit like the ACCC's approach.

From your brief opening remarks and your answers I have not got a feeling as to how your organisation views, or how strongly your organisation feels about, the strength and importance of anti-dumping legislation. I have not understood whether they regard it as critical, just necessary, essential, underenforced, in need of a great overhaul or what. I am not sure of the strength of the feeling that you have about these things.

Mr Gainsford—Both the Institute of Chartered Accountants in Australia and the State Chamber of Commerce of New South Wales have a very strong view that the dumping legislation should remain and should be strengthened, in a sense, but that at the same time there should not be any retroactive application of any duty—certainly where it is not clear from the outset what that should be. In other words, any ground rules that are established should be quite clear and they should be administrable, which means that Customs and the ADA have to be able to look at them and be able to use them to reach outcomes.

Our view is that there are problems if you are starting to have these provisions creep in where you can go back to 1 January 1993. Why not take it back to 1985 in some cases? As I understand it, the GATT anti-dumping code and the GATT subsidies code do allow some fairly broad provisions in some cases. That does not mean that we should adopt fairly broad provisions or a greatly different history in our legislation to what we have already adopted. I guess our bodies have that fairly clear and simple view about the operation of the legislation.

Senator MURRAY—To come down to the nuts and bolts of the submission by the panel, essentially they are putting to us their fear about the threat to Australia, particularly from the change to China's status, which will result in loss of Australian jobs in the manufacturing sector or industries or firms and also lower prices in various other sectors of industry, and about there being no benefit to Australia as a result of that, since the loss to us will be greater than the gain. Do you have any view on that?

Mr Gainsford—Again, I think that is the effect rather than the actual operation of the mechanism. If the mechanism guarantees a fairer trade outcome, really you have to say that that is the end. If you say that it allows an outcome which produces these effects in terms of job security—or job loss, on the other side of the fence—I do not think that is something that the dumping legislation should be saddled with.

CHAIR—As there are no further questions, we thank you very much for your evidence, Mr Gainsford.

[11.23 a.m.]

HARRISON, Mr Mark, National Manager, Dumping and Self-Assessment Development, Australian Customs Service, 5 Constitution Avenue, Canberra, Australian Capital Territory 2600

McGUIRE, Mr Jock, Executive Director, Anti-Dumping Authority, 20 Allara Street, Canberra, Australian Capital Territory

O'CONNOR, Mr Paul Richard, Director, Dumping Control Section, Australian Customs Service, 5 Constitution Avenue, Canberra, Australian Capital Territory 2600

PERKINS, Dr Frances Christine, Assistant Secretary and Head, East Asia Analysis Unit, Department of Foreign Affairs and Trade, John McEwen Crescent, Barton, Australian Capital Territory

CHAIR—Senator Collins has had to leave us for 10 minutes but she will be back. I know that she has some questions that she wants to put to you. Have you any opening statement in response to things that may have been said this morning?

Mr Harrison—I would like to make some very brief opening remarks and then ask Dr Perkins to speak in terms of the Chinese economy in particular. We believe this legislation is necessary to fill a significant gap in the legislation as it stands at the moment. Previously we were able to treat countries, such as China and other centrally planned economies, on the basis of section 269TAC(4). On the basis of submissions made to us in the conduct of an inquiry last year and on the basis of legal advice from the Attorney-General's Department, we believe that it is no longer possible to use that section in relation to an economy, such as China's, which has moved away from being centrally planned.

Senator WATSON—What is that section?

Mr Harrison—Section 269TAC(4). Without new legislation we would be required to treat China as any other economy. We recognise that China has not yet reached that status, therefore we do need legislation of some kind which would enable us to treat China on a case-by-case basis depending upon the commodity or the good which we are being asked to examine.

I believe that our differences with industry come down to four areas. The first is industry's desire to have us examine the cost of raw material inputs into the manufacturing process and the way in which the prices of those inputs are set. The second area relates to what factors we will look at to decide whether or not there is state control of the domestic selling price or of the price of inputs into the manufacturing process. Third, there is the question of whether, if we do identify state control of the price process, we then immediately go to a surrogacy or look at another method of establishing the normal value in an economy in transition. Finally, we differ as to whether we look at an industry on a sectoral basis or on a company-by-company basis.

I believe that those are the four areas where we differ. Before we examine them in more detail it might be worth while if I ask Dr Perkins now to give the Department of Foreign Affairs and Trade's assessment of the situation in China as they see it today.

CHAIR—Dr Perkins.

Dr Perkins—Thank you very much. I would like you each to have a copy of this report because I would like to refer to one or two tables and figures in it. I think you all received a copy of the larger report *China embraces the market* when we tabled it in the parliament. In case you did not bring your copy along today I will provide you with another. You can always give it back to me at the end of the day if you do not want to waste government resources.

I think the outcome of the discussion that has been going on between government and industry on this issue since the recent anti-dumping cases have arisen has been the conclusion that China really is no longer a centrally planned economy. I think there is no discussion or debate on that issue any more. Industry and the government have agreed that China is an economy in transition. We have defined that in various terms in that small briefing paper that

we have just produced, but also in the larger report. Therefore the government believes that a more flexible approach needs to be provided.

The current approach, as has just been indicated, was subject to legal challenge and would probably have led to China being treated just as any other country, with no flexibility to treat it as something in between a centrally planned and a full market economy.

I would just like to recap, though, on why we came to the conclusion that it was no longer a centrally planned economy. This is not an historically uninteresting fact now, and I will get to the reason for that in a moment. But the reason we made that decision, and I think industry agreed, is that the original legislation defined a centrally planned economy as one in which the government monopolised or substantially monopolised prices and monopolised or substantially monopolised trade.

As you can see from figure 3.1 in the larger report, on page 76, there is an indication of how market prices have been growing as a proportion of total prices over the reform period. The pale pink prices are the market prices. The red ones are the fixed prices. You can see that for retail goods, raw materials and agricultural products the dominance of market prices has been growing very rapidly.

That has been one of the biggest areas of success for China's economic reforms. It has been at the forefront of their reforms. The Chinese have moved fastest and most successfully in this area, and it is what has brought about the revolution in the Chinese economy. People are now making production and consumption decisions on the basis of market prices.

CHAIR—What basis are they using for those figures?

Dr Perkins—Those figures have been provided by China's statistical bureau. However, we did not merely accept them on face value. On page 7 of the smaller report you will see that we went back to the World Bank and the IMF to check. There have been numerous reports citing these figures and accepting them. I have one here from Salomon Brothers, who are not known to be pinkos and socialist sympathisers. They quote exactly the same figures in a recent study on the Chinese economy—in fact, their figures are slightly updated and show that market prices are now an even higher proportion of total prices.

I will quote what the IMF said. The quote is from Charles Adams who is in charge of the Central Asia Department. We got an e-mail back from him after specifically asking this question, knowing that it is of interest to the government. He said:

We don't uncritically accept Chinese estimates. By and large, however, we believe that the official estimate of a rising share of prices determined in the market provides a relatively good indication of the increasing role of market forces in the Chinese economy, and that the estimate of around 90 percent of retail prices occurring at market prices is in the right ballpark.

So these are not things that the government churns out and people accept. It is the business of organisations like the IMF to go in and check the statistics provided by governments, so that they can make assessments and give advice.

CHAIR—Does anyone or any organisation dispute those figures?

Dr Perkins—No, I have never seen anybody dispute those figures. The World Bank must have produced 10 or 15 reports over the last 10 years that reproduce those figures—the relevant ones for the years. As I said, private sector analysts all use those figures. Traders operating in China believe those figures are correct, and investors.

Basically, that is the situation. That is what is happening, and that is what is leading to the huge growth in the Chinese economy. If you compare pre-reform China, when it was centrally

planned—and Russia and all the other centrally planned economies—with China now, the huge difference is that market forces are allocating resources and, as we all know, they allocate resources much more efficiently. So that is what has been the prime leader of the reforms—that and the opening up of the economy to trade. Those are the two prime factors leading to the reforms.

I do not think anybody disputes that. That is the case. I even have survey results where we have asked individual enterprises, ‘Do you control prices?’ And that is one of the prime things they do control. Some of them still indicate that they are not always free to sack all the labour they would like to—that tends to push up their costs—but, on the other hand, they are free to set their prices and to buy inputs freely and to sell their outputs freely. They are the main areas in which enterprises have complete autonomy these days. That includes state owned enterprises as well as non-state enterprises. Non-state enterprises obviously have complete freedom in that area, but I am talking about the state owned enterprises. So, when we say those prices are market prices, they are market prices which are followed by the state and non-state sector firms. That is government policy and, as I say, it is what has been pushing reforms ahead.

That is the first reason that we do not believe saying that China is a centrally planned economy will stand up in court. Every reputable authority in the world accepts those facts. The second reason is linked to the extent of the state sector’s trade monopoly. Once again, the figures are pretty hard to refute.

In the pre-reform days, there used to be 12 centrally planned trading authorities which monopolised all China’s trade. These days there are 200,000 enterprises in China that export and import. That includes all foreign funded firms able to trade on their own account. A good number now—6,000 state owned enterprises—trade on their own account. They are all in on the import-export act—counties, villages, provinces, everybody. It is an extremely competitive market out there. You cannot possibly say the government is monopolising trade through 200,000 independent enterprises.

Of the other facts shown in this report, table 6.1 on page 181, for instance, shows the extent that foreign funded enterprises control China’s trade. You could hardly say that the Chinese government is monopolising foreign funded enterprises in China. Estimates in 1996 show almost 41 per cent of China’s exports and 52 per cent of imports are the responsibility of foreign funded enterprises. Add to that the township village enterprises, the Chinese private enterprises and a whole range of others, and you have about three-quarters of China’s trade being undertaken by non-state firms. So, again, it would be impossible to claim that the government is monopolising its foreign trade when you have three-quarters of the trade being undertaken by foreign and non-state firms.

Senator WATSON—With respect, that is not the issue though, is it?

Dr Perkins—This was going back to why that would have been challenged in the court and why the status quo was no longer viable. That position, that there is no longer a centrally planned economy, I think was accepted by everyone, including the industry. We then move to our advice, which was basically that China was an economy in transition. The reason we gave that advice is that there are still some sectors where government industries dominate. For instance, there is an interesting table on page 376 which is actually very relevant to the industry’s position, so we will come back to that later.

The table shows the extent to which the state sector dominates different industries in China and the extent to which the private sector dominates other industry sectors. You can see that

some of the heavy industries, such as petroleum, gas—not coal mining quite so much, where there are quite a few non-state sector firms—logging and tobacco are 90 per cent-plus government owned enterprise dominated. On the other hand, at the light industry end—garments, other manufacturing, furs, stationery, metal products—only 10 per cent-odd are government owned enterprise dominated. Also, in the hinterland regions there are more state owned enterprises than in the coastal provinces. In coastal provinces, only about 20 per cent of output is from state owned enterprises and in the hinterland it may be 30, 40 or 50 per cent.

What we said is that, because of that variation by sector and by region, and the ownership variations between them, there would be a reason to do case-by-case, in-house, in-country analyses of what the real situation was as far as any anti-dumping claim was concerned. I think the current legislation provides that flexibility. However, the industry submission of amendments to the legislation has two aspects. Firstly, it says that any situation, any anti-dumping case, in which the firm comes from a sector in which there is any government involvement would be deemed price controlled. As you can see from that table on page 376, that would be total Chinese industry.

There is no industry in China which does not have one per cent of government involvement. Even if it is down to seven per cent in garments, they are present in every sector, so you could therefore wipe out all exports from China under that provision. They would immediately be counted as price controlled, and you would revert to the old situation in the legislation, with China essentially still being treated as a centrally planned economy, even though we know that only 10 per cent—in fact, the recent figures are showing only seven per cent—of prices are government controlled and in a huge range of industries the government role is very minimal. That approach would totally wipe out all that evidence, and you would just revert to treating it as a centrally planned economy.

The second part of the industry test says that a firm would be deemed as coming from a price controlled industry if 10 per cent of its inputs came from a sector in which there were price controls. Obviously that is redundant because you have already wiped out all the Chinese exports. But that provision would certainly do it again. In fact, I would suggest that that kind of provision, if applied to any country's exports, including Australia's, would wipe out all of our exports as being price controlled.

If you took into account inputs from banking, telecommunications, rail, road, and ports, all of which are industries in Australia with some government involvement, that would come to 10 per cent of inputs into most Australian enterprises' production costs. So you would therefore be deeming that all Australian production is price controlled. Ditto, all production probably from any country in the world would be shown as price controlled, using that test. So you would wipe out all of those economies as being free market economies and you would revert immediately to surrogacy.

Obviously, this is a ludicrous position and one which would expose Australia to severe criticism if we were to adopt it—not least, of course, from the Chinese, who would see it as purely discriminatory. But, generally, as well, there would be criticism if that were seen as the position we were adopting.

So I think that approach is completely unviable and therefore the approach that is being suggested in the legislation provides sufficient flexibility to enable the Anti-Dumping Authority and Customs to go to the country—in this case China, but any transition economy—to check out the specific situation for that industry and make a determination of normal value on that basis.

CHAIR—What you are saying is that, if there are no changes to the legislation at all, China would be treated as a market economy.

Mr Harrison—Yes, that is correct. That is how the legislation is operating as we speak. We are doing cases involving China at the moment, and we are happy to do them on the basis that we are dealing with a market economy.

Senator CHAPMAN—The table you referred to on page 76 of the *China embraces the market* report deals with the price setting mechanism where prices are fixed by government or determined by the market. Isn't that a slightly different issue from the issue that is being raised by the industry, where they are talking about government enterprises being able to sell their goods at lower prices because they get the benefit of some form of subsidy on their inputs, rather than actually talking about government fixing the price of the output?

Dr Perkins—I think that there are two points in the industry's submission. Firstly, they would deem an industry as price controlled if there is a presence of a government enterprise there, even if the company itself involved in the anti-dumping action were not a government-owned enterprise. If that sector had a government enterprise in it—and we have seen that every sector in China has a government enterprise in it—that sector would immediately be deemed as being price controlled, irrespective of whether the government did try to influence prices at all. Just having a government owned industry there would impose that decision on the Customs department.

Secondly—to get to the next point of the industry's submission—there may be some inputs into an industry that are cheaper or are government controlled. You can see that with raw materials in 1994—though it is less now in 1997: you can see the rate of decline has been quite steep in recent years and recent figures indicate a lower figure—up to 20 per cent of inputs may still be considered price controlled.

That is exactly the situation, of course, in a lot of countries. The Customs department has decided—and it is your view that you should discuss this—that it is very difficult to judge if an input is price controlled. A lot of countries have controlled price inputs. We have electricity, for instance, which you may say is price controlled, because the government has some influence in a lot of states on electricity charges. So that has tended not to be looked at by Customs. That, I think, is their decision, just because that is the norm.

If you look at this report—and I am quite happy to talk in detail about this—our understanding is that very few price control inputs go to non-state sector firms, for a start. They go only to a few selected state owned enterprises or military enterprises, particularly, or to transport or maybe rail or electricity. They are tied to producing an output which is then allocated to a specific sector that is given high priority, such as infrastructure or the military. They are not inputs that are broadly available for industry, certainly not for export.

The Chinese believe that exports should basically be about earning the full dollar of income, if not more, for the Chinese economy. They are not something they are involved in heavily subsidising, or subsidising at all. So, if you did have a look at inputs, you would need to look case-by-case to see if that firm was receiving low priced inputs, and whether those inputs were in fact lower than international prices. Most of these controlled price inputs, like cotton, are at international prices now, if not slightly above; and they are of lower quality than can be got on the international market. In the section on agriculture, on page 309, there is a box to this effect which discusses cotton prices. It gives the domestic price of cotton in China compared with the international price, and it is, if anything, slightly higher.

All accounts are that, because farmers are being forced to grow this cotton when they would much prefer to be growing fruit and vegetables and earning higher profits, most of it is pretty rubbishy. The textile firms are always complaining that it is mixed with a lot of garbage and it is poor quality. They would be much better off being able to buy this cotton internationally, and this is a point we make in the report: they really should be buying it from countries like Australia, for instance, and not forcing their farmers to grow it. But this is a policy they have. I am not quite sure why—perhaps because they feel they should be growing their own cotton—but it is not actually advantaging their cotton producers, processors or textile firms, and it is not giving their exporters an undue advantage. In fact, it is probably doing quite the contrary.

Exactly the same goes for wheat and grain crops. Their grain prices are very close to international levels, if not now higher. They are forcing farmers to grow these crops because they are wanting self-sufficiency. It is not something that is going to feed into cheaper noodles coming from China which would disadvantage Australian noodle producers; in fact, quite the contrary. That is the kind of thing you would need to go into, if you did want to look at input prices. You would have to go digging down to that level, which I could understand Customs would be loath to do in a short inquiry. But you would be very unlikely to find many sectors where it is actually leading to an unfair advantage, even if a firm did get a small proportion of its inputs at controlled prices.

CHAIR—You did mention earlier the reasons why you could not accept the amendments that have been put forward by industry. Is there anything in those recommended amendments where there is an in-between position? Or is it the figure of 10 per cent in there? What are the particular aspects of their proposed amendments that you feel you cannot accept?

Dr Perkins—I think this is really a better issue for Mark Harrison to discuss, if I can pass it back to him. There is certainly a belief that there could be some guidelines, maybe in a letter to the minister, providing some valuable guidelines on things that you might like to look at when you go to do these in-country assessments of normal value, and discuss some of these points. But I think that is something that Mr Harrison is better qualified to discuss.

Mr Harrison—It relates essentially to the issue of certainty and predictability which the industry has raised, and for which I do have some sympathy. I can understand full well that they are looking for clear statements from the government as to what would constitute a circumstance that would give rise to us moving away from a normal value inquiry in China and into a surrogacy arrangement.

There is a suggestion from industry that that could be done by means of regulations that would stipulate the sorts of factors that we might look at. I have some doubts about using regulations as such, because there are some fairly complex administrative processes involved in drafting, tabling and passing those regulations. Also, they may tend to remove the flexibility that I would want my staff to be able to have in order to say, 'Here is an unusual circumstance, but it appears to me that that is clearly affecting the price of these goods in China and we should not be using the domestic price to calculate those.'

But I would certainly be quite prepared to look at some way in which we could give industry a very clear, firm idea about the sorts of circumstances that we would see as giving rise to a price control situation. So I am sure there is scope there for the way in which the government administers this legislation to provide that degree of certainty to the industry.

On the question of inputs—and particularly the 10 per cent figure—I do have some real concerns about that concept, firstly, because it is recognised under the WTO agreement that inputs will not be looked at. While China is not a party to the WTO agreement—and to that

extent we have a degree of flexibility in how we draft our own legislation in relation to economies in transition—nevertheless, there would be a significant difference in the way that we treated economies in transition and the way that we treated other economies.

From an administrative point of view, I am again reluctant to be required to engage in an examination of significant raw materials. If we use the 10 per cent benchmark, we may, before making our determination, end up having to look at several raw materials to decide whether or not any one of those inputs is state controlled. We have heard this morning some concerns raised by industry about the effectiveness of the anti-dumping system, and I am well aware of industry's concerns that the system still takes too long to deliver a final result. If we were to spend time looking at inputs into the manufacturing process in China, I fear we would be taking a very long time to deliver results to industry on cases involving China. Therefore, we need to balance the speed with which we can achieve a result against the requirements our staff have to conduct their investigations in China properly.

Senator JACINTA COLLINS—I think Dr Perkins gave a fairly general outline on some of these issues, addressing this report. I was absent at the time, so please bear with me if there is an element of duplication in my questioning. My impression has been that the argument is that price control in China is diminishing to such an extent that it is essentially a market economy anyway. No?

Dr Perkins—China can no longer be classified as a centrally planned economy. Under the terms of the act as it stands at the moment, that requires that a government, 'monopolises or substantially monopolises prices; monopolises or substantially monopolises trade.' Those figures indicate that the government does not monopolise or substantially monopolise prices any longer. I do not think anyone believes that China is a full market economy yet. As we point out in this small paper here, it is a transition economy. It is an economy between plan and market.

That is not because of the prices, particularly—I should imagine there would be quite a few market economies where governments do control at least that proportion of prices—but because of some other factors in the economy: the quite large state-owned sector, for instance, and other elements. There would certainly be many developing countries in Asia with economies which are classified as at least mixed economies—or full market economies—where the government controls that proportion of prices. Under the Customs Act we treat them as market economies. But, because of other elements in the economy, China is classified by the World Bank and everybody as a transition economy.

Senator JACINTA COLLINS—What are those other elements?

Dr Perkins—As I mentioned, although state owned output is shrinking, it is still 30 per cent of the economy. That includes some state agricultural activity, although not much. Agriculture is basically private now. Infrastructure is basically government owned: electricity, telecommunications, rail, ports, the new add-in social sector. In Australia the government sector would be 20 per cent of the economy, so we are not talking about a huge difference. But the main difference is that about 30 per cent of industry is still government controlled, although that is shrinking year by year.

Senator JACINTA COLLINS—The question I am raising here is this: why is there a need for a new category, particularly given that, from what we have heard earlier, Australia is the only country going down this path at this stage?

Dr Perkins—I do not think that is at all the case. That has not been addressed, but I think it could be. New Zealand and Canada are certainly taking the same approach as we are now

taking: case-by-case studies in China of normal value. The status quo, as we mentioned, was not viable. We were subject to legal challenge. I think there was no doubt that, in the courts, it was the belief of the government that we were legally vulnerable to challenge. Therefore, there was a need either to decide that China was a fully market economy or to introduce this amendment, which would enable some greater flexibility for the use of surrogate prices.

Mr Harrison—Perhaps I could add to that. At the moment, if we do not have legislation, we will be in the situation of having to treat China as a market economy, which is a situation that nobody in this room is looking for. We must have legislation in some form to enable us to treat China as an economy in transition.

Senator JACINTA COLLINS—Do you have that legal advice?

Mr Harrison—Do I have it with me?

Senator JACINTA COLLINS—Yes.

Mr Harrison—I do not personally have it with me. We can certainly make it available.

Senator JACINTA COLLINS—I think it is important that it is made available to this committee.

Mr Harrison—Then we will do that.

Senator JACINTA COLLINS—As has been indicated previously, that initial premise is perhaps arguable as well. I think it is relevant that the committee should consider the actual legal advice.

Dr Perkins—I do not think industry actually argues with that position.

Senator JACINTA COLLINS—Well, they did this morning.

Dr Perkins—No. They are not arguing that it is a centrally planned economy still.

Senator JACINTA COLLINS—I am not suggesting that is what they were arguing. I am suggesting that they were arguing that the legal advice that you have received—or the argument that the level of price control in China is diminishing to such an extent that it is no longer significant—is at issue.

Mr McGuire—The authority was the body that kicked this off in a sense. All this arose from an inquiry we did into glyphosate acid, which I would also like to expand on a little bit later. I do not think there is anyone arguing that there is a need for change. The issue was whether China passed two tests in our current legislation under TAC(4). We do not use the term ‘centrally planned economy’ in our legislation.

The test that applies is as follows: the country of export must control or substantially influence prices of goods—not services, just goods—and, in addition to that, control trade by that country. The clear advice we got from the Department of Foreign Affairs and Trade was that it no longer does that. That advice was placed on our public file to the glyphosate acid inquiry.

In addition to that, our decision was influenced by a submission which was lodged with Customs late in the inquiry. They did not have time to take the submission by a consultant on behalf of one of the exporters into consideration, but we did. Both those documents—the DFAT advice and the consultant’s advice—drew widely on reports by the World Bank and also by academic journals. Both strongly supported the view that TAC(4) no longer applied. The subsequent advice we got from the Attorney-General’s confirmed that view. That decision was not made purely on advice of Foreign Affairs. It was a combination of matters that were put to the authority.

Senator JACINTA COLLINS—My question relates more to the comment made in the second reading speech in relation to this bill, which was that, on the basis of legal advice, the conclusion had been reached. I think it is appropriate that we look at that advice. That is the only reason I raised that issue. Dr Perkins, you mentioned that New Zealand and Canada had both applied case-by-case determinations. Have they changed their legislation or have they not had a need to?

Mr Harrison—Perhaps I could answer that, Senator. As part of our preparations for today, through the Department of Foreign Affairs and Trade, we asked posts in a number of countries for a quick examination of the local anti-dumping system in relation to economies in transition. We have had responses from Ottawa and from Wellington.

The response from Ottawa suggests that Canada is moving towards a more flexible case-by-case approach in its dealings with economies in transition. It is prepared to allow former centrally planned economies to establish that an industry sector under investigation is no longer centrally controlled and that it is governed by market forces. We were not aware of that until very recently, but we understand that the Canadian legislation is so drafted that there is more flexibility built into it than there is built into ours.

Similarly, with New Zealand, we have been advised by Wellington that the New Zealanders are prepared to treat economies in transition on a case-by-case basis as well. But I am well aware, and the point was made quite rightly this morning by the industry group, that both in the United States and in Europe there is a continuing policy, at least, that they will treat China as a centrally planned economy for anti-dumping purposes. But I do not think it is quite right to say that we are right out in front of everybody on this or, to use Senator Murray's words, a 'Trojan horse'. We are at the cutting edge, perhaps, but no more.

Senator JACINTA COLLINS—Going back to your comments about the information you got from Ottawa, if they are looking at it case-by-case by industry sector, that sounds a bit like the amendment that is being proposed.

Mr Harrison—Yes; according to the cable, they are looking at industry sectors.

Dr Perkins—But they are not addressing the question of cheap government imports, apparently. Their legislation does not require them to look at imports. New Zealand, on the other hand, treats centrally planned economies just like any market economy. There is no difference in the way they treat China and any transition economy from a market economy, but then their legislation is different again and they do allow inputs to be looked at from everybody, and surrogacy. Every country has a different approach, I guess. You have just got to look. In the cases of customs and the legislation, we have tried to do what we think would be the best from Australia's point of view. You cannot be beholden to other countries and slavishly follow their approaches. Everyone has a different approach.

Senator JACINTA COLLINS—I do not think the suggestion at any point has been along those lines, but we do need to try to understand what has occurred to date with this. In industry policy generally, the suggestion has been that perhaps Australia is looking at putting the brakes on, even with some recent government decisions.

Dr Perkins—This case with Canada was looking at the steel industry, which is, as you can see from that table I mentioned, one of the most heavily government-controlled industries.

Senator JACINTA COLLINS—Are there any other cases from Canada?

Dr Perkins—That is the only one that was mentioned in that particular cable. It may just be the approach they have taken in that sector. We really need more information.

Senator JACINTA COLLINS—Yes, we may. Anywhere else, apart from Canada and New Zealand?

Mr Harrison—We have no reports from any other posts at this stage. As I said before, I do believe that the European Union and the American position is still to regard China as a centrally planned economy. But I also understand that the Europeans have that under review.

Senator JACINTA COLLINS—This question may have been asked earlier. Forgive me if it has. Has the department had any advice on the amendment that has been proposed by the task force?

Mr McGuire—Advice from whom, Senator?

Senator JACINTA COLLINS—Who would advise the department on, for instance, the question of whether it would be consistent with WTO obligations?

Mr Harrison—Senator, we have not referred the amendment as proposed by industry to the Attorney-General's Department or to our own legal area for an opinion, as yet. We have still been working on the policy issues. Indeed, this inquiry has been a fairly important factor in our decision as to how far we should proceed with that.

Senator JACINTA COLLINS—You are saying to me that, at the moment, you have information from New Zealand and Canada that they are moving towards a more case-by-case approach. New Zealand assesses inputs. Canada takes an industry sector approach—at least in the one case that you have given us. But at the moment we have no opinion as yet—even though we are applying policy to how we should proceed here—on whether they are relevant factors for Australia.

Mr Harrison—We have our own views on that. We are not necessarily going to be swayed by what is being done in other countries, as Dr Perkins has said.

Senator JACINTA COLLINS—Can you tell us what your own views are and what is the basis of them?

Mr Harrison—I do not know that my own views are very important.

Senator JACINTA COLLINS—You just said, 'We have our own views.'

CHAIR—That is the government department.

Mr Harrison—The government has a policy on how it will treat China and how it will treat economies in transition, and that is what this legislation is designed to implement.

Senator JACINTA COLLINS—So the only basis for this legislation is government policy?

Mr Harrison—The basis for this legislation is that it has been referred to cabinet, and cabinet has made decisions. We are acting on the basis of cabinet decisions in relation to how to treat economies in transition.

Dr Perkins—There have also been considerable consultations with industry, though. There have been several seminars held—I, myself, have presented at one of those; there have been others held in capital cities—where industry views were sought and they were certainly fed into the final legislation. So there was a wide variety of views sought in forming this final amendment.

Senator JACINTA COLLINS—Is it your impression that industry is happy with the way it is currently framed?

Dr Perkins—Certainly industries that are importing Chinese products would be very happy, and there are quite a lot of them—as are consumers, I should imagine, who are consuming Chinese products.

Senator JACINTA COLLINS—I do not know, actually. With the recent research we had in the TCF industry, you might be surprised.

Dr Perkins—I think the trouble with all protectionist cases—basically we are talking about a form of protection with this type of legislation that is being sought by the industry—is that the beneficiaries of protection are always very concentrated. It is always worth their while to come to Canberra and to seminars and have their voice heard.

The beneficiaries of free trade—consumers and industries that use imported inputs—are very widespread and scattered; and, although the benefits are very real, because they are not concentrated, those people do not tend to come to these types of hearings and have their views heard. Of course it should be the role of government to bear in mind those benefits and those interests, even though those people are not loudly and ferociously pushing them.

Senator JACINTA COLLINS—Would they be the same people who were the subject of market research recently in TCF and said that they were prepared to pay a little bit more for products if that helped to provide Australian jobs?

Dr Perkins—That is of course market research produced as a result of particular views put in the media. People will not necessarily perceive that they are better off from free trade. If you look at the growth in jobs we have had recently, you will see that the growth in Australia is one of the fastest of the OECD. We have been reducing protection and yet we have managed the fastest growth. Unfortunately, public views and the public views in opinion polls are not always the most informed. If you make policy on the basis of those, rather than trying to lead policy on the basis of where Australia's real welfare lies, you could well make some serious policy mistakes.

Senator JACINTA COLLINS—I go back to my original question: on what basis has the government reached its policy decision that you are implementing with this legislation?

Mr Harrison—Through the normal process in which government is advised by its departments, it makes decisions and departments then act upon what they are asked to do.

Senator JACINTA COLLINS—Yes, but so far you have just told me that you discount things such as market research, but you have not provided any alternative basis in fact for going down this particular path.

Dr Perkins—I think the basis in fact is what is happening in the Chinese economy. The basis in fact there is that it is heading very rapidly away from central planning towards a market economy. The imports coming from China, in the main, are determined on the basis of market forces in China, and Australian industry will have sooner or later to come to terms with that when China enters the WTO, which is likely to happen in the next year or so.

Apart from that, the legislation was obviously no longer applicable to China, given the changes that have occurred in the economy. We sought advice from all quarters: the World Bank, IMF, Asian Development Bank, and private analysts. As I said, there was no analyst—I would very much like industry to find an analyst—who could counter that view and provide an indication that what we are saying about the Chinese economy is not the case. I have not seen any views put forward to that end. Therefore there is really no choice but to change the legislation, or else allow China to be treated like any other normal economy.

Senator JACINTA COLLINS—Picking up on Senator Murray's example of a Trojan horse, one of the main concerns we would have with making changes rather than applying the 'later rather than sooner' principle and learning from the experience of other countries—other more major traders—is highlighted by a recent example. I do not have the case details, unfortunately, but you might. A joint action was taken on anti-dumping in Canada and in Australia in relation to China, and the Canadian action was upheld while the Australian one was not. How do we avoid that sort of predicament?

Mr McGuire—Perhaps I may comment on that. When you are doing a dumping inquiry there are three elements that you have to address. Firstly, were the goods dumped? Secondly, has the Australian industry suffered material injury? Thirdly, has material injury been caused by dumping or is it threatened by dumping?

The fact is that simultaneously one country can make a negative finding in respect of a particular product whereas another country makes a positive finding, but you cannot assume that both countries are identical in terms of the impact of the goods. It might well be that you did not find material injury in one instance but you did in the other. Without more information it is really difficult to comment, but a lot more goes into it than just looking at determination of normal price.

Senator JACINTA COLLINS—No, I appreciate that. That moves us on to the next area, which is industry's concern about material injury definitions, and leads me to my next line of questioning. What is happening with the Willett report?

Mr McGuire—The previous Minister for Customs, Mr Prosser, announced that the Willett report might well be considered in the context of a Productivity Commission inquiry.

Senator JACINTA COLLINS—But that was back on 13 December last year.

Mr McGuire—I cannot comment on the current status of the reference, Senator. I do not know.

Senator JACINTA COLLINS—So, despite the government's pre-election commitment to implement the reforms proposed in the Willett report, at 13 December last year it was referred to the Industry Commission, but at this point in time the department cannot apprise us of what is happening to it.

Mr McGuire—The government's pre-election commitments did not go to implementing the Willett report. The Willett inquiry did not come in—

Senator JACINTA COLLINS—Perhaps not in full, but certainly some of its recommendations, such as combining the two authorities and the time line.

Mr McGuire—The Willett inquiry did not commence until after the election, so the government when in opposition could not have forecast that it would accept the Willett inquiry recommendations, because it had not even decided to do an inquiry by Mr Willett. Mr Willett did recommend on a number of matters, but his recommendations were very broad—much wider than the terms of reference that he was given by the government. The government has said it will look at this in the context of a Productivity Commission inquiry, but there has been no announcement at this stage as to when that inquiry will proceed.

Senator JACINTA COLLINS—Do you know the reasons for the delay?

Mr McGuire—No, I do not.

Mr Harrison—I would add that we have reduced the time frames upon which our inquiries are conducted, both in Customs and in the Anti-Dumping Authority, following the Willett

report. We are now required to operate in a time frame which is considerably shorter than any other comparable anti-dumping system around the world. In Customs, for example, we are required to reach a preliminary finding in 85 days of an inquiry beginning. There is no other country in the world that requires its investigating authority to operate in that tight a time frame.

Senator JACINTA COLLINS—Were those changes introduced by regulation, or is this an internal tightening up that has not been through any legislative or regulatory regime?

Mr Harrison—They were introduced by direction of the previous minister.

Senator WATSON—So far, you do not appear to have addressed the issue of the picture framer's case, where evidence was given that there is a loss of jobs in Australia because of a substantial government involvement in the pricing of a raw material product at substantially below world market prices. While the industry position perhaps goes a little too far, how can you satisfy me that we are not losing jobs because of that situation? It is true, and I agree with Dr Perkins, that China is moving towards a market economy, but that does not mean that in the process there may be substantial damage, as a result of these new amendments, to jobs in Australia.

Mr Harrison—That is a difficult question to answer, because that case is currently under investigation and I do not know what the results of that investigation will be, as they are still being analysed. I would suggest that picture frames come from a number of countries: for example, Thailand produces picture frames, as does China. If Thailand were to import the same raw materials at the same price from, say, Malaysia, we would not be able to look at that as a factor in determining whether Thailand were dumping into Australia. That is why we are reluctant to look at inputs, because it would put China in a very different position from another economy, such as Thailand's.

Senator WATSON—Essentially, Thailand is more a market economy than is China.

Mr Harrison—Yes, it is; but I am trying to say that we want to be careful not to impose standards upon China which we are not even prepared to require of capitalist or market economies. That is one of my concerns about looking at inputs.

Senator WATSON—The industry said they were quite prepared to accept inputs, provided that there was a free market. It is only in situations where some of the inputs come from government controlled operations and in situations where there is substantial reduction in the price that I have concern in relation to this legislation. We have been given examples of picture frames, glass, the Roundup type of case and a number of others. Somehow we have got to resolve this issue: if there is a substantial reduction in the price as a result of an input somewhere along the line and those products are therefore coming into Australia at prices substantially below those of other countries, such as Thailand, Taiwan et cetera, and are adversely affecting Australian industry, there is no point in having anti-dumping legislation. If you allow this, you might as well throw out all the effects of the motor car industry tariff reductions and that sort of thing. We have got to have a very strong anti-dumping arrangement in this country if the integrity of your tariffs et cetera is going to be meaningful.

Mr Harrison—The answer to that is a question of, first of all, our philosophy about anti-dumping and whether we are prepared to treat China or other economies in transition quite differently from anyone else, in a way which no other aspect of any anti-dumping regime anywhere in the world does—and by that I mean any WTO party to the anti-dumping agreement. We cannot look at the cost of inputs or how inputs are priced.

Senator WATSON—The chairman tells me we have got to stop, but I would like to progress this particular line, because it is a matter of some concern to me.

CHAIR—I only said to stop because we are not allowed to hold this inquiry once the Senate starts sitting in a couple of minutes and you have to chair the Senate at 12.30 p.m.

Senator JACINTA COLLINS—I have a couple of questions.

Senator WATSON—Can we adjourn then?

CHAIR—No, I will let Senator Collins ask a couple of questions.

Senator JACINTA COLLINS—One of the suggestions that has been raised with us this morning is that we should ask you how Customs would apply the adjustments that are proposed under this legislation in China, in relation to industries where it is identified that there is some price control rather than surrogacy.

Mr P. O'Connor—In response to that question, the point, I think, that industry were focusing on this morning in their submission to you was the circumstance whereby we go in country, identify a price control situation and then would be confronted with a dilemma in the eyes of industry and what we do to then gather all relevant information. That would be a decision which would need to be made and assessed at that particular time of the inquiry. The legislation, or proposed bill, does not require us to automatically have recourse to information gathered in a surrogate country. That is an option that we could adopt. If the inquiry involved, for example, product coming from China and Malaysia or Thailand then we could use information obtained from those two other countries as a reference point for the surrogate principle.

Other options, if there were no other country involved in the application, would be to look at cost details, to decide which of those factors are appropriate, perhaps to look to other sources of information regarding aspects of costs, and to apply those to mix and match, if you like—to adopt some of the Chinese pricing information or cost information but go to other sources for the remainder.

There is no clear guidance provided to the investigating authorities by the legislation. There is certainly a broad discretion there as to the ambit of the phrase 'all relevant information'.

Senator JACINTA COLLINS—It is that broad discretion, I think, which should be concerning for this committee. To date you have a fairly clear principle, which is surrogacy. Under this proposal we are talking about mix and match. Under what principles are you going to mix and match?

Mr P. O'Connor—To ensure that the comparison between the ascertained normal value and the export price is a fair and proper one as we are obliged to do by the World Trade Organisation anti-dumping agreement. That is the overriding principle.

Senator JACINTA COLLINS—I appreciate that. 'Fair' and 'proper' are pretty broad concepts though. We have argued them black and blue in workplace relations. You might want to extend it into this field. As I said, the current legislative regime has very clear principles of surrogacy. This proposal has a new regime, so to speak, in relation to, as you have said, mixing and matching different factors but no clear guidelines on what sort of principles would be applied.

Mr McGuire—Senator, I would like to make a comment there. The legislation currently has such a provision for countries other than countries in transition. Suppose, for example, we were doing a dumping inquiry involving, let us say, the United States of America, and for some reason we could not use the price in the domestic market or we did not have a price in

the domestic market. The exporter may not cooperate with us; we cannot construct a price. Then we are essentially left in what is known as 269TAC(6) which in essence is based on information available. That is what my colleague from Customs is suggesting would be the alternative if we found price control in China. We essentially move to best information available. Now that may be going to a surrogate country; it may be constructing a price within China based on market prices for raw materials and so forth; it may be using prices of other sellers in China whose prices are not controlled by government.

CHAIR—Senator Collins has asked, because of the time pressures that we are under, whether perhaps you could put that information in writing in the next couple of days so that we can look at it when we are considering our deliberations. I am aware of the time constraints. We cannot sit after 12.30 and I was actually supposed to be at another meeting five minutes ago.

Thank you very much for appearing today and thank you to all the other witnesses who have appeared before this inquiry.

Committee adjourned at 12.24 p.m.