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JOINT STANDING COMMITTEE ON TREATIES

Reference: Australia's relationship with the World Trade Organisation

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JOINT COMMITTEE ON TREATIES

Monday, 27 November 2000

Members: Mr Andrew Thomson *(Chair)*, Senators Bartlett, Coonan, Cooney, Ludwig, Mason, Schacht and Tchen and Mr Adams, Mr Baird, Mr Bartlett, Mr Byrne, Mrs Elson, Mr Hardgrave, Mrs De-Anne Kelly and Mr Wilkie

Senators and members in attendance: Senators Coonan, Ludwig and Mason and Mr Baird, Mrs Elson, Mr Andrew Thomson and Mr Wilkie

Terms of reference for the inquiry:

To inquire into and report on:

- opportunities for community involvement in developing Australia's negotiating positions on matters with the WTO;
- the transparency and accountability of WTO operations and decision making;
- the effectiveness of the WTO's dispute settlement procedures and the ease of access to these procedures;
- Australia's capacity to undertake WTO advocacy;
- the involvement of peak bodies, industry groups and external lawyers in conducting WTO disputes;
- the relationship between the WTO and regional economic arrangements;
- the relationship between WTO agreements and other multilateral agreements, including those on trade and related matters, and on environmental, human rights and labour standards; and
- the extent to which social, cultural and environmental considerations influence WTO priorities and decision making.

WITNESSES

Committee met at 10.04 a.m.

BOUWHUIS, Mr Stephen, Acting Principal Legal Officer, Office of International Law, Attorney-General's Department

JENNINGS, Mr Mark Brandon, Senior Adviser, Office of International Law, Attorney-General's Department

ZANKER, Mr Mark Andrew, Acting First Assistant Secretary, Office of International Law, Attorney-General's Department

DEADY, Mr Stephen, Acting First Assistant Secretary, Trade Negotiations Division, Department of Foreign Affairs and Trade

MADDEN, Ms Jane, Acting Assistant Secretary, Trade Policy Issues and Industrial Branch, Trade Negotiations Division, Department of Foreign Affairs and Trade

MORGAN, Mr David, Acting Assistant Secretary, Agricultural Branch, Trade Negotiations Division, Department of Foreign Affairs and Trade

SPENCER, Mr David, Deputy Secretary, Department of Foreign Affairs and Trade

CHAIR—I declare open this hearing of the Joint Standing Committee on Treaties. I welcome witnesses, members of the public and media to this second hearing into Australia's relationship with the World Trade Organisation. The committee is undertaking a number of hearings across Australia to hear evidence on the opportunities for community involvement in developing Australia's negotiating position for the WTO; the transparency and accountability of WTO operations and decisions; ways Australia can best represent our interests in the dispute resolution processes of the WTO; the relationship between the WTO and regional economic agreements; and how WTO agreements impact on the environment, human rights and labour standards.

To begin, I call representatives from the Department of Foreign Affairs and Trade and the Attorney-General's Department. The committee does not require you to give evidence under oath but I advise you that the hearings are legal proceedings of parliament and warrant the same respect as proceedings of the House and the Senate. The giving of false or misleading evidence is a serious matter and may be regarded as a contempt of parliament. I should ask each of the witnesses at the table—starting with Mr Spencer—if they would wish to make some introductory remarks before we proceed to questions.

Mr Spencer—Thank you very much. We very much welcome the opportunity to appear before you again. Personally, I have had two opportunities to meet with the committee: the informal briefing here in Parliament House on 4 September and I also had the privilege to participate in the roundtable meeting that you organised in Melbourne on 12 September. I note that you have received over 300 submissions. We think that this is a very good indication of just how important the WTO and the community's perceptions of trade, trade liberalisation and trade rules are. I have not had an opportunity to look at each and every one of the 300 submissions but our department has, although not in great depth at this stage. I thought that it might be

useful if I drew to the committee's attention that there were a number of what we would regard as factual errors in some of the submissions, particularly regarding the WTO panellists in terms of codes of conduct, et cetera. I think that there is, in fact, a code of conduct which the WTO has for panellists and the appellate body.

CHAIR—Thank you. I am sure that we would be assisted if you could point out any factual errors. That would be very helpful.

Mr Spencer—Good. Thank you very much. Other than that, I would be prepared to just go through with the questions.

CHAIR—Thank you, Mr Spencer. Is it convenient for you to do that now—to point out the errors—or would you prefer to do that later on? I do not mind.

Mr Spencer—What we might do is write something or draw it to the attention of the secretariat.

CHAIR—If that is a convenient course. Thank you. Does anyone else want to make an opening statement?

Mr Zanker—I might just say that the Office of International Law in the Attorney-General's Department deals with all aspects of international law. Trade is a small part of our brief. We would not have anything particular to say by way of opening statement other than to say that we welcome the opportunity to participate in the deliberations this morning.

CHAIR—Just for the purposes of opening, would you care to make some statement about how you see yourself interrelating with DFAT on these issues?

Mr Zanker—We have a fairly productive working relationship, particularly on some of the more sensitive cases that have come up and we have been building on that. Both Mark Jennings and Stephen Bouwhuis recently participated in some litigation in Geneva. So I would say that the relationship that we have is pretty good.

CHAIR—I was really looking more particularly at how it operates. Who initiates what?

Mr Zanker—The Department of Foreign Affairs and Trade is the lead agency in relation to WTO matters. The Trade Negotiations Division deals with that. So they manage all aspects of the cases, with input from interested agencies and, of course, we are one of those.

CHAIR—Are there any other witnesses who would like to make some opening gambit or shall we go to questions? We will move to questions.

Mr ANDREW THOMSON—I was going to ask one of your number about the issue raised first in the *Australian*'s editorial this morning about the potential danger for Australia in this ASEAN plus 3 semiformal block of nations evolving into something more formal. I think the editorial had it growing rules of its own or something to rival the WTO. But, in a larger context, the threat to the integrity of the rules posed by the multilateral environmental agreements is

something that is obviously the hottest topic around this committee and in other parts of parliament. So do you have any views on, first of all, the ASEAN matter and, secondly, was the success in The Hague over the weekend good for the WTO? In the sense of having fought off the EU in one area, is this going to help us fight them off when they try to wreck the WTO again?

Mr Spencer—If I can answer that question, firstly, by saying that I am not aware of the details of exactly what has been agreed between ASEAN and the three north Asian countries with whom it was having a dialogue over the weekend. It is not clear to me at this stage. We will receive some telegrams today. I have not had an opportunity to read them this morning.

It is not clear to me whether what has been agreed is for ASEAN to have a bureaucratic investigation or examination of the potential for some sort of free trade agreement with the north Asian countries or whether this has been agreed between ASEAN and the three. It would be quite consistent with what is happening in the region that ASEAN has been looking at the potential for some form of free trade agreement between us, CER and ASEAN. You have member states of ASEAN, in particular Singapore, looking at free trade agreements with a number of countries. They have already concluded an agreement with New Zealand and an agreement to negotiate an FTA was announced by Prime Ministers Howard and Goh last week. The Singaporeans have also announced that they are negotiating with Canada, with Japan and with the United States. So it is just not clear to me exactly what has been reached on that.

The question of what it means for the WTO—because it is all well down the track—is hard to say. But if you are referring to the general question of what danger does this proliferation of interest and negotiation in free trade agreements and customs union mean for the WTO, that is a very interesting subject and one that is being debated through the capitals of the world and in Geneva. I think that, as you well know, there is a provision in the WTO that provides for the negotiations, for FTAs and customs union, and it was always perceived that if those agreements do not divert trade and if they do not raise barriers to others, then those free trade unions and customs unions can be very consistent with the rules of the WTO.

We have seen in the last couple of years a proliferation of these agreements, some of which are questionable in terms of their consistency with the rules to which I refer. There has been a very substantial debate in Geneva as to what are the implications in the longer term if people continue to do these FTAs. You can make a good argument that the very process of entering into free trade negotiations will be a very positive development in as much as it will spur on others to liberalise trade. You can also make the other argument that these agreements are not going to be helpful for a multilateral trade system because you will get a proliferation of preferential trading agreements around the world. That is a debate in which there are various views, and this is continuing.

On the question of what the implications are of the outcome of the negotiations in the Hague on the climate change convention for the WTO, I just do not know how to answer that at this stage. It does not strike me at this stage that there are any immediate implications for the WTO. I might make the observation that it was about a year ago that we came back from Seattle in a similar case where a multilateral trade negotiation had not succeeded in its objective. I think it throws up just how difficult some of these negotiations are multilaterally now, trying to move forward in some of these very complex cases of trade and the environment.

Mr ANDREW THOMSON—Leading on from that, where there are other agreements between nations—bilateral ones, I suppose—what is the legal position in relation to paramountcy in the sense that if a country says, 'We are in the WTO' and signs up to that and then at a later time signs another agreement inconsistent with that? Surely the latter one is paramount? What I was really coming to was, for example, what if there were some environmental agreements which, irrespective of whatever sophistry people employ, seem plainly inconsistent with the WTO and they seek to apply them to non-consenting third parties and all sorts of villainy like that? If you have a bilateral FTA later on after, say, the biosafety protocol—if you are in that—and later you sign a free trade agreement between yourself and another country, would that be paramount to any previous agreements? What priority do the obligations take?

Mr Spencer—The WTO clearly obliges all members to respect those rules. One of the major rules is that you do not discriminate. Article 1 of the old GATT—I think it is Article I of the GATT now—says that you do not discriminate. It then has a number of other exceptions to the rule that would provide for you to discriminate. And one very clear case is developing country preferences. Australia was the first country—back in the late sixties, I think it was—to make the decision to give preferences to certain developing countries. That is a classic form of an exception to the rule. Another exception to the rule is in Article XXIV, which deals with the provisions of customs union and free trade agreements.

It says that, provided you comply with the provisions of Article XXIV, you can then, as we did with New Zealand, discriminate against third countries; we are going to give zero duty treatment to New Zealand and they will do the same. You are asking a different question, I think, from that simple one about what the relationship is between Article XXIV, which deals with free trade agreements and customs unions, and article 1, which says that you cannot discriminate. You are asking another question as to whether, if you have two agreements simultaneously—one such as climate change or biosafety, or some other agreement on environment—and you have the WTO, nothing that is said, no agreement that has been negotiated now, says that a member here can unilaterally absolve itself from the rights and obligations that it has negotiated here. So when, for example, countries go off and do multilateral environment agreements, there is nothing in those agreements that absolves that country from living up to its obligations in the WTO.

Mr ANDREW THOMSON—They are not that obvious. The greens and so on are much sneakier than that. You know the EU. They put in language that is terribly subtle. You deal with this every day. For example, they say, 'You have to respect other international obligations.' It is deliberately vague. Is there any precedent for one obligation being clearly held paramount to another? Is that not yet in the agreements?

Mr Spencer—Not as far as I am aware. It does not matter how sneaky one is in terms of the nuances of language that are used in these international agreements; by going into one, you do not absolve yourself, because there is nothing in that agreement that absolves you from a provision here. And there has not been a case of which we are aware—and I am pretty confident about this—where the test has been to say, 'Which of these agreements is paramount?' We have said to you—and the government has said quite clearly—that regardless of what we do in environment agreements we will enforce, we will live up to all our obligations into the WTO and we will use all our rights in the WTO to protect Australia's trade interests.

CHAIR—That is interesting.

Mr Wilkie—Just out of curiosity, obviously, we are an active participant in the dispute resolution process. Can you please tell us how you go about initiating a dispute and, following on from that, what wins and losses we have had in following that process?

Mr Spencer—I will address that in terms of how we manage disputes or dispute cases by breaking it into two types of cases and then I will make some subdivisions. There are certain things that we do before an issue gets into a formal dispute case. In that context, there will be ones where we are on the offence; that is, we are thinking of bringing a case against someone else, and there will be other cases where we might be attacked by someone else. In the pre-dispute era, as opposed to once the dispute formally is initiated, in relation to actions where we are on the offensive, where we believe there is a prima facie case that a country has breached an obligation that it has under the WTO and hence we are thinking of complaining about it, we have a work program in our department which is looking at cases that have either been drawn to our attention by industry, by individuals or by companies that believe they are being treated unfairly elsewhere. We have a program looking into the future for potential cases. We will delegate someone from within the department to be the legal expert on that case. We will ask he or she or a couple of people to do some legal analysis on those particular issues. Depending on these discussions and the legal analysis, we will put an issues paper together. We will then convene a task force to talk with interested departments as to what that issue paper throws up and what the pros and cons are of initiating some form of dispute.

If it is then decided that we should recommend to the government that we take some affirmative action, we would then go to the minister and seek his endorsement for a line of action. In that context, I do not want to disclose too many cases that we are working on at the present time because I do not want to telegraph to other countries just what we are working on. But one classic example at the present time is sugar. We are doing some work with the sugar industry on the US sugar regime with a view to determining whether there is a case that we could take to the WTO. Another case is European Union subsidies on fruits and vegetables. That is another case where there has been long-term concern shared by not only Australian canned fruit exporters but also canned fruit exporters in the US and Chile about exactly how the EU regime works.

We are looking at the projected expiry of a thing called the peace clause. Unless there is some negotiation to continue it, in 2003 under the WTO the peace clause will expire. We are looking at the legal implications of what that will do for us with certain countries in terms of certain markets. They are the sorts of things we are looking at. There will then be other ad hoc cases that will come up where a country will take action and all of a sudden Australian interests will say that that is inconsistent and we should do something. That is how we work in terms of the offensive ones, if I can call them that.

There are then defensive issues where we get some indication that either a federal government action or a state government action might be something that another country is concerned about as to what is likely to be the policy. This is where we will be proactive in talking to the federal government agency or the state government as to what the concerns of the other country are to ensure that, as far as possible, we do not get into a dispute. Once you get into a dispute, the potential for resolving it is less because of the formalisation of a dispute and

expectations. Once a dispute gets going into a formal panel, it is harder to negotiate a settlement. We would always argue that it is better to try to head something off at the pass than get into a fight. So that is what we would do at the pre-dispute stage.

Once a formal dispute is taken, we would get a task force together. A group within DFAT would manage it. We would have legal people involved. As to whether there is a country manager because it deals with a particular country depends on the circumstances. We would then involve all the relevant Commonwealth agencies such as our colleagues in the Attorney-General's Department. If it is an agricultural dispute, we would almost certainly have someone from AFFA, and it would depend on the situation as to which part of AFFA they would come from. It could be ABARE. It could be the quarantine people. It could be the international people. It could be one of the commodity specialists. So we would have people from there. If it involved one of the states or territories, we would certainly invite them to be on the task force. If it involved an industry, a company or a product with a number of companies producing that product or service, we would invite them to be on the task force as well.

To a certain extent, it is horses for courses as to who exactly is on the task force. The Howe dispute had a relatively small group of players—that is, DFAT, Attorney-General's, Industry, Science and Resources plus the company concerned. At various stages we talked to many other people, such as state governments. We talked to people who might be potentially affected by possible retaliation. So it will differ. With the salmon case, for the record let me tell you who was involved. At the Commonwealth level, we had DFAT, AFFA, PM&C, Attorney-General's and the Australian Government Solicitor. It also included the Tasmanian salmon industry, the Victorian trout industry, the recreational fishing organisation called Recfish, the South Australian tuna industry, the Western Australian lobster industry, the South Australian pilchards industry, the pet industry and the Victorian and Tasmanian governments. So it will differ. It is horses for courses.

Mr Wilkie—Turning to the second part of that question, how many successes do you think we have had and how many failures have we had?

Mr Spencer—I think we have been involved in 16 cases. I will ask Mr Deady to summarise the cases.

Mr Deady—Overall, we have been involved in around 20 cases, depending on how you count them because some of them count more than once. A key case we have been defending is the salmon case taken by Canada. A case was also taken on salmon by the United States which reached the consultation stage. As Mr Spencer just mentioned, the Howe Leather case was the other major case taken against us. On the cases we have taken as a complainant, we took a case in relation to export subsidies against Hungary and a case against quantitative restrictions maintained by India. Both of those cases were resolved satisfactorily for Australia. Neither of them went right through the process. They were resolved prior to the whole panel process.

Another case we have been an active complainant in is the case taken against Korea's import regime in relation to beef. The panel findings in that case were very favourable for Australia. Korea appealed only two aspects of that case. That appeal process is just about complete. We should get the result of that appeal in the first or second week of December. Another ongoing case is the case taken against the United States safeguard on lamb. There has been an interim

report and there has been some press on that. Again, that is a favourable outcome for Australia, but we cannot go any further than that. That one still has a way to run. We will get the final panel report probably around about Christmas. We expect, although we do not know yet, that the United States will appeal that. So it will run into the new year.

The other element of cases—and this is where we get into large numbers—is that we have been very active as a third party in a number of cases. The process allows us to be involved as a third party in cases. We have been very active in that regard. For systemic reasons, we would certainly enter a case if we thought it was a major issue. For example, in relation to most of the subsidies agreements issues, even if they are not directly related to Australia, we would be involved. In fact, there is one at the moment. Canada has taken a case against the United States on lumber subsidies. We do not have a direct commercial interest there but, because of the nature of that case and because subsidies agreements are so important to us, we get involved in that.

Directly, commercially we have also been active in a number of cases. New Zealand and the United States took a case against Canada Dairy. That was important to our dairy industry. We were a third party there. In relation to the shrimp-turtle case, we again got a good outcome there. There were a couple of cases on intellectual property where we were third parties. We got good results there. In many cases, the third party process is an effective way of using the resources we have. It is obviously not as full blown as a complaint. We get to receive the submissions of the complaining and defending parties. We get to participate in the first panel meeting. It also gives us the right to become a third party if it goes to appeal. Again, action as a third party can be much more intensive with an appeal process where you actually get to sit in on the appeal. You can answer any of the questions. You can intervene in that process as the appellate body is asking questions of the defendant and the complainant. You can make a significant input. We were very active in the appeal processes in a couple of cases, such as the shrimp-turtle case and the beef hormones case. Again, the outcomes of both of those cases reflected some of that input.

Mr Wilkie—Do you think we should concentrate on being a third party to disputes where possible?

Mr Spencer—I think it will depend very much on the circumstances, in the sense that if there is a clearly egregious case where Australian interests are affected by someone's action—by the Americans on lamb—we do not want to be a third party to a complaint by New Zealand against the US, because we are the principal supplier; we want to be involved. I think it will depend upon certain circumstances, but mostly it will be determined on what our commercial interest in it is. If we are a principal supplier of the product in the market concerned, that will be a very important issue in determining whether we should be in there as a complainant or whether we should be a third party.

CHAIR—Could you clarify one point for me? Of the 20 cases, were there also others in which Australia has had a role in negotiating but where it has not reached the stage of being a decided case?

Mr Deady—I think that does get to the question of how you count some of these things. The salmon case taken by the United States, for example, never reached the panel stage, it reached

the consultation stage. That has followed our settlement of the salmon case with Canada. The United States has now signed off on that case. So that is one.

CHAIR—If you were to take a run at a comprehensive number, if there had been 20 cases are there an additional number where Australia has been involved in the consultation or negotiation phase?

Mr Deady—There have been cases where we would have been involved in consultation. In relation to most of them where we take the decision to be involved in the consultation phase, I suspect that, if they have proceeded to a panel, then we have certainly continued as a third party.

CHAIR—Could I just ask you to check that so that we have a full picture of Australia's involvement numerically.

Mr Deady—Yes, I can check that.

Mr BAIRD—My question is broader. The WTO is one of the organisations that I hear people in my electorate and elsewhere blaming constantly for the woes of Australia. They look back to the halcyon days when we had protected industries, when we were not, in their terms, flooded with cheap Asian imports and so on, when cars were manufactured under protection and we had a range of protection within Australia which ensured that our manufacturing industry was able to thrive. A lot of these people see that manufacturing is in a state of demise as we move towards more of a service sector. I am not saying that I agree with these comments, but this is a fairly common perception, especially by small manufacturers who are having trouble competing with Asian imports in particular. What do we say to them in terms of the benefits of the WTO? I see some of the examples here. Where have we travelled so significantly in terms of days of full employment, days of manufacturing and what are the principal benefits that you believe the WTO has brought to Australia?

Mr Spencer—I think there are two issues here. One is that Australia is a trading nation. Whilst agriculture, for example, only represents something like three per cent to four per cent of Australia's GDP, and hence the common layman's understanding would probably be that agriculture is pretty small in the overall scheme of things, the reality is that agriculture constitutes nearly a third of our exports. Without those exports we would not have the jobs, the income and the standards of living we have now. The first thing that one has to consider is that Australia is a trading nation. Hence, on the one hand, while you may have a lot of people who are interested in keeping imports out, on the other hand you have a lot of vested interests in ensuring that we have on the other side of our borders as liberal a regime as possible so we can export our products.

That has been brought home in terms of Tasmania. I am sure that many people in Tasmania will think that the challenge by Canada to our legitimate quarantine protection for salmon was a travesty and that it is disgusting that the Canadians can use the WTO to try to force us to change our quarantine measures. At the end of the day, we argue that our quarantine protection is still sacrosanct and so we have not lost anything from that case. But as we have been trying to point out to the Tasmanian government, you cannot just look at these issues as discrete little import problems. We have the same problems in trying to looking after Tasmanian apples, Tasmanian wool and Tasmanian opiates, where markets to those products remain closed. Through negotia-

tions set up under the WTO, we think we should always be looking for the most equitable result.

The second element, very briefly, to what you are arguing is: the implication of what some in your electorate are saying is that the WTO has forced Australia to reduce its protectionism; the WTO has forced the Australian government to reduce its tariffs on those manufactured products that you talk about. The reality is that the government of the day in Australia took the decision to reduce tariffs on those products. If you investigate the number of times where the Australian government has gone in a negotiation under the WTO and said, 'This is what we are prepared to do to reduce our tariffs,' you will find that it is minimal. In the last round of negotiations we got payment, in effect, for decisions to reduce tariffs that had been made before the negotiations had even started.

So the issue is not so much that the WTO is forcing the Australian government to reduce tariffs, it is that the government of the day has decided for economic reasons that it is in Australia's interests to reduce the costs of inputs; that for the benefit of consumers, competition policy and all of the other reasons it believes that it is in Australia's economic and other interests to reduce tariffs. This portrayal of the WTO as the villain for everything that happens now is quite unfair. It is certainly not the one forcing on us different quarantine regulations. It is not telling us how we should write our GM labelling regulations. It is not a government that is telling us we have to reduce our tariffs. It might suit us in a negotiation to bind those tariffs against increases once a decision has been made. But if you look back in history, the number of cases, particularly in the last decade, where we have gone into a negotiation and said, 'We will reduce tariffs in future if you do this,' could be counted on one hand. Most of them have been decisions that the government has taken quite independently of the WTO.

Senator LUDWIG—Your excellent briefing provides some information, but in terms of those—and I will see if I can get it in the concise format—that are within the WTO, there is, as your submission says, a very reduced level of tariff protection, and then there are 30 members who are seeking to be part of the WTO, and then there are a number of countries which stand outside those 30 and the WTO. Is there any analysis being done in relation to our trading partners, whether it be those within the first block, the WTO, which are not faced with significant tariff barriers, those within the 30 that are or are not faced with tariff barriers of some description and those areas outside in terms of the percentage or the range of our export to those countries?

In other words, has anyone determined the level in those countries outside the WTO that we trade with as against those that are within the WTO, with no tariff barriers, to get a measure of how well the WTO is servicing our export industries? Of course, the question that follows from that is: if there is a significant amount of work to be done in relation to non-member countries of the WTO, what is being done to encourage them to join the WTO or to undertake separate negotiations to reduce tariff barriers? That is where small companies and the like come across tariff barriers and complain about them. This is obviously not within WTO member countries but external to them. You might want to take that on notice, unless you have a short answer.

Mr Spencer—Can I give a quick answer to that? The major countries in terms of our trading interests that are not currently members of the WTO are China, Taiwan, Russia, Vietnam and Saudi Arabia, and there might be one or two other Middle Eastern countries. China and Taiwan

are both very significant trading partners of ours. Both are in the top half dozen export markets and both are in the final stages of negotiating entry into the WTO. If everything goes well, those two will come into the WTO, and we have negotiated deals with both of them in terms of their access negotiations to the WTO—there is still a bit of fine legal work that needs to be resolved in respect of both of them but we have substantively reached agreement with Taiwan and China.

In relation to Russia, our trade interests now have declined dramatically since the breakdown of the Soviet Union and our exports and our whole commercial relationship with Russia has declined substantially. In relation to the Middle East and Saudi Arabia, we have some major interests and we have negotiated a deal with them in the context of them joining the WTO. Apart from those four countries—and I will check it—I do not think there are any other significant trading partners outside the WTO. Ninety per cent of our exports go to countries that are either in the WTO or currently negotiating for accession. I would not be surprised if it is something higher than 90 per cent.

Senator LUDWIG—Is that 90 per cent of our gross exports in dollar terms or in volume terms?

Mr Spencer—Dollar terms. Sorry, 90 per cent of our exports are to member states of the WTO.

Senator LUDWIG—Yes, that is as I understood it. I would not mind having a look at some of the statistics that I asked for and some of that analysis as to whether or not you have got that. I think that helps in explaining the direction we are going, by and large. You also mentioned the intergovernmental committee to the WTO as a means of promoting the work of the WTO. As I understand it from your briefing, the WTO is a consensus based member nation and does not see its role as a significant public information service to defend itself because member nations should be undertaking that. You can correct me if I am wrong, but is Australia—or your department—looking at participating or working towards setting up an intergovernmental committee to deal with the criticism that the WTO gets—whether fairly or unfairly?

Mr Spencer—I think in the lead-up to Seattle and most assuredly in the post-Seattle period the organisation as such—that is, the WT0 itself—does realise that it has to do much more to win the hearts and minds of communities around the world that what it is doing is in their interests. So whilst there may have been an occasion in the past to expect the member states to do this publicity and this argumentation in their own countries, I think the WTO and most other international organisations realise now that they have to get out there and convince communities that what they are doing is in their interests. So we have seen the WTO, as a secretariat—a pretty small secretariat; when you compare the bureaucracy of the WTO to some other bureaucracies of international organisations, they are still a very lean operation—now trying to participate in outreach exercises by talking to people from environmental organisations, talking—

Senator LUDWIG—I do not mean to cut you off, but I understand that. This is in your briefing. The question is more concise than that: what work is Australia doing to participate in an intergovernmental committee to deal with the WTO criticisms? Your briefing paper suggests that there is one in train, although it may not be as high as that. My question then is: are you

pushing for it? Have you spoken to other countries about establishing an intergovernmental committee?

Mr Spencer—I am just—

Senator LUDWIG—Do you think I am reading it wrongly? I might be. If you then say that I am reading it wrongly, why aren't we doing that?

Mr Spencer—I am not quite sure about this intergovernmental committee you are talking about. Certainly, the councils of the WTO are discussing this issue of what we should do about getting broader support for the work that they are doing and we are actively sitting on the councils of the WTO in this whole question of what more we can be doing in the WTO in terms of transparency, outreach and communications. I would like to see the reference, if I can.

Senator LUDWIG—While I find that, there is another question you might like to deal with. You talk about trade and investment on page 7, which reads, 'There is no comprehensive multilateral investment framework ...' and it goes on from there. What stage is that working group up to and what is our role in that working group?

Mr Spencer—There has been an ongoing agenda item in the WTO for some years now dealing with the broad issue of trade and investment. You will recall that there were some negotiations in an OECD context on having a multilateral agreement on investment. They failed and in Seattle and in the lead-up to Seattle last year the European Union had suggested that in a future round of negotiations the issue of trade and investment be on the agenda for negotiation. There has been a long-held opposition, principally amongst developing countries, to the question of negotiating any new instruments, rules, disciplines or whatever on the question of foreign direct investment or portfolio investment.

All I can say is that, whilst the general discussion has continued over the past 12 months in the WTO on this general issue of the interlinkage between trade and investment, there has been no meeting of minds, no significant narrowing of the gaps, between on the one hand the Europeans who want to have negotiations on investment as part of a new round and developing countries, on the other hand, who are saying, 'Absolutely no. We are prepared to continue to study the issue, but we are not prepared to say now that we will negotiate new rules.'

Senator LUDWIG—So when a constituent asks me about the multilateral investment agreement, how shall I answer them? Shall I say that it has gone away?

Mr Spencer—It is dead.

Senator LUDWIG—That is what I said, but I did not know whether I should say that again.

Mr Spencer—Dead. The Europeans would like to resurrect it, but it is dead.

Mr Wilkie—It has been buried, I suppose.

Senator LUDWIG—On page 12 it talks about the Industry Commission and the Uruguay agreement, and it goes on to specify some figures. Is there any update on those figures? They are for 1994. A range of constituents always raise the question about the cost benefit. Of course, they are looking from perhaps a more narrow perspective in some respects—what their business is now confronting in terms of one of those countries that deals with China or Taiwan and no tariff barrier. Are there more up-to-date figures about exactly the benefit to Australian exports at least since 1994?

Mr Spencer—No.

Senator LUDWIG—Is there any way of updating that, or is the cost of that prohibitive?

Mr Spencer—I think it would be very difficult to update it. I do not think that it has been on the agenda of Treasury, which has the prime responsibility for commissioning the Productivity Commission to do work, and I have never heard the Productivity Commission mentioning it as something on which they would like to do further work.

Senator LUDWIG—Disappointing, really, isn't it?

Mr Spencer—In the total scheme of things, I just wonder how it would be possible now to reach back into the past with everything that has gone on since then—financial crises and the change in exchange rates, et cetera—to go back into the past and to do that analysis. I have never spoken to the analysts to see how they could do it. But, as I say, there has been no indication from Treasury, who is the principal director of the work of the Productivity Commission, or the Productivity Commission themselves to go back and do any work on it.

Senator LUDWIG—I might come back to that. On page 7 you then talk about some possible compromise proposals such as the establishment of a forum outside the WTO, which is under *'Trade and Labour'*, third dot point. Has that been progressed?

Mr Spencer—The issue continues to be under active consideration.

Senator LUDWIG—Is that a euphemism?

Mr Spencer—No, I am trying to be dead serious and to give you an accurate picture of what has been discussed. It is informal discussion, although whenever major seminars or conferences take place, this is a very hot topic as to exactly what you should do about the whole implications for globalisation and labour rights and standards, et cetera.

Senator LUDWIG—Yes, I am acutely aware of that. I do not mean to be rude—

Mr Spencer—In the WTO, I think there are a lot of private discussions going on which are trying to broker the differences between, on the one hand, again, the Europeans and the Americans who would like to get some formalised discussion going somewhere—not necessarily exclusively in the WTO but some general discussion of a much more disciplined nature than what we are doing now—and, on the other hand, the developing countries who are still very opposed to the idea of introducing the subject in the WTO. All I can say is that there are various ideas kicking around as to what sort of multidisciplined study could be done

involving the WTO, but it might involve other organisations like the World Bank, the UN or the ILO, and to have this agenda discussed in either a very narrow way or a much broader way.

Senator LUDWIG—I am wondering in the event that this is the last question—thank you for the time—if you could keep that on your plate, so to speak, and give this committee an update in February or March or at some point as to the time lines or how that issue is being progressed?

Mr Spencer—Certainly, we would be pleased to do so. It is critical to the launch of a new round. Australia wants a new round to be launched where we are opposed ourselves to introducing labour into the WTO, but we are not necessarily opposed to doing something about looking at the implications of globalisation and its impact on labour in a broader sense.

Senator LUDWIG—And so as not to make you search your briefing again, if I can rephrase the question in relation to the intergovernmental committee: can you put that on your plate and tell us in the same sort of time frame whether or not there is the intention to set up subcommittees as part of the WTO, or what work Australia is doing to ensure that the dissemination of information about the WTO is in the public domain outside of what DFAT do in terms of having public seminars and the usual ways that you would communicate? What I am more interested in is the member countries having the responsibility to go out there and explain the WTO operations collectively. From my perspective, I think that it has more force as a collective rather than individual governments of individual countries saying, 'It is a good thing.' I think that that expression can be a bit well worn; whereas, if you have across-the-board committees all saying that the WTO is more successful, it raises its profile, perhaps. I do not know—I am open to the suggestion; but I was curious to know what work was being done other than just the usual round of seminars we seem to throw ourselves into when we need to raise public information.

Mr Spencer—I will be very happy to brief you in the future, yes.

Senator LUDWIG—Thank you.

Senator MASON—Senator Ludwig and Mr Baird raised to me perhaps the most fascinating issue of all, and that is not the intricacies of the operation of the WTO but something much more fundamental. There are a lot of cynics around who reckon these days that ideas and philosophies and principles do not matter in politics; it is all about good administration. The first sentence in section 1 of your full brief is, 'Open markets remain crucial to Australian and global economic prosperity.' That is the ideological assumption underpinning all of this. For those cynics who believe ideas do not matter, I can tell you that 15 years ago I was a public servant in Canberra and to have said that would have been anathema. Twenty years ago—until Milton Friedman, 'free to choose' and all of that—that was absolutely outside the ballpark.

I endorse what you say, but it is remarkable the degree to which that philosophy has gained bipartisan support and credibility within the Public Service, which is usually seen to be a bit soft Left. To have the pillar of classical liberalism adopted in a bipartisan sense right throughout the West—for those people who think ideas do not matter, that politics does not matter, that debate does not matter, that it is all a waste of time—that would be the biggest intellectual and ideological win, no offence, for the Right, or at least for liberal democracy, ever. You do not need to comment, but I just find the fact that that is written like that—you simply would not have seen

that in the 1970s at all. I just find it remarkable—although it is true, isn't it? In my lifetime, when I was at university, none of my lecturers would ever have said that like that, ever, and yet today it is accepted nearly universally. It is absolutely remarkable.

I do not expect you to say anything in response. I say it as an editorial comment. I say to the cynics out there who say political debate and the battle of ideas do not matter: read the first sentence of your report. Moreover, they should read something that Senator Ludwig referred to, which is the second last dot point on page 4. It says:

> At the same time there is a strong view among most WTO Members that as an intergovernmental organisation, the primary responsibility for discussing the benefits of open markets and a rules-based multilateral trade system, and for consultations with 'civil society' on WTO issues, rests with Members themselves.

In other words, better than an ideological win, member countries are expected to protect that principle. I do not know. People here may not be shocked. In my lifetime, from when I went to university, that is a huge ideological win.

CHAIR—Was there a question you asked?

Senator MASON—Let me get to the question. That is the general principle. I just thought it appropriate that—

CHAIR—It was preliminary comment, yes.

Senator MASON—It was. It is appropriate sometimes that the Right stand up for itself and show that in fact it led the way. I make no apologies for that. I will ask specific questions. You say in there that most decisions are covered by consensus within the apparatus of the WTO. What ones are not?

Mr Spencer—There is provision for voting on budgetary matters and whilst, as far as I am aware, we have never resorted to voting on those very restricted areas where voting is sort of prescribed in the rules, I cannot remember any cases where it has been. When you say most, I would say almost all.

CHAIR—Can you just remind us on that. Does everyone have an equal vote? Are all the members' votes equal or is there any weighting? I just cannot recall.

Mr Spencer—Can I quote from article IX of the Marrakesh agreement. Provision 1 of article IX says that:

> The WTO shall continue the practice of decision-making by consensus followed under GATT 1947.[1]. Except as otherwise provided, where a decision cannot be arrived at by consensus, the matter at issue shall be decided by voting.

As I say—and it goes on to talk about it there—the question of voting is something that people are very loath to even contemplate. It last arose in a substantive sense when there was an impasse about the successor as the head of the WTO and we had these two candidates who were running neck and neck with considerable support from within the organisation, both Mr Moore from New Zealand and Dr Supachai from Thailand. A number of people at that stage said, 'Let us resolve it by voting.' This was resisted because of the concern that the precedent of having a

vote would just detract so substantially from the consensus approach that we have had in the past.

Senator MASON—Thank you, that was terrific.

CHAIR—The principle is that all members have equal votes, don't they?

Mr Spencer—Yes.

CHAIR—Just a couple of questions and then I will—

Senator MASON—I had not quite finished.

CHAIR—I am so sorry.

Senator MASON—No, I had nearly finished. I want to ask one last question.

Mr Spencer—Can I just clarify one point? On page 33 there are the four exceptions to consensus making.

Senator MASON—Yes, thank you.

Mr Spencer—That just elaborates a little more on what I said.

Senator MASON—Mr Spencer, just one other point. In reference to trade and labour, you say in your submission:

Some developed countries have sought to place trade and labour issues on the WTO agenda for negotiations ...

However, some people see this as a disguised attempt at protectionism. What countries have sought to do that and what have you done to dissuade them from doing that?

Mr Spencer—The countries which are most in favour of putting labour on the agenda are the United States and the European Union. In the middle of the Seattle negotiations in November last year, on or about the second or third day of the discussions, President Clinton came to Seattle and made a speech in front of many of the ministers who were attending the conference and in it made it very clear that what he did have in mind was that, in certain circumstances, countries should have the right to take trade sanctions against those that had not met all that the United States would regard as acceptable labour standards. This caused, at that very point in time, a very strong reaction from developing countries who interpreted it exactly the way you said: that it was simply going to be a disguised form of protectionism. That had a galvanising impact insofar as the developing countries as a group then just refused point blank to negotiate anything solely in the WTO.

I think there are some developing countries who are prepared to see that the impact of globalisation on certain communities—the whole question of labour issues—is a subject worthy of very specific and dedicated consideration globally. That is where we are in terms of trying to

work out how you can get an acceptable discussion going. But as far as the developing countries are concerned, they are not going to have this done in the WTO precincts.

Senator MASON—I have two last points, Madam Chair. It is interesting because so many of these people who protest against globalisation claim to be doing it on behalf of the developing countries and so forth, which is generally rubbish. Secondly, to end where I commenced, it is funny that Nixon in 1971 said we are all Keynesians now. Now it seems 30 years later we are all free marketeers. Thank you.

CHAIR—Have you finished, Senator Mason?

Senator MASON—Yes.

CHAIR—Thank you. Mr Thomson wants to take up another point. Could I just clarify: what is Australia's annual contribution to the WTO budget?

Mr Spencer—It appears as though we will have to get back on that, Madam Chair.

CHAIR—That is fine. The question I wanted to pursue very briefly relates to one of the terms of reference that we have to consider, which is ways that Australia can best represent our interests in the dispute resolution processes of the WTO. Can you tell me whether, in previous WTO disputes, the government has engaged any private lawyers or specialist advisers and, if so, in which cases and in what capacities? The second part of the question is: what are the advantages and disadvantages that each of the people at the table might see in being able to use the private professions, be it accountants, lawyers or whatever, as an additional or other resource?

Mr Spencer—The answer to the first question, Madam Chair, is that Australia has not engaged any outside lawyers in any of the cases that it has been involved in. We are aware that there have been cases where the industry with whom we were liaising—that is, the Australian industry with whom we were liaising—had employed lawyers/consultants/PR people. In relation to the lamb dispute, the meat and livestock industry got advice in the United States from a Washington lawyer. There is another case that I am aware of which for privacy reasons, I am not quite sure I want to say too much about. I am aware of a case of an Australian company which has engaged US legal advice as well. You asked about the pros and cons. Was it in that context?

CHAIR—Yes—whether you would see any advantage to augmenting the department's resources and, indeed, the resources of the other agencies in being able to access, if budgetary and other matters permitted, outside assistance, in what capacity, and how it would work.

Mr Spencer—The Department of Foreign Affairs is not closed minded to the question of whether there may be circumstances with a particular case where we would wish to engage outside assistance. If we had a case where we wanted to do some investigation on a particular dispute, I could very well envisage that we could employ a firm of consultants with legal training—I do not want to say lawyers—to give us some specific help in understanding better the way in which a particular offending measure worked. For example, I could well understand

that if we wanted to do an investigation against a US agricultural measure we may well engage some specialist advice.

In terms of engaging outside lawyers in a narrow sense of what I think you are really after in Australia, we have not yet been convinced that we did not have the resources within the department and within the Commonwealth to successfully defend or prosecute a case. When you compare the private sector knowledge base with, say, that of the United States or Canada in terms of their knowledge of the WTO rules, obligation laws and practices, we do not have a tremendous base here in Australia. If you look at what is being done in our universities to teach WTO law and trade negotiations in a broader sense, there are not too many universities which have those facilities. Not many lawyers or legal companies in Australia have specialist advice on the WTO. It is growing. The more disputes we have, the more likely that that marketplace will generate the need for legal firms in Australia to be much more savvy in terms of representing their clients in relation to WTO disputes. At this stage we have not confronted circumstances where we thought there was a gap of some sort in Foreign Affairs, Attorney-General's or from other agencies where we needed to fill in what I would call a legal gap.

CHAIR—To what extent do industry bodies, when they bring complaints forward, prepare the case to assist DFAT?

Mr Spencer—Our whole rationale in going out with the disputes investigation mechanism that the Minister for Trade initiated some 12 months ago was to encourage industry to look more proactively at the dispute settlement mechanism in the WTO and to think more positively about what they can do to push government or to assist government in taking these disputes. Part of that dispute investigation mechanism was to say to industry and Australian corporates, 'If you believe that there is something that is affecting your interests, you go and do some work yourself. You go and employ a consultant or a lawyer to come up with a prima facie case. Because if you can do that, it is, to a certain extent, a load off our mind and you can present us with a much more professional case, et cetera.'

I cannot say to you that we have been inundated with any requests. I cannot say that there are many cases, and there are outside the disputes area. For example, if a company is asking the government to contemplate a new infrastructure subsidy arrangement, they may very well get a private lawyer to give their views about the consistency or otherwise of the measure that they are requesting with the WTO. So we have seen a couple of cases of that. But there have not been very many cases where we have seen corporates come to the government with private legal advice on the WTO.

Mr ANDREW THOMSON—I think Mr Morgan covers agriculture for DFAT.

Mr Morgan—Yes.

Mr ANDREW THOMSON—The two developments of most harm to agriculture in all of these treaty negotiations we see in the committee would be multifunctionality and the precautionary principle. You might call it green creep. It is creeping into everything. Has the government done anything concrete or anything noteworthy to stop this in negotiations and in agreements that are under negotiation now? Where do you see it threatening us and what are you doing to stop it?

Mr Spencer—Can I make some introductory comments on that?

Mr ANDREW THOMSON—Not too many. One of the purposes of asking Mr Morgan was to get more specialist advice.

Mr Spencer—I am responsible for the negotiations on the WTO. I think that I have some direct experience more at the negotiating table than perhaps Mr Morgan in terms of what we have done. I can assure you that the country that has been most assiduous in trying to reject the arguments of multifunctionality has been Australia. Whether we have done it ourselves or whether we have done it in conjunction with the Cairns Group—I am only saying this because I have attended the negotiations where it has been on the agenda either with the minister or at an officials level—we have been the ones who have tried to convince our Cairns Group colleagues that multifunctionality is the danger that it is. We have coopted them in undertaking research, in participating in conferences, in making speeches and in otherwise contributing to a challenge to those who have argued that multifunctionality is a new ground for protectionism.

The most recent manifestation of that was when the last special session of the agricultural negotiations met in Geneva the week before last to discuss the question. There was only one country who mentioned the word 'multifunctionality'. I think that that reflected the very aggressive way in which the Cairns Group, Australia and others have challenged in the WTO, in the FAO and the OECD. We have tried to pour scorn on this concept of multifunctionality. I recall only one country mentioning the word last week, and I think it was Fiji, which, ironically enough, is a member of the Cairns Group.

Mr ANDREW THOMSON—If these negotiations were ferocious enough, why then did we join the consensus on the text of the biosafety protocol last January? Indeed, the minister leading the negotiations issued a press release foreshadowing our signing it when article 26 relates to socioeconomic considerations in another language—again, sneakiness. It is there plain as day in the text. Why did we join in that negotiation if we were so good at opposing it in others?

Mr Spencer—I was talking about multifunctionality; you are talking about the precautionary principle.

Mr ANDREW THOMSON—No, I think article 26 of the biosafety protocol allows countries, and developing countries in particular, on the basis of socioeconomic considerations to take measures to stop trade in these LMOs. That is a wolf in sheep's clothing if we have ever seen one.

Mr Spencer—The issue as you make it out is that Australia was actively involved in signing a document that had that in it.

Mr ANDREW THOMSON—No, we joined the consensus on it without protesting.

Mr Spencer—No, we did not join a consensus. I think that is wrong. The chairman of the conference tabled a document. The document was negotiated amongst a group of countries. Australia participated in a group of countries referred to as the Miami group. The Miami group was, right down to the wire, very strongly opposed to any exceptional provisions relating to

inter alia the precautionary principle and the relationship between this agreement and the WTO. At the last moment, two of our close allies in the Miami group decided that it was in their commercial interest to accept that it was better not to stop this negotiation, not to cause another failure of this negotiation, and so they accepted a text which was not a text that we would have supported actively in those negotiations.

The chairman then came to the committee as a whole and said, 'This text is here.' That committee chairman was well aware from the way we had been negotiating as part of the Miami group—and all major delegations at that table knew very well—that we did not like this outcome, but it was tabled and the text was tabled. It has not been accepted in the sense that we have decided to sign it, far be ratify it. That text now is open for public discussion in Australia as to whether we should sign it. The government has made it very clear that there is no timetable for signing this document.

Mr ANDREW THOMSON—Was it not the case that after the text was tabled the minister issued a press release—

Mr Spencer—A minister may have said something, but the government, as I say, has made no decision whether to sign it and there is no timetable to do it. It is now out there for public comment.

Mr ANDREW THOMSON—I welcome that. It would be nice if occasionally ministers issued press releases denouncing things that you say, quite rightfully, are so bad rather than either remaining silent or, in some cases, as in this case, issuing a press release, I think, welcoming the text. Anyway, we will leave that for another occasion. I appreciate that it is not your line department that was responsible. I welcome the ferocity with which you oppose this green creep. It is a very bad thing.

Mr Spencer—To suggest that there is a line in our department that has a different view from me is not correct.

Mr ANDREW THOMSON—I will leave it there.

Senator LUDWIG—In relation to the issue of the precautionary principle, as I understand it, the Cartagena protocol is signed but not ratified by Australia. Sorry, it is not signed and not ratified. I think the last time I asked that question it was not about to be. In relation to that issue, if the precautionary principle in the Cartagena protocol is signed by a significant number of overseas trading countries, if we want to export into those countries we might have to meet that principle, in any event, even though we are not a signatory to it. Can you give me a view on that?

Mr Spencer—There appears to be some considerable confusion as to the implications of the biosafety protocol insofar as to whether you sign it or do not sign it. This is a very important point so I would like to answer this question in full. The implicit argument has always been put that, if we do not sign a protocol such as the biosafety protocol and if the biosafety protocol comes into force by virtue of being ratified by a certain number of countries, the question will be: what impact will that have on Australia? The question—and I think the issue was raised in

your committee in the context of the consideration of the biosafety protocol—is: could we do some thinking about the potential costs?

In trying to work out the answer to your question, it depends very much on what the world is going to look like in a couple of years time or 10 years time and what the provisions of the protocol will be in a couple of years time. The Americans and the Canadians decided to let that text go forward because it was a commercial decision at the time that, for reasons, it would be better to adopt this text now and not incur the wrath of the political opposition that they would have in their countries and kick the ball down the field in relation to the substantive provisions that are going to cost them in terms of their exports of GMO or LMO products.

So the whole question of what documentation will be required—and that is very important, because it means what you do at the farm gate in terms of having separate documentation for an LMO product and a non-LMO product, how you ship it, where you export it, et cetera—is an issue that has not yet been determined, and it will not be determined until the parties to this biosafety protocol negotiate these issues in the next couple of years. Australia does not export too many LMO products that are covered by the protocol. In fact, I do not think we sell one.

Senator LUDWIG—Four, as I understand it.

Mr Spencer—A couple of cotton products and a couple of flowers.

Senator LUDWIG—It is important to the flower industry, I suspect. There are violet carnations and carnations—

Mr Spencer—Absolutely. For example, if you are selling blue carnations to Japan you could make a hypothetical argument that this protocol will enable the Japanese to be more protectionist in terms of the conditions under which they let those carnations into Japan. My argument would be that they can make the same arguments in the WTO. They can argue, in the same way as we do with salmon or with all our fruits and vegetables, that the risk to their own flower or horticultural industry from importing LMO seeds or flowers of the blue carnation type that have been LMO treated—

Senator LUDWIG—I think the colour is violet, but we will pass on that.

Mr Spencer—I bow to your superior knowledge. But the reality is that the WTO, irrespective of whether Japan signs that biosafety protocol or not, will be able to do a risk assessment. If that risk assessment shows that the importation of an LMO carnation is going to have adverse consequences for the horticultural industry of Japan, they may take action under the WTO, as I say, irrespective of whether they are in the biosafety protocol or not. You might make an argument that the biosafety protocol will give them some additional moral cover or some extra cover, but the difficult issue to work out in trying to assess this biosafety protocol is that no-one knows what LMOs we are going to be producing in Australia.

If you go to our farming community now and say, ‘What LMOs will be commercially viable in Australia in 10 years time?’, they will have no idea. They can say, ‘We might do LMO wheats, canolas, cottons and goodness knows what.’ Others will say, ‘No. The last thing we will do in the current international environment is go down that route, because that’s the route that

consumers don't like.' Firstly, you have got no idea what we are going to do domestically. You have got little idea about what other countries are going to do; whether countries like Japan or in Africa, Latin America, Europe or North America will be letting in LMOs and under what conditions. It may well be that those conditions are ones that are perfectly justifiable under the WTO. So all I am saying to you is that it is very difficult to make that assessment as to the question that you raised.

Senator LUDWIG—I actually do not know whether I quite raised that question, but the point is that if we are going to then have a precautionary principle embodied in the Cartagena protocol that we may or may not have to address, at least in terms of cost, the gene technology bill does not contain the precautionary principle but it would still then, in terms of the violet carnation, be subject to it if we wanted—and we do currently export it—to then export it to a country that was signed. Why don't we then deal with the precautionary principle on a more uniform basis?

Mr Spencer—That is precisely what a number of countries are trying to do now—to bring in a much more uniform view about what the precautionary principle is. We have it in our own legislation in Australia. I am not quite sure what the outcome of the gene technology bill will be. That is another imponderable in this context. But the precautionary principle or the precautionary approach is already contained in the SBS agreement of the WTO and, in various manifestations, it is with all governments. All governments reserve the right to be cautious when it comes to something that the scientific evidence is not unanimously agreed. We are seeing the most important manifestation of that now with mad cow disease in Europe.

Senator LUDWIG—Thank you.

CHAIR—We are running short of time now. I think that we have nearly exhausted the time available for the current witnesses. So it just remains for me to thank each and every one of you for your attendance and for sharing your views with the committee. It is obviously a topic where issues come up and we may need to be back in touch with you as we explore these issues further.

[11.36 a.m.]

ROBERTSON, Professor David Henry, Director, Centre for the Practice of International Trade, Melbourne Business School, University of Melbourne

CHAIR—Welcome. Is there anything you want to add to the capacity in which you are appearing?

Prof. Robertson—I am also the John Gough Professor of International Trade.

CHAIR—Thank you. We have your submission with the committee under consideration, but would you care to make a short opening statement?

Prof. Robertson—Yes. I think most of the points that I want to make are in that submission. Really, what I would like to do is just explain why I put it that way. I think in the last year or so—two years, I suppose—there has been an awful lot of ignorance around what the WTO is. Having sat through the first session, I have heard the Department of Foreign Affairs and Trade trying to disabuse people of some of those problems—things like supernationality, the role of governments and so forth—which you have heard about. So I will not go into those. But, of course, there has also been a program of misinformation from the so-called non-government organisations that, in fact, would actually rather like to be in government, it seems to me. So it is necessary to try to put some of those points right.

The big problem, of course, is that you are not dealing with anything that is monolithic; it is something which has many heads—like the Hydra—and as a consequence you have problems in trying to deal with any particular argument. If you do refute the argument, they will go and find another one. If you do refute the argument, you have probably played into the hands of another group that has the opposite view. So in dealing with NGOs you have a tough time in trying to keep up with the ball.

Having said all of those things, looking at the terms of reference, there were one or two specific points that to me needed covering, such as regional trade agreements and the dispute settlement understanding. You have spent a lot of time on the latter and a little bit of time on the former. But if you have questions on what I have said, we can deal with it there. The big difficulty I had in looking at the terms of reference is that an awful lot of them are about participation. The main points are really to do with the role of the community—whether they are getting a fair hearing, whether the WTO is answerable to the public and so forth. A lot of this, I think, arises from the setting up of the WTO by the Uruguay Round where, in fact, in 1994 people suddenly pounced on the idea that this institution had an enforceable mechanism—in other words, the dispute settlement understanding.

People have again pounced on what looked to be the instrument of effectiveness, which was trade sanctions. We still hear a lot of people talking about trade sanctions. On all the issues that you have raised this morning on labour rights, the environment and human rights you will often find people saying, 'We must use trade sanctions to force this.' Of course, it shows a complete misunderstanding about trade sanctions. Let us suppose Australia introduced a trade sanction. It does more damage to us than it does to anybody else. If, say, to force Indonesia to raise its minimum wage we were to introduce trade sanctions, we would suffer, the Indonesians would

suffer, too, and nobody would gain. So trade sanctions, which look like an effective instrument, are actually extremely harmful.

I have only used one case. Let us say a whole number of countries started to introduce trade sanctions. Firstly it would go completely against the principles of non-discrimination and transparency, because countries would not know what their exports might be liable for in a particular market. There could be a whole mass of new regulations. So trade sanctions are not what a lot of NGOs seem to believe they are; that is, an instrument to be effective in achieving their objectives; they are just extremely costly to the whole of the economy and to the world trading system. So this fashion for using trade sanctions, I think, deserves some emphasis because it is a dangerous route which could destroy a lot of the gains that we have made in the last 50 years since the GATT started.

The other thing I would say is that we have an inconsistency in the way in which the non-government organisations put their points of view. It is as if when they do not succeed in persuading a government or an international agency that their route should be taken, it is not because their opinions were weighed in the balance and found wanting. They tend to look on it as a question of shouting it a bit louder because clearly, if only people listened, we would all know that they were right. That does not work when there are so many different points of view. I think that you could put that down to 'the baby boomer disease', which is a belief that they are all right. We should just listen to what they have to say and that will be enough.

There are, of course, some very severe dangers in the system. The multilateral trading system is under threat from its misuse, or attempted misuse, by various non-government organisations, particularly because many governments fail to understand their commitments and to explain them to the population at large. The problem is that governments would rather play things quietly, make the decisions and not try to confront these groups in the community. We are now heading, I think, for some serious problems at the international level when you look at, for example, the idea of the United Nations global compact.

Mr ANDREW THOMSON—What?

Prof. Robertson—You have not come across that one?

Mr ANDREW THOMSON—There are a lot of villains on the stage.

CHAIR—It is not a new defence system but it is—

Prof. Robertson—No. It was first voiced by the UN secretary-general, Kofi Annan, and it has now been given substance. It proposes yet another big assembly that would comprise the United Nations—which basically means the officials, I suspect—transnational corporations and non-government organisations.

CHAIR—Super global guardian.

Prof. Robertson—Exactly. Now, if that gets under way, the record of the UN does not fill one with much enthusiasm. Anyway, that is just as an aside. That is the sort of problem I think

we face and we need to be sure that we do not pay too high a price for pursuing some of these ideas.

CHAIR—Yes, thank you. I am sure my colleagues will want to take up some of those issues. I wanted to ask one brief question. You are, of course, from the renowned—or certainly very well regarded—Centre for the Practice of International Trade at the University of Melbourne. You would have heard some representatives from DFAT suggesting a little earlier that there seems to be a dearth of, shall we say, trade lawyers or people interested in trade issues in this country. I thought it would be interesting to get your comment about whether it is a 'chicken or egg' situation. Where do your students go? They obviously do not get work from DFAT unless they become internal to the department. It seems to me that Australia has not properly exploited the possibility of having a whole body of trade experts available who are not actually part of the department. Do you agree with that?

Prof. Robertson—No, I do not, actually. I think there are quite a lot of people out there. When David Spencer was answering that question, the thought came to me that I know that the law faculty at the University of Melbourne runs a course on WTO law, Deakin University does with Jeff Waincymer, so there are certainly others in Melbourne. There is quite a gathering of trade experts, I think, really in three parts of Australia. One is here with the Australian National University where you have people like Ross Garnaut and Peter Drysdale, who have been involved in policy for a long time. So I do not think they should be forgotten. You have Kym Anderson at the University of Adelaide who runs a pretty effective trade Centre there. He ran the training for Chinese students coming to Australia under an AusAID program. Then you have a grouping around the University of Melbourne where there are a number of very good people in the faculty at the university as well as in the business school and in the law faculty. So I think there are quite a lot of academic trade experts.

There are also a lot of independent experts. You have got consulting firms that do a lot of advertising. The Centre for International Economics is run by Andy Stoeckel here in Canberra, and ACIL which is in Canberra and Melbourne. There are a number of people who I know get drawn into trade agreements. Many have worked in the Department of Trade and then have gone off independently. I think there are a fair number of people around in the community.

Having said that, it is not easy to get Australian business interested in the issue. We tried to put on one-week courses on particular aspects of WTO in Melbourne but got very little support from business. We could get people from governments, both state and federal, but there were not many businesses that were prepared to release somebody for a week to find out how the system works. In running seminars at the University of Melbourne I found that plenty of academics and officials turn up, but very few businessmen.

CHAIR—It is interesting, of course, because if you look at the impact of the WTO I would have thought that it was becoming at least imperative that, say, legal firms advising clients on investment and certainly those involved in exporting would need to have a good knowledge of the possible impact of the WTO on their business. Certainly, if they are in receipt of a subsidy as, for instance, Howe Leather is, you would think that in those circumstances there would be roles for legal firms just advising clients in the normal course to be aware of the WTO as part of risk management and as part of the general range of advice you would give on investment.

Prof. Robertson—Yes. I think some of the law firms are getting involved in dispute settlement. I have had a number of people who have sent me emails saying that they have seen this or they have seen that. Baker Mackenzie is one—but I don't think they seek economist's views.

CHAIR—Although they are involved internationally as well.

Prof. Robertson—That is right. But it is not the businessmen as such. The lawyers obviously are in business, but I am thinking of the producers, the service providers and so forth who seem to get interested only when they are up against the wall, frankly.

CHAIR—Thank you.

Mr BAIRD—I wanted to say that I am actually a graduate of that august institution, the Melbourne Business School, and I went from there directly into trade as a trade commissioner, so you do have some of the people go there.

Prof. Robertson—That was before my time.

Mr BAIRD—We did not have such a group, obviously, in the international trade area. It would be nice if we had. I notice what seemed to be your non-support for NGOs' involvement in the WTO. Do I see that you do not see they have a role at all in relation to WTO negotiations? Where do you see they fit? They claim, of course, that they are the push to make the role of the WTO more transparent, et cetera. If you were in charge of the WTO would you have any role at all for NGOs?

Prof. Robertson—I would encourage governments to meet NGOs and to take account of their views in their own positions, which is what I think the WTO and GATT before it were established to do. It is an intergovernmental organisation. Government's role is to consult and to make people aware of what is going on. In terms of the WTO itself, it is very difficult to just open it up and say, 'Well, yes, we will let some of the NGOs in.' On last count, there were 26,000 NGOs registered with the United Nations. It is very difficult to do that, except in a separate forum which, as you know, they do by having consultative meetings with governments, academics and NGOs. But they are selective; they keep participation down to about 300. That is a consultative process that does not involve decision making; you could not really see NGOs in the council, for example.

One of the things that has been done because of pressure from the Europeans and the Americans was that the staff in the dispute settlement area consult with the green NGOs. It sounds like a good idea that they should be aware of what WT0 is doing and what is going on in the environment committee and that kind of thing. The problem is that it upset the developing countries because they felt that the green NGOs that are not part of the WTO were getting special treatment from the secretariat which they could not get. Many of the developing countries' delegations are very small; they have probably got only one or two people in Geneva and they cannot afford to spend the time going to talk to people in the environment area. It created a bit of resentment among the members. So it is a very difficult balance to try and maintain. I think it is best done through governments.

Mr BAIRD—If you had the job of director-general of the WTO, what areas would you reform?

Prof. Robertson—Can I take that question on notice? No, it is all right.

Mr BAIRD—Just briefly.

Prof. Robertson—It is a huge subject. The first thing is that the director-general is going to have to work with a completely new set of circumstances. We now have 137 members, I think, of which 100 are developing countries. The developed countries can no longer just run the show the way they want. The developing countries showed in Seattle that they were going to have their say and that they were not going to be bullied. So there is a new political situation there. There is also a new political situation in the sense that in the past a lot of the negotiations were initiated by business. It was US firms that pushed the US government to go for liberalisation of trade in manufactures.

We have now reached the stage where business is actually withdrawing. They figure they have got most of what they want. They want a low profile because they are being picked on by the green NGOs. So governments are no longer able to get a lot of support from business. This is coming out in the sort of requests that go out from all governments to business saying, 'We would like to consult you about the next round,' and they get no responses. They get huge responses from NGOs. So you have got a different balance that governments are having to play with, which is going to change the way the system works.

Mr BAIRD—I thought in Seattle, for example, that the Australian Trade Minister had this huge delegation of business people there. So it sounded like the reverse of what you said. I heard a few of them come back and say that the problem was that they did not really feel they had a role to play there. A lot of them were there, but how do you integrate them in terms of the overall decision making?

Prof. Robertson—I think that you might find the next time there will not be so many.

Mr BAIRD—Obviously, because—

Prof. Robertson—Because of the very reason you said. When they were all talking about biotechnology and agriculture, a lot of businessmen pulled back. One concern the WTO, remember, is that most of the tariffs and other import barriers of interest to business—that is services and manufacturing—have basically gone. We are pretty close to free trade in a lot of those areas. Where there is not free trade—agriculture, textiles, clothing and footwear—they are the areas where developing countries want liberalisation because that is the way they can expand their exports. But developed countries have protectionists behind the governments. They are the farmers and the labour-intensive manufacturers. So you are getting a change in the balance, I think. We have moved away from 'let us tackle industrial tariffs' to these more difficult, problematic areas where we are dealing with another part of the community, and businessmen are showing less interest.

Mr BAIRD—Thank you.

Senator LUDWIG—The last paragraph on page 14 of your submission states:

Even though Australia has gained economic benefits from its own liberalisation, we still need to improve our access to others' markets.

How do you say we should do that? You say broadly that continuing the strength of the WTO is important, but it is counterbalanced by, as you have said, NGOs—I guess there are two views about NGOs, which I will not say, but they are out there in terms of either assisting or not assisting in the process—and there are bilateral agreements which cut across multilateral agreements, which can also cut across the ability of the WTO to achieve its aims. You also spoke about the hub and spoke phenomena that is growing. Australia is not—although New Zealand is—in any of those major regional agreements. So what does Australia do? I know that is a long question and I do not expect a long answer, but we have set a course of heading down the WTO path of supporting the WTO. We then, when it comes to the environmental agreements, though, get a bit cautious about all of that. But we have still basically set our sails in that direction. Is there anything else we can do? I asked DFAT earlier about what their role was in promoting the benefits of the WTO. I did not ask for a costing of it but I might at some future time. Their short answer was that they are promoting it. But what else needs to be done?

Prof. Robertson—I think we need to make people aware of just how much the contribution from the GATT/WTO system has been over the last 50 years. One of the problems I have—and this is a problem I have with students—is if you talk about the world the way it was in the seventies, never mind the fifties and forties, they do not believe it was ever like that; they believe that the world has always been the way it is now. The fact of the matter is that in 1947, of course, the world was in a pretty disastrous state. The GATT was drawn up and pottered along for a decade. Then it got a stimulus because the European Union, or the European Common Market as it then was, was established and the other major players—Great Britain and the United States in particular—recognised that they had to do something to make sure that discrimination in the Common Market did not affect everybody else. They all became very enthusiastic about lowering tariffs generally, because that way they could reduce the degree to which the Europeans would discriminate against them.

The figures are in the paper. The growth in world output and the growth in world trade in the last 50 years has been phenomenal. It has put us back on a plane that is roughly where we were in 1900. The dangers I see in not persisting with the WTO—a multilateral approach—is that we could easily do what we did in 1914, which then led to 35 years of nationalism, protectionism, competitive devaluations and so forth. So it is very easy for policy to be turned on its head if we do the wrong things. So WTO multilateralism is the key.

But, of course, most of the advantages that Australia has got have come because we woke up. We woke up in the mid eighties to the fact that a medium-sized country with a very dispersed trade pattern—no natural partners—could not survive unless we became more efficient, and that meant removing protection. I think that we have to continue with that. We cannot survive in the world if we start trying to protect our economy. So the multilateral system is very crucial to us.

I have never represented Australia on matters trade but I did work for the government for 15 years. On looking at the behaviour of Australia in the international trade sphere, it certainly punches well above its weight. I think we do better diplomatically in the sense that we go out

and form alliances like the Cairns Group, which gets together a group of like-minded countries which helps us to negotiate with the big guys. I think that the research we do is way ahead of the field. The work that comes out of ABARE, the Centre for International Economics and from various academic sources means that our negotiators go into meetings with a really sound basis. Very often we can quote numbers that other people have not even thought about collecting. So we have an advantage in the multilateral system.

If we try to think of regional agreements, I think we could get into serious trouble. The one with Singapore is just a small affair. That is not to say that Singapore is not an important trading partner—it is—but if we start to tie ourselves to the United States, or to Japan, or to some other group and start joining in the discrimination, we are actually going to damage ourselves.

Senator LUDWIG—Much appreciated. Thank you.

Mr ANDREW THOMSON—I would just like you to speak frankly—and remember that these are legal proceedings of the parliament and we have to be very straightforward, Professor. What is your view of the government's role in opposing these NGOs and their influence in this process? Has there been enough steel in the government's spine?

Prof. Robertson—No, I do not think so. I think the government needs to confront some of these NGOs head on. Most of them have fairly narrow interests. It is difficult to pick on them but there are certainly some that really should be tackled by government ministers. If you want a case in point, on last night's ABC news some fellow from Greenpeace said, 'The trouble was that the United States, Australia and the others went into the meeting with something they knew the European Union could not accept'—not the other way around! Why was it that the European Union had a position that the Australians and the Americans could not accept?

Mr ANDREW THOMSON—Presumption in the national interest is illegitimate. Let us be frank. Just one more question: do you think that there is a relationship between the role of NGOs in threatening large corporations who then capitulate and the modern trend to give large packets of share options to CEOs such that they may feel their own personal wealth is threatened by a cracker NGO campaign that might drive the share price down? Has that been talked about much?

Prof. Robertson—I have not thought of it quite that way. I think this idea of corporate social responsibility is the easy way out, which has largely been brought about by leverage from NGOs. Shell and BP have both gone to water because of the way in which Greenpeace picked on Shell, for example, with that rig in the North Sea.

Mr ANDREW THOMSON—Yes, the Brent Spar.

Prof. Robertson—Most people are very surprised at just how much they have gone to water on this. I do not know whether you have read it, but I wrote a paper recently on civil society in which I suggested that if we are going to have corporate social responsibility we should also have a code of conduct for NGOs because of their corporate social responsibility.

Mr ANDREW THOMSON—And public broadcasters.

Prof. Robertson—The media generally would really like to join in, yes.

Mr ANDREW THOMSON—Thanks very kindly. I appreciate the submission.

CHAIR—Professor, I want to get your views on problems that we clearly have with sanctions, which you mentioned in your opening remarks, which in many ways go to the nub of just how difficult it is to have a rules based global system. I absolutely take your point that in a way sanctions are a real contradiction in terms. We are trying to have free trade, so imposing sanctions hardly seems to advance the case. But what do you do about really recalcitrant cases? We have seen it with the big ones such as hormones and bananas, and what not. What is your view as to any other way in which we can have a better system of enforceability, or can we just finger point and be impotent?

Prof. Robertson—This comes down to a very fundamental point, which is the question of international law. We are hearing a lot about how international law should take over from national law, but international law of course does not have any real enforcement. The only way you can enforce it is to go to war, and nobody wants to do that. That is why I am pretty sceptical about the idea of international law. In the case of US sanctions against the EU, we have seen that with bananas and beef hormones they did not achieve anything. All we need now is for the Europeans to impose sanctions on the US for their tax relief on exports (ESC) and we will have more restrictions being introduced. Clearly, that is going the wrong way.

There are two ways of trying to get concurrence with a decision from the panel or the appeal board. One of them is to use trade sanctions, which is really an attempt to force the exporters in the infringing country to put pressure on the infringer to change. That does not seem to work. The other way to do it would be to provide compensation. In other words, you have to reduce protection in that country which would then put pressure on the recalcitrants again. That would require that the WTO actually set those figures which would be the panel, but it would put more pressure on the infringing country. The second route, which has never been used, except temporarily, might be a better one than trade sanctions. That is the only thing I can think of that is going to be effective.

CHAIR—Would you be thinking that the Appellate division would be the one to do that, or it goes back to the panel to enforce it, doesn't it?

Prof. Robertson—It goes back to the panel, yes.

CHAIR—Thank you for that. I wanted to ask that because, through absolutely no quality of your presentation, we seem to be lacking a few members. Thank you very much. I will have to wind it up for quorum reasons, even though I would like to continue. Thank you very much, Professor. We always like to hear from you. You always provide some insight into our deliberations. Thank you very much for taking the time to join us this morning.

Resolved (on motion by **Mr Andrew Thomson**):

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

Committee adjourned at 12.09 p.m.