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Official Committee Hansard

JOINT STANDING COMMITTEE ON TREATIES

Reference: Australia's relationship with the World Trade Organisation

FRIDAY, 20 APRIL 2001

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JOINT COMMITTEE ON TREATIES

Friday, 20 April 2001

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 and Ludwig, Mr Baird, Mr Hardgrave 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.

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Subcommittee met at 8.41 a.m.

DELANE, Mr Robert John, Executive Director, Agriculture Protection, Agriculture Western Australia

FARNHILL, Mr John Paul, Team Leader, Statistical Analysis Team, Industry Services Division, Western Australian Department of Commerce and Trade

JUDGE, Mrs Petrice, Director, Federal Affairs, Western Australian Ministry of the Premier and Cabinet

KURAL, Ms Hazel, Assistant Director, Economic and Revenue Policy, Western Australian Treasury

MURALI, Mr Bala, Principal Policy Officer, Federal Affairs, Western Australian Ministry of the Premier and Cabinet

MURPHY, Mr John, Policy Manager, Western Australian Department of Resources Development

CHAIR—I declare open this hearing of the Joint Standing Committee on Treaties. We are very pleased to be able to bring the committee here today to meet in Perth in Western Australia. I welcome witnesses, members of the public and some members of the media to this seventh hearing into Australia's relationship with the World Trade Organisation. The committee is almost at the end of the evidence gathering phase of the inquiry. At hearings across Australia we have heard evidence on the opportunities for community involvement in developing Australia's negotiating position for the WTO, the transparency and accountability of the 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 environment, human rights and labour standards.

The impact of the WTO on Australia and Australia's ability to participate in the global trading system are clearly matters of the utmost importance. We are very glad to welcome here today representatives from the Western Australian government. The committee does not require you to give evidence under oath but for the record I should advise you that the hearings are regarded as legal proceedings of the 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.

Resolved (on motion by **Mr Baird**):

That submission No. 310, from the National Tertiary Education Union, be received as a submission to the committee's inquiry into Australia's relationship with the WTO and authorised for publication.

Each of you might like to start with a statement and we can then move on to questions. I should just say that I am not in any way seeking to limit the submission—I believe everyone has read it—and the issues that appear to come out of it. It appears to address the Western Australian government's concerns about the WTO's impact on major project assistance, communication

channels between Australian governments, the WTO and other multilateral agreements. By no means am I simplifying or seeking to simplify the submission, but perhaps you can speak to those topics in particular and anything else that you consider relevant to the committee's attention.

Mrs Judge—Thank you for giving us the opportunity to appear before this Commonwealth parliamentary committee hearing. I am going to provide some introductory comments, each of my colleagues will make a few comments and then we are open to questions. Western Australia provided a comprehensive whole of government submission to the inquiry on 21 September 2000. Not all of the agencies that contributed to that submission are here today.

CHAIR—It is a very comprehensive submission, thank you.

Mrs Judge—We are particularly interested in the operations of the WTO due to its impact on the provision of assistance by governments to major projects. We believe Australia should maximise its leadership role with the WTO to ensure that local industry and export initiatives are not compromised. Western Australia has a strong economy and contributes a very large share per capita to the national economy. The strengths of the Western Australian economy lie in its resources and agricultural sector and a growing manufacturing and service industry base.

The Western Australian resources sector is world competitive. It faces barriers when it seeks to move into secondary processing due to unfair competition from subsidised operations in other countries. To redress this position and allow the sector to reach its full potential we favour moves to encourage free trade and the elimination of international trade barriers. The minerals and petroleum processing sector faces considerable tariff barriers. Given the opportunities for expansion of this sector, minerals and petroleum processing requires increased attention in Australia's WTO negotiating strategy. The elimination of tariffs on processed products is a priority issue and we support the Commonwealth's position to seek the elimination of differentiated tariffs, which discriminate against Australian exports of refined petroleum products.

Western Australia is of the view that the best form of assistance that can be provided by government is a world-class, competitively priced, multi-user infrastructure. This is an approach that has been successful in other countries. Western Australia has previously expressed concerns to the Commonwealth about the removal of accelerated depreciation provisions. Potential investors might consider this a disincentive. This may harm the state's efforts to attract international resource processors.

The option of locating in Western Australia may be discarded in favour of locations overseas which offer a more attractive taxation regime for capital investment. We are very pleased with feedback from the Department of Foreign Affairs and Trade which commends Western Australia's approach to major project assistance. It has been judged to be WTO compliant. There currently appears to be a need for improved consultation to enable communication of concerns from the states to the Commonwealth level. Australia's obligations under the WTO impact on all Australians either directly or indirectly. As such, it is important that members of the community and other levels of government have the opportunity to be involved in the development of negotiating positions.

Similarly, state government policy priorities need to be taken into consideration when determining Australia's negotiating position. The Commonwealth government could be encouraged to disseminate to the community generally more, better and more timely information concerning issues to be negotiated and to call for expressions of interest from expert representatives on specific issues. There is also potentially a lack of predictability and legal certainty between the WTO and trade related measures in multilateral environmental agreements, or MEAs. There is a need for urgent international agreement on the role of the WTO and the MEAs which would focus on their primary competence and the principle of deference. Such an agreement would also include objective criteria to determine the MEAs to which the WTO should defer competence, rather than leave clarification to the WTO dispute settlement system.

Dispute settlement procedures need to be strengthened. The WTO could consider a mechanism or procedure to examine the relationship between other bilateral or multilateral agreements. The principle of precaution should be used to help make decisions and manage risks to protect human health and the environment where there is scientific uncertainty. WTO measures based on this principle need to be proportional, non-discriminatory, cost effective and transparent, with an emphasis on scientific risk assessment and science based decision making.

In conclusion, Western Australia has a major interest in the WTO and its operations. It is essential that WTO processes ensure that world markets are open to free trade. The WTO should be encouraged to ensure transparent and fair rules of the game for all member countries. Most importantly, information needs to be widely disseminated for the benefit of the community and industry. That concludes my remarks. I will now hand over to Ms Kural.

Ms Kural—I have just a few words to say on the importance of international trade to the Western Australian economy. I have no overheads but I have pretty charts. Because of the importance of trade to the Western Australian economy, we think we should be involved in determining the negotiating position as well as informed of the outcome. I am not going to cover individual sectors of the economy because we have people here from minerals, energy and agriculture; I am talking more generally.

Last year, exports in Western Australia accounted for around 37 per cent of the state economy. It was probably a little higher because of the downturn in domestic demand, but it was around that. This compares with 15 per cent nationally, so it is more than double the national average. Western Australia accounts for around 27 per cent of total national exports. The major markets are in Asia. As you can see, I have a chart showing that, in the year to February, Japan was by far the largest export market. That has been the case for quite a long time. South Korea and the United States are also very important. The major exports, as Petrice was pointing out, are commodity exports. The item 'confidential exports' is primarily alumina. Alumina is probably our largest export at the moment, followed by petroleum, iron ore, gold and LNG. The move into more processing of this is dependent on opening up of markets, often overseas.

Mr BAIRD—Which one is alumina in?

Ms Kural—It is in 'confidential items'.

Mr BAIRD—Why is it confidential?

Ms Kural—It is because there are only two alumina producers in Western Australia. I think it would be identifying the company that is exporting if you put it down. Is that the case?

Mr Murphy—I can confirm that that is the case. Under ABS rules, in certain circumstances where there are only a small number of producers, they are able to protect their commercial interests through a confidentiality clause in the statistics; otherwise, potential competitors could obviously get access to commercially important information.

Ms Kural—Imports are also very important to the Western Australian economy. It is very important that they be delivered at the lowest possible cost. They are a major part of business investment costs in Western Australia. Imports account for around 14 per cent of gross state product, which is less than New South Wales and Victoria. It is mainly concentrated in plant and machinery building products which are used for the large investment projects. Trade restrictions impacting on the price or availability of imported products affect the viability of business investment in Western Australia. To conclude, it is important not only to the state but to the nation that markets for Western Australian products are open and that the costs of imports are minimised.

CHAIR—So 45 per cent of your imports are from somewhere other than the identified area?

Ms Kural—Yes, but there is five per cent from here, there and everywhere. There is no other major—

CHAIR—So it is a cumulative figure.

Ms Kural—Yes.

Mr Farnhill—The Department of Commerce and Trade focuses on manufacturing and services, science and technology, and trade development. I would like to say a few words about areas that we regard as being particularly important, particularly in the services sector and related areas such as intellectual property. Trade in services is the fastest growing component of world trade and it is said to account for about one-third of world trade. Having said that, it is extremely difficult to measure the value of services, particularly at the state level. As a government we tend to focus on what we can measure rather than on what we cannot measure, but I think services are becoming increasingly important and therefore it is important that the WTO's position on services is in line with what is good for Australia and the rest of the world.

CHAIR—What sorts of services are you talking about?

Mr Farnhill—I am talking about exports of, for example, health, education, environmental management—

Mr BAIRD—Tourism would be in there as well, wouldn't it?

Mr Farnhill—Tourism is an export in terms of people coming into the country, but there is also great potential for export of services going out of the country. We see environmental management as being a big one, particularly in Asia. Health is particularly important too, as are certain information technology services. One thing which is often overlooked is that, while mining and agriculture are very big in Western Australia in terms of commodities, the services associated with those are equally big.

CHAIR—And IT?

Mr Farnhill—Yes, that is right. In fact, I have seen figures quoted that exports of mining services are worth \$1 billion a year, over 60 per cent of which are from Western Australia. I cannot confirm the accuracy of that \$1 billion, but that is investment by the industry itself.

Mr Murphy—On that point, there are also projections that, by the year 2010, the mining services sector will in fact be the fifth largest component of the resources sector nation wide. That reinforces the point that Paul made.

Mr Farnhill—As we move more into a knowledge economy, the real value in production is going to come from intellectual property as the manufacturing components essentially become commoditised, so the real value is going to be in services and intellectual property. It is important to note that Australia has a real comparative advantage in quite a number of service sectors, particularly in our region of the world. The factors include good education and training systems, a computer literate society, highly developed services sectors, and developments in IT—we are world class in certain niches in IT. Australia also has the biggest number of Internet service providers in the Asia-Pacific, and 60 per cent of Australia's small businesses are on line. So we have clearly got the potential to boost exports of services.

Having said that, quite a number of barriers exist to trade in services, and that is why we think the WTO should take a strong position on those barriers. In some cases there are restrictions in a number of countries on foreigners providing legal and especially accounting and engineering services. In some countries you can provide those services, but only if you live in the country, which is obviously going to impact on those cases in which we can transmit services electronically.

CHAIR—Are there professional qualification type barriers?

Mr Farnhill—No, it is basically that the qualifications are simply not recognised. There are cases in which Australian qualifications may be at least as good as, if not better than, those overseas but they are simply not recognised.

CHAIR—Do we recognise overseas people professionally here? Do they have the same problem coming in?

Mr Farnhill—In some instances that is the case. I do not quite know on balance how well we would fare as a nation in that regard. Certainly it is a two-way issue.

Mr HARDGRAVE—I understand that the various states are the ones that actually arbitrate on whether people who have come from other countries are able to apply their professional

skills here. Doctors and others are accredited by each state, I understand. Do you have a measure of Western Australia's performance? I do not expect you to have it off the top of your head, but you brought the matter up so I think it is worth my saying, as a federal member, that I have too many constituents saying to me that the various state medical boards and other state based organisations prevent people with quality skills applying them for certain reasons.

Mr Farnhill—Yes.

Mr HARDGRAVE—I will put that on notice. I would be interested to see if there was any reflection Western Australia could offer on that.

CHAIR—We might tease all of that out a bit. I just wanted to clarify this on the way through—

Mr HARDGRAVE—The interruption is too good to miss.

Mr Farnhill—It is an important point, actually. I think that basically concludes the summary on barriers to trade. Related to that, though—just moving to a second area—is intellectual property, which is closely related to the development of the services sector. There are really two key points there. One is that there is a real need to strengthen the rules on trade related aspects of intellectual property rights. In fact, the rules across the board are not really in place, and when they are they are often not satisfactory. Of equal concern, though, is enforcement and compliance of those IP rules—and that is another game completely. Given the increasing importance of services, I think we are going to find that rules on intellectual property are going to increase the importance as well.

The only other thing I might touch on is tariffs generally. Just quickly, basically the position of the Western Australian government is that we are strongly in favour of free trade. Australian tariffs have been lowered quite considerably over the last 20 years or so—far more so than many of our competitors. Obviously in terms of trade policies we would be looking to countries overseas to lower their rates of tariffs at a faster rate than what Australia can manage in future. That concludes everything I want to say.

CHAIR—Thank you, Mr Farnhill.

Mrs Kural—Can I just make another point as well? Generally, Western Australia suffers from the tariffs imposed on products coming into Australia as well, because we often do not have a competing industry in Western Australia but the products have the tariffs on them. Maybe Victoria will benefit from the tariffs on the motor vehicle industry, for example, protecting the industry there, whereas we have to pay the higher prices because we do not have a local motor vehicle industry.

CHAIR—I follow what you mean.

Mr HARDGRAVE—We all suffer that.

CHAIR—It is a good point, though.

Mr Murphy—Further to that, there was actually a study done by the UWA Economic Research Centre which confirmed Hazel's comments that in effect the export industries of WA were being adversely affected by the tariffs that were in place and that were to be advantageous for the manufacturing sector in the eastern states.

Many of the issues have already been covered. Petrice gave a very good outline of the major concerns from the resources sector point of view. Hazel also mentioned the economic significance of trade in WA. I would just like to give a couple more figures. The production of the resources sector in the year 2000 was \$25.7 billion. The vast majority of that was exported. That figure of \$25.7 billion is roughly the same amount as the entire agricultural production of Australia for the year. That gives you some sense of the significance of the sector both in Western Australian and in national terms.

It is very important, therefore, that the freer trade environment which has developed over recent years continues to develop. The resources sector has been pushing for that freer trade environment for many years, having been in a global market since the gold industry in the 1890s and, later, with the development of the iron ore sector in the 1960s. Barriers such as tariffs in overseas countries for resource processing is a concern. There is a sense that many of these countries are willing to accept the primary products of Australia. However, they are less willing to accept the value added products that are being developed here in Western Australia, which we hope to develop further in the years to come. That is a concern at both a federal and a state level.

CHAIR—Can you just outline the products you are talking about—the value adds?

Mr Murphy—We are talking about instead of exporting iron ore looking at exporting hot briquetted iron, direct reduced iron or steel products. There are still barriers in many Asian countries in particular which reduce the competitiveness of Australian products in those markets.

Mr BAIRD—What kinds of barriers are you talking about?

Mr Murphy—There are tariff barriers in those countries. We also have the situation in India where there are tariff barriers on LNG products, which again puts us at a disadvantage. They are major issues for the sector. Recent WTO rulings have had an impact on the provision of assistance for major resource projects. We are concerned in WA that our international competitiveness is being effectively eroded as a result of the loss of accelerated depreciation provisions, the federal government's response to which was to expand the strategic investment coordination process. We believe a transparent form of assistance which helped make us competitive internationally has been reduced by a process which lacks that transparency and puts us at a disadvantage essentially because potential investors cannot categorically say, 'This is the form of assistance that we will get in terms of a particular project.'

CHAIR—Are you saying that it is difficult to comply with WTO rulings, vis-à-vis the federal government?

Mr BAIRD—Are you having a bit of a go, while you have got feds here, to say, 'We'd like that too'? If you are going to say that then we would remind you of corporate tax going down

from 36 to 30 per cent and that there is no GST on export products, which does make them more competitive. With the overall swings and roundabouts, your exporters in Western Australia are in a far more competitive position than they were before the GST and before these rules were changed.

Mr Murphy—The issue there is for major resource projects with capital investments of, say, \$500 million or more. The sums basically show that accelerated depreciation provisions are more significant to those companies than the lower company tax rates, and they are the projects that we are particularly concerned with.

Ms Kural—It depends on the life of the project as well. Accelerated depreciation was very important for projects such as gas projects. As a long-term investment, they could have a 30-year life span, and accelerated depreciation was very important for them.

CHAIR—It was something up front?

Ms Kural—Yes. Something that has got a four- or five-year lifespan is probably better off under the new provisions.

Mr Murphy—In effect, with LNG projects what we are seeing, instead of an accelerated depreciation regime which is depreciating an asset over four or five years, as is occurring in competing locations—it was occurring for over 7.8 years under the old regime—is that it is now likely to be over the effective life of that project, so that could have a significant adverse impact.

CHAIR—We might come back to the WTO compliance and some assistance. I will let you finish your statement.

Mr Murphy—The link with the WTO there is the advent of the strategic investment coordination process, which was developed to offset the loss of accelerated depreciation. There have been some difficulties with that process because of the WTO rulings on the forms of assistance that might be provided to particular projects. That particular issue, I suppose, is the link to the WTO.

CHAIR—Even the United States has had trouble with this.

Mr Murphy—Yes. I will leave it at that and answer any questions you might have.

CHAIR—Have we come to the so-called cinderella of the WTO—agriculture?

Mr Delane—We believe WTO still provides a great opportunity for agriculture but it must be vigorously pursued so that regions such as Western Australia in countries such as Australia capture those benefits. It is a new set of rules which all countries will use to their advantage, and we must endeavour to use it to our advantage. It is pretty well summarised in a recent September 2000 national forum, the title of which is *Quarantine and market access: playing by WTO rules*. There are two major areas of interest for us: one is the great reliance on exports and the other is the excellent plant and animal health status of regions such as ours. Something like 85 per cent of our agricultural production is exported. It is usually premium produce, targeted at

the premium markets of the world, which are the more developed markets—if you like, the Western economies. They tend to be well protected markets as well.

In that area, Australia needs to continue its efforts—through the Cairns Group and other measures—to try to break down some of those protection measures in premium markets such as Europe, the US and the like. We all recognise that at the moment there are rural issues in this country—and our major trading partners have the same issues—but we need to find ways internationally of uncoupling support for rural communities, rural lifestyles and the like from production support, which distorts international trade. We are seeing in the UK at the moment the results of distortional support to agriculture, where there is considerable subsidy without adequate recognition of some of the impacts of that on animal health. We believe that that will drive some substantial rethinking in Europe towards approaches such as the multifunctionality approach.

Mr BAIRD—What is the link with animal health?

Mr Delane—There has been very substantial support for agriculture in the UK—there have been great subsidies to agriculture for production, which cause their own distortions—but not an adequate balance in looking after the animal health issues. Of course, you need to keep those supports in balance. The flow-on impact of that support means a subsidised product on international markets or exclusion of countries like Australia from those markets. That is probably the greatest step in helping to rethink the support for agriculture in Europe.

CHAIR—Do you see a role, say, for the dispute settlement system in advancing the cause of agriculture at all? Or do you think it is much better placed in the negotiating phase in terms of other pressures that can be brought to bear?

Mr Delane—We would see it in the negotiation phase. It is a complex area.

CHAIR—So you do not think that you can force it with cases?

Mr Delane—We need to use all possible measures. It is probably limited by the effort Australia can afford to apply to these things. We do not quite have the economic strength of the US to put these cases forward, but we do need to play by all the rules and think of innovative ways in which Australia can do that. As a simple example, in this country we still have substantial export inspection charges imposed by AQIS through the Commonwealth. It would be WTO compliant to reduce those inspection charges and provide a direct facilitation to exports. We need to think about those sorts of measures—whether we have the assistance to agriculture, for example, in the right place under the new operating environment.

Mr HARDGRAVE—What do those inspection measures actually achieve—a quality stamp across the product going out?

Mr Delane—Yes, they do. Clearly that is of benefit to the exporter, but Australia is very long and strong on promoting exports of all kinds in agriculture. We need to turn some of the rhetoric into action and facilitate that. We could take away—even within agriculture—some much more clumsy support measures and turn them into direct facilitation export by reducing some of those

barriers. Cutting the export inspection fees in half would be a very powerful signal to all current and potential exporters out of this country.

Mr HARDGRAVE—Would doing that lower the price or the price return to the producer?

CHAIR—And the reputation?

Mr Delane—It does not need to change the reputation. You still have the same standards; you just do not impose the same impost on the Australian exports.

CHAIR—So you get the same thing for less cost.

Mr Delane—For the exporters, yes.

Mr HARDGRAVE—But aren't we selling our beef products offshore on the basis that—albeit bureaucratic and albeit an additional cost—there is a stamp applied at an abattoir for export quality assessed by AQIS and so forth? Isn't there the possibility of, over time, eroding that standard?

Mr Delane—No, I am not suggesting any change in the standards. We need to maintain the standards. The question is whether the government recovers the cost of that from exporters when it has the opportunity under WTO to actually provide, if you like, a subsidy or assistance to exporters through that avenue. In fact, the Commonwealth perhaps should be looking at some of the much more clumsy assistance which is provided to agriculture.

Mr HARDGRAVE—That would then potentially improve the return to the producer as well, wouldn't it?

Mr Delane—Absolutely, and it would provide a very powerful signal that in fact there is real backing for the rhetoric that we should be marketing to Asia, et cetera.

CHAIR—And it would be WTO compliant.

Mr Delane—Yes. The US, for example, has no export charge.

CHAIR—I think we get the point, thank you.

Mr Delane—The other side of it is the import protection. Western Australia, New Zealand and Tasmania have some of the best quarantine real estate in the world. We like to promote ourselves as being the most pest and disease free region in the cleanest country in the world.

Mr HARDGRAVE—The pests would give up trying to fly here, wouldn't they?

Mr Delane—There is an issue there, but of course fast airplanes, fast ships and a rapid increase—

CHAIR—You cannot really add to your own risk.

Mr Delane—You cannot. We need to manage that. Countries that have much more developed and perhaps evolved change environments—much greater pest and disease rates—do not appreciate our starting position. We need to protect that under the WTO rules. The SPS agreement and all the measures under that provide us with a good opportunity to do that. The issue is that Australia is faced with dozens of import risk assessment applications and is under great pressure from its trading partners for bilateral negotiations. There is poor international recognition of Australia's freedom from pests and diseases. There is generally ignorance and parochialism within Australia about the understanding of that approach, and so there tends to be a very simplistic attitude towards it.

There is relatively undeveloped infrastructure—policy, science and communications—to support that. It is a relatively new area, which needs support. We must be realistic. We cannot use science as a non-tariff barrier; we must use it as a WTO compliant measure. Until recently Commonwealth-state relationships on issues of recognising regional freedoms, second-tier quarantine provisions under the SPS agreement and the like have been very immature, so there is some work still to be done there by both the Commonwealth and the states.

Mr HARDGRAVE—It has only been 100 years!

CHAIR—Mr Murali, is it your field to deal with how the communications between federal and state might work?

Mr Murali—That is one of the issues I will touch on. Initially I will make a brief statement about the issue of providing information to the community in general. We deal with requests from the community on a regular basis. It is fair to say that a lot of complicated data or information about the WTO and trade related issues are often bandied around. I think there is a need for clear information dissemination to the community to clear up misconceptions on what the WTO stands for and what it does—general issues like that. Sometimes it is also good to disseminate information about the comparative advantages for Australia in engaging in free trade with other economies. I think that is not understood very clearly by the community in certain instances.

We should put out information that, although we might concede on one thing, we might pick up benefits on another by engaging with these other economies. Basically there needs to be a very clear and transparent enunciation of issues like that to communities so they are conversant with what happens in these forums. For example, in recent discussions on free trade agreement with Singapore, there have been misconceptions that the building we are sitting in today might be sold to the Singaporeans. That sort of misconception needs to be cleared up if we are going to constructively engage with other economies.

CHAIR—Do you or others at the table want to add something about the process of consultation between state and federal governments? It is something that you bring up in your submission.

Mrs Judge—We are happy to take questions on notice. That concludes our statements.

CHAIR—Thank you all very much.

Senator LUDWIG—In your conclusion in your very detailed submission you mention that the WTO, and its rules based system, is not put out into the wider community. I think you point the finger at the Commonwealth government, but I am not sure that you could qualify that. I am interested to know what the Western Australian government does to support the WTO in engendering in the community a better understanding of the WTO. What specific strategies have you adopted? If I understand your submission, you say that it is in your best interests to support a rules based system. To chase some of the dark shadows, what is the WA government doing?

Ms Kural—Sorry, I cannot answer that one.

Mr Delane—I could certainly make some comments. We have quite extensive communication on both sides of the argument. Firstly, there is the need to use WTO and play by the rules to promote market access and, secondly, where we can identify opportunities to improve it, we should work with local industry and Commonwealth government national industry to try to improve that. We have quite a program of trying to educate what is a relatively parochial industry sector on the import risk assessment approach to Australian imports. That is an area that requires a lot of communication. The current New Zealand apple case is a good example of where the Commonwealth, state governments and industries need to do a lot of education.

Senator LUDWIG—Thank you. I guessed that, by and large, the agricultural area would be doing something, but I was looking at a whole of government approach. Perhaps you might want to take that on notice to examine and reflect on what you are actually doing.

CHAIR—Was there any consultation between the Commonwealth government and the state in the lead-up to the Seattle ministerial?

Mr Murali—From memory there was some consultation—it goes back a couple of years. We provided some comments to the Commonwealth on it. I would also say that we have got fairly close lines of communication with the WTO section in DFAT and we keep our lines of communication open all the time.

CHAIR—The government does not have any problem with DFAT's approach to consultation and discussions about how any state schemes might be WTO compliant, and things of that kind?

Mrs Judge—I think it has improved a lot over the years. Ever since the committee on treaties was set up there has been a lot of improvement.

Mr Murphy—I can say the same from the resources sector point of view. We have had very good, open and frank discussions with them. It has been beneficial talking to them.

Mr Murali—I would also say that a forum like this has improved the lines of communication between departments as well as providing the link between departments and accountability to the community.

Senator LUDWIG—But don't you argue that it is difficult to convince DFAT that there are barriers to trade and that they should take some action in respect of those barriers? Isn't that

what your submission in part summarises and puts forward as one of the difficulties that you face? I am not sure who I am addressing this to because the WA government has got so many departments here, but what you have just answered is that it has improve. You submission does not say that. More particularly, I am looking at what your problems are. You have highlighted some of those problems as being barriers to trade and communications with DFAT. I would not mind a comment on that, or you could take it on notice.

Mr Delane—Certainly in agriculture I think both things are true. There has been a dramatic improvement and we would say it is now reasonable to good, but there is still a lot of work to be done. It is an area that is going to require ongoing attention. We work in a complex structure in a federation. WTO issues are complex and evolving. It is going to require a lot more attention probably than all governments are able to apply to it.

CHAIR—When I just asked that question to kick it off—following on from what Senator Ludwig said—I was looking at page 4, which says:

There does not appear to be any easy way for a State agency to bring to the attention of the Commonwealth issues that impinge upon actual or potential barriers to trade. There currently appears to be no mechanism for consultation that would allow easy and informal communication of concerns from the State to the Commonwealth level. In Western Australia's view, Australia needs to pressure the WTO to take a more active, interventionist role, instead of merely reacting to international disputes.

That followed on also from an earlier question about whether there was a view at the table that Australia could take a more proactive role in using the disputes settlement system as opposed to leaving it to negotiation. Mr Delane dealt with that to a degree. We are told here that things have improved and I am glad to hear it. I wanted to tease out what was behind that statement.

Mrs Judge—If you look at the treaties area generally, consultation has improved dramatically between the Commonwealth and the states, but I believe that there is no dedicated forum to look at the WTO issues as there is with other treaties. It would be beneficial if we had a regular consultation mode with DFAT so that we could pull together all our agencies at state level and, in a consistent fashion, bring up the issues of concern to the state and have a forward work plan from the Commonwealth's point of view.

Mr HARDGRAVE—I am sure you would not mind a similar opportunity.

CHAIR—Obviously you do not find those avenues through the compliance and enforcement unit in DFAT. That is obviously set up for a different purpose.

Mrs Judge—We do not have a regular forum.

CHAIR—Thank you. That is what I was trying to understand.

Mr HARDGRAVE—I have a couple of questions about consultation. Acknowledging that Western Australia has a natural advantage over just about any other economy in the world in that it shares a time zone with the growth part of the world—namely, the east coast of China and everything north and south of that—is that something that you attempt to exploit? Looking at your export shares, I see that 27 per cent of our national exports come from this place. What is

that made up of? Is it mainly mining exports or is it the overproduction—in a nice way—of agricultural products?

Ms Kural—It is mainly mining, alumina, petroleum, LNG and a lot of iron ore—

Mr HARDGRAVE—Gold and nickel.

Ms Kural—Yes—gold, diamonds, nickel. Somewhere I have details of our major exports.

Mr Murphy—They are certainly the top five commodities.

Mr Delane—They are followed by wheat, probably, at about \$2 billion.

Mrs Judge—It is a conscious strategy of the state government to target that part of the world, and they do see that they have an advantage.

Mr HARDGRAVE—If there is one part of Australia that is more part of Asia than the rest of Australia, it must be Western Australia. In respect of another matter before the committee which we were discussing yesterday, information from the Department of Resources Development, which referred to competitor nations in commodities such as LNG, alumina, and nickel and iron ore, showed that the Western Australian share of the world market for LNG is nine per cent and that the competitor nations are Alaska—although that is part of the United States and has only half a million people—Indonesia, Malaysia, Algeria, Qatar and Oman. What do they do in relation to tariffs and other matters in comparison to Western Australia? Do you monitor those sorts of things?

Mr Murphy—We certainly do. For example, a two-person team from DRD—the Department of Resources Development—is going to the Middle East next week to sell Western Australia.

Mr HARDGRAVE—What do you hope to achieve from that? They are a competitor for LNG. What are you going to do?

Mr Murphy—They will sell the competitive advantages of Western Australia, one of which is that we are in the same time zone and very close, in shipping terms, to those major expanding Asian markets. Those are key points that we continue to emphasise.

Mr HARDGRAVE—If you have a major competitor for LNG, and Western Australia has nine per cent of the world market and is competing against six major nations or groups of regions, how does what you do, and the cost structures involved in the production of this commodity which you sell and which nine per cent of the world buys, compare? What does Indonesia do in relation to LNG and Western Australia? What does Malaysia do? Is there government assistance? Is there different treatment in relation to investment? Is there a different write-off on taxes and all those sorts of things? Do you communicate this to the Department of Foreign Affairs and Trade?

Mr Murphy—In terms of government incentives, that is certainly a key issue that I was alluding to earlier in relation to the accelerated depreciation issue, which has put us at a major

disadvantage in respect of many of those nations. I can provide the committee with more information on that issue if you wish. But, for example, Malaysia and nations in the Middle East write off the depreciation of those assets in terms of four or five years compared to what at the moment appears to be effectively life, which could be 20 or 30 years.

Mr HARDGRAVE—How does that stack up under WTO?

Mr Murphy—That is an interesting issue and it is something that I personally have discussed with officers from DFAT—that is, what is DFAT going to do about countries such as Malaysia, for example, which are providing incentives to these projects against which we compete? Are we able to start taking the initiative and saying, ‘We’re in the same market for potential projects; let’s go out there and nab them for anti-WTO behaviour’?

Mr HARDGRAVE—What is their reaction? What is DFAT’s cooperation level like?

Mr Murphy—Informally, they have been very good.

Mr HARDGRAVE—That is a very qualified comment. What is the formal response then?

Mr Murphy—I suppose we come back to the issue that was highlighted before: what is the system and what is the process in place? I am not sure whether the bureaucratic processes are there to address those issues in a proactive manner.

CHAIR—If an industry group can approach DFAT, we are told, under their compliance system or under their enforcement agency and say, ‘Look, there’s a serious issue here; it will be investigated and there will be an answer about whether the government, in the interests of the nation, will decide to bring a case,’ surely Western Australia could argue that case with DFAT, could it not? Surely it could say, ‘We have a good case’? What is the process for you, as somebody with knowledge and expertise in what is impacting on your state and, ultimately, the Australian economy, to be able to agitate this issue through that forum?

Mr Murphy—We look at all mechanisms to try to ensure that we are as competitive as possible for these projects. The issue of WTO is a relatively new one, and we are still examining the options that are available to us.

CHAIR—You are not saying that DFAT have not agreed to take a case that this state wants to run?

Mr Murphy—No. We have not formally approached them, and hence my initial comment on the informal approach which we have undertaken and to which we have responses, and we are very happy with that level of communication. It is certainly up to us to take the next step.

Mr HARDGRAVE—I would also like to pursue these other commodities, just to give the committee a taste of the circumstance that Western Australia is in and, as the chair has rightly sought to discover, just what advocacy you are providing for these producers. Australia has 18 per cent of the world alumina market, but that represents 24 per cent of world trade in alumina. I imagine that that means that a lot of it is used here in Australia. Major competitor nations are Brazil, Guinea and Jamaica. What are alumina producers in those countries doing that is

different from what alumina producers here in Western Australia are doing? Do you have a feel for that?

Mr Murphy—I am not in a position to answer in detail, but certainly it would be fair to say that the general levels of government assistance are higher in those countries than they are here in Australia. We tend to take a more hands-off approach.

Mr BAIRD—Do you have examples? It is all right to make a sweeping statement, but the companies that are involved in those areas are the same ones that are here. The committee would be particularly interested in finding out, for example, what subsidy Alcoa gets in those countries versus Australia. That would be a meaningful input and a more appropriate way of getting a feel for how effectively we negotiate on WTO. Should we focus more on companies rather than on countries?

Mr HARDGRAVE—Can I just look at iron ore? Western Australia has a 14 per cent share of the world market in iron ore, which represents 36 per cent of the world seaborne trade. The major competitor nations are South Africa, India and Brazil. Can you find some specifics on what is going on in those countries versus ours? I think the committee would appreciate knowing just how much Western Australia is jumping up and down about any unfair advantage that those markets may be inflicting on our producers. Also, given that our nickel commodity is 14 per cent of the world market, the same question applies to Russia, Canada, New Caledonia and Indonesia. The table put together out of yesterday's discussions about the Kyoto protocol was very interesting. I think that this committee would be very interested to know what efforts you have made to communicate this with DFAT, what is DFAT's formal reaction, what efforts they have expended on behalf of the producers and the workers involved in those industries, and what accountability have they offered in return. One thing the WTO offers is an opportunity to discuss these matters. Quite frankly, I think most people want nitty-gritty. They do not want rhetoric at the WTO level; they want results.

CHAIR—Half the problem is how you sell it to the community. They want to know whether it is really working.

Mr HARDGRAVE—The opportunity for it to work is in those four commodity sectors alone. If you have any other examples, we would appreciate them.

Mrs Judge—I will provide that information to you.

Mr BAIRD—On a different aspect of that, which relates to one of the earlier questions, Western Australia has a unique position in the Australian economy. It is the export state: 37 per cent of GDP in Western Australia is export related and 27 per cent of total Australian exports are from Western Australia. Probably more than in any other state, Western Australian industries benefit from efficient, low tariff regimes. To what extent does Western Australia take the lead in this?

Gary Hardgrave made a comment on the extent to which Western Australia takes a lead in discussions with DFAT to push its export agenda; but in terms of your community, your population, which so depends on exports, what do you do to try to change the mix? Without wishing to be political, a political party that did very well in the last state election had as one of

its main platforms an antitrade stance. That surprised me, considering Western Australia's position in relation to trade. After yesterday's very professional presentation—Mrs Judge, thank you twice; your level of input has been excellent and very professional—which showed the state taking the running in terms of promoting the great benefits of a free trade environment and pushing that agenda harder in the community, I want to know the degree to which you can push that, because changes in negotiations depend on how much you have the community behind you. In Sydney it is on talkback radio all the time. What WTO might do to you is a kind of new scourge. I am just interested in terms of that.

Ms Kural—I am not sure what is being done at the moment, but Treasury has certainly recognised that as an issue. We are in the process of developing a public discussion paper on the benefits of free trade, the winners and losers in that and how the whole economy can benefit from it rather than just looking at individual sectors. Obviously, you are always going to get one industry or a few industries that are hurt; but, hopefully, there will be benefits overall because of the expansions of the industries that will benefit from free trade. We were hoping to get a discussion paper out to the general public in the next few months on that issue. It is also something that I believe the Productivity Commission was going to work on; it has been put on the backburner for a little while—but it is an issue.

CHAIR—They have done more on competition than perhaps—

Mr BAIRD—Also, are you likely to come back to us—yesterday with Mr Murphy there was an issue on this whole question as well—with real examples of where your very efficient export orientated industries are being disadvantaged by the injection of subsidies internationally? That is particularly important for this inquiry.

Mrs Judge—We will undertake to do that.

Mr WILKIE—In terms of the issues that are affecting our trading, particularly in the resource sector, you mentioned accelerated depreciation. I would be interested to see what other nations are doing there so we can make a recommendation in relation to that.

CHAIR—If anyone at the table wants to add to what we have said today, we would be very pleased to receive any additional comments.

Mr HARDGRAVE—This question relates to matters we discussed yesterday with regard to Kyoto. Because Western Australia's major source of income from the commodity sector has competitor nations that are non-annex 1 nations—in other words, are not signed up to the Kyoto protocol—there is some concern about the exporting of pollution from developed to developing countries and countries with high populations which will not be adding to the overall world picture as far as the level of greenhouse gas emissions in the world atmosphere is concerned. Is there any effort by the Western Australian government to use this WTO forum to get some benefit for Western Australian producers? Given that—and it is a whole of government approach on both occasions—Western Australia is basically a quarry for the world, and given that attempts to improve value adding or to value add products produced here in a far more greenhouse sympathetic way are not rewarded by the Kyoto process, I am looking to see whether any work was done at the WTO level on this matter to further assist Western Australia. Is there any communication to DFAT about these matters?

Ms Kural—We talk to DFAT, but we talk to the climate change section with regard to the Kyoto protocol. We are working very closely with them.

Mr HARDGRAVE—Is there a cross-purpose that is not being properly served here? As far as the industry is concerned, there is not the result. You have two separate agendas not complementing each other. Is that a reasonable statement?

Mrs Judge—It is fair to say that, at the Commonwealth-state level, far more effort is going into establishing the forums and the dialogue over greenhouse and climate change than over WTO. That was what I was alluding to before—it is in stark contrast to the greenhouse consultations.

Mr HARDGRAVE—There is some validity, though, to pursuing these climate change issues as well at the WTO level, one would suspect.

Mrs Judge—I would have to explore it further. I have not really thought of it from that particular aspect.

Mr HARDGRAVE—You might like to reflect on that.

CHAIR—Otherwise you are not really using the WTO at all, are you?

Mrs Judge—That is right.

Ms Kural—Sometimes it is easier to have discussions generally rather than ring DFAT, bring up the issues one by one and ask them to put a case forward. If you have an established forum where you discuss these issues and have other states and other industries involved, it makes it easier to facilitate the process.

Mr HARDGRAVE—It strikes me that the two are completely related, given again—looking at this table provided by DRD—that the non-annex 1 nations literally are able to pollute more than they currently are and that Western Australia has insisted that it pollutes less but has an aspiration to produce more. The various trade-offs under the Kyoto matter are established as well. The efforts, the aspiration and all of those sorts of things are there. I am concerned that the opportunity to discuss this on a WTO basis is not taken up. The exporting of pollution is a major issue that needs to be talked about. Anyway, I certainly look forward to your reflection on it.

Mr Delane—The points are well made. It is clear that, in a relatively early stage of development in this area, there is far too much disaggregation and reaction and there is not a strategic approach to it. Certainly, some recommendations—like an improved strategic forum, et cetera, for bringing these things together—would be very useful.

CHAIR—It is an interesting suggestion.

Mrs Judge—It is a two-way street because as a state government we need to be able to react on a whole of government basis and pull all our agencies together. But if we have a forum to do that, then we are forced to do it and we can also achieve more.

Mr HARDGRAVE—And you suspect that maybe the Commonwealth is not acting as a whole of government, in the sense that the Greenhouse Office is doing one thing and DFAT is doing another and maybe—

Mrs Judge—I am referring more to the WTO. With greenhouse, you do have the AGO that is supposed to pull together the Commonwealth.

Mr WILKIE—Following on from Mr Hardgrave, the suggestion is that, if developing nations will not be involved in the Kyoto protocol, one way to get them to be involved is to get the World Trade Organisation to bring them to that point. Are we looking at that closely enough?

CHAIR—We will welcome any further reflections you have that you want to convey to us in a note. Apart from that, I would like to thank the Western Australian government for their submission and for the way in which each of you, from your various perspectives, has made a very valuable contribution to the committee. Thank you for coming.

Resolved (on motion by **Mr Hardgrave**):

That the six coloured charts from the Western Australian government be received as evidence to the inquiry into Australia's relationship with the WTO.

[9.47 a.m.]

O'CONNOR, Mr Paul Richard (Private Capacity)

CHAIR—The committee is very grateful to have you here, Mr O'Connor. I would ask you to outline the basis on which you can make a contribution to our deliberations.

Mr O'Connor—I am happy to make myself available this morning to the committee. My experience with exposure to the GATT and the WTO spans 10 years. I have had exposure to dispute settlement, predominantly in the areas of anti-dumping and countervailing, with some exposure to safeguards dispute resolution. I have served as a dispute panel member on two GATT dispute panels. I have completed two WTO dispute panels in anti-dumping and in countervailing action. I am currently a member of an article 21 dispute panel in Geneva, reviewing compliance with a former panel ruling, and I have chaired a dispute panel convened under the NAFTA provisions reviewing US safeguard action. That is my background. I suppose I can offer the committee some insights as to the operation of dispute settlement, in terms of the former system under GATT and the current system under WTO to the extent that there are differences, and I could comment on the differences between WTO dispute settlement processes and those under other systems, such as the NAFTA agreement.

Certainly, in relation to the migration from the GATT to the WTO and dispute resolution, there was frustration building up through the eighties and early nineties at the inability, or perceived inability, of the GATT dispute settlement process to deliver tangible outcomes. That predominantly flowed from the requirement for panel reports to be adopted by consensus. In simple terms, it allowed the losing party to block adoption. That was the frustration that led to the demand for greater disciplines and certainty in terms of outcomes, which led to the WTO dispute resolution system that we have at the moment.

There is a continuing debate within Geneva, flowing from the migration from the old GATT days, which was predominantly influenced by traditional trade diplomacy, to a much more litigious and legalistic approach. We saw that through the initial debate about the establishment and membership of the appellate body under the WTO—should it be composed of trade diplomats or trade negotiators, or should it be dominated by lawyers? There was some attempt to bring about a balance, but I think it is fair to say that the WTO has now moved to a very legalistic approach to dispute resolution and the interpretation of agreements.

That of itself has introduced another tension within the organisation and its membership. After all, we are talking about negotiated agreements, and negotiated agreements are deliberately full of ambiguity. You have a dispute process now—I will leave aside anti-dumping, because that has some particular standard-of-review requirements that are not in other agreements—whereby a panel can look at a text and come up with a meaning, and that would act as a precedent for further action by member states. In the face of claims, it is an ambiguous provision. There are different meanings that can be taken and there are different methods of implementation, and it is not for a panel to come out and deliver a definitive view. The legalistic approach would be that words have a meaning and it is appropriate for a panel to determine that meaning. In general terms, that is my perception of the WTO as it operates in dispute settlement. If you have any specific questions, I would be pleased to take them.

Mr WILKIE—You mentioned that dispute resolutions are becoming more legalistic. We have had a number of submissions from law firms suggesting that there should be far more involvement by outside lawyers in dispute resolution. What is your opinion in relation to that?

Mr O'Connor—In the Australian context or generally?

Mr WILKIE—Generally and in the Australian context.

Mr O'Connor—There has been a movement. Certainly, in the early 1990s the attitude of the then GATT and its members was that it was inappropriate to involve outsiders, in the sense of legal advisers, in the panel process. There was strong resistance to allowing private lawyers to participate in government delegations. It has now moved quite some distance from that. You now have panels meeting the parties, and you have private legal firms representing in a very active way the interests of member state governments. But that is not universal; it tends to happen in disputes involving countries without a strong GATT tradition. The more developed countries—the US, Canada and the EC, for example—use their own in-house lawyers and trade experts to prepare their documentation and to act as advocates. In the Australian context, to my knowledge, there has not been any significant involvement by private firms in dispute settlement.

Mr WILKIE—Do you think that involving outside firms would help to speed up the resolution process, or would it become bogged down?

Mr O'Connor—There are some inevitable time delays in the dispute process. I do not see that they would be avoided by involving private sector firms. Certainly private sector firms, for example representing particular industry groups or companies, could put information forward, for example to DFAT, which could then pick it up and run with it.

Mr BAIRD—I am interested in the system itself in terms of whether, having been involved in the whole process of negotiating and so on, which none of us on this panel has been involved in, you feel it advantages some countries over others and some trading blocs over others. Are we in Australia sitting in an unfair position compared to the EU's negotiating clout, or the US?

Mr O'Connor—There are certainly advantages of scale, but I would make the point that Australia has been a very active participant in both the WTO and its predecessor, the GATT. We are very knowledgeable of the system and its operation. The introductory part of your question was whether some countries were disadvantaged. Perhaps 'disadvantaged' is not the correct term. Some countries did not do themselves justice in their participation during the course of the Uruguay Round and predominantly it is fair to say they were developing countries without a strong depth of experience in the GATT process. Given that the Uruguay round took such a long time to conclude, there was a noticeable change in the attitude and the experience of members throughout that process. Today there is a much greater sophistication and awareness amongst the vast majority of membership, so in the next round there would be less opportunity for states to misunderstand and misinterpret what their interests are in terms of participation. In answer to your question, some countries were not served well by the position they took during the Uruguay Round and ended up with an understanding of outcomes which did not accord with the text.

Mr BAIRD—Do you think some of these trading blocs dominate the WTO?

Mr O'Connor—It is in their interest to exert as much influence as possible, and Australia is responding to that. You can see that through our involvement in groups such as the Cairns Group. We must adopt tactics and strategies which can counter that influence.

Mr BAIRD—Given that we should be adopting strategies that can counter that influence, do you think there are things we could do to better handle our negotiations with the WTO?

Mr O'Connor—It is difficult for me to answer in that I am not a DFAT official; I have only observed from the periphery. I am reluctant to answer that.

CHAIR—Could we use the dispute settlement system better? Let me give you an example. There is no doubt that the United States has been an aggressive user of the dispute settlement system and in the context of the breakdown of talks it seems that—I am not saying this emphatically, this is just a private opinion—having picked off all the low-lying fruit that the US can from negotiations, they are now using the dispute settlement system as an instrument to further their trade negotiations. If you go aggressively after countries in the dispute settlement system, that is another way that you can open up barriers to your goods and trade. What is your view on that? I am not only picking on the United States; it is other countries with large clout that are using the system very effectively, very aggressively and very proactively. There is a perception that we tend to act defensively and that we are not actually going after some of the things we could perhaps agitate more appropriately for through the dispute settlement system.

Mr O'Connor—In answer to the first part of your question, there certainly was an expectation that certain members would be more aggressive in their use of the WTO. You can see that through some of the provisions in the dispute settlement understanding which, on one view, favours the aggressor rather than the defending member. But the US, and, for that matter, the EC, have been very much on the receiving end of a number of adverse panel rulings, and other member states—

CHAIR—At appellant level it has been different.

Mr O'Connor—Not in all instances. The interaction between panels, the appellant and the appellate body is another dimension to the debate. In answer to your question, certainly there was an expectation amongst certain members that they would have a high usage of the system, but I would say that they have, in turn, felt the brunt of action within the dispute settlement process.

CHAIR—Do you think we are doing as well as we should, given the constraints and difficulties—and I am not underrating them—and the fact that, going aggressively after one aggressor, you may end up with problems in some other domestic sector? Obviously, it all has to be balanced but, in your view, do you think we go after aggressors enough in markets that interest us?

Mr O'Connor—Again, I am reluctant to comment on that, because it is beyond my area of expertise in the sense of knowledge of what our strategic position is in relation to access to

particular markets, but, if you review our involvement in the dispute process as participants so far, certainly it is my impression that we have acquitted ourselves very creditably.

CHAIR—That is not really what I am getting at. I am not saying that we have not; what I am saying is: could we do better? We have basically taken defensive measures in everything other than safeguards in the US lamb case. Would we do better to institute more actions?

Mr O'Connor—But we have intervened as third parties—

CHAIR—I understand that.

Mr O'Connor—We have taken the strategic position, looking at our interests and using the rules system to try and get an advantage for us—not, perhaps, of an immediate impact in that particular dispute, but in a longer-term view. Certainly, the dispute settlements system is a very effective mechanism and, as I mentioned earlier, it provides the opportunity to fill in some of the gaps around the ambiguity, and that can provide opportunities.

CHAIR—But you are not really in a position to say, because, apart from our third party action, we have not actually initiated one case yet apart from the US lamb safeguards case.

Mr O'Connor—Yes, I think that is right. Korea and beef was also a third party action.

CHAIR—I may be wrong, but I am just asking you for your opinion. Obviously, you have a view because you sit there on panels and you know how effective it can be.

Mr WILKIE—There is probably a view, too, that we should be involved in more third party actions.

Senator LUDWIG—You have mentioned that you have sat on four WTO disputes. What period does that cover—generally?

Mr O'Connor—My first involvement was under the GATT system in a panel that started in 1992 and I am currently on a WTO panel.

Senator LUDWIG—Have you noticed a rise in legal argument being put to you?

Mr O'Connor—Undoubtedly.

Senator LUDWIG—Do you have a view about that as to whether or not it should be downplayed or should be encouraged or should be further regulated? I am sure you do now, but you have thought about it.

Mr O'Connor—There has been increasing sophistication in the argument. When you look at what panels produced in terms of their reports from the eighties through to the nineties, the degree of analysis and the breadth of argument was not as great as what you are confronted with at the moment. There was a recent example of in excess of 38 separate claims being argued before the one panel, whereas previously member states might have been content to raise one or

two major points. That complication arose out of the effort that was put in by one member state to look for holes in the case of the other member state involved in the particular dispute. It is very legalistic. They will consume considerable resources in terms of participation, whether they be an active partner or even a third party to the proceedings. That is an issue for the government, no doubt. It is inevitable that we have reached the degree of sophistication that we have. I do not think this is unnecessarily cumbersome, restrictive or limiting; rather, it provides a thorough examination and analysis of all the issues.

Senator LUDWIG—It would be better to say that, from a panel member's perspective, it is far better to have that argument put before you so you can consider a broad range of issues rather than a more limited range or a less sophisticated position.

Mr O'Connor—Very much so.

Senator LUDWIG—Has Australia appeared before you in relation to that?

Mr O'Connor—No.

Senator LUDWIG—I thought that might have been the case—that they excluded you from that. Are there countries that could potentially fail on the basis that the arguments they put before you are not sophisticated, that they do not have decent representation or that their arguments are lacking the width and breadth of the arguments of the cases that are put up against them? You can only decide matters on what is put before you, of course, but sometimes you get a feeling that the respondent or the applicant are not putting their best foot forward.

Mr O'Connor—Indeed. I have noticed that, when countries less experienced with the system are involved in disputes, more likely than not they will go out and seek external advice, whether it be from Washington based or Brussels based lawyers, to help them with their particular case. That is in recognition of the experience of the other country involved in their dispute. I have not seen an instance where a country has gone into a dispute and not put its best foot forward. I think there has been an acceptance that it is a complex process. They need certain skills and certain knowledge of the operation of the system. If they perceive they are lacking that, they will go out and seek independent advice.

Senator LUDWIG—There are some who argue that it should be a less legalistic process. Do you think that is possible?

Mr O'Connor—I do not, and you see some frustration coming out. I have been a member of a panel when amicus curiae briefs have been submitted, and there is a debate going on about the involvement of non-government organisations and general interest groups in the dispute process.

CHAIR—How would you see that working, assuming that you could do it?

Mr O'Connor—There are some limitations under the current system for member governments. To the extent that NGOs or interest groups are to be brought into the process, that needs to be under the auspices of the member states involved in the particular disputes. There is a process whereby panels can have regard to amicus curiae briefs. The difficulty that throws up

is that outside groups have a limited understanding of the role of dispute settlement and the constraints that operate on panels—namely, that the panel is limited to the terms of the agreement. NGOs and interest groups tend to put information in at a fairly general non-specific level in pleading particular provisions within the agreement. For example, there will be general statements about environmental issues without linking those statements to particular provisions within the agreement. To the extent that interest groups can participate then, that must be with the agreement and support of the countries involved. Other than that, under the current system the only option is through an amicus curiae brief.

Senator LUDWIG—Do they actually benefit the process? In other words, where you have amicus curiae briefs or NGOs seeking to put an amicus brief forward or member countries including an NGO in the process—notwithstanding the criticism that they may not always plead directly on point—as a panellist do you think that the range of information they put before you assists in the process? I guess it is a loaded question in part because the NGOs, as you have submitted here, want to put forward information to you as a panellist. That is what we have been told: that they are interested in getting direct access to disputes and the like to be able to put their position forward. As the process develops, if they were allowed in, I suspect they might also get a little bit more sophisticated in how they addressed a case.

Mr O'Connor—As a panellist, if information is relevant I find it useful, but it must be relevant to be of assistance to a panel. To the extent that NGOs want to participate, they would be better placed in dealing with the government and feeding their information, which would form part of the government's preparation of its submission to the panel.

Senator LUDWIG—Sorry to be dominating, but this area is very interesting. Do you have rules as to how people are to address the panel, how they are to bring their dispute—in other words similar to rules, though I did not want to use the phrase, of the court or the procedures that are to be followed by countries in their preparation—and how they respond to the case?

Mr O'Connor—That is outlined in the dispute settlement understanding. There is a process whereby—

Senator LUDWIG—I was wondering if there was anything more than that. I am familiar with that. If you are familiar with the court process—or even that of a tribunal, if I can use that less troublesome area—as an alternative, they have an act and they have regulations but they might also have orders or rules for procedures to deal with, for argument's sake, allowing an amicus curiae brief. If it was not on point or not relevant, before it actually took up your time you could put it aside and say, 'It is not relevant to these proceedings,' or, 'It has not addressed the pleadings and therefore I am not going to receive it.' Those rules allow tribunals to do those sorts of things. Does the WTO, as a panellist in the proceedings or dispute, have those or has it approached those? I am doing more of the talking; I would rather hear from you. If you have noticed that we have proceeded down a more legalistic path, in order to counter that or to ensure that at least the WTO is receiving relevant information and can move with the times as well, what is it doing? Have you noticed anything? Do you see my point?

Mr O'Connor—If the panel receives an amicus brief, the panel has the power to seek information from whatever source it sees fit. That gives it the power to have regard to amicus briefs. The panel can look at the brief and say, 'It is not relevant and therefore we don't need to

consider it,' and that has happened with a number of panels. The frustrating part of that outcome is that the interest group has put the effort in to lodge something and is told, in effect, that it will not even be considered. The only means by which those comments can be put to the panel in any meaningful way is through a government submission, so it would be better if they were linked into the government preparation.

Senator LUDWIG—So you would have a preference for that rather than receiving the submission and then, without even setting it aside, simply saying, 'We will take cognisance of it, but it will provide little weight in the determination of these proceedings because it has not addressed the relevant point.' Would a process that adopted that approach be more beneficial? Because if we assume for a moment that one of the criticisms of the WTO is that they do not take amicus briefs, they do not allow the wider community to be involved and they do not seem to have a forum which allows the public to participate—that is the criticism that has been levelled; it is not my criticism—then one of the answers to that may be found in tribunals which allow public sittings, allow the proceedings to be transcribed and allow amicus briefs. People are able to put an interest if they can seek leave and demonstrate that they have some purpose relevant to the proceedings. Even if the matters are slightly off the point or are not so cogent to the argument itself, the tribunals can at least take them and say, 'We will determine the weight that we attach to this submission.' In that way, people can feel that they have been able to at least apprise the panellists of the relevant information. Do you have a view about all of that?

Mr O'Connor—As a panellist, I would find that incredibly burdensome, purely from the point of view of the amount of documentation that I would have to consider. It would also be time consuming. It would be necessary to extend the time frame for the panel and that might cause some concern to member states, which obviously have a strong interest in ensuring that disputes are resolved quickly. It would unnecessarily complicate matters in the sense of creating an overburden for the panellists by making them come to grips with a large bulk of information without any tangible benefit in terms of an outcome—other than providing an opportunity for participants to come forward and plead their case.

Senator LUDWIG—How do you address some of the criticisms that have been put forward against the WTO's dispute settling body? They are not my criticisms, but people have come to this table and made them. If you say that one of the ways forward is to continue to deny them access in that way because it is too cumbersome or too burdensome, then do we simply say no or do we deal with the criticism in another way?

Mr O'Connor—In my view, I think there will need to be some accommodation made. I will use the example of the NAFTA process and contrast that with the WTO process. With the WTO, the panel proceedings are in a room similar to this. You have government representatives or the members of the delegations—these days those members can include legal representatives or in-house counsel—and the discussion takes place. There is no provision for anybody who is not a member of the delegation to participate in the process. With NAFTA, on the other hand, the proceedings are open to the extent that you can have interest groups and their legal advisers in the auditorium observing what is going on, without a right of participation. That does lend some greater transparency to the process, but even under NAFTA they have not gone to the extent of allowing interventions from nonmembers of delegations.

Senator LUDWIG—As a WTO dispute panellist, do you have a view that it would be helpful to go towards that process?

Mr O'Connor—It would not add to the burden of the panellist and it seems to be an easier method of providing greater transparency.

Senator LUDWIG—What about the support that is given to the panellist? If we adopt an assumption that this process may occur over time, does the panellist then need additional resources and additional support to ensure that it is least able to address the case in a way that will provide an outcome? I am just trying to be neutral in the way I say this.

Mr O'Connor—It is a problem. For example, in one panel that I was involved in the applicant's submission turned up and it was 38 kilograms. That is the paperwork that you have to get across. That was the applicant's submission. There was a submission in reply, the parties engaged and the documentation went on. So they are becoming more complex. There is a debate starting in Geneva about whether the current panel process—as distinct from the appellant body, which is a standing body—can continue as is with effectively part-time, ad hoc participation or whether you need a standing body to deal with it because the issues are becoming more complex, with much greater breadth of issues and greater documentation required.

Senator LUDWIG—That is what I was trying to draw out of you: whether or not they were considering a standing body. The counterargument against that in my mind is that a person who might spend too much time on that would then lose the contact that you would actually draw as a panellist member—in other words, your current experience in the industry, so to speak. Do you have a view about that?

Mr O'Connor—Very much so. The way that the selection criteria—if I could use that term, and it is very loose—is applied is that a panel will generally consist of a diplomat or government trade policy official, an academic/lawyer and ideally a practitioner within the area of anti-dumping administration or anti-subsidy investigation. So you have that balance on the panel. That draws in knowledge, if you like, of the real world and how things operate—how the techs are administered.

Senator LUDWIG—Could you see a more standing committee being able to accommodate those issues? In other words, could they accommodate that diverse mix in a meaningful way?

Mr O'Connor—It would be difficult, given the breadth of the agreements that give rise to disputes. You have anti-dumping, safeguards, PSP and countervailing. It would be difficult to cycle through any standing body.

Senator LUDWIG—Could you tell me what countervailing is?

Mr O'Connor—It is essentially anti-subsidy.

Senator LUDWIG—I just need a concrete example to put it into frame. Do you have a concrete example?

Mr O'Connor—In the Australian context, we currently have measures on canned tomatoes out of the European Union. There are subsidies which are prohibited. There are subsidies which are then actionable, and actionable means that, if you can identify that they are causing injury to a local industry—in this case, the Australian industry—you can calculate the amount of that subsidy and impose a countervailing duty to compensate for that.

CHAIR—Could you describe for the committee how a panel is struck? How do you actually put together a panel?

Mr O'Connor—It is generally coordinated by the secretariat in Geneva. Member states are invited to submit a list of names and qualifications. The secretariat draws on that list with the objective, as I mentioned earlier, of having a trade expert, an academic/lawyer and a practitioner. Those names are then put forward to the applicant and the respondent, and each party would have a right to challenge. It is similar to a jury selection, if you like. It can take some considerable time to get agreement amongst the participants as to who are suitable individuals to act as panellists. If there is no agreement, there is power for the Director-General of the WTO to actually nominate panellists. There is some considerable delay between the establishment of a panel in the formal sense under the auspices of the DSU and the panellists being actually selected. That delay comes down to the lack of agreement between the participants as to who is not acceptable.

CHAIR—There is just one other area that quite a few submitters to this committee have raised and that is the need to have perhaps a better thought through mechanism, be it by way of a formal agreement or otherwise, as to how you deal with MEAs and other agreements that are going to impact on the WTO. Do you have a view about how that might be progressed?

Mr O'Connor—It would need to be absorbed within the WTO framework through a negotiating process. The WTO is very much a stand-alone provision and its parameters are quite clearly defined to the extent that, should you wish to bring in additional issues, that can only be through a further negotiating process by which the current agreement is modified and extended and disciplines are extended to different areas. That can feasibly happen only through a negotiating process. There are some steps that have been taken informally whereby the WTO is interacting with other agencies, such as UNCTAD, to provide assistance to less developed countries. But in a formal sense the WTO is limited by the current confines of the agreement.

CHAIR—What if there is a conflict between some other environmental agreement, for instance? How would you, as a panellist, approach that? Would you just apply what you can do under the WTO?

Mr O'Connor—Exactly. That is not to say that members of the WTO cannot come to bilateral agreements and disciplines over and above the WTO disciplines, but in terms of what the WTO panellists can look at that relates only to the obligations that arise out of the WTO text.

CHAIR—So, in other words, countries or parties before you might come to an agreement as to whether there would be some principle of deference or other to some other agreement that might be applicable; but you would, of course, only be able to do what you can do under the WTO.

Mr O'Connor—Exactly. That is the status of free trade agreements or regional trade agreements and that is how they operate outside of the WTO process.

CHAIR—Assume for the purpose of this question that there is some merit in looking at how the WTO process can better accommodate civil society and all of the things that that implies: do you have a view about how the WTO can better do that?

Mr O'Connor—Predominantly, it would come down to individual member states and how they engage with civil society interest groups within their own borders. That is the most effective means to ventilate those concerns through the current confines of the WTO. As I said, beyond that increased transparency through access to observations and panel processes is an obvious example of where that could be achieved without too much change, additional burden or downside impact on dispute resolution time frames. Predominantly, I think the way to achieve it would be through—

CHAIR—National processes.

Mr O'Connor—National process. There seems to be some misunderstanding as to what the WTO is and how it operates. I think that must be dispelled, rather than from the WTO itself. After all, it is a composition of member states; it really is up to each member state to get its own message out.

CHAIR—Thank you very much. As a committee, we appreciate that you have taken the time in your private capacity to come and help us with your submission.

Senator LUDWIG—It has been very helpful. Thank you.

[10.39 a.m.]

MacFARLANE, Ms Kerry Margaret, Chairperson, Catholic Social Justice Council

QUINN, Terrence Anthony, Project Officer, Catholic Social Justice Council

CHAIR—I welcome representatives from the Catholic Social Justice Council. Would either or both of you like to make an opening statement to the committee?

Mr Quinn—We appreciate the opportunity that the committee has given us to sit and talk with you for a while. I will make a brief opening statement and then the chair of the council, Kerry, will look at a few of the terms of reference. Then I will conclude, if that is all right with you, Senator.

CHAIR—Yes, of course. Please proceed.

Mr Quinn—We come as a body of interested people from the community. We are far from being experts, but we have a continuing intelligent interest in the topic. The Catholic Church believes that the gospel of Christ is a message of freedom and a force for liberation. This applies not only to individuals but also to civil society. The Catholic Church has a clear role in the public arena. The Catholic Social Justice Council here in Perth is the social justice body of the Catholic archdiocese here. In cooperation with many stakeholders, the council aims to work for justice in social structures at all levels: global, national, regional and local. The work of justice takes particular form in a commitment to the poor, to those who suffer marginalisation by deliberate decisions of those in power or to those whose humanity is lessened and weakened by structures of injustice.

The church's role in the public forum is both positive and negative. It supports actions and policies that enhance human life—again, whether they are international, local or whatever. It criticises actions and structures that damage people. In doing this, our council draws on some basic principles of our own church, called the Catholic social teaching of the church. This has principles in common with many other stakeholders in all the issues that we face. Some of those principles are human dignity, that every human being must be honoured as a child of God made in God's image, and human rights—the minimum conditions necessary for the healthy growth of individuals and peoples. They include the right to life itself; the right to sufficient life goods; the right to education; the right to work and its accompanying decent conditions; the right to cultural expression; the right to economic justice; and the right to political participation.

The Catholic Church also believes that in the community the relationship of equality and love within the Holy Trinity itself is the model for all human relationships. This is where we come from in our approach as the Catholic Social Justice Council. Human rights are recognised and most effectively protected only in community with others, we believe. In respect of interdependence, we also believe that political and environmental crises alert us to the fact that we are all interconnected. As for cooperation, we believe in working together towards common goals. True cooperation demands that the goals and the measures used to obtain those goals are just.

There is an important principle in Catholic teaching called the common good. This is defined as the sum of those conditions which allow groups or individuals ready access to their own fulfilment. There is also talk in our church about solidarity—global solidarity, especially since our head has come from a particular country where solidarity has not been an important principle.

CHAIR—Mr Quinn, I do not think the committee would disagree with most of what you are saying; they are worthy objectives. Can you relate it to our terms of reference and the concerns which you obviously have about how those principles are interrelating and impacting with the WTO?

Mr Quinn—Thanks, Senator. I wanted to indicate to the committee where we are coming from.

CHAIR—I understand the need for that, but I am just asking if you can address the terms of reference.

Mr Quinn—Perhaps we could address them now.

CHAIR—It is your time; I just want you to get the most out of your submission.

Mr Quinn—I understand. Thanks.

Ms MacFarlane—I want to make some brief statements about the first five dot points in the terms of reference. The first two dot points relate to community sector involvement, accountability and transparency. We believe there needs to be community sector involvement both in internal policy making and in negotiations at WTO meetings. We live in a democracy, and our government, obviously, is fully accountable to the Australian people; so accountability, in our view, requires transparency, openness to public scrutiny and debate in the areas of policy formation and policy advocacy, and it requires transparency in dispute resolution. This requires, we believe, an informed community, vigorous debate about the issues, and consultation with the community sector—that is, non-government organisations.

Consultation on World Trade Organisation issues has tended to be with business interests, mainly corporations and peak industry bodies, with little or no publicity about the issues involved and no attempt to encourage public debate. Often, the public become aware of issues when there is a dispute and when there is media publicity about the results of a dispute, and then they learn about our role and what is expected of us in signing certain trade agreements.

We have to be aware of the difference between the aims of corporations and the aims of government. Professor Friedman says that increasing shareholder wealth is the purpose of business and that that is the basis of a free economy. He rejects the notion of corporate social responsibility. He said that that is the domain of government. The WTO preamble says that the objective is to conduct trade with a view to raising standards of living, ensuring full employment and a large, steadily growing volume of real income. Corporations therefore are concerned about shareholders; governments and the WTO are concerned about communities that trade. Trade and investment, however, can have non-economic dimensions that can affect social, cultural and spiritual values. We believe it is essential that the Australian community be

involved in the processes of the WTO if the aim is to be realised. Basically, we support the aim but, if the aim is to be realised, the Australian community has to trust the process.

The processes of the WTO are in marked contrast to those of the United Nations, yet most UN agreements that we have signed have only moral force and are not subject to the sanctions and disciplines that apply in WTO agreements—that is not all UN agreements, but most of them have only moral force. It is even more compelling that our government engage the Australian community in the processes of the WTO. This is particularly so when that organisation can require our government to amend or repeal a law enacted in the interests of the Australian community. Exclusion of the community from these processes undermines the principle of representative government and fosters mistrust of the whole purpose of the WTO.

Australia should support moves to improve the transparency of our dealings with the WTO by involving non-government organisations as observers at negotiating rounds and also as participants in the dispute settlement processes. The Community Aid Abroad submission suggested that we should have a World Trade Organisation social and environmental advisory council. We would certainly support that claim.

On the dispute settlement procedures and their effectiveness and access, we believe that the dispute settlement process has to be open, accessible, fair and impartial, just as our judicial system is. Disputes, at the moment, are heard by a panel of three trade specialists or bureaucrats in secret without public access to documents or hearings. The appellate body is chosen from seven persons, three of whom serve in any case. We would suggest the need for a broader composition of members of these bodies. Limiting the panel to those who are experienced in trade law or policy is too restrictive, as panel decisions can have implications for issues other than international trade, such as environmental sustainability, labour standards and sustainable development. In fact, the articles of the WTO require panel members to be independent and to have a sufficiently diverse background and a wide spectrum of interest, but that does not appear to reflect the present common practice.

The preamble to the WTO also recognises that trade is a means to an end. It states that trade relations should be conducted with a view to raising standards of living and ensuring full employment, while allowing for the objectives of sustainable development and the need to protect and preserve the environment. So this requires people with broader interests than merely trade law or trade policy. At present there is no obligation on either the panel or the appellate body to accept NGO briefs. In two cases that we looked at, the appellate body held that *amicus curiae* briefs could be submitted by non-government organisations at the discretion of the panel, and in another case the appellate body held that it can accept such a brief from the public at the appeal stage. We believe that Australia should support the inclusion of a mandatory review of *amicus curiae* briefs by panels. This would provide panels with a far greater range of expert evidence and broaden public input. Panels should also be required to provide reasons why they accept or reject such evidence to assist in making the dispute settlement procedure more transparent and accountable.

Under the WTO rules, the dispute settlement process is a state to state proceeding. However, we believe that corporations have obviously significant lobbying power in initiating complaints, particularly those from the quad—the EU, the USA, Japan and Canada. So there is a belief that WTO rules are predominantly shaped by corporate interests, not by concerns for human rights

protections, labour standards protections, health and safety measures and environmental protections. I think the Australian government needs to consult widely with the community when an exporter requests the government to initiate a dispute. This increases community participation and leads to greater public trust in the outcome. I think that is the one problem with our involvement with the WTO. It is not understood by the public and it is certainly not trusted by the public, so you get this sort of xenophobic view growing.

CHAIR—Is that based on any examples or just the issues that you have pointed out? I am seeing if I can nail down any particular issue that you want to bring forward.

Mr BAIRD—I would like to follow up on this. I am very glad to see you here and would identify with all your objectives and aims of your group. From our point of view, we would be interested in specific examples of where you believe the agreements that Australia has signed have not been in our interests or have disadvantaged the poor in Australia or have provided inequities, lack of social justice et cetera. I totally agree with your objectives. They have tried to focus on where you feel the process has let down the groups that you are concerned about.

Ms MacFarlane—With the salmon importation from Canada, Australia put up scientific analysis that we should not accept Canadian salmon. That was overridden by the WTO. So obviously our salmon farmers would argue that that may cause the importation of diseases which would wipe them out. That would have an economic effect, but it would also have a large social effect because most of the salmon production is in Tasmania, which has high unemployment at the moment. That would be an example.

CHAIR—All of the arguments that you make about that were certainly agitated in the whole process of very exhaustive AQIS analysis. On phytosanitary agreements, the scientific basis is really exhaustive. Ultimately, one may or may not agree with it, but are you suggesting that there is something wrong with that process? The Tasmanian farmers were very vocal; there was a Senate hearing on it; there was ample opportunity to engage the community and industry interests on that. If you do not think that, can you tell us where you do think there is a problem? These are the sorts of issues that we genuinely are trying to grapple with. We are very glad to hear you. I am not trying to argue with you; I am trying to elicit where you feel that the processes are not working adequately when, with something like salmon, the ultimate outcome seemed to address those problems. In fact, there has been almost no salmon at all imported.

Mr BAIRD—Isn't the issue there that they argued in relation to the problems of locally produced salmon and health risks et cetera, whereas you are saying that perhaps we should have argued in relation to local employment in Tasmania, which has an unemployment problem?

Ms MacFarlane—It could have a social consequence—that is right. Our scientific evidence was held not to be acceptable, and that is what they looked at—scientific evidence; the WTO does not seem to take into account social effects.

Mr BAIRD—I am certainly aware of what happened in Seattle. But if you just looked at it in terms of employment with the Nikes of the world et cetera, they would say that they are helping local employment. It is not so much employment, it is the conditions that are provided in those arrangements, isn't it?

Ms MacFarlane—That is right. I think Australia's position in the WTO should not just be a concern for Australians. As a developed country, we have obligations to be an advocate for the developing countries. We provide significant aid to developing countries. Obviously they do not have the same expertise as we do to answer these allegations, some of them do not even have a mission and they are not able to have a great voice in WTO negotiations.

Mr BAIRD—Do you think there could be a danger of conflict? We have just had a presentation by the Western Australian government, and they feel there are occasions where subsidies by developing countries provide direct competition to exports from this country, so assisting Third World countries in the forum might disadvantage Australian productions and employment. Do you see that as being a possible problem?

Ms MacFarlane—I do. But if you just look at it from a trade point of view, you may not see that without the subsidy the developing country is putting into place there may be widespread poverty in that country and then we are called upon to assist them. You cannot simply look at it from a trade point of view; it has to be wider.

Mr WILKIE—Can you give examples where the trade point of view has been the only issue that has been looked at? At a lot of these hearings people have come along and given us a lot of generalisations about what they believe is happening, but they have not been able to come up with specific instances or examples that we could then put in a report and say, 'We believe this because this is the evidence—the actual hard core facts, not the generalisations—that has been presented to us.' We really need to have the meat if we are going to do something.

Ms MacFarlane—You could argue about the EU's arrangement with the Caribbean banana producers, which was one case Community Aid Abroad looked at. They would only accept bananas from that area, and the WTO said that that agreement was in breach of the WTO rules. They have to accept imports from other areas, which has the potential to devastate the economy of those islands.

Mr BAIRD—And perhaps help a few other islands.

Ms MacFarlane—Yes, but it depends on who controls the banana production. That is another effect.

CHAIR—That is not a good example because enforcement has never been able to be achieved with bananas.

Mr BAIRD—As I understand it, your basic thrust is that you do not believe there is enough accountability in WTO negotiations in terms of the social impact rather than the economic impact per se and also that there is no recognition of NGOs who are representing the social impact in these negotiations. Is that the core?

Ms MacFarlane—Yes, basically. Ultimately, if you do not bring the Australian public with you then you get voted out of office.

CHAIR—That is a very good point. What sort of NGO should be represented and how representative are the NGOs? We have that problem as well. I would like your views on that for the committee's benefit.

Ms MacFarlane—You could have, for example, Community Aid Abroad.

CHAIR—The main ones you mean? You do not mean every group that wants to?

Ms MacFarlane—No. I think you should have a representative from regional areas, which have certainly felt the brunt of deregulation in this country. They would like a voice, I am sure, representing the effects of globalisation and their interests as rural exporters. Certainly it would include the churches and the social justice groups.

CHAIR—You might like to think about that. You could put a note to us about how we pick the NGO winners. That would be an interesting exercise. But that would be your point of view and that of the sorts of people and groups that you come into contact with. It is a serious issue.

Mr WILKIE—There has been a suggestion along the line that we need to have more NGO involvement, but the argument countering that is: which ones do you choose? So if someone can come up with a reasonable formula, we would be interested in looking at it.

CHAIR—Have you been able to say what you want to say to the committee?

Mr BAIRD—We cut you off, didn't we?

CHAIR—We tend to do that because we get interested and dive in before people finish. If there was anything that you wanted to say for the record, please do.

Ms MacFarlane—One other point was that we believe our role as an advocate should be not only to represent Australia's interests but also to represent the developing nations' interests. We suggest that the developed countries could establish an advocacy centre funded by them to provide a certain expert technical support for some of the poorest developing countries so that their concerns are heard.

CHAIR—The secretariat has established now some assistance for developing countries which is contributed to by some of the other members to allow access to the dispute settlement system. We thank the Catholic Social Justice Council for their time and effort in coming before us this morning. We appreciate it very much.

[11.04 p.m.]

JENKINS, Mr Brian Joseph, Honorary Secretary, StopMAI (WA) Campaign Coalition

CHAIR—Welcome, Mr Jenkins. Would you like to make an opening statement?

Mr Jenkins—StopMAI is an informal coalition, which has been in progress for about three years. It was created to examine and to raise public awareness on the issue of the Multilateral Agreement on Investments. It is because we believe that those issues are being carried over into the World Trade Organisation that we have decided not only to continue but also to retain the name StopMAI.

CHAIR—Catchy title.

Mr Jenkins—I would like to very much thank the parliament and the JSCOT for making this opportunity available. We lobbied loud and long in the early days against the idea that consultations only took place in Canberra, Melbourne and Sydney, and it is terrific to see them happening in Perth. We regard that as partly an achievement from our complaints.

CHAIR—In any event, we are pleased to be here.

Mr Jenkins—I am here to assist the committee. StopMAI is not a propagandist organisation; it is an organisation of citizens which is primarily concerned with obtaining information. We were formed because of the difficulty of obtaining any information in the days of the MAI. I might add that the parliamentary representation which we have in great abundance in Western Australia did not assist us very much in getting that information. It was not until we started to receive the first formal responses from Treasury in very highly pruned sort of documents that we had any information from our government, and this was nothing compared to the vast amounts of information that we were able to get from the Internet and from colleagues in other countries. One of the themes of our organisation is that we are not just concerned with local issues, we are concerned with what is happening in other parts of the world. Our program is not just concerned with the WTO in Seattle or Qatar but also, as you have seen, with the World Bank and IMF in Washington, the WEF in Melbourne, the European Union in, say, Gothenburg, and so on. So we have a program of examining events in all parts of the world which are related, otherwise we would not be doing it.

The written submission that we put in was essentially an international log of claims and personally I am prepared to stand by it, I very proud of that statement, but some of the particular clauses will not be subscribed to by individual members of our organisation, StopMAI. We have a variety of people, including some trade union people and people associated with religious groups, though not, I hasten to add, the people who have just presented evidence. Principally our interests are in democracy, the protection of the environment, the protection of culture, human rights and all that sort of thing. But I would stress that we are not a doctrinaire body. We are volunteers; we have no funding. We are not, strictly speaking, an NGO, although I think we come into that category. Unless you want to ask me more about the nature of StopMAI and how we operate—

Mr BAIRD—That would be good.

Mr Jenkins—If you would like me to go into that a little now, I will do that. Unlike some of the other organisations you are dealing with, we are not coming from some sort of social objective. For instance, we are not working for the Communist Party to take over the world: when a vacuum is created, new power structures will be created and so on. We are not into that necessarily, although some of our members may well subscribe to that sort of thing. We are into obtaining information and promoting that information, raising public awareness about issues. We do this by conducting public meetings. We have quite a few public meetings in Western Australia.

Western Australia is not the best place to discuss these issues. We have never had any response, for instance, from the Western Australian government to any inquiries, whether they be about trade policy, the ramifications in local government or the environment or what have you. There is a complete brick wall between members of civil society such as ourselves and the bureaucracy of Western Australia. We have permeated the bureaucracy in Canberra to some degree, because the onus is placed on Canberra to communicate with civil society. This came first of all from the OECD and now it is coming from the WTO. For instance, in November last year we initiated a coming together of other groups interested in globalisation. When I say ‘globalisation’, I am aware of the semantic problem with the word. We use the term ‘globalism’ or ‘corporate globalism’ to describe what we are against, which is essentially the movement by corporate interests to obtain the most significant economic power in the world.

CHAIR—What is the status of the groups that you refer to in your letter which you sent with your submission to the committee? The letter, dated 31 August, said:

There follows a submission in relation to the reference which is endorsed by the following organisations—

Are you claiming to represent each of those organisations or are they affiliated in some way and, if so, what is the process? How many members belong to StopMAI as opposed to other groups that might be sympathetic and prepared to endorse a generic statement, if I can put it that way?

Mr Jenkins—To answer the first part of your question, the purpose of that list is to indicate that the statement which follows headed, ‘WTO shrink or sink—the turnaround agenda’ is an international statement which is not owned by my organisation but which is subscribed to, in principle, by StopMAI. It is also subscribed to by all of those Australian organisations which I listed there. They are included in 521 international organisations—organisations in overseas countries as well as Australia—that had signed that statement by 31 August when the submission was made.

CHAIR—What you are saying is that StopMAI also endorses this statement?

Mr Jenkins—That is right. This is the company we are in as far as Australia is concerned.

Senator LUDWIG—Did you seek permission from the author to put that statement in?

Mr Jenkins—Yes. The nature of communications in what we call the international movement against globalisation is a copyright free environment. Things are done openly.

Senator LUDWIG—Because *Hansard* is published we have to be a little more—

Mr Jenkins—These endorsements are published on the Internet. You can go to the web site of the Ralph Nader organisation, Public Citizen, in the United States and you will find that there is a list of all the people who have subscribed to it. This goes for a number of other similar documents. For instance, the Westminster United Nations Association has a document called Charter 99, which is addressed to the United Nations, fundamentally. It lists some thousands of signatories ranging from members of parliament to the great unwashed.

Senator LUDWIG—So ‘WTO shrink or sink’ is a statement that you have taken off the web site. You have attached your letterhead to it and submitted it to the committee?

Mr Jenkins—There is a little more than that. We actually participated in the framing of the document. It is a cooperatively framed document but we do not necessarily own every word in it. As a matter of principle we are co-owners.

CHAIR—How many people are in StopMAI and how do you join? Where do you operate?

Mr Jenkins—StopMAI meets monthly. We have regular meetings on the last Saturday of every month. Meetings last for about two or three hours. Formal business—the matter of reports, et cetera—is done at those meetings. We usually have about 20-odd people attending. When we hold a public meeting the numbers we attract are about 150 to 200. Our convention, which we held in November, when people had to pay money to go—about \$40 or \$50—attracted about 200 people. Those people are not representative of any particular part of the political spectrum. They are from all parts.

CHAIR—How many members does StopMAI have?

Mr Jenkins—We do not have a formal membership structure. We are not anxious to be manipulated, taken over, or generally assailed on the basis of some sort of corporate structure.

CHAIR—It is more an informal group?

Mr Jenkins—It is an informal group.

Mr WILKIE—That is the WA branch we are talking about.

Mr Jenkins—This is the WA branch, yes. We keep minutes and we have a properly structured way of going about things. Most of our communication takes place outside meetings anyway—an email—

CHAIR—We were talking with a previous witness about how you would identify NGOs. You said you are probably not an NGO. You would not regard yourself as representative of anything other than perhaps your views of those and the people who wish to associate themselves with it.

Mr Jenkins—We are a forum for planning information, assessing information and raising public awareness. We welcome any contribution to that. We have people in the group who are scientists, for instance; we have people who are lawyers.

CHAIR—But presumably so long as their views are reasonably consistent with yours. If I turned up and said, ‘I would love to be a member. I love the WTO. I think it is the greatest thing we have ever had and I want to go and agitate in your group,’ I probably would not be very welcome, would I?

Mr Jenkins—We have some members, for instance, who say, ‘The way to handle Australian trade is not to have it, to have a fortress Australia situation,’ and, ‘We should not be sending coal to Newcastle.’

Mr BAIRD—If you look at Australia’s primary production, where we produce five times the amount of agricultural product than we actually consume, what do you think would be the result for those people on the land if we did actually adopt fortress Australia? How would we talk to them and address them?

Mr Jenkins—This raises very large issues. It is not simply a matter of ‘We produce five times more than we need’. The matter is that as a result of having been a British colony and a granary for half the world we have got into this overproduction situation.

CHAIR—What do we do with the farmers? Seven out of 10 farmers would not have a job unless we had that order of exports.

Mr Jenkins—In 50 years they may not be there. I believe the agricultural sector is dwindling anyhow.

Mr BAIRD—If you went through Western Australia and if four-fifths of the need for farmers would disappear—and then in terms of the minerals, because it is a very important role, and you were here for the presentation that 37 per cent of the GDP relates to exports—we do not then have an export industry. What is everyone going to do?

Mr Jenkins—I am very conscious of these things. When I raised the example that one of our members had those views I did not for a moment expect you to take on that we were all like that. I, for instance, have been a public relations consultant with briefs from the pharmaceutical industry and mining companies. I write—

Senator LUDWIG—What encouraged us was you tended to defend the issue. That is what set us off, so to speak.

Mr Jenkins—The point you raise about agriculture shows that there are issues that are not being addressed by people who are interested in trade. For instance, the cost of combating the desalination of soil and the land degradation is not being met by the people who have made the profits from the mining, wheat or the introduction of inappropriate animals to inappropriate pieces of terrain. No, those costs are being socialised and met by the public. That is just one of many issues that arise. Another one is: is it fair to treat what I call extensive agriculture, which is agriculture for export, under the same rules that must apply to subsistence farmers or to small

farmers in Europe, where farming has different cultural values from Australian farming, where indeed there are many more farmers per square mile than there are in Australia? The attempt to create a one size fits all regimen to cover all of those farmers is obviously going to lead to inequities. That is another of the issues that we talk about.

Mr BAIRD—Do you think there have been any benefits at all in Australia being involved with the WTO?

Mr Jenkins—Speaking personally, yes. Indeed, I would have even gone down the road to some degree with the OECD, except that we are in an adversarial situation—not because we want to be but because the people who are pushing for the reforms and the liberalisation are only interested in one side of the story; that is, to release themselves from obligations whilst giving themselves the freedom to cross boundaries with their capital, with their workforces if need be.

You have a rules based system for trade, but we should request that the rules based system be extended to cover obligations. For instance, if you are goldmining in Romania, there should be obligations not to pollute the Danube with cyanide and so on; if you are transporting oil across the sea, you should have obligations in respect of what you have to do if you have an oil spill. Those factors are not currently obligatory—they cannot be enforced. The WTO has very good teeth, so that what is enacted in the WTO has a pretty good chance of coming about. That is why the people who are pushing for these reforms do not want to see any sort of corporate responsibility or standards—be they in human rights or environmental standards—incorporated into those agreements. As far as some including myself are concerned, there are a lot of benefits in the rules based regime as long as it is a balanced regime.

CHAIR—For the benefit of the committee, can you provide some concrete examples of where the operation of current WTO agreements are impacting adversely in Australia on any group in terms of inequity, being contrary to environmental expectations and standards, being contrary to human rights—those sorts of arguments?

Mr Jenkins—The whole movement for liberalisation in the past 20 years or so has obviously made enormous changes to the Australian way of life. Speaking as a citizen—

CHAIR—But where are the advantages and the disadvantages. We have the figures, but we are asking you why we should be critical of the current WTO agreements and the way they apply in Australia—who is not benefiting and to what extent?

Mr Jenkins—I simply have to ask you: are you happy with the idea that something like 20 per cent—using even official statistics—of the youth of Australia has never worked and that many of them will probably never have employment and will be living on social welfare?

CHAIR—But is there a specific WTO agreement that relates to that?

Mr Jenkins—No, it is because of the emphasis on globalised free trade doctrine—which was once very good. There was a golden age of free trade doctrine during the GATT period when economic growth was increasing, economic conditions were rosy, the Australian dollar was worth a dollar, there was full employment and so on. But in the last 10 years we have moved

into what has been called the 'leaden age' of globalisation by many economists, or what Chris Patten referred to yesterday as 'the dark side of globalisation'. In the last decade we have seen—and many of us have only seen it in the last two or three years—a terrible downside, which is measurable in terms of unemployment and the devaluation of our Australian assets. When the Australian dollar is worth US50c or 33p sterling—

Senator LUDWIG—How is that a consequence of free trade? I am really having trouble with your economics. How do you explain that both unemployment—

Mr Jenkins—I am not an economist.

Senator LUDWIG—That is my problem—I do not understand how you come to those conclusions. You are making very broad assertions.

Mr Jenkins—It is caused by investment factors. The meltdown of the Asian so-called tiger economies a few years ago was caused, I understand—and I have this from a very good economist—by the sloshing about of speculative investment across state boundaries without any kind of restriction until people like Mahathir decided to impose a few capital controls. This caused excessive confidence and it caused—

Senator LUDWIG—Even if that is the case, that is not free trade.

Mr Jenkins—The very term 'trade' is a misnomer in many ways. Western Australia is still in that golden age. We are still producing iron ore, nickel, natural gas—valuable commodities—and we are trading those. In other words, we are producing a value—

Senator LUDWIG—You are not suggesting that speculative investment is trade?

Mr Jenkins—Ninety per cent of trade covered by the World Trade Organisation is intra-company transactions, is speculative in nature and is not balanced. Something like 90-odd per cent of the world's gross global turnover has nothing to do with the production of value, with iron, coal or oil. It is currency; it is speculation. Most of the profit that is made is made out of speculation.

Senator LUDWIG—I am happy for you to go away and look at it, but if you are going to assert that a downturn in our exchange rate, a downturn in the economy, a last quarter drop or negative growth is as a consequence of free trade I would really like to look at your argument, if you do have one, rather than an assertion. I certainly understand the time constraints that we all have. I would appreciate it if you could turn your mind to putting that on paper rather than picking a WTO shrink or sink and giving it to us. If not, I accept that. The other matter I want to raise is in relation to those other organisations that you have attached to your letter. Are they aware that you have put this submission in?

Mr Jenkins—Yes.

CHAIR—I think basically what we are looking at is: how do we strike a balance sheet on the WTO? What you say may or may not be right, but we have not got anything concrete to rely on, and we have to make up our minds about the overall benefits or the deficits from the WTO. It is

a difficult task in front of us. We appreciate people coming in front of us and presenting their point of view. We are about to open up the committee to people who want to make statements to us. To be of value, it really needs to be more than a broad assertion that sits up there in the air somewhere that may or may not be correct, but there is no way of gauging it unless you can put it in the balance sheet somewhere. I do not think anyone on this committee is saying that everything to do with free trade, Australia's engagement with free trade and the WTO is rosy and perfect. It is not, but there are palpable benefits and we need to balance the problems with the benefits.

Mr Jenkins—I understand that. One of the difficulties that we are confronting all the time is that we are aware that a lot of the problems simply do not fall into the parliamentary arena, and there is very little that parliament or even executive government can do about it from an Australian point of view. For something like six years Treasury were sending people to Paris every six weeks to negotiate the Multilateral Agreement on Investment. We did not hear about it until about 18 months before the thing collapsed. Most businessmen, on seeing the text of the Multilateral Agreement on Investment, would say, 'This is preposterous. It shouldn't happen. We shouldn't sign an agreement which will take away the government's right to regulate on various things.' Not only did we not hear that but also it did not become apparent to the people who were negotiating for us, and it should have become apparent. The government eventually did, as a result of the work that this committee did, come out with that conclusion.

So there are elements about this that cannot be handled by parliamentarians. In the context of parliament at the moment, we have decided to focus on only two elements of this whole business which have some relevance to parliament: one of them is the GATT, which will be very close to the heart of government authorities both national and subnational; and the other one is the national competition policy, because this is something that is discussed in the parliament. A lot of the negotiations, the signing of treaties and so on do not come into the parliament, and there is nothing, with respect, that this committee or the parliament can do about it.

CHAIR—This committee now looks at every treaty that is proposed.

Mr Jenkins—That is important. But the situation is that treaties still do not have to be ratified by parliament—they can be commented on, but not ratified—and the executive government can still simply sign a treaty. Would you like me to make some brief comments on the terms of reference?

CHAIR—We have pretty much run out of time. If you would like to put something to us in writing about that, by all means you are very welcome to do so.

Mr Jenkins—I would be glad to do that, yes.

Mr WILKIE—Mr Jenkins, you have stated that the aim of the StopMAI (WA) is to gather information, but there is nothing in your submission that suggests what information you would like to see made available to your organisation. I would just like you to consider that and possibly put in something in the future that outlines what you think needs to be made available. Also, you have stated that you believe in a rules based submission, but the submission talks about rolling it back and says 'We don't want it.'

Mr Jenkins—I am more disposed to a rules based system than other organisations are. As I have said, there is no doctrinaire approach here.

CHAIR—Thank you very much for coming and giving us your time, Mr Jenkins. You are welcome to put in any further note that you wish to.

[11.31 a.m.]

BRADLEY, Mr Malcolm (Private Capacity)

CHOMLEY, Mrs Helena Elizabeth, Council for the National Interest

HUTCHISON, Mr David Eric (Private Capacity)

MASSAM, Mr John Charles, Australian Fair Trade and Investment Network

MUELLER, Mr Otto (Private Capacity)

SCHINDLER, Mr John (Private Capacity)

WALLER, Mrs Norah (Private Capacity)

CHAIR—I declare open the public forum on Australia's relationship with the World Trade Organisation and welcome those who are appearing before the committee. The forum will allow members of the public to make a statement to the committee about Australia's relationship with the WTO. Although we have done this before, it will be a slightly different process than usual, because it is not a question and answer or discussion session but a chance for those appearing before the committee to have their say and make their comments as part of the evidence that is being taken before the committee in this inquiry. Can I ask, however, for statements to be as brief as possible; perhaps confine them to three minutes in getting your point across.

I would just remind you to go very quickly through the terms of reference for our inquiry, because they are what we want to hear about: opportunities for community involvement in developing Australia's negotiating position with the WTO; transparency and accountability; Australia's interaction with the dispute resolution mechanisms of the WTO; and the impact that WTO agreements have on any other bilateral or multilateral agreements on the environment, human rights and labour standards. As I said to a previous witness, it would be great if you could give us some concrete examples rather than generalisations. We have the picture pretty clearly about some of the major concerns, so we now need to try and give it some flesh. I am now going to call on the first speaker. I will do it in this order: Mr David Hutchison, Mr Malcolm Bradley, Mrs Norah Waller, Mr John Schindler, Mr John Massam and Mrs Helena Chomley. In that order, could each of you please address the committee?

Mr Hutchison—I am David Hutchison, and I am just making a personal submission. I want to raise the specific issue about the potential for the WTO to impact on national social policy. Recent media reports have caused my concern. According to these, American health corporations propose to seek a ruling from the WTO that subsidised health schemes in some nations are anticompetitive. It may be that the WTO would not, or could not, make such a ruling. If it were to do so, Australian health schemes such as Medicare and pharmaceutical benefits would be at risk. That is all I wish to say.

CHAIR—Thank you very much. The next speaker is Mr Bradley.

Mr Bradley—Good day. As a concerned barefoot citizen speaking for myself, basically I am saying that three minutes cannot do justice to what I feel and have to say. I do not think that in three minutes you can present any concrete evidence that you guys could justify as believable, accountable or economic.

CHAIR—You are at liberty, if you want to, to put in a note to just amplify that.

Mr Bradley—That is fine. And I would like not to be interrupted as well, if that is okay. I do not want to get into a rant on the evils of the World Trade Organisation or the international system as it stands; nor do I claim to have the answers. I think the onus is on you guys to research and look into the matters as best you can and work within the system that exists now. My major point is about the consultation. This is not really what I would call a consultative process. I would suggest that the number of people who even know that JSCOT is in town is limited to fewer than a thousand out of several million, or whatever it is, in Perth. If you call that public consultation I think it is inadequate.

Australia's or any country's relationship with the World Trade Organisation should not be taken in isolation from the other institutional structures and the environmental issues that are facing the world at the moment. The way I see it, the focus of these talks has been almost purely economic—I have heard some submissions from other people who have tried to broaden the issue. It has been very nationalistic as well. You are not taking a global position; you are not thinking about the millions of people who do not even have food, who do not have the things that we take for granted. Globalisation is bigger than this—it is obviously social, it is environmental, it is economic; but, most of all, it is political, and that is what you guys are here for.

Free trade is political, and I am not sure that you are expressing how much that really is the case. Whether or not it can ever be free is another matter. Can it be fair? I do not know. All this talk of Kyoto scares me. I appreciate that you took submissions on that yesterday but, from what I can gather, you all seem to implicitly accept that environmental things should be linked within the WTO and the neoliberal institutional system, which has a dubious path of evolution, from the post war through the GATT, through a period dominated by the United States hegemonically, politically and militarily. I will not go into that; I could go on for a long time.

Treaties such as the GATT, the World Trade Organisation and a number of other things that you guys deal with are not representative of the people nor accountable to the people. The negotiation is not transparent; it is done behind closed doors. Who does all this benefit? Today we have seen the government make a submission. Where is business? Business is actually at the talks at these places. They are not here today because they are really in where it matters. You have seen a groundswell—you mentioned Seattle. I do not see that that is where it started. You know about S11 Melbourne. You know that there is going to be a big thing about the free trade agreement in Quebec today. M1—Mayday—is going to happen in a couple of weeks. So it is only going to grow unless you guys do something about it. I do not think you can placate the massive amount of hurt that is in the system at the moment. Good luck to you in trying. Thank you for your time.

Mrs Waller—I want to speak about the financial markets and the monetary system. After World War II the Bretton Woods Conference was held and they arranged a fixed exchange rate

between national currencies under the Bretton Woods system. This system lasted for 25 years. The IMF was created to ensure stabilisation of rates. By 1967 President Nixon allowed the dollar to float against other currencies, and other nations followed. By 1973 a flexible exchange was adjusted under the Smithsonian agreement and the system collapsed. The present speculative nature of the currency markets is causing instability on world markets, particularly in the Asia-Pacific region. As I speak, the Solomon Islands cannot buy food, fuel or medicines. Ideally, there should be a world currency, but this is a distant dream at present.

In 1978, Nobel Prize winning economist James Tobin proposed that a small worldwide tariff—less than half of one per cent—be levied on all major countries on foreign exchange rate transactions. For a currency transaction to be profitable the exchange currency must be greater than the proposed tax. Some special currency trades have much smaller margins. The Tobin tax would reduce and eliminate the intention to speculate. This would help to stabilise exchange rates and boost world trade.

So I am suggesting that the IMF, which is responsible for this particular state of affairs, and the World Trade Organisation should now call a world conference to discuss currency rates and how to stabilise them, because it is an unfair system. We know from our own currency at the moment, which is right down, that this is not a fair system in which to do business. Ideally, there would be a world currency, but we cannot get to that. However, we could at least put the brakes on. This is something that the World Trade Organisation can do; it is something we can do. As an older person, I am not against the World Trade Organisation. I think globalisation is a good thing. It is coming early and very fast and most of us cannot keep up with it, but it is going to be a good thing provided it is done in a fair manner for everybody.

CHAIR—Thank you for your point of view, Mrs Waller. I turn to you, Mr Schindler.

Mr Schindler—I am a community activist, which is quite an expensive occupation. On their web site the WTO define themselves as the only global international organisation dealing with the rules of trade between nations. Their goal is to help producers of goods and services, exporters and importers, conduct their business. A very large percentage of world trade is conducted by relatively few transnational corporations. So, by their own definition, the World Trade Organisation are there to help these corporations conduct their business and not to help individual countries. A lot of world trade has now shifted out of the control of national governments and been taken over by organisations bigger than national governments.

In their definition—and I have read through it—the environmental and social impact part of their policies and rules does not seem to get much of a mention. When you asked a former witness today how the panels were selected, people with any experience in the environment or of the social impact of their policies did not get a mention. They are all lawyers and experts in trade or economics. It is all about money.

There are a few examples there. For instance, if logging has been carried out in a country on a non-sustainable level, there seems to be no provision in the World Trade Organisation's rules and regulations to actually penalise that country and give an advantage to other countries that are practising a sustainable level of things. You can dump your toxic waste into the ocean in one country but, if you come to Australia, you cannot do that. So it is an extra cost for industry in Australia. You can go over to Indonesia or anywhere like that or even to Europe, in some parts

of the former Iron Curtain countries, and you have an unfair advantage over countries that are more environmentally conscious. Australia still has a long way to go of course.

There is nothing mentioned about the production and transport of radioactive material in the World Trade Organisation's rules and so on. Those people are not penalised, but if one of those things goes down here our fishing industry and everything will go by the board. But that does not cost them anything.

As for the social impact, I have been in Australia for only 35 years but I have seen nearly all our labour intensive industries now shifted overseas to countries with lower wages with no safety rules and regulations, no workers compensation, no social services payments after workers have reached old age—nothing like this. Australia cannot compete with these countries in those sorts of industries. I think somebody mentioned that 20 per cent of the young people in Australia do not have jobs. One of the reasons is that all the labour intensive industries have left. Nike got a mention, of course—they are the bad boys—but they are only one of the examples. I do not have specific examples but I do have a couple of pages of web sites with the information if you are interested.

CHAIR—Yes, you are welcome to tender it. Thank you.

Mr Schindler—I would just make a point that the Western Australian government representation here today had nobody from the Department of Environmental Protection and no-one from the health department to address the environmental or social impact of the WTO—and I will be writing to the Premier pointing that out to him.

CHAIR—Thank you for your point of view, Mr Schindler. Now, Mr Massam, representing the Australian Fair Trade and Investment Network.

Mr Massam—Thank you, Madam Chair. I am speaking more as an individual because we have not submitted this statement to all the members around Australia. This might seem irrelevant for a moment but the danger of engines falling off planes and the necessity in Australia for doctors to have a degree and for teachers to have passed exams might seem to have nothing to do with trade, but of course they are part of the world exchanges that go on. We know now over these last few days that a government body, CASA, and a big company called Ansett, both charged with the job of keeping planes safe in the sky, evidently could not do that. There were cracks on the engine mountings. That means that your engine can fall off if you strike certain air turbulence.

These things seem to be so obvious and we are satisfied in a country that is organised like Australia—as many other such countries are satisfied with their organisation—and we forget that there are people out there wanting all this swept away. There is actually a web site asking for anyone in the world to send in information about restraints on trade. Teachers having to have qualifications is a restraint on trade. Say you are running a big tutoring college which is wanting to go worldwide—why should your teachers have qualifications?

These might seem fanciful to us; but a lot of the things that are happening in the world now do seem fanciful. Take the impudence of President Bush talking about spreading the benefits of free trade and the North American free trade area by spreading it to the whole of the continent.

Only in the last few days Canadian religious leaders have gone down to Mexico to see the benefits of what Mexico has got—and remember it includes Mexico, not just Canada and the US, in spite of what Anglo-Celts might think. It has been a horror for the Mexicans because there are modern factories being built just over the border and elsewhere in the country, too, and people are coming out of shanties they have made themselves out of bits of cardboard and scraps of tin and rubbish. They have to shower before they can go into the modern beaut factory and they work away at very low rates of pay while their Yank or Canadian cousins would have been entitled to a decent salary, a kind of a salary that most of us expect to get.

We go through life and somewhere in mid-life we can afford to travel the world and we can afford to do things. Some of us buy houses and then we build on house after house. But this is the horror of Mexico. The Canadian churchmen have been astonished. The World Trade Organisation—as other speakers have said—has forgotten that trade and industry and the economy are not everything. We are more than just money-making machines. We have to remember that all these other parts of our lives—our private home life and our ability to go to law if someone is doing bad things, a proper system of safety in public transport—actually end up helping the economy.

So the economy is not everything. But there are all of these things like proper union wages. The bus drivers in Perth—not all; there are still some running around—are on strike. Their wages were cut by \$100 when competition came in. Competition is part of world trade. They want to compete everywhere in the world. When you think of a big company in Britain, America, France or anywhere you like wanting to compete in Australia, what they are really wanting is to take someone else's market share. It is not just a normal growth of the world; they want to take some other company's or some other private individual's market off them. Why would New Zealand be wanting to send apples to Australia? Australia has a surplus of apples, and has had it for years. Australia has always been exporting. Why would North America be trying to send salmon to Australia? Aren't there hungry people in North America and South America? Aren't there people who could eat apples in New Zealand?

CHAIR—Thank you, Mr Massam. You have pretty much reached the time limit. Is there anything else you would like to give us in a note of any sort?

Mr Massam—I could try to write something.

CHAIR—I will try to give everyone a little opportunity at the end if I can just keep to the time frame.

Mrs Chomley—We are addressing the terms of reference relating to the WTO disputes panel and Australia's relationship with it. The principle that the CNI espouses is fair trade, not free trade, for Australia. But 'fair' means judgments, and judgments mean the disputes panel. The problem, as I saw from one of the other submissions—and somebody made the point earlier when I was here this morning that the World Trade Organisation has got very sharp teeth; I think we have had 10 cases so far—is that on the one hand the powerful economies can press Australia not to use the disputes panel on threat of substantially hurting Australian trade, and on the other hand when we are threatened with world trade action by a large economy we do not have the economic clout to deter a large economy from using the WTO dispute settlement

system against us. So our recommendation is that Australia should be very cautious in its approach to this panel. That is our second recommendation.

But our third recommendation is the one that I would like to speak to most this morning. Apart from representing the CNI I am an academic, so I have an interest in this recommendation that we are making. It is that we as a country do not have people skilled enough to represent our national interests adequately on panels such as this one and we should be doing something about it. What we should be doing about it is not relying on, as somebody also said, theoretical economists or even the legal interests, who obviously see opportunities for profit here. Universities in other nations have departments specialising in commercial diplomacy—something sadly lacking in Australia. WTO treaties need to be rigorously scrutinised by specialists in commercial diplomacy as well as by the public and politicians.

The clearest example of where such scrutiny was lacking was the MAI. If signed, the MAI would have meant that Australia could offer no protection—tariffs or subsidies—or have granted any preferential contracts to or given any special legal protection to an Australian company over foreign based multinationals. And Mr Costello would not have problems at the moment. It took a year of public outcry to achieve a government inquiry that led to the shelving of the MAI. It illustrates how Australia needs experts skilled in commercial diplomacy who are more circumspect about multilateral agreements which extend the reach of foreign economic interests into Australia. So our recommendation is this: Australia urgently needs to have trained negotiators skilled in commercial diplomacy involved with the WTO and should not be reliant on theoretical economists in WTO trade negotiations and disputes.

CHAIR—Thank you. There was another person who, I am sorry, I missed, and that was Mr Mueller.

Mr Mueller—I thank you for the opportunity to make this submission. Notwithstanding what may have been claimed this morning by very vested interest groups, the following comments should be noted. Over the last five years and more following the founding of the World Trade Organisation, both Australian major parties have promoted a so-called level playing field. We were brainwashed into believing that it is bad to support Australian industry. Therefore, tariffs, called featherbedding by the proponents, were and still are progressively reduced. This resulted, and still results, in widespread social upheaval, increased welfare budgets, reduced employment levels and revenue raisings—a shortage of taxes for some reason—and vastly increasing private and public debt levels. It is a lie to claim that it is a win-win situation.

In addition, we have been kept in the dark by the government and the media alike about whether there has been a concomitant reduction in protective measures by our trading partners. There is probably no level playing field among the more than 100 World Trade Organisation members. There is not even a proper definition of what free trade means. Is it trade in human beings—people-smuggling? Or is it ships, supposedly full of children, in the Gulf of Guinea? Is it free trade to deny South Africa cheap pharmacological goods to combat rampant AIDS? Is that free trade? Is it free trade to export and import Angolan diamonds to promote wars in west Africa? Is it merely to export miscellaneous ores and their wastes back into the countries they came from or vice versa? Someone claimed earlier that 90 per cent of the so-called free trade—and I would estimate that 50 per cent of so-called free trade—is actually intercompany trade. Is it semifinished products from the least cost countries to be completed in other countries for tax

minimisation schemes by the companies concerned? Is it free trade to export or import genetically modified foodstuffs without designating them as such? Is it carpets produced by child labour? Finally, is it free trade to swamp your competitors with cheap bulk commodities which put the local guy out of business, as happens in this country?

My list could continue and we are left to wonder whether the many thousands of WTO regulations have produced any winners yet among those who most need it. At the same time, however, our government cherishes deregulation. Why then does the executive, including the Prime Minister, defend CASA—note Ansett hot air over the past week—and the ACCC and Professor Fels and his people who have failed completely to promote competition and, rather, support mergers of one kind or another in this nation?

Free trade also requires a free money flow. Again, governments of both persuasions have been instrumental in ensuring that that happens. As a result of that change, the Australian dollar has become a currency for speculators and it consistently loses value. Every day, an estimated \$70 billion are shifted around the globe by the so-called unaccountable money market. None of that Australian money produces any goods or services, while the electorate—that is you and me—have been told for years that there are ever more budgetary constraints; no wonder, when it is all siphoned out of the country by those who run the businesses. Thank you very much for your time.

CHAIR—Thank you, Mr Mueller, and I apologise for having had to leave for a moment. I listened to you through the fog of my flu. Thank you all very much. I am sorry that the committee has to wind up, but in all the capital cities we have been trying to turn the forum into a public forum for a while because we value very much each of you coming here and giving us the benefit of your views. Thank you; we do appreciate that.

Resolved (on motion by **Mr Wilkie**):

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

Subcommittee adjourned at 12.00 p.m.